



GUIDE TO THE EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

Volume 1: Establishment, Operations and Cases



Extraordinary Chambers
in the Courts of Cambodia

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FOREWORD

Established with the solemn purpose of “bringing to trial senior leaders of Democratic Kampuchea and those who were most responsible” for the atrocities committed in Cambodia between 1975-1979, the Extraordinary Chambers in the Courts of Cambodia (ECCC) has solidified its presence in the hearts and minds of victim-survivors, the Cambodian public, and the international community that came together to support its mission.

With the successful completion of the trials, it is a pleasure to publish this *Guide to the Extraordinary Chambers in the Courts of Cambodia* and to share the ECCC’s various contributions within and beyond the courtroom. The motivation behind this publication is rooted in the commitment to preserving the legacy of the ECCC and ensuring that the valuable information contained within its archive is disseminated widely and made accessible to all.

The methodology behind this Guide has been rigorous and inclusive. We began with an initial call for expressions of interest, inviting contributions from a range of qualified practitioners. In an effort to ensure the accuracy and objectivity of the information presented, we advanced an edition of this Guide between January and June 2024 to solicit feedback from the public. This iterative approach has allowed us to incorporate valuable insights and refine our content to better meet the needs of our various audiences.

The information presented in this Guide is drawn directly from the decisions of the ECCC itself and other authoritative documents, providing readers with a factual overview of the life and work of this unique institution. By providing pinpointed references to information, we hope to not only inform, but to also provide the reader with several entry points into the complex work of the ECCC.

We would like to extend our sincere thanks to all those who have contributed to the creation of this Guide, as well as to those who will use it as a tool for learning. It is through valuable cooperation and engagement like this that we can ensure the lasting impact and legacy of the ECCC.

Tony Kranh

Acting Director of Administration

Knut Roesandhaug

Deputy Director of Administration

CONTENTS IN BRIEF

<i>Foreword</i>	i
<i>List of abbreviations</i>	xiii
<i>Acknowledgements</i>	xv
1. FINDINGS ON THE KHMER ROUGE REGIME	1
2. OVERVIEW OF THE NEGOTIATIONS, ESTABLISHMENT, AND OPERATIONS OF THE ECCC	39
3. MANDATE	53
4. COMPOSITION	109
5. CASES	185
6. REPARATIONS	309
7. RESIDUAL FUNCTIONS	329
8. ANNEXES	335

CONTENTS

1. FINDINGS ON THE KHMER ROUGE REGIME

1.1.	Pre-Democratic Kampuchea period (1930 – April 1975)	2
1.1.1.	The origins of communism in Cambodia	2
1.1.2.	The Khmer Rouge emerge	3
1.2.	The Khmer Rouge regime (17 April 1975 – 7 January 1979)	7
1.2.1.	Organisation of political control	7
1.2.2.	Organisation of military control	10
1.2.3.	The “Great Leap Forward”	11
	1.2.3.1. Displacement of populations, cooperatives, and worksites	12
	1.2.3.2. Security centres and execution sites	16
	1.2.3.3. Targeting of specific groups	23
	1.2.3.3.1. <i>Mistreatment of former Khmer Republic officials, soldiers, and their families</i>	23
	1.2.3.3.2. <i>Mistreatment of Buddhists</i>	25
	1.2.3.3.3. <i>Mistreatment of Cham</i>	27
	1.2.3.3.4. <i>Mistreatment of Vietnamese</i>	29
	1.2.3.3.5. <i>Mistreatment of other groups</i>	32
	1.2.3.3.5.1. <i>Khmer Krom</i>	32
	1.2.3.3.5.2. <i>Thai</i>	33
	1.2.3.3.5.3. <i>Other groups</i>	34
	1.2.3.4. Regulation of marriage	34
1.3.	The fall of the Khmer Rouge regime	37

2. OVERVIEW OF THE NEGOTIATIONS, ESTABLISHMENT, AND OPERATIONS OF THE ECCC

2.1.	Background to the negotiations	40
2.2.	Negotiations commence	43
2.3.	Legal formalities continue and financial contributions flow in	44

2.4.	The start of operations	46
2.5.	Key milestones of the judicial phase	48

3. MANDATE

3.1.	Purposes of the ECCC	54
3.2.	Legal framework	55
3.2.1.	ECCC Law	55
3.2.2.	UN-RGC Agreement	56
3.2.2.1.	Supplementary Agreement on Safety and Security	58
3.2.2.2.	Supplementary Agreement on Utilities, Facilities, and Services	59
3.2.3.	Internal Rules	59
3.2.4.	Practice Directions	61
3.3.	Jurisdiction	62
3.3.1.	Subject matter jurisdiction	62
3.3.1.1.	Crimes under the 1956 Penal Code	62
3.3.1.2.	Genocide	65
3.3.1.3.	Crimes against humanity	66
3.3.1.4.	Grave breaches of the Geneva Conventions	74
3.3.2.	Temporal jurisdiction	77
3.3.3.	Territorial jurisdiction	77
3.3.4.	Personal jurisdiction	78
3.4.	Modes of liability	81
3.4.1.	Planning	82
3.4.2.	Instigating	85
3.4.3.	Ordering	87
3.4.4.	Aiding and abetting	89
3.4.5.	Committing	92
3.4.6.	Joint criminal enterprise	93
3.4.7.	Superior / command responsibility	97
3.5.	Amnesties and pardons	101
3.6.	Penalties and sentencing	102
3.7.1.	“National” and “international” components	104
3.7.2.	Decisions by a “supermajority”	104
3.7.3.	Innovation of a Pre-Trial Chamber	105
3.7.4.	Limited jurisdiction and jurisdiction over international crimes	106
3.7.5.	Languages	107
3.7.6.	Victim participation	108

4. COMPOSITION

4.1.	Office of the Co-Prosecutors	110
4.2.	Office of the Co-Investigating Judges	114
4.3.	Judicial Chambers	118
4.3.1.	Appointment of judges	118
4.3.2.	Pre-Trial Chamber	119
4.3.3.	Trial Chamber	122
4.3.4.	Supreme Court Chamber	124
4.4.	Support Sections	126
4.4.1.	Victims Support Section	126
4.4.2.	Defence Support Section	128
	4.4.2.1. Co-Lawyers and their teams	131
4.4.3.	Civil Party Lawyers and Civil Party Lead Co-Lawyers Section	132
4.5.	Judicial organisation and administration	135
4.5.1.	Plenary sessions	135
4.5.2.	Judicial Administration Committee	136
4.5.3.	Rules and Procedure Committee	137
4.6.	Legal Support	138
4.7.	Office of Administration	139
4.7.1.	Court Management Section	141
	4.7.1.1. Records and Archives Unit and Front Office	141
	4.7.1.2. Witness and Expert Support Unit	142
	4.7.1.3. Interpretation and Translation Unit	144
	4.7.1.4. Transcription Unit	145
	4.7.1.5. Audio-Visual Unit	146
	4.7.1.6. Detention Liaison Unit	147
4.7.2.	Public Affairs Section	151
4.7.3.	General Services Section	152
4.7.5.	Information Communication Technology Section	155
4.7.6.	Operational Support Units	155
	4.7.6.1. Budget and Finance Sections	155
	4.7.6.2. Human Resources Management Sections	156
	4.7.6.3. Procurement Units	157
4.8.	United Nations Assistance to the Khmer Rouge Trials	157

5. CASES

5.1.	Case 001	186
5.1.1.	Overview of the Accused	186
5.1.2.	Preliminary investigation and Introductory Submission	187
5.1.3.	Judicial investigation	187
5.1.3.1.	Detention and charges	187
5.1.3.2.	Evidence on the case file	188
5.1.3.3.	Final Submission	189
5.1.3.4.	Closing Order	190
5.1.4.	Pre-Trial Chamber proceedings	191
5.1.4.1.	Appeal against the Closing Order	191
5.1.4.2.	Pre-Trial Chamber's decision on appeal against the Closing Order	192
5.1.5.	Trial Chamber proceedings	194
5.1.5.1.	Initial hearing	194
5.1.5.2.	Substantive hearing	195
5.1.5.2.1.	<i>Agreed and contentious facts</i>	195
5.1.5.2.2.	<i>Civil Parties</i>	196
5.1.5.2.3.	<i>Statements by the Accused</i>	197
5.1.5.3.	Dismissal of International Co-Lawyer	198
5.1.5.4.	Trial Judgment	198
5.1.5.5.	Trial Chamber decision regarding national crimes	202
5.1.6.	Supreme Court Chamber proceedings	203
5.1.6.1.	Appeals against the Trial Judgment	203
5.1.6.2.	Appeal Judgment	206
5.1.7.	Post-conviction phase	213
5.1.7.1.	Detention and assistance in Case 002	213
5.2.	Case 002	214
5.2.1.	Overview of the Accused	214
5.2.2.	Preliminary investigation, Introductory and Supplementary Submissions	215
5.2.3.	Judicial investigation	216
5.2.3.1.	Detention and charges	216
5.2.3.2.	Evidence on the case file	216
5.2.3.3.	Jurisdictional challenges	216
5.2.3.3.1.	<i>Amnesty and pardon</i>	217
5.2.3.3.2.	<i>Ne bis in idem</i>	217
5.2.3.3.3.	<i>Applicability of JCE</i>	218

	5.2.3.4. Civil Parties	218
	5.2.3.5. Final Submission	219
	5.2.3.6. Closing Order	219
5.2.4.	Pre-Trial Chamber proceedings	221
5.2.5.	Trial Chamber proceedings	223
	5.2.5.1. Preliminary objections and initial hearing	223
	5.2.5.2. Severance	226
5.2.6.	Case 002/01	231
	5.2.6.1. Conduct of the trial	231
	5.2.6.2. Ieng Thirith's fitness to stand trial, severance, and death	232
	5.2.6.3. Ieng Sary's fitness to stand trial and death	234
	5.2.6.4. Trial Judgment	235
	5.2.6.5. Supreme Court Chamber proceedings	241
	5.2.6.5.1. <i>Appeals against the Trial Judgment</i>	241
	5.2.6.5.2. <i>Appeal Judgment</i>	242
5.2.7.	Case 002/02	250
	5.2.7.1. Conduct of the trial	251
	5.2.7.2. The start of Case 002/02 proceedings and issues caused by severance	253
	5.2.7.3. Trial Judgment	255
	5.2.7.4. Supreme Court Chamber proceedings	261
	5.2.7.4.1. <i>Nuon Chea's death and termination of proceedings</i>	261
	5.2.7.4.2. <i>Appeals of the Case 002/02 Trial Judgment and appeal hearings</i>	261
	5.2.7.4.3. <i>Appeal Judgment</i>	262
	5.2.7.5. Post-conviction phase	265
5.3.	Cases 003 and 004	265
5.3.1.	Challenges faced concerning Cases 003 and 004	265
	5.3.1.1. Disagreements concerning whether to open further cases	265
	5.3.1.2. Disagreements during the judicial investigation	266
	5.3.1.3. Consideration of a permanent stay of proceedings	268
	5.3.1.4. Disagreements concerning whether the cases would proceed to trial	269
5.3.2.	Case 003	270
	5.3.2.1. Overview of the suspects	270
	5.3.2.2. Introductory Submission	270

5.3.2.3.	Judicial investigation	271
5.3.2.4.	Death of Sou Met	272
5.3.2.5.	Issue concerning a chapeau requirement of crimes against humanity	273
5.3.2.6.	Final Submissions	275
5.3.2.7.	Closing Orders	275
5.3.2.8.	Civil Party applications	276
5.3.2.9.	Appeals against the Closing Orders	277
5.3.2.10.	Considerations on appeals against the Closing Orders	278
5.3.2.11.	Litigation concerning the status of Case 003	279
5.3.2.12.	Termination of proceedings	281
5.3.3.	Case 004	283
5.3.3.1.	Overview of the Suspects	283
5.3.3.2.	Introductory Submission	284
5.3.3.3.	Judicial investigation	284
5.3.3.4.	Issues concerning forced pregnancy and forced impregnation	285
5.3.3.5.	Severance of Im Chaem and creation of Case 004/01	285
	5.3.3.5.1. <i>Final Submissions</i>	287
	5.3.3.5.2. <i>Closing Order</i>	287
	5.3.3.5.3. <i>Civil Party applications</i>	288
	5.3.3.5.4. <i>Appeal against the Closing Order</i>	288
	5.3.3.5.5. <i>Considerations on appeal against the Closing Order</i>	289
	5.3.3.5.6. <i>Dismissal of charges</i>	292
5.3.3.6.	Severance of Ao An and creation of Case 004/02	292
	5.3.3.6.1. <i>Final Submissions</i>	292
	5.3.3.6.2. <i>Closing Orders</i>	293
	5.3.3.6.3. <i>Civil Party applications</i>	294
	5.3.3.6.4. <i>Appeals against the Closing Orders</i>	295
	5.3.3.6.5. <i>Considerations on appeals against the Closing Orders</i>	296
	5.3.3.6.6. <i>Termination of proceedings</i>	298
5.3.3.7.	Case 004 – the proceedings against Yim Tith	301
	5.3.3.7.1. <i>Conclusion of the investigation</i>	301
	5.3.3.7.2. <i>Final Submissions</i>	301
	5.3.3.7.3. <i>Closing Orders</i>	301
	5.3.3.7.4. <i>Civil Party applications</i>	302

5-3-3-7.5.	<i>Appeals against the Closing Orders</i>	303
5-3-3-7.6.	<i>Considerations on appeals against the Closing Orders</i>	304
5-3-3-7.7.	<i>Termination of proceedings</i>	306

6. REPARATIONS

6.1.	Case 001	310
6.1.1.	Publication of statements of apology by Kaing Guek Eav (alias Duch)	311
6.1.2.	Publication of Civil Party names	311
6.2.	Case 002/01	312
6.2.1.	National Remembrance Day	312
6.2.2.	Construction of a memorial in Phnom Penh – “For Those Who Are No Longer Here”	312
6.2.3.	Testimonial therapy	313
6.2.4.	Self-help groups	314
6.2.5.	Permanent exhibition on forced transfers	314
6.2.6.	Mobile exhibition on Khmer Rouge history and the ECCC	315
6.2.7.	School curriculum chapter on forced population movements and executions at Tuol Po Chrey	316
6.2.8.	Construction of a Community Peace Learning Centre in Samroang Khnong	317
6.2.9.	Civil Party booklet related to facts adjudicated in Case 002/01	317
6.2.10.	Publication and distribution of the Judgment in full and summary form	318
6.2.11.	Publication of Civil Party names	318
6.3.	Case 002/02	319
6.3.1.	Khmer Rouge history app	319
6.3.2.	Training and workshops for teachers and university lecturers	319
6.3.3.	The “Turtle Project”	320
6.3.4.	Community media project: Cham people and the Khmer Rouge	321
6.3.5.	Phka Sla Kroam Angkar	322
6.3.6.	Voices from ethnic minorities	323
6.3.7.	Unheard stories of Case 002/02 Civil Parties	323
6.3.8.	Song-writing contest: “A Time to Remember”	324

6.3.9.	Memory sketches of Kraing Ta Chan	324
6.3.10.	Public access to judicial records and Civil Party materials	325
6.3.11.	Healing and reconciliation for victim-survivors	325
6.3.12.	Legal and civic education for minority Civil Parties	326
6.3.13.	Mental health support and counselling	327

7. RESIDUAL FUNCTIONS

7.1.	Consultation process	330
7.2.	Addendum to the ECCC Agreement	331

8. ANNEXES

Annex 1:	Further reading	336
Annex 2:	Legal and operational framework	341
Annex 3:	List of principals	344
Annex 4:	Key case documents	347
Annex 5:	Decisions grouped by theme	349
Annex 6:	Financial information	352

LIST OF ABBREVIATIONS

AVU	Audio-Visual Unit
BAKC	Bar Association of the Kingdom of Cambodia
BFS	Budget and Finance Section
CMS	Court Management Section
CPK	Communist Party of Kampuchea
CPLCLs	Civil Party Lead Co-Lawyers
DDOA	Deputy Director of Administration
DFLU	Detention Facility Liaison Unit
DK	Democratic Kampuchea
DOA	Director of Administration
DSS	Defence Support Section
ECCC	Extraordinary Chambers in the Courts of Cambodia
FO	Front Office
FUNK	National United Front for Kampuchea
GRUNK	Royal Government of the National Union of Kampuchea
GSS	General Services Section
HRMS	Human Resource Management Section
ICCPR	International Covenant on Civil and Political Rights
ICP	Indochinese Communist Party
ICTY	International Criminal Tribunal for the former Yugoslavia
ITU	Interpretation and Translation Unit
JAC	Judicial Administration Committee

JCE	Joint Criminal Enterprise
KNUFNS	Kampuchean National United Front for National Salvation
KPRP	Khmer People's Revolutionary Party
OA	Office of Administration
OCP	Office of the Co-Prosecutors
OCIJ	Office of the Co-Investigating Judges
OLA	Office of Legal Affairs
PAS	Public Affairs Section
PRA	People's Representative Assembly
PRK	People's Republic of Kampuchea
PRT	People's Revolutionary Tribunal
RAK	Revolutionary Army of Kampuchea
RAU	Records and Archives Unit
RGC	Royal Government of Cambodia
RPC	Rules and Procedure Committee
SCM	Supreme Council of Magistracy
SSS	Safety and Security Section
TU	Transcription Unit
UN	United Nations
UNAKRT	United Nations Assistance to the Khmer Rouge Trials
UNGA	UN General Assembly
UNSG	UN Secretary General
VU	Victims Unit
VSS	Victims Support Section
WPK	Workers' Party of Kampuchea

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FINDINGS ON THE
KHMER ROUGE
REGIME

1. FINDINGS ON THE KHMER ROUGE REGIME

This chapter describes the origins and rise of the Khmer Rouge, their consolidation of control over Cambodia, and the criminal policies and crimes that were committed in pursuit of their objectives. The facts provide an important basis for understanding the later establishment, operations, and jurisprudence of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”).

The historical facts provided below are based on findings which were relevant to the ECCC’s proceedings.¹ As such, they may not necessarily provide an exhaustive historical account of events. For further historical context about the Khmer Rouge regime and Democratic Kampuchea, refer to the list of suggested readings in Annex 1.

1.1. Pre-Democratic Kampuchea period (1930 – April 1975)

1.1.1. The origins of communism in Cambodia

In 1930, Vietnamese revolutionary leader Ho Chi Minh declared the founding of the Indochinese Communist Party (“ICP”). Under the influence of the Moscow-based Communist International, the ICP would seek to foment socialist revolution in Vietnam, Laos, and Cambodia. Initially, there were no Khmer in the ICP. Throughout the 1940s, Khmer Issarak, or freedom-fighter groups, had been struggling against French colonialism. Members of the Khmer Issarak included Ke Pauk, Sao Phim, Moul Sambath alias Ruos Nhim, Chhit Choeun alias Ta Mok, Ney Sarann alias Ya alias Men San, Achar Sok alias Tou Samouth, and Sieu Heng. In early 1950, Vietnamese agents organised a Unified Issarak Front, which at that point included Chou Chet, Keo Meas, and a former Thai Communist

¹ Historical facts are drawn from the Trial Chamber’s findings in Case 002/02, which reviewed crimes and the implementation of policies across Cambodia.

Party member, Nuon Chea. Led by Son Ngoc Minh, with Tou Samouth and Sieu Heng as his deputies, they were gradually assimilated into the ICP.

By 1951, the Vietnamese decided to break up the ICP into three national parties. The party for Cambodia would be known as the Khmer People's Revolutionary Party ("KPRP").²

The Geneva Conference in 1954 certified the independence of Vietnam, Laos, and Cambodia. While Vietnamese and Laotian communists were permitted to participate in the conference, Cambodian communists were not represented. The Geneva Accords required French and Vietnamese forces to leave Cambodia, and the Issarak groups to disband. Since the Geneva Accords called for elections in Cambodia, the KPRP organised a political party, *Krom Pracheachon* (the People's Group), to contest the vote. It was headed by Keo Meas, with help from Sao Phim, Men San, and Chou Chet. In February 1955, King Norodom Sihanouk renounced the throne and called for general elections according to the Geneva Accords, founding the political party *Sangkum Reastr Niyum* (People's Socialist Community), which won the election.³

Following their defeat in the election, Cambodia's communists reorganised. A new central committee was formed with Sieu Heng as Secretary, Tou Samouth as Deputy Secretary, and Son Ngoc Minh, Sao Phim, and Ruos Nhim as members. Tou Samouth was assigned as Secretary of the Phnom Penh City Committee with Nuon Chea as his deputy. Saloth Sar (who would later become known as Pol Pot), who had returned to Cambodia from his studies in France in 1953, was also a member. The *Krom Pracheachon* unsuccessfully contested another election in 1958. It was around this time that Norodom Sihanouk branded the left wing in Cambodian politics as "Khmers Rouges" or "Red Khmers". Around 1956, Sieu Heng defected to the Sihanouk regime.⁴

1.1.2. The Khmer Rouge emerge

In the late 1950s, Tou Samouth, Pol Pot and Nuon Chea began to draft documents to establish a communist party independent of Vietnamese

² Case 002/02, Judgment, 16 November 2018, E465, paras 196-198.

³ Case 002/02, Judgment, 16 November 2018, E465, para. 196-200.

⁴ Case 002/02, Judgment, 16 November 2018, E465, paras 200-202, 564.

influence. Pol Pot and Nuon Chea were the principal authors of the new Party Statute. The party sought to achieve a national democratic revolution to eliminate feudalism, reactionaries, landowners, imperialists, and their henchmen. By doing so, the country’s worker-peasants would be liberated, and a true socialist revolution could ensue.⁵

During the First Party Congress from 30 September 1960 to 2 October 1960, a group of 21 communist militants – 14 from rural areas and seven from the cities – gathered in Phnom Penh to adopt a new statute, agree to Pol Pot’s and Nuon Chea’s strategic and tactical lines, and elect the upper echelon of what would henceforth be known as the Workers’ Party of Kampuchea (“WPK”). Attempting to assert its independence and distance itself from Vietnamese communist movements, the KPRP’s decision to rebrand itself as the WPK was kept secret from Vietnamese comrades. Tou Samouth was elected as the party’s secretary, with Nuon Chea as his deputy. Joining those two as a full member of the Standing Committee was Pol Pot, while Ieng Sary was appointed as a candidate member.⁶

Around the time of the 1962 election, Tou Samouth disappeared. At the Second Party Congress in February 1963, Pol Pot was elected to replace Tou Samouth, while Nuon Chea remained deputy. Ieng Sary and Sao Phim became full members of the Standing Committee, and Vorn Vet, Ruos Nhim, Son Sen, and Ta Mok were elevated to the Central Committee. The Party also reaffirmed the strategic and tactical lines that had been adopted in 1960. Just weeks later, Norodom Sihanouk dissolved his government and published a list of 34 suspected leftists, including Khieu Samphan, Pol Pot, Hu Nim, Hou Youn, Ieng Sary, Son Sen, and Chou Chet. Fearing arrest, Pol Pot, Ieng Sary, and Son Sen fled to the jungle near the Vietnamese border, while Nuon Chea remained in Phnom Penh as the nominal head of the Party. Although Khieu Samphan, Hu Nim, and Hou Youn lost their government portfolios, they remained in Phnom Penh.⁷

Due to the attacks on the political left, the WPK Central Committee adopted “revolutionary violence” as part of the official party line in January 1965. In September 1966, the WPK adopted a resolution instructing zones to prepare for “armed struggle”. It also changed its name from the WPK

⁵ Case 002/02, Judgment, 16 November 2018, E465, para. 202.

⁶ Case 002/02, Judgment, 16 November 2018, E465, paras 203-204.

⁷ Case 002/02, Judgment, 16 November 2018, E465, paras 206-209.

to the Communist Party of Kampuchea (“CPK”). In April 1967, fighting erupted between soldiers and peasants in Samlaut village, Battambang province – an ex-*Issarak* stronghold. The fighting took place as a result of the *Sangkum* government’s mandatory grain acquisition policy, resulting in the deaths of soldiers and the seizure of weapons by the peasants.⁸

In the wake of the Samlaut events, Norodom Sihanouk blamed the three most popular leftists still operating in the open – Khieu Samphan, Hu Nim, and Hou Youn – threatening to turn them over to a military tribunal. Nuon Chea decided that they should all be taken to safety in rural areas controlled by revolutionary forces. Rumours quickly spread that the three named leftists had been killed by Norodom Sihanouk’s or Prime Minister Lon Nol’s forces.⁹

On 17 January 1968, a group of CPK combatants attacked police outposts at Bay Damram in Battambang province, seizing the weapons they found there. The CPK subsequently adopted this event as the beginning of the armed struggle and the founding date of the Revolutionary Army of Kampuchea (“RAK”).¹⁰

From March 1969, when the United States first launched its aerial bombing campaign on North Vietnamese communists present on Cambodian soil thus pulling Cambodia into the Vietnam War, Norodom Sihanouk allowed the North Vietnamese to establish bases in Cambodia. Growing social and political discontent about the presence of communist Vietnamese forces in eastern Cambodia led to protests in March mobilised on Norodom Sihanouk’s orders. With the National Assembly and government growing impatient with Norodom Sihanouk’s rule, Prime Minister Lon Nol signed a decree on 17 March 1970 supporting the overthrow of Norodom Sihanouk, who was in Moscow at the time. The National Assembly approved a vote of no confidence in Norodom Sihanouk the next day, removing him from office as Head of State.¹¹

Faced with these events, Norodom Sihanouk announced the formation of the National United Front for Kampuchea (“FUNK”) in a radio

⁸ Case 002/02, Judgment, 16 November 2018, E465, paras 208-210.

⁹ Case 002/02, Judgment, 16 November 2018, E465, para. 211.

¹⁰ Case 002/02, Judgment, 16 November 2018, E465, para. 212.

¹¹ Case 002/02, Judgment, 16 November 2018, E465, paras 214-217.

broadcast from Beijing on 23 March 1970, calling upon his compatriots to join the resistance against the new Khmer Republic and its leadership, including Lon Nol. Prior to the broadcast, Chinese Premier Zhou Enlai handed Norodom Sihanouk's draft to Pol Pot, who edited out references to socialism, presumably to harness maximum public support for FUNK. Rather than reveal himself and the CPK, Pol Pot forwarded a message of support under the names of established leftist politicians Khieu Samphan, Hu Nim, and Hou Youn (referred to as the "Three Ghosts").¹²

On 5 May 1970, Norodom Sihanouk declared the establishment of a government-in-exile, the Royal Government of the National Union of Kampuchea ("GRUNK"). Norodom Sihanouk became the Head of State, while Khieu Samphan was (unknown to him, initially) named as Deputy Prime Minister and Minister of National Defence. Hu Nim became Minister of Information and Propaganda, with Hou Youn named as Minister of Interior, Communal Reforms, and Cooperatives. Whereas previously, the Chinese and North Vietnamese had provided essentially no military assistance to the Cambodian communists, this geopolitical shift changed that policy. By the end of April 1970, a force of 35,000-40,000 Vietnamese communist troops had launched offensives in Cambodia and occupied large swathes of territory in the east. The CPK's forces occupied or controlled nearly one-fifth of Cambodia's territory at this time. The remainder of 1970 saw escalating conflict in and against the newly proclaimed Khmer Republic (*i.e.*, the Lon Nol government).¹³

By mid-1970, CPK members largely controlled FUNK/GRUNK. The CPK Central Committee "adopted a pragmatic line of good relations" with the Vietnamese communists on the assumption that the latter would withdraw from "liberated areas" once they were replaced by Cambodians. This policy was reversed in September 1971 at the Third Party Congress, when Vietnam was resolved as a long-term enemy of Kampuchea. At the Congress, Khieu Samphan was appointed as an alternate member of the CPK Central Committee along with Chou Chet, Ke Pauk, and Koy Thuon. The Congress also ratified the CPK name and approved the Party Statute.¹⁴

¹² Case 002/02, Judgment, 16 November 2018, E465, paras 218-219.

¹³ Case 002/02, Judgment, 16 November 2018, E465, paras 213-224.

¹⁴ Case 002/02, Judgment, 16 November 2018, E465, paras 223-226.

On 27 January 1973, the Democratic Republic of Vietnam, the Viet Cong, the Republic of Vietnam, and the United States signed the Paris Peace Accords. The provisions of that agreement provided that the United States would cease fighting in Vietnam and that North Vietnamese military forces would withdraw from Cambodian territory. Although the Vietnamese communists removed their forces from Cambodia except for a residual element to guard the flow of supplies from the north into southern Vietnam, the withdrawal of the United States from combat operations on Vietnamese territory enabled the United States military to divert its bombing raids to communist forces in Cambodia.¹⁵

The Khmer Rouge used the devastation and humanitarian plight caused by the US bombings to galvanise public sentiment against the Khmer Republic and successfully recruit combatants to the armed forces marching under the banner of FUNK/GRUNK. In June 1974, the CPK convened a Central Committee meeting attended by Pol Pot, Nuon Chea, Sao Phim, Koy Thuon, Ta Mok, Vorn Vet, Ruos Nhim, and Son Sen. Decisions were taken to make the final assault on Phnom Penh and other rural centres during the 1974-1975 dry season. On 1 January 1975, the Khmer Rouge commenced its three-and-a-half-month assault on Phnom Penh, shelling the city with rockets and other ordnance. On 1 April 1975, Khmer Republic forces sustained significant military losses, causing Prime Minister Lon Nol to resign and flee into exile. At a meeting in early April 1975, Pol Pot, Nuon Chea, Khieu Samphan, Son Sen, Vorn Vet, Koy Thuon, Ke Pauk, Sao Phim, and Ta Mok finalised the plan for seizing Phnom Penh.¹⁶ Phnom Penh fell to Khmer Rouge forces on the morning of 17 April 1975.

1.2. The Khmer Rouge regime (17 April 1975 – 7 January 1979)

1.2.1. Organisation of political control

Secrecy was considered fundamental, so much so that the very existence of the CPK was not publicly proclaimed until September 1977. Prior to that, cadres were instructed to refer to the CPK simply as *Angkar* or “The Organisation”. By 1975, an organisational structure was in place based on the CPK’s Party Statute. The “highest power rights throughout the country” were vested in the Party Congress, which was to meet once every

¹⁵ Case 002/02, Judgment, 16 November 2018, E465, paras 228-229.

¹⁶ Case 002/02, Judgment, 16 November 2018, E465, paras 227, 229-233.

four years. Between Party Congresses, power rested with the CPK Central Committee. The Central Committee was to meet at least every six months, but real power lay with the permanent Standing Committee, which was the executive committee of the Central Committee. Members of the Standing Committee were drawn from the larger body of the Central Committee and met approximately weekly, or more often if the circumstances required.¹⁷

“ The CPK’s rule was marked by some of the worst excesses of any regime in the twentieth century, during which an estimated 1.5 to 2 million Cambodians died ”

President of the Supreme Court Chamber ¹⁸

The Military Committee was an “extra-statutory sub-committee of the Central Committee” chaired by Pol Pot, with Son Sen as a member, and supervised the RAK. Office 870 oversaw the implementation of Standing Committee decisions and initially consisted of at least Sua Vasi alias Doeun and Khieu Samphan. The precise meaning of Office 870 is somewhat obscure, as different people had different notions of what was designated by this codename. During the ECCC trials, however, there was a consensus among the experts who testified that Office 870 was essentially the administrative apparatus surrounding the Standing Committee responsible for overseeing the implementation of Standing Committee policies, communicating those policies to lower echelons, and receiving reports on progress and issues with implementation. In addition, the Party Centre maintained a “Government Office” – codenamed S-71 – which handled technical and administrative matters and operated under the leadership of Chhim Sam Aok alias Pang. S-71 oversaw a network of entities codenamed with a “K” prefix, including “K1”, Pol Pot’s office and residence, “K3”, Nuon Chea and Khieu Samphan’s office and residence, “K6”, the CPK political training

¹⁷ Case 002/02, Judgment, 16 November 2018, E465, paras 342, 343-346, 355, 357, 388.

¹⁸ Case 002, Summary of the Appeal Judgment in Case 002/02, 22 September 2022, F76.1, para. 5.

school at Borei Keila, and “K15”, a political training school principally for Cambodians returning from overseas, among others.¹⁹

Beneath these organs of central political power, the country was divided geographically into zones, sectors, districts, subdistricts, and villages. The CPK devised the zones before 1975 and initially there were six zones: the North, Northeast, East, Southwest, West, and Northwest Zones. Prior to 1975, the area around Phnom Penh was designated as the Special Zone but was later dissolved. In 1977, the North Zone was split into the New North Zone and the Central Zone.²⁰

Each zone was divided into several sectors, which in turn were divided into districts. Within each district were sub-districts, and within the subdistricts were villages. Over time, as the revolution progressed, the villages, and in some cases the communes, were reorganised into cooperatives. There were also several regions labelled “Autonomous Sectors”, including Preah Vihear (Sector 103), Siem Reap/Oddar Meanchey (Sector 106), Monduliri (Sector 105), Kratie (Sector 505), and Kampong Som. At each echelon in the CPK’s organisational hierarchy, affairs were controlled by a party committee composed of a secretary, a deputy secretary, and one or more members. The secretary at each level was typically appointed by the next superior echelon of the hierarchy.²¹

The CPK also organised an apparent state apparatus, and in early 1976 adopted a constitution, officially naming the state “Democratic Kampuchea” (“DK”). The DK Constitution provided for the formation of a People’s Representative Assembly, which was a “façade” for the CPK. On 30 March 1976, the leadership of the DK government was announced by the CPK’s Central Committee. A few weeks later, all leading members of the former administration resigned to make way for the new CPK-led government.²²

¹⁹ Case 002/02, Judgment, 16 November 2018, E465, paras 359, 362-364, 366-368, 427.

²⁰ Case 002/02, Judgment, 16 November 2018, E465, paras 370-372, 376-377. See also Case 002/01, Judgment, 7 August 2014, E313, para. 216.

²¹ Case 002/02, Judgment, 16 November 2018, E465, paras 372-373, 384.

²² Case 002/02, Judgment, 16 November 2018, E465, paras 412-415.

All these government organs reported to and took orders from the CPK Standing Committee. The PRA purported to create a judicial branch, the Judicial Committee, but no such organ ever functioned.²³

All communications within this network of organisational structures, from the highest echelon of the Standing Committee, to the lowest at the village and commune echelons, were strictly vertical, with minimal lateral communication. Instructions flowing down the hierarchy and implementation reports flowing up always went from one level to the next – from the sector level to the zone, or down in the other direction, but never from one sector directly to another sector. Only the Standing Committee had a broad picture of what was happening across the country.²⁴

Communications methods included telegram, mail or letters, and shortwave radio for messages within the hierarchical system, while radio broadcasts and magazines, particularly the monthly publications *Revolutionary Flag* and *Revolutionary Youth*, were used by the central authorities to disseminate information and instructions more broadly. Only a few of the highest authorities had access to telephone communications. In addition to these internal communications channels, the Ministry of Foreign Affairs also prepared propaganda for external consumption in Vietnamese, English, French, and Chinese. The Ministry of Propaganda and Information and the Ministry of Foreign Affairs were responsible for monitoring foreign news reports and summarising external information for the Standing Committee.²⁵

1.2.2. Organisation of military control

The CPK's military forces were under the control of zone secretaries, as opposed to the Party Centre, before 17 April 1975. On 22 July 1975, Pol Pot announced the formation of a new Revolutionary Army of Kampuchea (“RAK”), centralising the Party Centre's control of the military forces. The new command structure created a “centre” army under the command of a General Staff, led by Son Sen, who reported directly to Pol Pot and the Military Committee. On the General Staff, Son Sen's deputies and assistants

²³ Case 002/02, Judgment, 16 November 2018, E465, paras 416-418.

²⁴ Case 002/02, Judgment, 16 November 2018, E465, paras 483, 487.

²⁵ Case 002/02, Judgment, 16 November 2018, E465, paras 457, 460-463, 465, 467, 473-478, 480-481, 486.

dealt with various aspects of military affairs including intelligence, logistics, planning, personnel, armaments, and communications.²⁶

Several “centre divisions” and “independent regiments” reported directly to the General Staff. Of these, Division 164 was the DK navy under the command of Meas Muth, while Division 502 was the DK Air Force under the command of Sou Met. Additional centre divisions included Divisions 170, 290, 310, 450, 703, 801, and 920. Each division was led by a secretary and a deputy secretary. There were three regiments in each division, three battalions in each regiment, three companies in each battalion, three platoons in each company, and three squads in each platoon, with a typical compliment of 12 soldiers per squad. There were independent regiments, each with specified functions, including the S-21 Security Centre. Most of these units were reorganised periodically and assigned new leadership, designations, duties, and duty stations. Manpower averaged 5,000 personnel, varying in size from less than 1,000 to more than 3,000 in an independent regiment. Some of the divisions and independent regiments fell under the control of the General Staff and some fell under the control of the individual zones or autonomous sectors.²⁷

At the villages, communes, and cooperative levels, another form of security force known as the militia, or *chhlop*, was under the control of the sub-district leaders. The *chhlop* did not possess independent authority to make arrests; this was reserved for sector or district echelon authorities.²⁸

1.2.3. The “Great Leap Forward”

The ECCC concluded that, by 17 April 1975, the CPK leadership had started to *rapidly implement socialist revolution in Cambodia through a “great leap forward” designed to build the country, defend it from enemies, and radically transform the population into an atheistic and homogenous Khmer society of worker-peasants.*²⁹ Plans to accomplish this were progressively developed from the earliest days of the communist movement in Cambodia,³⁰ and were criminal in their design and implementation.³¹

²⁶ Case 002/02, Judgment, 16 November 2018, E465, paras 424, 428.

²⁷ Case 002/02, Judgment, 16 November 2018, E465, paras 387, 424, 427-428, 430, 432, 452.

²⁸ Case 002/02, Judgment, 16 November 2018, E465, paras 453, 1066-1069.

²⁹ Case 002/02, Judgment, 16 November 2018, E465, paras 3743, 4068.

³⁰ See Case 002/02, Judgment, 16 November 2018, E465, paras 3733, 3743.

³¹ Case 002/02, Judgment, 16 November 2018, E465, para. 4068; Case 002/02, Appeal Judgment, 23 December 2022, F76, section VIII(B)(2)-(8).

The ECCC reviewed evidence of crimes through “policies” by which the CPK implemented their “great leap forward”. The following sections will outline the policies which were implemented between 17 April 1975 and 6 January 1979.



While it is not inconceivable for revolutions to benefit society without resulting in bloodshed or criminal activity, this was not one of them

Supreme Court Chamber ³²



1.2.3.1. Displacement of populations, cooperatives, and worksites

The CPK implemented a criminal policy of displacing populations from urban centres and forcibly relocating them to cooperatives and worksites. The objective of these relocations was mainly to increase national crop production and fulfil economic goals, thereby building the country and transforming the population into a society of worker-peasants.³³

In a trend which started before 1975 and continued throughout 1978, the CPK forcibly removed populations from urban centres across the country. The ECCC reviewed several mass displacements, termed “population movements”:

- **Pre-1975:** in areas “liberated” from Khmer Republic control³⁴
- **17 April 1975 and the ensuing days (“Phase I”):** following the fall of Phnom Penh and expulsion of at least two million people from the capital, as well as other displacements along major population centres immediate after³⁵

³² Case 002/02, Appeal Judgment, 23 December 2022, F76, para. 1815.

³³ Case 002/02, Judgment, 16 November 2018, E465, sections 16.4.1. See also Case 002/02, Appeal Judgment, 23 December 2022, F76, section VIII(B)(4).

³⁴ Case 002/01, Judgment, 7 August 2014, E313, sections 3.3.1, 14.2; Case 002/02, Judgment, 16 November 2018, E465, paras 3879, 3883.

- **Expulsion of Vietnamese civilians to Vietnam:** in 1975 and 1976, especially in the East Zone and the Tram Kak Cooperatives³⁶
- **From late 1975 throughout 1976-early 1977 (“Phase II”):** ongoing seasonal displacements of tens of thousands of people within and between zones³⁷
- **1977-early 1979 (“Phase III”):** to further meet agricultural needs and relocate populations affected by East Zone purges and intensifying border clashes³⁸

“

The CPK systems of mistreatment permeated every aspect of life as the able-bodied were conscripted and enslaved at worksites and cooperatives throughout the country

Trial Chamber ³⁹

”

Cooperatives in every zone and sector received most of these displaced populations. The cooperative was used as an ideological tool to organise the population into self-sufficient collectives. As the primary social unit, it replaced notions of private ownership, industry, means of production, formal education, medical institutions, and even family.

In practice, the CPK used cooperatives to harness and control the human resources it required to implement its economic targets. The population was enslaved to cultivate grain at unrealistic rates to enable exports and

³⁵ Case 002/01, Judgment, 7 August 2014, E313, section 10; Case 002/01, Appeal Judgment, 23 November 2016, F36, section IV(E)(1)(c); Case 002/02, Judgment, 16 November 2018, E465, paras 3881, 3883.

³⁶ Case 002/02, Judgment, 16 November 2018, E465, sections 10.1.10, 13.3-7.

³⁷ Case 002/01, Judgment, 7 August 2014, E313, section 11; Case 002/01, Appeal Judgment, 23 November 2016, F36, section IV(E)(1)(c); Case 002/02, Judgment, 16 November 2018, E465, para. 3903.

³⁸ Case 002/02, Judgment, 16 November 2018, E465, paras 3908, 3915. Due to the severance of Case 002/02, facts related to Phase III were not specifically examined at trial.

³⁹ Case 002/02, Judgment, 16 November 2018, E465, para. 4364.

capital for further construction and national defence purposes. Despite persistent drought, food shortages, starvation, and inadequate medical supplies, shelter and working conditions, people were forced to farm and build paddy dyke systems, canals, dams, reservoirs, railways, and produce textiles, among other things.⁴⁰



Those who were forced to
work were enslaved for the
sole benefit of the Party

Trial Chamber ⁴¹



In relation to the expulsion of at least two million people from Phnom Penh on 17 August 1975 and the following days, the ECCC found that the following crimes against humanity were committed:

- **Forced transfer**, as an “other inhumane act” – relating to the exodus under the pretext of a temporary “evacuation”⁴²
- **Murder** – relating to executions of civilian and military personnel, including those who refused to leave their homes and those who did not follow instructions; as well as deaths resulting from illness, lack of food, water, medical assistance, shelter, and hygiene facilities⁴³
- **Attacks against human dignity** – relating to the violent circumstances surrounding the “evacuation” of the city, severity of the conditions, the length of the journey to rural areas, and mistreatment by Khmer Rouge soldiers along the way⁴⁴

⁴⁰ Case 002/02, Judgment, 16 November 2018, E465, section 16.4.1.

⁴¹ Case 002/02, Judgment, 16 November 2018, E465, para. 3985.

⁴² Case 002/01, Judgment, 7 August 2014, E313, section 10.4.1. See also Case 002/01, Appeal Judgment, 23 November 2016, F36, section IV(D)(3).

⁴³ See Case 002/01, Judgment, 7 August 2014, E313, section 10.4.2. See also Case 002/01, Appeal Judgment, 23 November 2016, F36, section IV(D)(1)(b). The Supreme Court Chamber reversed convictions for the crime against humanity of extermination. See Case 002/01, Appeal Judgment, 23 November 2016, F36, section IV(D)(2)(b).

⁴⁴ See Case 002/01, Judgment, 7 August 2014, E313, section 10.4.4. See also Case 002/01, Appeal Judgment, 23 November 2016, F36, section IV(D)(3).

- **Political persecution** – relating to the comparatively harsh treatment experienced by real and perceived enemies of the CPK.⁴⁵

By relocating the population from place to place and forcing them to work at cooperatives and worksites across the country, the following crimes against humanity were committed:

- **Forced transfer**, as an “other inhumane act” – relating to coerced transfers of civilians within and between zones⁴⁶
- **Murder** – relating to executions of real and perceived enemies and deaths resulting from inhumane conditions at cooperatives and worksites⁴⁷
- **Enslavement** – relating to the construction of irrigation infrastructure (including cooperatives, paddy fields, dams, dykes, and feeder canals) and defence facilities⁴⁸
- **Political persecution** – relating to targeting of real and perceived enemies including New People, former Khmer Republic officials, traitors, counterrevolutionaries, and other detractors of the revolution who were unable to fulfil revolutionary goals⁴⁹
- **Attacks against human dignity**, as an “other inhumane act” – relating to inadequate living conditions (including insufficient food rations, drinking water, accommodation, toilet facilities, medical facilities, and sanitation) and hazardous working practices⁵⁰
- **Enforced disappearances**, as an “other inhumane act” – relating to the disappearance of those who were identified as enemies.⁵¹

⁴⁵ See Case 002/01, Judgment, 7 August 2014, E313, section 10.4.5. See also Case 002/01, Appeal Judgment, 23 November 2016, F36, section IV(D)(4).

⁴⁶ See Case 002/01, Judgment, 7 August 2014, E313, section 11.6.1. See also Case 002/01, Appeal Judgment, 23 November 2016, F36, section IV(D)(3).

⁴⁷ See Case 002/02, Judgment, 16 November 2018, E465, para. 3920; Case 002/02, Appeal Judgment, 23 December 2022, F76, section VIII(B)(9) (deaths resulting from poor conditions [i.e. murder with *dolus eventualis*] formed part of the common purpose and were directly imputable to Khieu Samphan as a member of the joint criminal enterprise). See also Case 002/01, Appeal Judgment, 23 November 2016, F36, section IV(D)(2)(c) (recharacterising facts relevant to Phase Two as murder); Case 002/02, Appeal Judgment, 23 December 2022, F76, section VII(A)(5)(a)-(d).

⁴⁸ See Case 002/02, Judgment, 16 November 2018, E465, paras 3922-3923.

⁴⁹ See Case 002/02, Judgment, 16 November 2018, E465, paras 3924-3925. See also Case 002/02, Appeal Judgment, 23 December 2022, F76, section VII(F)(2)(b). The Supreme Court Chamber reversed the finding that the movement of populations during Phase Two constituted political persecution. See Case 002/01, Appeal Judgment, 23 November 2016, F36, section IV(D)(4)(d).

⁵⁰ See Case 002/01, Judgment, 7 August 2014, E313, section 11.6.3; Case 002/02, Judgment, 16 November 2018, E465, para. 3926. See also Case 002/01, Appeal Judgment, 23 November 2016, F36, section IV(D)(3).

⁵¹ See Case 002/01, Judgment, 7 August 2014, E313, section 11.6.2; Case 002/02, Judgment, 16 November 2018, E465, para. 3927. See also Case 002/01, Appeal Judgment, 23 November 2016, F36, section IV (D)(3)(e); Case 002/02, Appeal Judgment, 23 December 2022, F76, section VII(G)(2)(a).

The ECCC specifically reviewed facts relating to population displacements, cooperatives, and worksites in the following cases:

- **Case 001:** relating to detainee working conditions at S-21 Security Centre,⁵² and living and working conditions at S-24⁵³
- **Case 002/01:** relating to the expulsion of the population from Phnom Penh (Phase I);⁵⁴ and the movement of populations within and between zones between September 1975 and 1977 (Phase II)⁵⁵
- **Case 002/02:** relating to joint criminal enterprise as implemented at the Tram Kak cooperatives;⁵⁶ Trapeang Thma Dam worksite,⁵⁷ 1 January Dam worksite;⁵⁸ Kampong Chhnang Airfield construction site;⁵⁹ and relating to the displacement of the Cham (within Phase II)⁶⁰
- **Case 003:** relating to alleged RAK crimes at Kampong Chhnang Airfield construction site and Stung Hav Rock Quarry worksite⁶¹
- **Case 004:** relating to alleged crimes at Anlong Chrey Dam (Central Zone), Trapeang Thma Dam, Spean Spreng and Prey Roneam Dam construction sites (Northwest Zone).⁶²

1.2.3.2. Security centres and execution sites

The CPK implemented a criminal policy of identifying, arresting, isolating, and “smashing” (*i.e.*, executing) the most serious categories of enemy. Lesser offenders, known as “bad elements”, were re-educated through political indoctrination, criticism/self-criticism, and work assignments designed to temper counter-revolutionary tendencies. These policies were implemented at over 200 security centres throughout the country by every level of the CPK’s administrative and military structures.⁶³

⁵² Case 001, Judgment, 26 July 2010, E188, section 2.4.2.2.

⁵³ Case 001, Judgment, 26 July 2010, E188, sections 2.4.2.1.

⁵⁴ Case 002/01, Judgment, 7 August 2014, E313, section 10.

⁵⁵ Case 002/01, Judgment, 7 August 2014, E313, section 11.

⁵⁶ Case 002/02, Judgment, 16 November 2018, E465, section 10.

⁵⁷ Case 002/02, Judgment, 16 November 2018, E465, section 11.1.

⁵⁸ Case 002/02, Judgment, 16 November 2018, E465, section 11.2.

⁵⁹ Case 002/02, Judgment, 16 November 2018, E465, section 11.3.

⁶⁰ Case 002/02, Judgment, 16 November 2018, E465, section 13.2.8.

⁶¹ Case 003, Second Introductory Submission, 20 November 2008, D1. Proceedings related to these facts were terminated. See below, chapter 5.3.2. Case 003.

⁶² Case 004, Third Introductory Submission, 20 November 2008, D1. Proceedings related to these facts were terminated. See below, chapter 5.3.3. Case 004.

⁶³ Case 002/02, Judgment, 16 November 2018, E465, section 16.4.2.

Throughout the DK era, the CPK discussed so-called enemies continuously and at length during meetings at various levels. The concept of the “enemy” encompassed those who were perceived as opposing in fact or ideologically the communist revolution. Individuals were classified based on their real or perceived association with a particular group or class, or as a consequence of having engaged in particular real or perceived counter-revolutionary behaviour. From early on, a distinction between internal enemies (*i.e.*, those from within the country and CPK) and external enemies (foreign elements) was maintained.⁶⁴

The Trial Chamber conducted a review of the CPK’s changing attitudes toward enemies between 1975 and 1979, including their identification as such. In general, the CPK considered the following categories to be enemies for most of the DK period:

- Former ranking civilian and military personnel of the Khmer Republic
- Perceived counter-revolutionary classes such as feudalists, capitalists, neo-colonialists, imperialists, and other “oppressors”
- So-called “agents” of the CIA and KGB, disaffected workers and peasants, “infiltrators” and saboteurs of the revolution
- Vietnam and the USA

Other categories, such as “New People”, returnees from abroad, monks, and Thais, were also variously referred to as enemies.⁶⁵

An April 1976 grenade explosion near the Royal Palace in Phnom Penh and distribution of leaflets critical to the CPK sparked a wave of arrests. Hundreds of individuals were arrested and tortured into providing “confessions”. Those named in the “confessions” were also arrested, detained, interrogated, forced to provide “confessions” implicating others, and ultimately executed.⁶⁶

⁶⁴ Case 002/02, Judgment, 16 November 2018, E465, para. 3744.

⁶⁵ See Case 002/02, Judgment, 16 November 2018, E465, section 16.3.

⁶⁶ See Case 002/02, Judgment, 16 November 2018, E465, section 12.1.

The inflow and outflow of prisoners at S-21 Security Centre mirrored successive waves of purges which depleted military and administrative structures across the country, including divisions, zones, ministries, and even the CPK's top leadership. The following list summarises the ECCC's findings regarding major purges and execution of ranking individuals:⁶⁷

1976

- **Keo Meas:** Former Issarak and member of *Krom Pracheachon*, later publicly denounced as collaborating with the below individuals
- **Yim Sambath:** Platoon Deputy in Division 170 and responsible for location where the grenade explosion took place
- **Chan Chakrei:** Secretary of Division 170, implicated by Yim Sambath
- **Suos Neou (alias Chhouk):** Secretary of Sector 24 (East Zone), denounced as responsible for the grenade attack and distribution of leaflets
- **Ney Sarann (alias Ya):** Former Issarak, member of *Krom Pracheachon*, and Secretary of the Northeast Zone, implicated as a Vietnamese collaborator by Yim Sambath, Chan Chakrei, Suos Neou and Ly Phen
- **Non Suon (alias Chey Suon):** Secretary of the Agriculture Committee, implicated of colluding with Kev Meas to plot against the Party and the revolution

1977

- **Koy Thuon:** Minister of Commerce and formerly Secretary of the North Zone
- **Sua Vasi (alias Doeun):** Chairman of the Political Office of 870, replaced Koy Thuon as Minister of Commerce
- **Sbauv Him (alias Oeun):** Secretary of Division 310 in the North Zone, accused of heading a plot to overthrow Pol Pot
- **Hu Nim (alias Phoas):** One of the “Three Ghosts”, Secretary of the Ministry of Propaganda

⁶⁷ See Case 002/02, Judgment, 16 November 2018, E465, sections 12.1, 12.2.8.

- **Seat Chhae (alias Tum):** Secretary of Sector 22 of the East Zone, previously replaced Ya as a Deputy Secretary to Son Sen in the General Staff

1978

- **Sao Phim:** Former Issarak, Secretary of East Zone, committed suicide before his capture
- **Ruos Nhim:** Secretary of the Northwest Zone, arrested at around the same time as Sao Phim committed suicide
- **Chou Chet (alias Sy):** Former member of *Krom Pracheachon*, Secretary of the West Zone
- **Kang Chap (alias Se, Chann Sam):** Secretary of the New North Zone, formerly Secretary of Sector 35 of the Southwest Zone
- **Vorn Vet:** Deputy Prime Minister for Economics and member of the Standing Committee
- **Born Nan (alias Yi):** Secretary of Sector 505
- **In Lorn (alias Nat):** Former Chairman of S-21 Security Centre
- **Chhim Sam Aok (alias Pang):** Spokesperson for Pol Pot and Chief of Office S-71



As the revolution wore on [...] individuals were indiscriminately apprehended, mistreated and eliminated without any attempt at rational or coherent justification on political grounds, in actions that were no longer persecution but constituted a reign of terror where no discernible criteria applied in targeting the victims

Supreme Court Chamber ⁶⁸



⁶⁸ Case 001, Appeal Judgment, 3 February 2012, F28, para. 283.

The ECCC reviewed facts relating to security centres and execution sites at trial in the following cases:

- **Case 001:** relating to S-21 Security Centre and the treatment of detainees at Choeng Ek and S-24⁶⁹
- **Case 002/01:** relating to Tuol Po Chrey execution site⁷⁰
- **Case 002/02:** relating to:
 - Joint criminal enterprise as implemented in relation to internal purges, at S-21 Security Centre, Kraing Ta Chan Security Centre, Au Kanseng Security Centre, and Phnom Kraol Security Centre⁷¹
 - Mistreatment of the Cham at Trea Village Security Centre and Wat Au Trakuon Security Centre⁷²
 - Mistreatment of the Vietnamese at several sites in the East Zone and Central (old North) Zones.⁷³

The following **crimes against humanity** were committed at security centres and execution sites:⁷⁴

- **Murder** – relating to executions of real and perceived enemies and deaths resulting from inhumane conditions ⁷⁵
- **Extermination** – relating to the mass murder operations, including at least 11,742 people at S-21 Security Centre and 1,000 people at Kraing Ta Chan Security Centre⁷⁶

⁶⁹ Case 001, Judgment, 26 July 2010, E188, section 2. See also Case 001, Appeal Judgment, 3 February 2012, F28, section IV.

⁷⁰ Case 002/01, Judgment, 7 August 2014, E313, section 12. See also Case 002/01, Appeal Judgment, 23 November 2016, F36, section IV(D)(1)(c), (D)(2)(d).

⁷¹ Case 002/02, Judgment, 16 November 2018, E465, sections 12.1-12.5. See also Case 002/02, Appeal Judgment, 23 December 2022, F76, sections VI-VII.

⁷² Case 002/02, Judgment, 16 November 2018, E465, section 13.2.

⁷³ Case 002/02, Judgment, 16 November 2018, E465, section 13.3.

⁷⁴ The mistreatment of targeted groups is discussed separately below in Chapter 1.2.3.3.

⁷⁵ Case 001, Judgment, 26 July 2010, E188, section 2.5.3.2; Case 002/01, Judgment, 7 August 2014, E313, para. 683; Case 002/02, Judgment, 16 November 2018, E465, paras 3974-3977. See also Case 002/01, Appeal Judgment, 23 November 2016, F36, section IV(D)(1)(c); Case 002/02, Appeal Judgment, 23 December 2022, F76, section VII(A)(5)(e).

⁷⁶ Case 001, Judgment, 26 July 2010, E188, section 2.5.3.2; Case 002/01, Judgment, 7 August 2014, E313, para. 684; Case 002/02, Judgment, 16 November 2018, E465, para. 3978. See also Case 002/01, Appeal Judgment, 23 November 2016, F36, section IV(D)(2)(d); Case 002/02, Appeal Judgment, 23 December 2022, F76, section VII(B).

- **Enslavement** – relating to the exploitation of workers at sites for the purpose of extracting a gain for the Party⁷⁷
- **Imprisonment** – relating to the arbitrary detention of prisoners because of their perceived enemy status⁷⁸
- **Torture** – relating to the severe pain and suffering inflicted on prisoners during interrogations for the purpose of obtaining “confessions” of counter-revolutionary conduct, procuring incriminatory evidence about other “enemies” or “traitorous networks”, or as a means of intimidating or punishing detainees⁷⁹
- **Political persecution** – relating to the systematic singling out of real and perceived enemies for adverse treatment through arbitrary arrest and detention, torture, physical and psychological mistreatment, re-education, disappearance, and death⁸⁰
- **Enforced disappearances**, as an “other inhumane act” – relating to the dispensing of enemies under a shroud of secrecy⁸¹
- **Attacks against human dignity**, as an “other inhumane act” – relating to the serious attacks on human dignity and serious mental and physical suffering inflicted through the above crimes⁸²
- **Other inhumane acts**, as a standalone category – relating to degrading and dehumanising conditions of imprisonment at S-21 Security Centre including shackling and chaining, blindfolding, and handcuffing, severe beatings and corporal punishment, detention in small or overcrowded cells, inadequate food, hygiene and medical care, as well as blood drawing and medical tests⁸³

Genocide was committed against Vietnamese and Cham communities, which were killed in large numbers at various security centres and execution

⁷⁷ Case 001, Judgment, 26 July 2010, E188, section 2.5.3.4; Case 002/02, Judgment, 16 November 2018, E465, para. 3979. See also Case 001, Appeal Judgment, 3 February 2012, F28, section IV(C); Case 002/02, Appeal Judgment, 23 December 2022, F76, section VII(C).

⁷⁸ Case 001, Judgment, 26 July 2010, E188, section 2.5.3.6; Case 002/02, Judgment, 16 November 2018, E465, para. 3980.

⁷⁹ Case 001, Judgment, 26 July 2010, E188, section 2.5.3.8; Case 002/02, Judgment, 16 November 2018, E465, para. 3981. See also Case 002/02, Appeal Judgment, 23 December 2022, F76, section VII(E) (related to Cham).

⁸⁰ Case 001, Judgment, 26 July 2010, E188, section 2.5.3.14; Case 002/01, Judgment, 7 August 2014, E313, para. 685; Case 002/02, Judgment, 16 November 2018, E465, para. 3982. See also Case 001, Appeal Judgment, 3 February 2012, F28, para. 283, section IV(E); Case 002/02, Appeal Judgment, 23 December 2022, F76, section VII(F)(2).

⁸¹ Case 002/02, Judgment, 16 November 2018, E465, para. 3986. See also Case 002/02, Appeal Judgment, 23 December 2022, F76, section VII(G).

⁸² Case 002/02, Judgment, 16 November 2018, E465, para. 3985.

⁸³ Case 001, Judgment, 26 July 2010, E188, section 2.5.3.12.

sites.⁸⁴ **War crimes** were also committed at S-21 Security Centre against Vietnamese prisoners who were protected under the Geneva Conventions of 1949.⁸⁵

In the other cases before the ECCC, prior to their dismissal or termination, the Co-Investigating Judges also reviewed facts relating to security centres and execution sites. The following were discussed in the Closing Orders:⁸⁶

- **Case 003:** relating to alleged RAK crimes at Wat Enta Nhien Security Centre, Prison 810, and other RAK security centres and purge sites⁸⁷
- **Case 004:** relating to alleged crimes at:
 - **Central Zone security centres and execution sites:** Wat O Trakuon, Wat Batheay, Met Sop (Kor), Wat Phnom Pros, Kok Pring, Chamkar Svay Chanty, Wat Srange, Tuol Ta Phlong, Wat Kandal, Wat Baray Chan Dek
 - **Northwest Zone security centres and execution sites:** Wat Kirirum, Banteay O Ta Krey, Banteay Treng, Wat Thoamayutt, Wat Kandal, Wat Samdech, Wat Po Laingka, Wat Banteay Neang, La-Ang Phnom Kuoy Yum, Wat Chamkar Khnol, Prison No. 8, Tuol Po Chrey, Phnom Trayoung, Phum Chakrey, Wat Preah Net Preah and Chamkar Ta Ling
 - **Southwest Zone security centre:** Wat Pratheat
 - **Other locations:** relating to the purges of the Central Zone and Northwest Zone, and within the context of the alleged genocide of the Cham in Kampong Cham province.⁸⁸
- **Case 004/01:** relating to alleged crimes at Phnom Trayoung Security Centre, Wat Ang Srey Muny and Prey Sokhon Execution Site, Wat

⁸⁴ See Chapters 1.2.3.3.3. Mistreatment of Cham, 1.2.3.3.4. Mistreatment of Vietnamese.

⁸⁵ Case 001, Judgment, 26 July 2010, [E188](#), section 2.6.3; Case 002/02, Judgment, 16 November 2018, [E465](#), section 12.2.24.2.

⁸⁶ Only the sites which were considered at the Closing Order stage are listed here. Facts related to sites which were excluded from the investigation or reduced from its scope by the Co-Investigation Judges are omitted. For more information on these, refer to the Introductory Submissions and procedural histories of the respective Closing Orders.

⁸⁷ Case 003, Second Introductory Submission, 20 November 2008, [D1](#); Case 003, Dismissal Order, 28 November 2018, [D266](#), sections 3, 5; Case 003, Closing Order (Indictment), 28 November 2018, [D267](#), section 5. Proceedings related to these facts were terminated. See Chapter 5.3.2. Case 003.

⁸⁸ Case 004, Third Introductory Submission, 20 November 2008, [D1](#); Case 004 Dismissal Order, 28 June 2019, [D381](#), section IV; Case 004, Closing Order (Indictment), 28 June 2019, [D382](#), section 5.2. Proceedings related to these facts were terminated. See Chapter 5.3.3. Case 004.

Preah Net Preah and related sites, Phnum Chakrey Security Centre, and Wat Chamkar Khnol⁸⁹

- **Case 004/02:** relating to alleged crimes at Wat Phnom Pros Execution Site, Wat Au Trakuon Security Centre, Wat Batheay Security Centre, Met Sop (Kor) Security Centre, Kok Pring Execution Site, Wat Ta Meak Security Centre, Tuol Ta Phlong Security Centre, Wat Kandal Security Centre, Chamkar Svay Chanty Security Centre, Wat Baray Chan Dek Security Centre, Wat Srange Security Centre, Wat Angkuonh Dei Security Centre, Tuol Beng Execution Site, sites in Kampong Cham province regarding alleged killings of the Cham.⁹⁰

1.2.3.3. Targeting of specific groups

1.2.3.3.1. Mistreatment of former Khmer Republic officials, soldiers, and their families

The CPK implemented a criminal policy broadly discriminating against former Khmer Republic officials, soldiers and their families and targeting them for adverse treatment. The objective of this policy, which developed through time, was done to defend the country against enemies – as Khmer Republic officials and their families were considered to be – and radically transform the population into a homogenous society of worker-peasants.⁹¹



[A]fter 17 April [...] it was decided to do whatever had to be done in order to make it impossible for them to stage a counter-revolutionary comeback

leng Sary, referring to Khmer Republic personnel⁹²



⁸⁹ Case 004/01, Third Introductory Submission, 20 November 2008, D1; Case 004/01, Dismissal Order (Reasons), 10 July 2017, D308/3, sections 4-5.

⁹⁰ Case 004/02, Third Introductory Submission, 20 November 2008, D1; Case 004/02 Dismissal Order, 16 August 2018, D359, section III(B); Case 004/02, Closing Order (Indictment), 16 August 2018, D360, section 6.4.

⁹¹ Case 002/02, Judgment, 16 November 2018, E465, section 13.4. See also Case 002/02, Appeal Judgment, 23 December 2022, F76, section VIII(B)(5)(c).

⁹² Case 002/02, Judgment, 16 November 2018, E465, para. 4034 (emphasis added).

After years of revolutionary struggle against the Khmer Republic, the Khmer Rouge had developed a discriminatory stance toward republican officials and their families, which began to materialise in CPK-controlled areas.⁹³ In the immediate aftermath of 17 April 1975, republican elements had become “key enemies” of the Khmer Rouge and were systematically “hunted down” and executed to prevent a counter-revolution. After a brief pause, high-ranking officers were marked for execution from October 1975 due to the perceived threat of counter-revolutionary rebellion in the country, and were continuously hunted down and executed until the DK regime fell. Lower-ranking soldiers, officials and their families were consistently subjected to discrimination in the form of arrest, detention, torture and disappearance throughout the DK period.⁹⁴

In discriminating against former Khmer Republic officials and their families, the following crimes against humanity were committed:

- **Murder** – relating to the execution of all Khmer Republic officials from 20 April to late May 1975, and the murder of high-ranking officials from October 1975 to January 1979⁹⁵
- **Political persecution** – relating to the adverse treatment of all former officials, soldiers, and family members of Khmer Republic personnel throughout the DK period, including through arrest, detention, torture, and disappearance.⁹⁶

The ECCC specifically reviewed the mistreatment of former Khmer Republic officials, soldiers, and their families in the following cases:

- **Case 002/01:** relating to the expulsion of the population from Phnom Penh in April 1975 (**Phase I**) and events at the Tuol Po Chrey Execution Site later that month
- **Case 002/02:** relating to the implementation of the policy at Tram Kak Cooperatives, 1 January Dam Worksite, S-21 Security Centre, and Kraing Ta Chan Security Centre.

⁹³ Case 002/02, Judgment, 16 November 2018, E465, para. 4031.

⁹⁴ Case 002/02, Judgment, 16 November 2018, E465, sections 16.4.3.4.1.2-16.4.3.4.1.3.

⁹⁵ Case 002/01, Appeal Judgment, 23 November 2016, F36, section IV(D)(1)(3); Case 002/02, Judgment, 16 November 2018, E465, para. 4057. See also Case 002/01, Judgment, 7 August 2014, E313, section 10.2.15, 10.4.2; Case 002/01, Appeal Judgment, 23 November 2016, F36, section IV(E)(1)(d).

⁹⁶ Case 002/01, Appeal Judgment, 23 November 2016, F36, section IV(D)(4)(c)-(d); Case 002/02, Judgment, 16 November 2018, E465, para. 4059. See also Case 002/01, Judgment, 7 August 2014, E313, section 10.2.15, 10.4.5; Case 002/01, Appeal Judgment, 23 November 2016, F36, section IV(E)(1)(d).

In the other cases before the ECCC, prior to their dismissal or termination, the Co-Investigating Judges also reviewed facts relating to the targeting and mistreatment of Khmer Republic officials, their families, and those perceived to be associated with them. These were discussed in the Closing Orders in the following cases:⁹⁷

- **Case 004:** relating to general evidence of targeting and specific instances of mistreatment at Wat Pratheath Security Centre, Kraing Ta Chan Security Centre, Banan Security Centre, Phum Veal Security Centre, Svay Chrum Security Centre, Wat Angkun Execution Site, Wat Samdech Security Centre, Prison No. 8, Prey Sokhon and Wat Angk Serei Muni Execution Site, Wat Koas Krala Security Office, Prey Krabau Execution Site, Reang Kerei commune, Wat Banteay Neang Security Office, Phum Chakrey, and Tuol Po Chrey⁹⁸
- **Case 004/01:** relating to alleged crimes at Phnom Trayoung Security Centre⁹⁹
- **Case 004/02:** relating to general evidence of purges and specific instances of mistreatment at Met Sop (Kor) Security Centre, Tuol Ta Phlong Security Centre, Wat Srangae Security Centre, Wat Angkuonh Dei Security Centre, Tuol Beng Security Centre, Kampong Cham province, Wat Au Trakuon, Wat Batheay, Wat Ta Meak.¹⁰⁰

1.2.3.3.2. Mistreatment of Buddhists

The CPK implemented a criminal policy to abolish Buddhist practices in Cambodia and forbid the practice of Buddhism between April 1975 and January 1979. The objective of this policy was to defend the country against enemies – as those who practiced Buddhism were considered to be – and radically transform the population into an atheistic and homogenous Khmer society of worker-peasants.¹⁰¹

⁹⁷ Only the sites which were considered at the Closing Order stage are listed here. Facts related to sites which were excluded from the investigation or reduced from its scope by the Co-Investigation Judges are omitted. For more information on these, refer to the Introductory Submissions and procedural histories of the respective Closing Orders.

⁹⁸ See generally Case 004, Dismissal Order, 28 June 2018, D381, sections III(1.9), IV(2); Case 004, Closing Order (Indictment), 28 June 2018, D382, sections 5.2.2.2, 5-5.

⁹⁹ Case 004/01, Dismissal Order, 10 July 2017, D308/3, section 6.2.

¹⁰⁰ Case 004/02 Dismissal Order, 16 August 2018, D359, section III(B)(1) (generally); Case 004/02, Closing Order (Indictment), 28 June 2018, D382, sections 6.2, 8 (generally).

¹⁰¹ Case 002/02, Judgment, 16 November 2018, E465, para. 4021. See also Case 002/02, Appeal Judgment, 23 December 2022, F76, section VIII(B)(5)(d).

The Khmer Rouge considered Buddhism to be incompatible with the revolution. Monks were forcibly defrocked and expelled from pagodas across the country. Pagodas were closed or converted for non-religious purposes and desecrated through sacrilegious use. Buddhist worship, rituals and practices were prohibited, including the lighting of incense, traditional wedding ceremonies and funerary rites. Buddha statues and religious objects were destroyed, and the CPK opposed the religion as “reactionary” in nature, vowing to destroy its practices.¹⁰²

“

90 to 95 percent of the monks and Buddhist practices will no longer exist. So this special layer [of the society] will no longer cause any worry.

CPK Policy Document from September 1975¹⁰³

”

By mistreating Buddhist monks and followers, the following crime against humanity was committed:

- **Religious persecution** – relating to the defrocking of monks, prohibitions on worship, and destruction of religious symbols, objects, and practices.¹⁰⁴

The ECCC specifically reviewed the mistreatment of Buddhists in the following cases:

- **Case 002/02:** relating to the nationwide policy as implemented in the Tram Kak cooperatives.¹⁰⁵

¹⁰² Case 002/02, Judgment, 16 November 2018, E465, section 16.4.3.3.1.

¹⁰³ Case 002/02, Judgment, 16 November 2018, E465, paras 1088, 4020.

¹⁰⁴ Case 002/02, Judgment, 16 November 2018, E465, sections 10.1.9.

¹⁰⁵ Case 002/02, Judgment, 16 November 2018, E465, sections 10.1.9.

Evidence of the imprisonment of Buddhist monks at S-21 Security Centre was presented at trial in Case 001,¹⁰⁶ and instances of general targeting elsewhere in the country were reviewed in Closing Orders in Case 004¹⁰⁷ and Case 004/02.¹⁰⁸

1.2.3.3.3. Mistreatment of Cham

The CPK implemented a criminal policy discriminating against Cham and targeting them for adverse treatment. The objective of this policy, which developed from dispersal of the community to its physical destruction as a group, was done to defend the country against enemies – as Cham were then considered to be – and radically transform the population into an atheistic and homogenous Khmer society.¹⁰⁹



[I]n practice, the CPK never implemented the right of freedom of religion, even within the limits of the purported protection provided for in the DK Constitution, and considered Islam to be ‘reactionary’ and therefore ‘absolutely forbidden’

Trial Chamber ¹¹⁰



¹⁰⁶ Case 001, Judgment, 26 July 2010, E188, para. 386.

¹⁰⁷ Case 004, Closing Order (Indictment), 28 June 2019, D382, paras 226, 311.

¹⁰⁸ Case 004/02 Dismissal Order, 16 August 2018, D359, para. 527.

¹⁰⁹ Case 002/02, Judgment, 16 November 2018, E465, section 16.4.3.1.2. See also Case 002/02, Appeal Judgment, 23 December 2022, F76, section VIII(B)(5)(b).

¹¹⁰ Case 002/02, Judgment, 16 November 2018, E465, para. 3215.

The Cham group is a distinct religious and ethnic group in Cambodia whose members share a common language and culture, and practice Islam. In 1975, the Cham were Cambodia's largest minority group and, although they were spread throughout the country, mostly lived along the Mekong and Tonle Sap rivers, with Kroch Chhmar district in Kampong Cham considered to be the heartland of Cambodia's Cham community.¹¹¹

In the early years of the DK period, the DK specifically targeted the Cham by restricting their cultural and religious practices, in an initial attempt to assimilate them with the Khmer community. When the Cham resisted abandoning their ethnic and religious identity, "rebellions" were brutally suppressed, religious and community leaders were executed, and Cham communities were dispersed. A final shift occurred between 1977 and 1978 when purges of all Cham were ordered. This coincided with the escalation of the conflict with Vietnam when the need to preserve the Khmer race and to protect the Cambodian population from all enemies was considered as a top priority.¹¹²

Genocide and crimes against humanity were committed through mistreatment of the Cham:

- **Genocide** by killing members of the Cham group; **murder** and **extermination** as crimes against humanity – relating to the discriminatory arrest, detention, and mass execution of Cham at security centres, with intent to physically destroy the ethnic and religious group, as such¹¹³
- **Imprisonment** – relating to the arbitrary detentions at security centres without due process of law¹¹⁴
- **Torture** – relating to severe pain and suffering occasioned by physical and mental mistreatment while detained¹¹⁵
- **Political persecution** – relating to the discriminatory targeting of Cham during population movements from the East Zone to the Central (old North) Zone¹¹⁶

¹¹¹ Case 002/02, Judgment, 16 November 2018, E465, section 13.2.4.

¹¹² Case 002/02, Judgment, 16 November 2018, E465, para. 3228.

¹¹³ Case 002/02, Judgment, 16 November 2018, E465, sections 13.2.10.1, 13.2.10.2, 13.2.10.10.

¹¹⁴ Case 002/02, Judgment, 16 November 2018, E465, section 13.2.10.3.

¹¹⁵ Case 002/02, Judgment, 16 November 2018, E465, section 13.2.10.4.

¹¹⁶ Case 002/02, Judgment, 16 November 2018, E465, section 13.2.10.5.

- **Religious persecution** – relating to the discriminatory suppression of Cham culture, traditions, language and religion in the East Zone and upon dispersal to the Central (old North) Zone¹¹⁷
- **Forced transfer**, as an “other inhumane act” – relating to the forced dispersal of Cham communities from the East Zone.¹¹⁸

The ECCC specifically reviewed the mistreatment of Cham in the following cases:

- **Case 002/02**: relating to the nationwide policy as variously implemented at Trea Village security centre, Wat Au Trakuon security centre, and during **Phase II**¹¹⁹
- **Case 004/02**: relating to the alleged genocide of the Cham of Kampong Cham province.¹²⁰

Evidence of the imprisonment and execution of Cham at Kraing Ta Chan Security Centre, Svay Chrum Security Centre, and Wat Samdech Security Centre was reviewed in Case 004.¹²¹

1.2.3.3.4. Mistreatment of Vietnamese

The CPK implemented a criminal policy discriminating against Vietnamese broadly targeting them for mistreatment throughout the DK period. The objective of this policy, which developed through time, was to defend the country against enemies – as the Vietnamese were considered to be – and radically transform the population into a homogenous Khmer society.¹²²

The Vietnamese group is a distinct ethnic, national, and racial group in Cambodia whose members share a common language, culture, and heritage.¹²³ Ethnic Vietnamese were often identifiable by their accents,

¹¹⁷ Case 002/02, Judgment, 16 November 2018, E465, section 13.2.10.6.

¹¹⁸ Case 002/02, Judgment, 16 November 2018, E465, section 13.2.10.8.

¹¹⁹ The Trial Chamber’s factual findings relating to the mistreatment of the Cham are grouped thematically rather than by crime site. For the precise scope of the Chamber’s review, see Case 002/02, Judgment, 16 November 2018, E465, para. 3184.

¹²⁰ Case 004/02 Dismissal Order, 16 August 2018, D359, section III(B)1.16; Case 004/02, Closing Order (Indictment), 16 August 2018, D360, section 6.4.2.

¹²¹ Case 004, Closing Order (Indictment), 28 June 2019, D382, paras 489, 778, 857-858.

¹²² Case 002/02, Judgment, 16 November 2018, E465, sections 13.3.5, 16.4.3.2.

¹²³ Case 002/02, Judgment, 16 November 2018, E465, section 13.3.6.1.

physical traits, or family, and the CPK considered Vietnamese ethnicity to be matrilineal.¹²⁴

The CPK’s stance toward the Vietnamese was grounded in their perceptions of a long-standing animosity between Khmers and Vietnamese, and resolved that Vietnam was Cambodia’s long-term “acute enemy” as early as 1971. The deterioration of diplomatic relations with the country and mistreatment of Vietnamese escalated with the military situation.¹²⁵ Armed clashes commenced at DK’s external territorial borders and maritime waters as early as May 1975, and skirmishes quickly spread to islands and the territorial boundary across the next two years.¹²⁶



The evidence presented to the Trial Chamber amply demonstrated that all Vietnamese located in Cambodia were specifically targeted for destruction [...]. Their intended destruction would, if successful, have resulted in the annihilation of all Vietnamese from Cambodia.

Supreme Court Chamber ¹²⁷



Vietnamese were specifically marked for deportation between 17 April 1975 and April 1977, for physical destruction as a group thereafter, and its

¹²⁴ Case 002/02, Judgment, 16 November 2018, E465, sections 13.3.6.2-13.3.6.3.

¹²⁵ Case 002/02, Judgment, 16 November 2018, E465, section 13.3.5.2.

¹²⁶ Case 002/02, Judgment, 16 November 2018, E465, paras 282-284.

¹²⁷ Case 002/02, Appeal Judgment, 23 December 2022, F76, para. 1635.

members were subject to systematic discrimination throughout the DK period as the country's most dangerous enemy.¹²⁸

At trial in Case 002/02, the ECCC reviewed facts relating to the nationwide mistreatment of Vietnamese.¹²⁹ The Supreme Court Chamber confirmed that the Khmer Rouge committed **genocide** by killing members of the Vietnamese ethnic, national, and racial group in Cambodia and intending to destroy them as a group.¹³⁰

By mistreating the Vietnamese, the Khmer Rouge also committed the following **crimes against humanity**:¹³¹

- **Murder** and **extermination**¹³² – relating to the systematic killing of those with actual or perceived Vietnamese identity
- **Deportation** – relating to the removal of Vietnamese from Cambodian territory between 17 April 1975 and April 1977¹³³
- **Racial persecution** – relating to the discriminatory treatment of the Vietnamese population in Cambodia.¹³⁴

The following **war crimes** were committed at S-21 Security Centre against Vietnamese prisoners who were protected under the Geneva Conventions of 1949:¹³⁵

- Unlawful confinement
- Torture, inhumane treatment, and wilfully causing great suffering or serious injury to body and health
- Wilfully depriving a prisoner of war or a civilian the rights of a fair and regular trial
- Wilful killing

¹²⁸ Case 002/02, Judgment, 16 November 2018, E465, section 13.3.5.2.

¹²⁹ For the scope of the Trial Chamber's review, see Case 002/02, Judgment, 16 November 2018, E465, para. 3360.

¹³⁰ Case 002/02, Appeal Judgment, 23 December 2022, F76, section VII(H). See also Case 002/02, Judgment, 16 November 2018, E465, section 13.3.

¹³¹ Case 002/02, Judgment, 16 November 2018, E465, section 13.3.10.

¹³² See also Case 002/02, Appeal Judgment, 23 December 2022, F76, section VII(B)(2).

¹³³ See also Case 002/02, Appeal Judgment, 23 December 2022, F76, section VII(D).

¹³⁴ See also Case 002/02, Appeal Judgment, 23 December 2022, F76, section VII(F)(4).

¹³⁵ Case 001, Judgment, 26 July 2010, E188, section 2.6.3; Case 002/02 Trial Judgment, E465, section 12.2.24.2.

In the other cases before the ECCC, prior to their dismissal or termination, the Co-Investigating Judges also reviewed facts relating to the targeting and mistreatment of Vietnamese, and those perceived to be associated with them. These were discussed in the Closing Orders in the following cases:¹³⁶

- **Case 003:** relating to evidence of alleged mistreatment of Vietnamese fishermen and civilians on islands and in territorial waters, and in the context of the armed conflict with Vietnam and purges, and at security centres and execution sites¹³⁷
- **Case 004/01:** relating to the imprisonment of Vietnamese “citizens” at Phnom Trayoung Security Centre, and those with perceived Vietnamese family ties at Spean Sreng Canal Worksite.¹³⁸

1.2.3.3.5. Mistreatment of other groups

1.2.3.3.5.1. *Khmer Krom*

Khmer Krom were not specifically identified as a targeted group in Case 001 or Case 002.¹³⁹

In the other cases before the ECCC, prior to their dismissal or termination, the Co-Investigating Judges reviewed facts relating to the targeting and mistreatment of Khmer Krom. These were discussed in the Closing Orders in the following cases:¹⁴⁰

- **Case 003:** relating to their connection to Vietnam or the Vietnamese, the disappearance of many Khmer Krom from Kang Keng and Bet Trang Worksites, and targeting of the group at Toek Sap Security Centre.¹⁴¹
- **Case 004:** relating to the alleged genocide of Khmer Krom by killings in:¹⁴²

¹³⁶ Only the sites which were considered at the Closing Order stage are listed here. Facts related to sites which were excluded from the investigation or reduced from its scope by the Co-Investigation Judges are omitted. For more information on these, refer to the Introductory Submissions and procedural histories of the respective Closing Orders.

¹³⁷ See generally Case 003 Dismissal Order, D266; Case 003, Closing Order (Indictment), D267.

¹³⁸ Case 004/01 Closing Order (Reasons), 10 July 2017, D308/3, section 4.6.

¹³⁹ Case 002/02, Judgment, 16 November 2018, E465, para. 816. See also Case 002/02, Appeal Judgment, 23 December 2022, F76, paras 673-674.

¹⁴⁰ Only the sites which were considered at the Closing Order stage are listed here. Facts related to sites which were excluded from the investigation or reduced from its scope by the Co-Investigation Judges are omitted. For more information on these, refer to the Introductory Submissions and procedural histories of the respective Closing Orders.

¹⁴¹ Case 003, Closing Order (Indictment), 28 November 2018, D267, paras 196, 352, 419.

¹⁴² Case 004 Dismissal Order, 28 June 2019, D381, sections (IV) 2.1-2.2; Case 004, Closing Order (Indictment), 28 June 2019, D382, sections 5.2.1, 5.5.

- **Southwest Zone, Sector 13:** Wat Pratheat Security Centre, Kraing Ta Chan Security Centre, Preil Village Execution Site, Wat Angkun Execution Site, Slaeng Village Forest Execution Site, Wat Ang Serei Muni Execution Site, Prey Sokhon Execution Site, and Saom Village
- **Northwest Zone, Sector 1:** Kang Hort Dam Worksite, Kampong Kol Sugar Factory Worksite
- **Northwest Zone, Sector 2:** Phum Veal Security Centre, Svay Chrum Security Centre, Tuol Seh Nhauv Execution Site, Prey Krabau Execution Site
- **Northwest Zone, Sector 4:** Kampong Prieng commune (including Wat Po Laingka Security Centre, Kach Roteh, Thmei and Sala Trav Villages), Reang Kesei commune
- **Case 004/01:** relating to the alleged imprisonment of Khmer Krom at Wat Ang Srei Mealy and alleged execution at Prey Sokhon Execution Site.¹⁴³

1.2.3.3.5.2. Thai

Thai were not specifically identified as a targeted group in Case 001 or Case 002.

In **Case 002/02**, the Trial Chamber examined evidence of seizures of Thai boats and arrests and executions of Thai fishermen within the broader context of the DK Navy's (Division 164) capture of Vietnamese boats at sea. The Chamber also reviewed the CPK's identification of the Thai as enemies.¹⁴⁴ However, the Trial Chamber did not enter findings or convictions specifically related to the Thai.

In **Case 003**, the International Co-Investigating Judge specifically included persons of Thai ethnicity or nationality within the CPK's targeting policy and investigated facts relating to the DK Navy's alleged commission of war crimes, crimes against humanity, and premeditated homicide of the Thai.¹⁴⁵ The National Co-Investigating Judge also discussed evidence relating to

¹⁴³ Case 004/01, Dismissal Order (Reasons), 10 July 2017, D308/3, para. 249.

¹⁴⁴ Case 002/02 Trial Judgment, 16 November 2018, E465, section 13.3.9.1, 16.3.

¹⁴⁵ Case 003, Closing Order (Indictment), 28 November 2018, D267, sections 5.2.3, 5.4, 12 (counts 2, 3, 4).

the seizure of boats and mistreatment of the Thai in his Closing Order.¹⁴⁶ The case did not proceed to trial and was terminated at the pre-trial stage.

The alleged targeting of the Thai was not part of the other cases before the ECCC.

1.2.3.3.5.3. *Other groups*

The CPK's persecution of enemies who were not specifically characterised under the above policies was a prominent feature of all cases before the ECCC. The categories included:

- New People (or 17 April People) and intellectuals
- Returnees from abroad and foreigners
- CIA, KGB and Vietnamese “agents” (including former Thieu-Ky soldiers, FULRO members and ethnic Jarai)
- Counterrevolutionaries, feudalists, detractors and traitors of the revolution, critics of the Party, and those suspected of or implicated in complicity with enemies

The Supreme Court Chamber determined that even though these groups did not consist of a single homogenous polity, they were clearly identifiable as “political enemies”, and could legally be considered as targets.¹⁴⁷

For more information about the ECCC's considerations regarding these other targeted groups, refer to the factual and legal findings in the respective cases relevant to the crime against humanity of persecution on political grounds.

1.2.3.4. Regulation of marriage

The CPK implemented a criminal policy to forcibly arrange marriages between men and women and enforce consummation. The objectives of this policy were to increase the country's population so that the population could build the country, defend it against enemies – primarily Vietnam,

¹⁴⁶ See generally Case 003 Dismissal Order, 28 November 2018, D266.

¹⁴⁷ Case 001, Appeal Judgment, 3 February 2012, F28, section IV(E); Case 002/01, Appeal Judgment, 23 November 2016, F36, section IV(D)(4); Case 002/02, Appeal Judgment, 23 December 2022, F76, section VII(F)(2)(b).

which had a considerably larger population and military than DK – and radically transform society.¹⁴⁸

Couples were matched by CPK cadres, and approved at the district echelon, although in some instances couples who requested to be married were approved.¹⁴⁹ Parents of the couples were usually not involved in any way in the marriage decision or the ceremony.¹⁵⁰ Many of the couples paired by cadres had never met before their wedding day, and in most cases, had no right to refuse.¹⁵¹ Wedding ceremonies ranged in size from one couple to 70-80 couples.¹⁵² During their wedding ceremonies, couples were often instructed that they had to commit to producing children for *Angkar* in order to increase the population.¹⁵³ After the ceremony, the couples were sent to a hut where they were expected to consummate the marriage, a requirement which was often enforced by having militiamen hide under the hut to monitor whether or not the couple had engaged in marital relations.¹⁵⁴ Male-female relationships prior to, or outside the context of, marriage were considered “moral offences” and could be severely punished.¹⁵⁵



The CPK actively sought to supplant the traditional institution of marriage with a regime – implemented by local authorities in accordance with directives of the Party Centre – of arbitrary pairing largely devoid of individual or familial input

Trial Chamber ¹⁵⁶



¹⁴⁸ Case 002/02, Judgment, 16 November 2018, E465, para. 4066. See also Case 002/02, Appeal Judgment, 23 December 2022, F76, section VII(G)(3).

¹⁴⁹ Case 002/02, Judgment, 16 November 2018, E465, paras 3604-3608, fn. 12051.

¹⁵⁰ Case 002/02, Judgment, 16 November 2018, E465, paras 3613, 3640.

¹⁵¹ Case 002/02, Judgment, 16 November 2018, E465, paras 3615, 3619, 3623.

¹⁵² Case 002/02, Judgment, 16 November 2018, E465, paras 3631-3632.

¹⁵³ Case 002/02, Judgment, 16 November 2018, E465, para. 3556.

¹⁵⁴ Case 002/02, Judgment, 16 November 2018, E465, paras 3641, 3644, fn. 12176.

¹⁵⁵ Case 002/02, Judgment, 16 November 2018, E465, para. 3563.

¹⁵⁶ Case 002/02, Judgment, 16 November 2018, E465, para. 4065.

By forcibly marrying couples and coercing them to consummate their unions, the ECCC found that the following crime against humanity was committed:

- **Forced marriage**, as an “other inhumane act” – relating to the coerced unions, which were not reflective of traditional Khmer wedding traditions, were conducted in a widespread climate of fear, and where there was no genuine consent¹⁵⁷
- **Rape**, as an “other inhumane act” – relating to the coerced sexual intercourse between newly “married” spouses under threat of death or re-education and without genuine consent.¹⁵⁸

Both women and men suffered mentally and physically as a result of being forced to marry and consummate their marriages, and this constituted a serious attack on their human dignity.¹⁵⁹

“ [F]orced marriage during the DK regime was deliberately orchestrated to subjugate both males and females
Supreme Court Chamber¹⁶⁰ ”

The ECCC specifically reviewed the regulation of marriage in the following cases:

- **Case 002/02:** relating to the nationwide implementation of the policy,¹⁶¹ including at the Tram Kak cooperatives,¹⁶² Trapeang Thma Dam worksite,¹⁶³ and 1 January Dam worksite¹⁶⁴

¹⁵⁷ Case 002/02, Judgment, 16 November 2018, E465, section 14.4.1.

¹⁵⁸ Case 002/02, Judgment, 16 November 2018, E465, section 14.4.2.

¹⁵⁹ Case 002/02, Appeal Judgment, 23 December 2022, F76, section VII(G)(3).

¹⁶⁰ Case 002/02, Appeal Judgment, 23 December 2022, F76, para. 1213.

¹⁶¹ Case 002/02, Judgment, 16 November 2018, E465, section 14.3.10.

¹⁶² Case 002/02, Judgment, 16 November 2018, E465, section 14.3.11.1.

¹⁶³ Case 002/02, Judgment, 16 November 2018, E465, section 14.3.11.2.

¹⁶⁴ Case 002/02, Judgment, 16 November 2018, E465, section 14.3.11.3.

- **Case 003:** relating to the alleged forcible arrangement of marriages in Kampong Som (Sihanoukville)¹⁶⁵
- **Case 004:** relating to the alleged forcible arrangement of marriages in districts 1 and 4 of the Northwest Zone¹⁶⁶
- **Case 004/02:** relating to the alleged forcible arrangement of marriages in Sector 41 of the Central (old North) Zone¹⁶⁷

1.3. The fall of the Khmer Rouge regime

In late December 1978, the Vietnamese army launched a large-scale attack against Democratic Kampuchea.¹⁶⁸ In early January 1979, Nuon Chea ordered Duch to remove and execute all of the remaining prisoners at S-21.¹⁶⁹ On or about 6 January 1979, Duch was summoned to a meeting chaired by Khieu Samphan, who told the gathered cadres that they should not panic, and should continue working normally, because the RAK had the situation under control.¹⁷⁰

On 7 January 1979, KNUFNS and Vietnamese troops entered Phnom Penh and took effective control of the greater part of Cambodian territory,¹⁷¹ overthrowing the Khmer Rouge and forcing them to retreat after three years, eight months and 20 days.¹⁷²

While the fall of the regime marks the end of the ECCC's temporal jurisdiction, evidence of later events was reviewed by the ECCC in relation to legal and procedural issues such as *ne bis in idem*, amnesty, pardon, personal jurisdiction, and sentencing. These are discussed further in Chapter 5.2.3.

¹⁶⁵ Case 003, Closing Order (Indictment), 28 November 2018, D267, section 5.11. The National Co-Investigating Judge reviewed facts relevant to marriage generally across the country in his Dismissal Order. See Case 003, Dismissal Order, 28 November 2018, D266.

¹⁶⁶ Case 004, Dismissal Order, 28 June 2019, D381, sections IV(2.1.13), IV(2.2.26); Case 004, Closing Order (Indictment), 28 June 2019, D267, section 5-5-7.

¹⁶⁷ Case 004/02 Dismissal Order, 16 August 2018, D359, section III(B)(1.15), Case 004/02, Closing Order (Indictment), 16 August 2018, D360, section 6.3.4.4.

¹⁶⁸ Case 001, Judgment, 26 July 2010, E188, 26 July 2010, E188, para. 80; Case 002/02, Judgment, 16 November 2018, E465, para. 293.

¹⁶⁹ Case 002/02, Judgment, 16 November 2018, E465, para. 2555.

¹⁷⁰ Case 002/02, Judgment, 16 November 2018, E465, para. 2557.

¹⁷¹ Case 002/02, Judgment, 16 November 2018, E465, para. 2558; Case 001, Judgment, 26 July 2010, E188, para. 80.

¹⁷² Case 002/02, Judgment, 16 November 2018, E465, para. 293.

It is worth noting that after the fall of the Khmer Rouge regime in January 1979, a new government was established under the name of the People’s Republic of Kampuchea (“PRK”). The PRK established the People’s Revolutionary Tribunal (“PRT”) in 1979 to try Pol Pot and Ieng Sary for crimes committed during the DK era. Both were tried, convicted of genocide, and sentenced to death in their absence.¹⁷³ The ECCC determined that the PRT proceedings were deficient in several respects, and were not conducted independently, impartially, or with regard to due process of law.¹⁷⁴

The PRK was succeeded by the State of Cambodia (1989-1992), the United Nations Transitional Authority in Cambodia (UNTAC) (1993), and the Kingdom of Cambodia (1993-present). Negotiations commenced in 1997 to establish what would become the ECCC. These are outlined in the next chapter.

By the time the ECCC commenced operations, several ranking Khmer Rouge cadres who survived the internal purges of 1976-1978 (see above, Chapter 1.2.3.2. Security centres and execution sites) had passed away:

- **Pol Pot** (died in April 1998)
- **Son Sen** (murdered in 1997 along with his wife Yun Yat)
- **Ke Pauk** (died in February 2002)
- **Chhit Choeun** (alias **Ta Mok**) (died in July 2006 while in military detention)

Ieng Sary and his wife **Ieng Thirith** surrendered to the Royal Government in 1996. **Khieu Samphan** and **Nuon Chea** surrendered in December 1998.

This signalled the final collapse of the Khmer Rouge movement.

¹⁷³ The PRT documents were as admitted into evidence as exhibit E3/2144.

¹⁷⁴ Case 002, Decision on Ieng Sary’s Appeal against the Closing Order, 11 April 2011, D427/1/30, section III(D); Case 002, Decision on Ieng Sary’s Rule 89 Preliminary Objections (*ne bis in idem* and Amnesty and Pardon), 3 November 2011, E51/15, section 4.



OVERVIEW
OF THE
**NEGOTIATIONS,
ESTABLISHMENT,
AND OPERATIONS
OF THE ECCC**

2. OVERVIEW OF THE NEGOTIATIONS, ESTABLISHMENT, AND OPERATIONS OF THE ECCC

This chapter provides an overview of the events which led to the negotiations and establishment of the ECCC, the start of operations, and key milestones of the judicial phase (2007-2022). The facts presented are based on official records which are publicly available. For further context and detailed information about the negotiations and start of the ECCC’s operations, please refer to the list of official documents and texts in Annex 1. The ECCC’s residual functions and process which preceded the adoption of the Addendum to the UN-RGC Agreement are discussed in Chapter 7.

2.1. Background to the negotiations

September 1996

Following his surrender to the Royal Government of Cambodia (“RGC”), Ieng Sary is pardoned for the crimes for which he was convicted in his absence in 1979 by the People’s Revolutionary Tribunal, and is amnestied by Royal Decree for prosecution under the *Law to Outlaw the Democratic Kampuchea Group*.

31 January 1997

The United Nations Special Representative of the Secretary-General for Human Rights in Cambodia files a report on his official mission to Cambodia in early 1996, observing that the amnesty granted to Ieng Sary “should not exclude the possibility of establishing a truth commission to clarify facts and assign responsibility” for Khmer Rouge atrocities.

March-April 1997

The UN Economic and Social Council approves the UNHRC's request to the UN Secretary-General ("UNSG") "to examine any request by Cambodia for assistance in responding to past serious violations of Cambodian and international law as a means of bringing about national reconciliation, strengthening democracy and addressing the issue of individual accountability".

15 June 1997

Son Sen and his wife Yun Yat are murdered, ostensibly due to factionalism within the Khmer Rouge.

21 June 1997

First and Second Prime Minister of Cambodia jointly send a letter to the UNSG requesting the assistance of the UN and the international community in "bringing to justice those persons responsible for the genocide and crimes against humanity during the rule of the Khmer Rouge from 1975 to 1979".

September 1997

UN Special Representative in Cambodia recommends to the UN General Assembly ("UNGA") that a group of experts be appointed to evaluate the nature of the alleged crimes, status of evidence, and applicable laws, and to recommend an appropriate mechanism to proceed.

12 December 1997

The UNGA endorses the comments of the Special Representative and requests the UNSG "to examine the request by the Cambodian authorities for assistance in responding to past serious violations of Cambodian and international law, including the possibility of the appointment, by the Secretary-General, of a group of experts to evaluate the existing evidence and propose further measures, as a means of bringing about national reconciliation, strengthening democracy and addressing the issue of individual accountability".

15 April 1998

Pol Pot dies while under house arrest by Ta Mok.

7 August 1998

UN announces the appointment of Sir Ninian Stephen of Australia, Rajsoomer Lallah of Mauritius, and Steven Ratner of the United States as the Group of Experts to examine the question of accountability for the Khmer Rouge.

November 1998

The Group of Experts conducts its mission to Cambodia, meeting with officials from the RGC, diplomatic delegations, and interested officials from inter-governmental organisations and non-governmental organisations and inspects several sites relevant to the Khmer Rouge period.

December 1998

Nuon Chea and Khieu Samphan surrender to the RGC.

22 February 1999

The Group of Experts delivers its report to the UNSG, concluding that: the Khmer Rouge had committed war crimes, genocide, crimes against humanity, and other crimes for which the leaders could be prosecuted; and recommending the establishment of an ad hoc international criminal tribunal.

3 March 1999

Prime Minister of Cambodia informs the UNSG that any decision to bring Khmer Rouge leaders to justice must consider Cambodia's need for peace, reconciliation, and economic development.

6 March 1999

Chhit Choeun (alias Ta Mok), the Khmer Rouge Southwest Zone Secretary and Communist Party of Kampuchea ("CPK") Standing Committee member is arrested, prompting a criminal case to be filed against him in the Military Court of Phnom Penh.

15 March 1999

The RGC informs the UNSG that it intends to hold a domestic trial for Ta Mok but that foreign assistance and expertise would be accepted.

10 May 1999

Kaing Guek Eav (alias Duch) is arrested and indicted by the Military Court for violating the Law on the Outlawing of the Democratic Kampuchea Group.

2.2. Negotiations commence**1999**

UN and RGC exchange a series of letters regarding a set of draft articles of cooperation between the UN and the Cambodian Government.

February-March 2000

UN and RGC exchange a series of letters regarding a set of draft articles of cooperation between the UN and the Cambodian Government, which would later become the “UN-RGC Agreement”. Discussions ensue regarding the composition of the chambers, decision-making rules of the co-prosecutors and co-investigating judges, amnesty and pardon, and guarantees for the arrest and surrender of indictees.

January 2001

The National Assembly and Senate approve the ECCC Law on 2 January and 15 January, respectively.

July 2001

The National Assembly and Senate approve amendments to the ECCC Law to bring it into conformity with the Constitution of Cambodia, on 11 July and 23 July respectively.

10 August 2001

King Norodom Sihanouk promulgates the *ECCC Law*.

8 February 2002

The UN withdraws from negotiations with the RGC due to opposing positions on the relationship between the ECCC Law and Articles of Cooperation between the UN and RGC.

18 December 2002

The UN General Assembly requests the UNSG to resume negotiations with the RGC to conclude an agreement consistent with the provisions of the UNGA resolution.

January 2003

Negotiations continue in Phnom Penh, and a final draft is concluded.

13 May 2003

The UNGA approves the draft UN-RGC Agreement by consensus.

6 June 2003

The UN and RGC sign the *Agreement between the United Nations and the Royal Government of Cambodia concerning the prosecution under Cambodian law of crimes committed during the period of Democratic Kampuchea* (“UN-RGC Agreement”).

**2.3. Legal formalities continue
and financial contributions flow in**

31 March 2003

The UNSG recommends that international assistance to the ECCC be financed through assessed contributions of the United Nations.

13 May 2003

The UNGA decides that the expenses of the UN for assistance to the ECCC “shall be borne by voluntary contributions from the international community” and “appeals to the international community to provide assistance, including financial and personnel support to the Extraordinary Chambers”.

7-13 December 2003

A UN technical team travels to Phnom Penh to prepare a preliminary concept of operations, including an organisational chart, task lists, timelines, and other key parameters. The team reviews staffing requirements, specifications for premises and other resource needs.

4 October 2004

The National Assembly passes the law on ratification of the UN-RGC Agreement.

12 October 2004

The UNSG reports that the anticipated cost for the first three years of the national and international component would be USD 57 million.

19 October 2004

The UN-RGC Agreement is ratified by the RGC.

27 October 2004

The ECCC Law is amended to reflect the provisions of the UN-RGC Agreement.

16 November 2004

The legal requirements for entry into force of the UN-RGC Agreement are fulfilled.

29 November 2004

The UNSG reports that the UN's reciprocal notice would be provided "when pledges for the full three years of the Extraordinary Chambers' operations as well as actual contributions for its first year of operations have been received".

December 2004

A UN team conducts discussions and agrees with RGC representatives on a budget of USD 56 million, as well as the premises and infrastructure for the trials.

28 April 2005

The UN sends a formal notification to the RGC indicating that the legal requirements on the UN side for the Agreement’s entry into force have been fulfilled, as “sufficient contributions and pledges were received [...] to fund the international staffing of the Extraordinary Chambers and their operations for a sustained period of time”.

29 April 2005

The UN-RGC Agreement enters into effect.

2.4. The start of operations

Mid-2005

The location for the ECCC’s premises in Choam Chao is agreed.

14 October 2005

UNSG appoints Michelle Lee of China as UNAKRT Coordinator.

12 November 2005

Sean Visoth is appointed Director of Administration by Royal Decree, with Tony Kranh as Reserve Director. Michelle Lee is appointed as Deputy Director of Administration.

15 January 2006

The High Command of the Royal Cambodian Armed Forces hands over the new premises of the ECCC, and initial outfitting works begin.

4 May 2006

The Supreme Council of the Magistracy approves the selection of ECCC Co-Prosecutors, Judges, and Co-Investigating Judges.

7 May 2006

The Co-Prosecutors, Judges, and Co-Investigating Judges are appointed by Royal Decree.

3 July 2006

The Co-Prosecutors, Judges, and Co-Investigating Judges are formally sworn in during a ceremony at the Royal Palace in Phnom Penh.

4-7 July 2006

Judicial Strategic Planning and Development Workshop is held to constitute a Rules and Procedures Committee (RPC) and Judicial Administration Committee (JAC).

10 July 2006

Co-Prosecutors assume their posts.

21 July 2006

Chhit Choeun (alias Ta Mok) dies while in military detention.

1 September 2006

The Co-Investigating Judges assume their posts.

20-25 November 2006

The first ECCC Plenary takes place.

12 June 2007

The ECCC Plenary adopts the Internal Rules.

19 June 2007

The Internal Rules enter into force.

2.5. Key milestones of the judicial phase

18 July 2007

The Co-Prosecutors formally request the prosecution of Nuon Chea, Ieng Sary, Khieu Samphan, Ieng Thirith and Kaing Guek Eav (alias Duch) for crimes.¹⁷⁵

31 July 2007

Kaing Guek Eav (alias Duch) is detained by order of the Co-Investigating Judges, transferred to the ECCC, and appears before the Co-Investigating Judges.¹⁷⁶

19 September - 19 November 2007

Nuon Chea, Khieu Samphan, Ieng Sary, and Ieng Thirith are arrested on orders of the Co-Investigating Judges and detained at the ECCC.¹⁷⁷

8 August 2008

The Co-Investigating Judges indict Duch for the crimes against humanity and war crimes.¹⁷⁸

30 March 2009

Substantive hearings in Case 001 against Duch commence.¹⁷⁹

7 September 2009

The International Co-Prosecutor requests the prosecution of Meas Muth, Sou Meth, Yim Tith, Ao An, and Im Chaem for crimes.¹⁸⁰

¹⁷⁵ Case 001/002, Introductory Submission, 18 July 2007, [D3](#).

¹⁷⁶ Case 001, Kaing Guek Eav Arrest Warrant, 30 July 2007, [C1](#); Case 001, Written Record of the Initial Appearance of KAING Guek Eav, 31 July 2007, [E3/915](#).

¹⁷⁷ Case 002, Nuon Chea Arrest Warrant, 17 September 2007, [C6](#); Case 002, Ieng Sary Arrest Warrant, 8 November 2007, [C12](#); Case 002, Ieng Thirith Arrest Warrant, 8 November 2007, [C13](#); Case 002, Khieu Samphan Arrest Warrant, 14 November 2007, [C24](#).

¹⁷⁸ Case 001, Closing Order, 8 August 2008, [D99](#).

¹⁷⁹ Case 001, T. 30 March 2009, [E1/5.1](#).

¹⁸⁰ Case 003, Second Introductory Submission, 20 November 2008, [D1](#); Case 004, Third Introductory Submission, 20 November 2008, [D1](#).

17 September 2009

Hearings in Case 001 conclude with closing statements.¹⁸¹

26 July 2010

The Trial Chamber sentences Duch to 30 years' imprisonment for crimes against humanity and war crimes.¹⁸²

15 September 2010

The Co-Investigating Judges indict Nuon Chea, Ieng Sary, Ieng Thirith and Khieu Samphan for crimes against humanity, war crimes, genocide and domestic crimes.¹⁸³

17 November 2011

Ieng Thirith is found unfit to be tried.¹⁸⁴

21 November 2011

Substantive hearings in Case 002/01 against Nuon Chea, Khieu Samphan and Ieng Sary commence.¹⁸⁵

13 December 2011

Ieng Thirith is released under judicial supervision after being found unfit to be tried.¹⁸⁶

3 February 2012

The Supreme Court Chamber resentsences Duch to life imprisonment.¹⁸⁷

¹⁸¹ Case 001, T.17 September 2009, [Ei/77.1](#).

¹⁸² Case 001, Judgment, 26 July 2010, [Ei88](#).

¹⁸³ Case 002, Closing Order, 15 September 2010, [D427](#).

¹⁸⁴ Case 002, Decision on Ieng Thirith's Fitness to Stand Trial, 17 November 2011, [Ei38](#).

¹⁸⁵ Case 002, T. 21 November 2011, [Ei/13.1](#).

¹⁸⁶ Case 002, Decision on Immediate Appeal Against the Trial Chamber's Order to Release the Accused Ieng Thirith, 13 December 2011, [Ei38/1/7](#).

¹⁸⁷ Case 001, Appeal Judgment, 3 February 2012, [F28](#).

14 March 2013

Ieng Sary dies and the proceedings against him are subsequently terminated.¹⁸⁸

14 June 2013

Sou Met dies and the proceedings against him are subsequently terminated.¹⁸⁹

31 October 2013

Hearings in Case 002/01 conclude with closing statements.¹⁹⁰

7 August 2014

The Trial Chamber sentences Nuon Chea and Khieu Samphan to life imprisonment for crimes against humanity in Case 002/01.¹⁹¹

8 January 2015

Hearings in Case 002/02 against Nuon Chea and Khieu Samphan commence.¹⁹²

22 August 2015

Ieng Thirith dies while under judicial supervision after having been found unfit to stand trial and the proceedings against her are subsequently terminated.¹⁹³

23 November 2016

The Supreme Court Chamber upholds Nuon Chea and Khieu Samphan's life sentence in Case 002/01.¹⁹⁴

¹⁸⁸ Case 002, Termination of the Proceedings Against the Accused Ieng Sary, 14 March 2013 [E270/1](#).

¹⁸⁹ Case 003, Dismissal of Allegations Against Sou Met, 2 June 2015, [D86/3](#).

¹⁹⁰ Case 002, T. 31 October 2013, [E1/237.1](#).

¹⁹¹ Case 002/01, Judgment, 7 August 2014, [E313](#).

¹⁹² Case 002/02, T. 08 January 2015, [E1/247.1](#).

¹⁹³ Case 002, Termination of the Proceedings Against the Accused Ieng Thirith, 27 August 2015, [E359/1](#).

¹⁹⁴ Case 002/01, Appeal Judgment, 23 November 2016, [F36](#).

11 January 2017

Hearings in Case 002/02 conclude with closing statements.¹⁹⁵

22 February 2017

The Co-Investigating Judges dismiss the charges against Im Chaem.¹⁹⁶

16 August 2018

The Co-Investigating Judges issue opposing closing orders in relation to Ao An.¹⁹⁷

28 November 2018

The Co-Investigating Judges issue opposing closing orders in relation to Meas Muth.¹⁹⁸

16 November 2018

The Trial Chamber sentences Nuon Chea and Khieu Samphan to life imprisonment for crimes against humanity, war crimes and genocide in Case 002/02.¹⁹⁹

28 June 2019

The Co-Investigating Judges issue opposing closing orders in relation to Yim Tith.²⁰⁰

4 August 2019

Nuon Chea dies after filing his notice of appeal, and further appeal proceedings concerning him are subsequently terminated.²⁰¹

¹⁹⁵ Case 002, T. 11 January 2017, [E1/519.1](#).

¹⁹⁶ Case 004/01, Closing Order (Disposition), 22 February 2017, [D308](#); Case 004/01, Closing Order (Reasons), 10 July 2017, [D308/3](#).

¹⁹⁷ Case 004/02, Order Dismissing the Case Against Ao An, 16 August 2018, [D359](#); Case 004/02, Closing Order (Indictment), 16 August 2018, [D360](#).

¹⁹⁸ Case 003, Order Dismissing the Case Against Meas Muth, 28 November 2018, [D266](#); Case 003, Closing Order (Indictment), 28 November 2018, [D267](#).

¹⁹⁹ Case 002/02, Judgment, 16 November 2018, [E465](#).

²⁰⁰ Case 004, Order Dismissing the Case Against Yim Tith, 28 June 2019, [D381](#); Case 004, Closing Order (Indictment), 28 June 2019, [D382](#).

²⁰¹ Case 002, Decision to Terminate Proceedings Against Nuon Chea, 13 August 2019, [F46/3](#).

10 August 2020

The Supreme Court Chamber terminates proceedings against Ao An due to the lack of an enforceable indictment.²⁰²

17 December 2021

The Supreme Court Chamber terminates proceedings against Meas Muth due to the lack of an enforceable indictment.²⁰³

28 December 2021

The Supreme Court Chamber terminates proceedings against Yim Tith due to the lack of an enforceable indictment.²⁰⁴

22 September 2022

The Supreme Court Chamber upholds Khieu Samphan's life sentence for crimes against humanity, war crimes, and genocide in Case 002/02.²⁰⁵

1 January 2023

The ECCC commences residual functions.

²⁰² Case 004/02, Decision on International Co-Prosecutor's Immediate Appeal of the Trial Chamber's Effective Termination of Case 004/2, 10 August 2020, E004/2/1/1/2.

²⁰³ Case 003, Decision on International Co-Prosecutor's Appeal of the Pre-Trial Chamber's Failure to Send Case 003 to Trial As Required by the ECCC Legal Framework, 17 December 2021, 3/1/1/1.

²⁰⁴ Case 004, Decision on International Co-Prosecutor's Appeal of the Pre-Trial Chamber's Failure to Send Case 004 to Trial As Required by the ECCC Legal Framework, 28 December 2021, 2/1/1/1.

²⁰⁵ Case 002/02, Summary of the Appeal Judgment in Case 002/02, 22 September 2022, F76.1. See also Case 002/02, Appeal Judgment, 23 December 2022, F76.



MANDATE

3. MANDATE

This chapter describes the ECCC’s purposes and hybrid nature, as well as its basic legal texts and jurisdiction.

3.1 Purposes of the ECCC

The preambles to the UN-RGC Agreement and the ECCC Internal Rules highlight “the pursuit of justice and national reconciliation, stability, peace and security” as guiding purposes of the ECCC.²⁰⁶

The pursuit of justice was considered as a means of promoting national reconciliation following atrocities committed against large sections of Cambodian society. The Group of Experts appointed by the UN in 1998 to examine the question of accountability for the Khmer Rouge considered that bringing Khmer Rouge leaders to justice was a means of bringing about national reconciliation, strengthening democracy, and addressing the issue of individual accountability.²⁰⁷ The Experts considered that “if justice is brought about with sensitivity to a country’s own situation, accountability and national reconciliation are, in fact, complementary, even inseparable”.²⁰⁸

The national context was one in which the pursuit of justice should not, however, come at the cost of national reconciliation or peace.²⁰⁹ The Experts noted the view that trials of Khmer Rouge leaders who had agreed to halt their struggle

²⁰⁶ UN-RGC Agreement, preamble. See also *Internal Rules*, preamble.

²⁰⁷ Report of the Group of Experts, 16 March 1999, annex, para. 105.

²⁰⁸ Report of the Group of Experts, para. 3.

²⁰⁹ See UNGA/UNSC, Identical Letters Dated 21 January 1999 from the Permanent Representative of Cambodia to the United Nations Addressed to the Secretary-General and the President of the Security Council, 22 January 1999, *A/53/801-S/1999/67*, Annexes I-II; UNGA/UNSC, Identical Letters Dated 3 March 1999 from the Permanent Representative of Cambodia to the United Nations addressed to the Secretary-General and to the President of the Security Council, 3 March 1999, *A/53/851-S/1999/230*, annex.

against the government in exchange for amnesties would be destabilising for Cambodia and risk returning the country to a state of civil war.²¹⁰

The interplay of these key principles was recognised in UN General Assembly Resolution 57/228, which stated that “the accountability of individual perpetrators of grave human rights violations is one of the central elements of any effective remedy for victims of human rights violations and a key factor in ensuring a fair and equitable justice system and, ultimately, reconciliation and stability within a State”.²¹¹

3.2. Legal framework

3.2.1. ECCC Law

The ECCC Law is the Cambodian law that established the ECCC to “bring to trial senior leaders of Democratic Kampuchea and those who were most responsible for the crimes and serious violations of Cambodian penal law, international humanitarian law and custom, and international conventions recognised by Cambodia, that were committed during the period from 17 April 1975 to 6 January 1979”.²¹²

The ECCC Law regulates the:

- ECCC’s personal, territorial, temporal, and subject matter jurisdictions²¹³
- Composition of the Trial and Supreme Court Chambers²¹⁴
- Appointment of judges and their decision-making²¹⁵
- Appointment and functions of the Co-Prosecutors, Co-Investigating Judges, DOA and DDOA²¹⁶
- Principle of individual responsibility²¹⁷

²¹⁰ Report of the Group of Experts, para. 104.

²¹¹ UNGA, Khmer Rouge Trials, 18 December 2002, A/RES/57/228, preamble.

²¹² ECCC Law, article 1.

²¹³ ECCC Law, chapter II.

²¹⁴ ECCC Law, chapter III.

²¹⁵ ECCC Law, chapters IV-V.

²¹⁶ ECCC Law, chapters VI, VII, IX.

²¹⁷ ECCC Law, chapter VIII.

- Trial proceedings²¹⁸
- Penalties²¹⁹
- Amnesty and pardons²²⁰
- Status, rights, privileges, and immunities of the International Judges, the International Co-Investigating Judge, the International Co-Prosecutor, and the DDOA, and their households²²¹
- ECCC’s location, expenses, and working languages²²²
- Absence of International Judges, Investigating Judges, or Prosecutors²²³
- The principle that the ECCC would dissolve automatically following a definitive conclusion of the proceedings²²⁴
- Application of the UN-RGC Agreement as law within the Kingdom of Cambodia.²²⁵

The ECCC Law was passed by the National Assembly in 2001 and was amended in 2004. The amendments included a critical change to Article 3 concerning the ECCC’s jurisdiction to prosecute homicide, torture, and religious persecution as set out in the 1956 Cambodian Penal Code. The original version provided that the statute of limitations “shall be extended for an additional 20 years” from the original 10-year statute of limitations in the 1956 Cambodian Penal Code. The amended version of the provision extended the statute of limitations “for an additional 30 years”. This amendment was made to allow the tribunal to try Suspects for these domestic crimes, as the crimes committed during 1975-1979 would have been barred under the original statute of limitations.

3.2.2. UN-RGC Agreement

The UN-RGC Agreement was drafted after the ECCC Law was agreed upon and promulgated as law in Cambodia. The Agreement is an international

²¹⁸ ECCC Law, chapter X.

²¹⁹ ECCC Law, chapter XI.

²²⁰ ECCC Law, chapter XII.

²²¹ ECCC Law, chapter XIII.

²²² ECCC Law, chapters XIV-XVI.

²²³ ECCC Law, chapter XVII.

²²⁴ ECCC Law, chapter XVIII.

²²⁵ ECCC Law, chapter XIX.

instrument concluded between the UN and the Royal Government of Cambodia which governs their cooperation in respect of the ECCC and is implemented through the ECCC Law.²²⁶ The UN-RGC Agreement provides the legal basis and the principles and modalities for such cooperation at the bilateral level²²⁷ and contains detailed provisions on the operation of the Extraordinary Chambers. It is not itself the basis for prosecutions at the ECCC, as this is provided by the ECCC Law.²²⁸

Similarly to the ECCC Law, the UN-RGC-Agreement, contains provisions on a variety of matters, including the:

- Composition of the Chambers and judicial decision-making²²⁹
- Work of the Co-Investigating Judges and Co-Prosecutors²³⁰
- Settlement of differences between the Co-Investigating Judges or Co-Prosecutors²³¹
- Functioning of the OA²³²
- Crimes falling within the ECCC's jurisdiction and their penalties²³³
- Amnesty and pardon²³⁴
- Procedure²³⁵
- Rights of the Accused²³⁶
- ECCC's premises and the salaries and emoluments of national and international personnel²³⁷
- Financial and other assistance of the UN²³⁸
- Inviolability of archives and documents and the privileges and immunities of certain officials and other personnel²³⁹

²²⁶ UN-RGC Agreement, article 2(2).

²²⁷ UN-RGC Agreement, article 1.

²²⁸ See Case 002/02, Appeal Judgment, 23 December 2022, F76, para. 690.

²²⁹ UN-RGC Agreement, articles 3-4.

²³⁰ UN-RGC Agreement, articles 5-6.

²³¹ UN-RGC Agreement, article 7.

²³² UN-RGC Agreement, article 8.

²³³ UN-RGC Agreement, articles 9-10.

²³⁴ UN-RGC Agreement, article 11.

²³⁵ UN-RGC Agreement, article 12.

²³⁶ UN-RGC Agreement, article 13.

²³⁷ UN-RGC Agreement, articles 14-16.

²³⁸ UN-RGC Agreement, article 17.

²³⁹ UN-RGC Agreement, articles 18-21.

- Witnesses and experts, and their protection²⁴⁰
- Security, safety, and protection of all persons referred to in the UN-RGC Agreement²⁴¹
- Obligations to assist the Co-Investigating Judges, Co-Prosecutors and the Extraordinary Chambers²⁴²
- Official and working languages of the ECCC²⁴³
- Other practical arrangements, the withdrawal of cooperation and settlement of disputes.²⁴⁴

An Addendum to the UN-RGC Agreement on the Transitional Arrangements and Completion of Work of the Extraordinary Chambers vests the Extraordinary Chambers with residual functions following the completion of the trials. It is discussed further in Chapter 7.

The UN-RGC Agreement has two supplementary agreements: the Supplementary Agreement on Safety and Security and its Addendum; and the Supplementary Agreement on Utilities, Facilities, and Services. Each Supplementary Agreement is briefly described below.

3.2.2.1. Supplementary Agreement on Safety and Security

The Supplementary Agreement on Safety and Security reaffirms the UN-RGC Agreement's assignment of responsibility for the security, safety, and protection of all persons referred to in the main Agreement.²⁴⁵ It states that the UN is responsible for security within the courtroom and the premises, while the Royal Government is responsible for general security outside the grounds of the ECCC. It also outlines the responsibilities of UN security officers and national security officers, as well as the right of the UN to import arms, ammunition, and protective clothing free of charge and without restrictions, and the right of certain uniformed officers to bear arms while on duty.²⁴⁶

²⁴⁰ UN-RGC Agreement, articles 22-23.

²⁴¹ UN-RGC Agreement, article 24.

²⁴² UN-RGC Agreement, article 25.

²⁴³ UN-RGC Agreement, article 26.

²⁴⁴ UN-RGC Agreement, articles 27-29.

²⁴⁵ UN-RGC Agreement, article 24.

²⁴⁶ See Supplementary Agreement on Safety and Security.

3.2.2.2. Supplementary Agreement on Utilities, Facilities, and Services

The Supplementary Agreement on Utilities, Facilities, and Services reaffirms the responsibilities assigned in the UN-RGC Agreement and emphasises each party’s responsibilities for different expenses. It states that the UN is responsible for equipment, vehicles, computer hardware and software, telecommunications running costs, training, and support for the defence and for witnesses and victims, while the RGC is responsible for the provision of the necessary buildings for the court, for office accommodation, for detention of defendants and safe housing of witnesses and victims requiring protection, all electricity and water, and for provision of services for telecommunications.²⁴⁷

This supplementary agreement was amended in 2011 to provide that the Royal Government would make adequate first aid facilities available on the ECCC premises for use in the event of emergencies. It also provided that the Royal Government would assure immediate access to the Calmette Hospital or Khmer-Soviet Friendship Hospital in Phnom Penh whenever required in the event of an emergency and would provide the transportation at its expense.²⁴⁸

3.2.3. Internal Rules

The Internal Rules were developed to clarify the applicable procedure in accordance with Article 12(1) of the UN-RGC Agreement.²⁴⁹ They “consolidate the Cambodian procedures applicable before the ECCC and adopt[ed] international procedure in order to ensure justice, fairness and due process of the law”,²⁵⁰ particularly where the existing procedures did not deal with a particular matter or where there is uncertainty regarding their interpretation or application, or a question regarding their consistency with international standards.²⁵¹

In this respect, Internal Rules “form a self-contained regime of procedural law related to the unique circumstances of the ECCC” and that “the focus

²⁴⁷ See Supplementary Agreement on Utilities, Facilities, and Services.

²⁴⁸ Amendment to the Supplementary Agreement on Utilities, Facilities and Services.

²⁴⁹ See UNGA, Report of the Secretary-General on the Khmer Rouge Trials, 27 August 2007, *A/62/304*, para. 32

²⁵⁰ Case 002/01, Judgment, 7 August 2014, E313, para. 21.

²⁵¹ Internal Rules, preamble. See also UNGA, Report of the Secretary-General on the Khmer Rouge Trials, 27 August 2007, *A/62/304*, para. 32.

of the ECCC differs substantially enough from the normal operation of Cambodian criminal courts to warrant a specialised system”.²⁵²

The Trial Chamber rejected a challenge to the alleged unconstitutionality of the Internal Rules, finding that they “represent prevailing international standards in relation to cases adjudicating international crimes and are consonant with the ECCC’s obligation [...] to conduct proceedings in accordance with international standards of justice, fairness and due process of law”.²⁵³ A similar challenge was also rejected by the Supreme Court Chamber.²⁵⁴

The Internal Rules contain four sections, which govern the following matters:

- Provisions relating to the Internal Rules themselves (discussing their entry into force and interpretation, the procedure in case of a gap in the Internal Rules, and amendments)
- The organisation of the ECCC (discussing the role and operation of the Office of Administration, Office of the Co-Prosecutors, Office of the Co-Investigating Judges, judicial police, investigators, and greffiers, the Chambers, and judicial organisation)
- Applicable procedure
- Procedures applicable during the phase of residual functions.

After their adoption in 2007, the Internal Rules were revised ten times for a variety of reasons, including streamlining and formalising various measures and procedures provided for in the Rules. Such revisions are common at international and internationalised tribunals.²⁵⁵ The Rules and Procedure Committee received requests for rule amendments and submitted proposals to ECCC Plenary sessions for adoption.²⁵⁶ Requests for amendments could

²⁵² Case 002, Decision on Nuon Chea’s Appeal Against Order Refusing Request for Annulment, 26 August 2008, D55/1/8, para. 14.

²⁵³ Case 002, Decision on Nuon Chea’s Preliminary Objection Alleging the Unconstitutional Character of the ECCC Internal Rules, 8 August 2011, E51/14, para. 7.

²⁵⁴ Case 002/01, Appeal Judgment, 23 November 2016, F36, section IV(A).

²⁵⁵ For example, the Rules of Procedure and Evidence at the ICTY was revised 50 times, and the Special Court for Sierra Leone’s Rules of Procedure and Evidence were revised 14 times. See ICTY, Rules of Procedure and Evidence, as amended on 8 July 2015, IT/32/Rev. 50; Special Court for Sierra Leone, Rules of Procedure and Evidence, as amended on 31 May 2012.

²⁵⁶ Internal Rules, rule 3.

be made by a judge, a Co-Investigating Judge, a Co-Prosecutor, the head of the Defence Support Section, the Victims Support Section, the Civil Party Lead Co-Lawyers, or the DOA or DDOA.³⁵⁷

3.2.4. Practice Directions

Practice Directions were adopted by the Rules and Procedure Committee.³⁵⁸ Once adopted, the Practice Directions could be reviewed and amended at the ECCC Plenary Sessions.³⁵⁹ Four Practice Directions were adopted:

- i. **The Practice Direction on Classification and Management of Case-Related Information** sets out whether material is to be classified as public, confidential, or strictly confidential, in order to balance the confidentiality of judicial investigations and of other parts of judicial proceedings closed to the public with the need to ensure transparency of public proceedings and to meet the purposes of education and legacy.²⁶⁰
- ii. **The Practice Direction on Filing of Documents Before the ECCC** set out details concerning the filing and formatting of documents, such as the numbering of case files, official filing hours, and font size; and contains provisions on document length, lists of authorities, translation, time limits for pleadings and applications, late filing, and deficient filings.²⁶¹
- iii. **The Practice Direction on Victim Participation** sets out the procedure and formalities to file complaints and Civil Party applications, and discusses Civil Party representation and the formation of victims' associations.²⁶²
- iv. **The Practice Direction on Protective Measures** was introduced to protect victims who participated in the proceedings as complainants, Civil Parties, or witnesses, by allowing the Co-Investigating Judges or Chambers to take measures such as ordering the written record or specific parts of the proceedings to be placed under seal, restricting public access to specific material on the case file, ordering measures aimed at physically protecting individuals, such as

³⁵⁷ Internal Rules, rule 3(1).

³⁵⁸ Internal Rules, rule 20(3).

³⁵⁹ Internal Rules, rule 18(6)(b).

³⁶⁰ Practice Direction on Classification and Management of Case-Related Information, article 1.2.

³⁶¹ Practice Direction on the Filing of Documents before the ECCC, articles 1-3, 5-10.

³⁶² Practice Direction on Victim Participation, articles 2-5.

by providing them a safe residence, or ordering the redaction of information that could potentially identify protected persons.²⁶³

3.3. Jurisdiction

3.3.1. Subject matter jurisdiction

The ECCC’s subject matter jurisdiction is set out in Articles 1, 2, and 9 of the UN-RGC Agreement and Articles 1-8 of the ECCC Law.²⁶⁴ The crimes encompassed within the subject matter jurisdiction of the ECCC are as follows:

- i. homicide, torture, and religious persecution, as set forth in the 1956 Cambodian Penal Code
- ii. the crime of genocide
- iii. crimes against humanity²⁶⁵
- iv. grave breaches of the Geneva Conventions
- v. destruction of cultural property under the Hague Convention for Protection of Cultural Property in the Event of Armed Conflict
- vi. crimes against internationally protected persons under the Vienna Convention on Diplomatic Relations.

The last two categories of crimes were never litigated before the ECCC. The other crimes falling within the subject matter jurisdiction of the ECCC are set out in more detail below.

3.3.1.1. Crimes under the 1956 Penal Code

Article 3 (new) of the ECCC Law provides that:

The Extraordinary Chambers shall have the power to bring to trial all Suspects who committed any of these crimes set forth in the 1956 Penal Code, and which were committed during the period from 17 April 1975 to 6 January 1979:

²⁶³ Practice Direction on Protective Measures, articles 1.2, 3.1.

²⁶⁴ UN-RGC Agreement, articles 1-2, 10; ECCC Law, articles 1-8.

²⁶⁵ While article 2 of the UN-RGC Agreement provides that the ECCC has subject matter jurisdiction consistent with that set forth in the ECCC Law, article 9 specifies that “crimes against humanity” are as defined in the 1998 Rome Statute of the International Criminal Court.

- Homicide (Article 501, 503, 504, 505, 506, 507 and 508)
- Torture (Article 500)
- Religious Persecution (Articles 209 and 210)

The statute of limitations set forth in the 1956 Penal Code shall be extended for an additional 30 years for the crimes enumerated above, which are within the jurisdiction of the Extraordinary Chambers.

The penalty under Articles 209, 500, 506 and 507 of the 1956 Penal Code shall be limited to a maximum of life imprisonment, in accordance with Article 32 of the Constitution of the Kingdom of Cambodia, and as further stipulated in Articles 38 and 39 of this Law.

The Pre-Trial Chamber found that premeditated murder – one of the two forms of homicide under the 1956 Cambodian Penal Code – is not subsumed by the international crime of murder as a crime against humanity or wilful killing as a grave breach of the Geneva Conventions, as it requires premeditation and a higher *mens rea*, *i.e.*, the intent to kill rather than the lesser intent to cause serious bodily harm.²⁶⁶ It found that homicide without intent to kill is, however, subsumed by these international crimes.²⁶⁷

No Accused was ultimately prosecuted for national crimes at the ECCC. In Case 001, after being charged with national crimes under Article 3 (new) of the ECCC Law,²⁶⁸ the Accused Kaing Guek Eav alias Duch, submitted a preliminary objection to the Trial Chamber arguing that Article 3 (new) was invalid, because it contravened Articles 14 and 15 of the International Covenant on Civil and Political Rights by extending the limitation period past the 10 years provided for in the 1956 Cambodian Penal Code, thus reactivating the possibility of prosecuting crimes after their statutory limitation period had already passed.²⁶⁹ The Trial Chamber judges split on this issue. The absence of a supermajority precluded the continuation of

²⁶⁶ Case 003, Closing Order (Indictment), 28 November 2018, D267, paras 92-93, referring to Case 001, Decision on Closing Order Appeal, 5 December 2008, D99/3/42, para. 78.

²⁶⁷ Case 001, Decision on Closing Order Appeal, 5 December 2008, D99/3/42, para. 83.

²⁶⁸ These charges were added to the Closing Order by the Pre-Trial Chamber. See Chapter 5.1.4.2. Pre-Trial Chamber's decision on appeal against the Closing Order.

²⁶⁹ Case 001, Decision on the Defence Preliminary Objection Concerning the Statute of Limitations of Domestic Crimes, 26 July 2010, E187, para. 4.

the prosecution of the Accused for national crimes, while the prosecution against him for the same acts constituting international crimes continued.²⁷⁰

In Case 002, the Co-Investigating Judges referred to the procedural history of Case 001, and stated that they were unable to agree on questions of (i) being tried twice for the same facts; (ii) the limitation period for the relevant national crimes; and (iii) the effect of a Cambodian Constitutional Council decision finding that Article 3's extension of the statute of limitations did not infringe the Cambodian Constitution. The Co-Investigating Judges thus deferred the decision on what procedural action to take regarding national crimes.²⁷¹ At trial, charges relating to national crimes were dismissed, because the Closing Order failed to specify the material facts or forms of responsibility relating to the national crimes charged. The Trial Chamber was thus unable to determine the scope of the case against the Accused with respect to the national crimes with which they had been charged.²⁷²

In the other cases before the ECCC, prior to their dismissal or termination, the International Co-Investigating Judge considered there was clear and consistent evidence of premeditated homicide in the following cases:

- **Case 003:** in relation to the killings of Vietnamese and Thai by the DK Navy, the purges of four military divisions, and deaths at two security centres, an execution site, and worksites²⁷³
- **Case 004:** at 22 locations including Sector 13 of the Southwest Zone and Sectors 1, 2, 3, 4 and 7 of the Northwest Zone²⁷⁴
- **Case 004/01:** at one security centre and one worksite in Sector 5 of the Northwest Zone²⁷⁵
- **Case 004/02:** at eight sites.²⁷⁶

²⁷⁰ Case 001, Decision on the Defence Preliminary Objection Concerning the Statute of Limitations of Domestic Crimes, 26 July 2010, E187, Opinion of Judges Silvia Cartwright and Jean-Marc Lavergne, paras 54-56.

²⁷¹ Case 002, Closing Order, 15 September 2010, D427, para. 1574.

²⁷² Case 002, Decision on Defence Preliminary Objections (Statute of Limitations on Domestic Crimes), 22 September 2011, E122, paras 21-22. See also Chapters 5.1.4.2. Pre-Trial Chamber's decision on appeal against the Closing Order, and 5.2.5.1. Preliminary objections and initial hearing, discussing the issues concerning the application of national crimes in Cases 001 and 002.

²⁷³ Case 003, Closing Order (Indictment), 28 November 2018, D267, count 4.

²⁷⁴ Case 004, Closing Order (Indictment), 28 June 2019, D382, count 4.

²⁷⁵ Case 004/01, Closing Order (Disposition), 22 February 2017, D308, para. 4(i).

²⁷⁶ Case 004/02, Closing Order (Indictment), 16 August 2018, D360, count 3.

3.3.1.2. Genocide

Genocide at the ECCC is defined in accordance with the Genocide Convention. The definition of the crime of genocide “has been universal, predictable and constant, being defined identically in the Genocide Convention and the ECCC Law”.²⁷⁷ Article 4 of the ECCC Law explains that certain acts, including killing members of the group, constitute genocide when “committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group”.

In Case 002/02, the Accused were prosecuted and convicted for the crime of genocide.²⁷⁸ Nuon Chea was convicted at trial of genocide against both the Cham and Vietnamese groups,²⁷⁹ while Khieu Samphan’s conviction for genocide against the Vietnamese was confirmed by the Supreme Court Chamber on appeal.²⁸⁰ The Trial Chamber found that it had jurisdiction over the crime of genocide, considering that it was foreseeable and accessible in general that genocide was punishable as a crime by 1975.²⁸¹

In Case 002, the Co-Investigating Judges also indicted Ieng Sary and Ieng Thirith for genocide of the Vietnamese and Cham,²⁸² but the charges were not determined at trial due to their respective deaths and release due to unfitness.

In the other cases before the ECCC, prior to their dismissal or termination, the International Co-Investigating Judge considered that there was clear and consistent evidence of genocide being perpetrated in the following cases:

- **Case 003:** genocide of the Vietnamese by killing members of the group²⁸³

²⁷⁷ Case 002, Decision on Ieng Sary’s Appeal Against the Closing Order, 11 April 2011, D427/1/30, para. 248.

²⁷⁸ Case 002/02, Judgment, 16 November 2018, E465, para. 782.

²⁷⁹ Case 002/02, Supreme Court Chamber, Decision on Urgent Request concerning the Impact on Appeal Proceedings of Nuon Chea’s Death prior to the Appeal Judgment, 22 November 2019, F46/2/4/2, para. 86. The Supreme Court Chamber clarified, *inter alia*, that the termination of the proceedings following Nuon Chea’s death did not vacate the Case 002/02 Trial Judgment, and that, at the same time a final judgment on Nuon Chea’s guilt or innocence cannot be delivered, as his death prevented any appellate review by the Supreme Court Chamber. See Chapter 5.2.7.4.1. Nuon Chea’s death and termination of proceedings.

²⁸⁰ Case 002/02, Appeal Judgment, 23 December 2022, F76, paras 2068-2070, disposition.

²⁸¹ Case 002/02, Judgment, 16 November 2018, E465, para. 789.

²⁸² Case 002, Closing Order, 15 September 2010, D427, part 5 (dispositive).

²⁸³ Case 003, Closing Order (Indictment), 28 November 2018, D267, count 1.

- **Case 004:** genocide of the Khmer Krom by killing members of the group²⁸⁴
- **Case 004/02:** genocide of the Cham by killing members of the group and causing serious bodily or mental harm to members of the group.²⁸⁵

3.3.1.3. Crimes against humanity

Article 5 of the ECCC Law defines crimes against humanity as “any acts committed as part of a widespread or systematic attack directed against any civilian population, on national, political, ethnical, racial or religious grounds”, such as murder, extermination, enslavement, deportation, imprisonment, torture, rape, persecution on political, racial, and religious grounds, and other inhumane acts.

In Case 001, the Trial Chamber was faced with a challenge to its jurisdiction over crimes against humanity. It noted that Cambodian law did not contain any provisions relevant to crimes against humanity between 1975 and 1979, and Cambodia was not a party to any relevant treaties during this time. The Trial Chamber nevertheless found that crimes against humanity had consistently formed part of customary international law since the Nuremberg Charter.²⁸⁶ It was thus foreseeable that the Accused could be held criminally liable for the crimes against humanity offences with which he was charged, and the law was sufficiently accessible to him at the time of commission.²⁸⁷ In addition, the Trial Chamber noted that “the appalling nature of the offences [...] helps to refute any claim that the Accused would have been unaware of their criminal nature”.²⁸⁸

The Trial Chamber also clarified that although constituting customary international law since the Nuremberg Charter:

crimes against humanity have been variously defined and its elements have been refined throughout the years. This reflects both the crime’s customary nature and the fact that the tribunals’ jurisdictions over the crime were not always co-extensive with the full scope permitted

²⁸⁴ Case 004, Closing Order (Indictment), 28 June 2019, [D382](#), count 1.

²⁸⁵ Case 004/02, Closing Order (Indictment), 16 August 2018, [D360](#), count 1.

²⁸⁶ Case 001, Judgment, 26 July 2010, [E188](#), para. 290.

²⁸⁷ Case 001, Judgment, 26 July 2010, [E188](#), para. 294.

²⁸⁸ Case 001, Judgment, 26 July 2010, [E188](#), para. 295.

under customary international law. The principle of legality prevents neither a reliance on unwritten custom nor a determination through a process of interpretation and clarification as to the elements of a particular crime. [...] [T]he formulation of crimes against humanity adopted in Article 5 of the ECCC Law comports with that existing under customary international law during the 1975 to 1979 period.²⁸⁹

Every other chamber at the ECCC agreed that the ECCC had jurisdiction over crimes against humanity.²⁹⁰

One distinction between the ECCC Law and the UN-RGC Agreement is the reference in the UN-RGC Agreement to “crimes against humanity as defined in the 1998 Rome Statute of the International Criminal Court” in Article 9, which details crimes falling within the jurisdiction of the ECCC.

Article 5 of the ECCC Law does not refer to the Rome Statute, but rather defines crimes against humanity as “any acts committed as part of a widespread or systematic attack directed against any civilian population, on national, political, ethnical, racial or religious grounds”.²⁹¹

The Rome Statute, to which Article 9 of the UN-RGC Agreement refers, differs from the ECCC Law in its definition of crimes against humanity. For example, it does not include a requirement that the attack be committed on any discriminatory grounds but simply defines crimes against humanity as “any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”.²⁹²

In Case 002/02, the Supreme Court Chamber rejected the Rome Statute’s *mens rea* of murder as a crime against humanity.²⁹³ Thus, the definition of crimes against humanity used at the International Criminal Court did not apply at the ECCC.

²⁸⁹ Case 001, Judgment, 26 July 2010, E188, para. 290.

²⁹⁰ See for example Case 001, Appeal Judgment, 3 February 2012, F28, paras 98-112; Case 002, Decision on Appeals by Nuon Chea and Ieng Thirith Against the Closing Order, 15 February 2011, D427/3/15, paras 131, 133.

²⁹¹ ECCC Law, article 5.

²⁹² Rome Statute of the International Criminal Court, article 7.

²⁹³ Case 002/02, Appeal Judgment, 23 December 2022, F76, para. 690.

The chambers also considered arguments relating to the *chapeau* requirements of Article 5 of the ECCC Law and to the existence under customary law (and thus the applicability at the ECCC) of the various underlying crimes against humanity. For example, the Trial Chamber in Case 001 considered whether crimes against humanity required a nexus with an armed conflict in 1975 and determined that a nexus between crimes against humanity and an armed conflict was not required.²⁹⁴ In Case 002, the Pre-Trial Chamber reached a different conclusion,²⁹⁵ but the Trial Chamber in Case 002/01 maintained its previous position that no nexus was required, and this was upheld on appeal by the Supreme Court Chamber.²⁹⁶

The existence of rape as an independent crime against humanity was also considered. The Trial Chamber in Case 001 considered that rape constituted an independent crime against humanity,²⁹⁷ but this was rejected by the Supreme Court Chamber, which found that a survey of custom and treaties before and during the ECCC's temporal jurisdiction indicated that rape was not a distinct crime against humanity at the time.²⁹⁸ This was also the position of the Pre-Trial Chamber in Case 002.²⁹⁹

²⁹⁴ Case 001, Judgment, 26 July 2010, [E188](#), paras 291-292.

²⁹⁵ Case 002, Decision on Appeals by Nuon Chea and Ieng Thirith Against the Closing Order, 15 February 2011, [D427/3/15](#), para. 144.

²⁹⁶ Case 002/01, Judgment, 7 August 2014, [E313](#), para. 177; Case 002/01, Appeal Judgment, 23 November 2016, [F36](#), para. 721.

²⁹⁷ Case 001, Judgment, 26 July 2010, [E188](#), paras 361-366.

²⁹⁸ Case 001, Appeal Judgment, 3 February 2012, [F28](#), paras 180-183.

²⁹⁹ Case 002, Decision on Appeals by Nuon Chea and Ieng Thirith Against the Closing Order, 15 February 2011, [D427/3/15](#), para. 154; Case 002, Decision on Ieng Sary's Appeal Against the Closing Order, 11 April 2011, [D427/1/30](#), para. 371.

Convictions for crimes against humanity at the ECCC ³⁰⁰

Case	Final convictions
<p>Case 001 Kaing Guek Eav (<i>alias Duch</i>)</p>	<ul style="list-style-type: none"> • Extermination • Enslavement • Imprisonment • Torture (including one instance of rape) • Persecution on political grounds • Other inhumane acts. <p>Note: On appeal, the Supreme Court Chamber quashed the Trial Chamber's decision to subsume, under the crime against humanity of persecution, other crimes against humanity for which it found Duch responsible. Accordingly, the Supreme Court Chamber entered additional convictions for extermination (encompassing murder), enslavement, imprisonment, torture, and other inhumane acts.</p>
<p>Case 002/01 Nuon Chea <i>and</i> Khieu Samphan</p>	<ul style="list-style-type: none"> • Extermination (encompassing murder) • Persecution on political grounds • Other inhumane acts (comprising forced transfer, enforced disappearances and attacks against human dignity). <p>Note: On appeal, the Supreme Court Chamber reversed convictions for: (i) extermination in relation to facts concerning the population movement (phase one); (ii) extermination and persecution on political grounds in relation to facts concerning the population movement (phase two); and (iii) extermination, murder and persecution on political grounds in relation to facts concerning Tuol Po Chrey.</p>

³⁰⁰These are the convictions which are considered final following appeals to the Supreme Court Chamber and against a holistic reading of the respective trial and appeals judgments.

Case	Final convictions
<p>Case 002/02 Khieu Samphan</p>	<ul style="list-style-type: none"> • Murder • Extermination • Enslavement • Deportation • Imprisonment • Torture • Persecution on political grounds, racial and religious grounds • Other inhumane acts (through attacks against human dignity and conduct characterised as enforced disappearances, forced transfer, forced marriage, and rape in the context of forced marriage) <p>Note: On appeal, the Supreme Court Chamber reversed convictions of (i) murder at Phnom Kraol Security Centre; and (ii) persecution on political grounds of New People at the 1 January Dam Worksite.</p> <p>The Chamber reversed the mode of liability for murder at Tram Kak Cooperatives, Trapeang Thma Dam Worksite, 1 January Dam Worksite, Kampong Chhnang Airfield Construction Site, S-21 Security Centre, and Kraing Ta Chan Security Centre, and entered a conviction for murder with <i>dolus eventualis</i> committed through a joint criminal enterprise.</p> <p>The Chamber further entered a conviction for the other inhumane act of conduct characterised as forced marriage and additionally categorised as crime against humanity of other inhumane acts in the form of sexual violence, understood to constitute forced sexual intercourse in the context of forced marriage with regard to male victims.</p>

Case	Final convictions
<p>Case 002/02 <i>Nuon Chea</i></p>	<p>No final convictions.</p> <p>Note: At trial, Nuon Chea was convicted of the same crimes against humanity as Khieu Samphan. Nuon Chea filed his notice of intention to appeal the convictions but died prior to filing the appeal. The Supreme Court Chamber clarified that Nuon Chea's death did not vacate the Case 002/02 Trial Judgment, and that, at the same time a final judgment on Nuon Chea's guilt or innocence cannot be delivered, as his death prevented any appellate review by the Supreme Court Chamber.³⁰¹</p>

Other crimes against humanity charged in Case 002

Case	Crimes charged by the Co-Investigating Judges
<p>Case 002 <i>Ieng Sary</i> <i>and</i> <i>Ieng Thirith</i></p>	<ul style="list-style-type: none"> • Murder • Extermination • Enslavement • Deportation • Imprisonment • Torture • Persecution on political, racial, and religious grounds • Rape • Other inhumane acts (through attacks against human dignity, forced marriage, forced transfer, and enforced disappearances) <p>Disposition: Ieng Thirith was found unfit to be tried. Her case was terminated after her death. (see Chapter 5.2.6.2. Ieng Thirith's fitness to stand trial, severance, and death)</p> <p>Ieng Sary's case was terminated after his death. (see Chapter 5.2.6.3. Ieng Sary's fitness to stand trial and death)</p>

³⁰¹ See Chapter 5.2.7.4.1. Nuon Chea's death and termination of proceedings.

Crimes against humanity charged in other cases

Case	Crimes charged by the International Co-Investigating Judges
<p>Case 003 Meas Muth</p>	<p>Variously, in several locations:</p> <ul style="list-style-type: none"> • Murder • Extermination • Enslavement • Imprisonment • Torture • Persecution on political and racial grounds • Other inhumane acts (through inhumane treatment, enforced disappearance, attacks on human dignity, forced labour, forced marriage, rape) <p>Disposition: Case terminated (see Chapter 5.3.2. Case 003)</p>
<p>Case 004 Yim Tith</p>	<p>Variously at 23 sites:</p> <ul style="list-style-type: none"> • Murder • Extermination • Enslavement • Imprisonment • Torture • Persecution on political and racial grounds • Other inhumane acts (through forced transfer, confinement and working in inhumane conditions, forced marriage) <p>Disposition: Case terminated (see Chapter 5.3.3. Case 004)</p>

Case	Crimes charged by the International Co-Investigating Judges
<p>Case 004/01 Im Chaem</p>	<p>Variously, at two sites:</p> <ul style="list-style-type: none"> • Murder • Extermination • Enslavement • Imprisonment • Persecution on political grounds • Other inhumane acts (through enforced disappearances and attacks against human dignity) <p>Disposition: Charges dismissed (see Chapter 5.3.3.5. Severance of Im Chaem and creation of Case 004/01)</p>
<p>Case 004/02 Ao An</p>	<p>Variously, at nine sites:</p> <ul style="list-style-type: none"> • Murder • Extermination • Enslavement • Imprisonment • Torture • Persecution on political and religious grounds • other inhumane acts (including forced marriage) <p>Disposition: Case terminated (see Chapter 5.3.3.6. Severance of Ao An and creation of Case 004/02)</p>

3.3.1.4. Grave breaches of the Geneva Conventions

Article 6 of the ECCC Law states that the ECCC shall have jurisdiction over grave breaches of the Geneva Conventions, “such as the following acts against persons or property protected under provisions of these Conventions, and which were committed during the period 17 April 1975 to 6 January 1979”:

- i. wilful killing
- ii. torture or inhumane treatment
- iii. wilfully causing great suffering or serious injury to body or health
- iv. destruction and serious damage to property, not justified by military necessity and carried out unlawfully and wantonly
- v. compelling a prisoner of war or a civilian to serve in the forces of a hostile power
- vi. wilfully depriving a prisoner of war or civilian the rights of fair and regular trial
- vii. unlawful deportation or transfer or unlawful confinement of a civilian
- viii. taking civilians as hostages.

In Case 002, the Pre-Trial Chamber established that liability under grave breaches of the Geneva Conventions was foreseeable and accessible to the Accused “because of the treaties to which Cambodia was a party, the pre-existing customary nature of the law which those treaties codified, and the nature of the individual rights allegedly infringed”.³⁰²

In Case 002/02, the Accused were charged with grave breaches of the Geneva Conventions for the acts that took place in the cooperatives, worksites, security centres, and execution sites, and in respect of the treatment against Vietnamese people. With respect to a number of the grave breaches charged and established in Case 002/02, the Trial Chamber noted that the legal elements are identical to equivalent crimes against humanity. For example, it noted that “save for their

³⁰² Case 002, Decision on Appeals by Nuon Chea and Ieng Thirith Against the Closing Order, 15 February 2011, D427/3/15, paras 109-111. See also Case 002, Decision on Ieng Sary’s Appeal Against the Closing Order, 11 April 2011, D427/1/30, para. 255 (and following paragraphs).

chapeau requirements, the grave breaches of wilful killing, torture and unlawful confinement share the same legal elements as the respective crimes against humanity of murder, torture and imprisonment”.³⁹³

Convictions for Grave Breaches of the Geneva Conventions

Case	Final convictions
<p>Case 001 - Kaing Guek Eav <i>(alias Duch)</i></p> <p>Case 002/02 Khieu Samphan</p>	<p>Relating to Vietnamese protected under the Geneva Conventions:</p> <ul style="list-style-type: none"> • Wilful killing • Torture • Inhuman treatment • Wilfully causing great suffering or serious injury to body or health • Wilfully depriving a prisoner of war or civilian of the rights of a fair and regular trial • Unlawful confinement of a civilian <p>Note: Convictions for grave breaches of the Geneva Conventions were not appealed to the Supreme Court Chamber</p>
<p>Case 002/02 Nuon Chea</p>	<p>No final convictions.</p> <p>Note: At trial, Nuon Chea was convicted of the same grave breaches as Khieu Samphan. Nuon Chea filed his notice of intention to appeal the convictions but died prior to filing the appeal. The Supreme Court Chamber clarified that Nuon Chea’s death did not vacate the Case 002/02 Trial Judgment, and that, at the same time a final judgment on Nuon Chea’s guilt or innocence cannot be delivered, as his death prevented any appellate review by the Supreme Court Chamber.³⁹⁴</p>

³⁹³ Case 002/02, Judgment, 16 November 2018, E465, para. 4007.

³⁹⁴ See Chapter 5.2.7.4.1. Nuon Chea’s death and termination of proceedings.

Grave Breaches of the Geneva Conventions charged in Case 002

Case	Crimes charged by the Co-Investigating Judges
<p>Case 002 Ieng Sary and Ieng Thirith</p>	<p>Relating to Vietnamese protected under the Geneva Conventions:</p> <ul style="list-style-type: none"> • Wilful killing • Torture • Inhuman treatment • Wilfully causing great suffering or serious injury to body or health • Wilfully depriving a prisoner of war or civilian the rights of fair and regular trial • Unlawful deportation or unlawful confinement of a civilian <p>Disposition: Ieng Thirith was found unfit to be tried. Her case was terminated after her death. (see Chapter 5.2.6.2. Ieng Thirith's fitness to stand trial, severance, and death)</p> <p>Ieng Sary's case was terminated after his death. (see Chapter 5.2.6.3. Ieng Sary's fitness to stand trial and death)</p>

Grave Breaches of the Geneva Conventions charged in other cases

Case	Crimes charged by the Co-Investigating Judges
<p>Case 003 Meas Muth</p>	<p>Relating to Vietnamese and Thai protected under the Geneva Conventions:</p> <ul style="list-style-type: none"> • Wilful killing • Torture • Wilfully causing great suffering or serious injury to body or health • Unlawful confinement of civilians <p>Disposition: Case terminated (see Chapter 5.3.2. Case 003)</p>

Case	Crimes charged by the Co-Investigating Judges
<p>Case 004</p> <p>Yim Tith</p>	<p>Relating to Vietnamese protected under the Geneva Conventions:</p> <ul style="list-style-type: none"> • Wilful killing • Unlawful transfer or deportation of civilians <p>Disposition: Case terminated (see Chapter 5.3.3. Case 004)</p>

3.3.2. Temporal jurisdiction

The temporal jurisdiction of the ECCC, according to Article 2 (new) of the ECCC Law and Article 1 of the UN-RGC Agreement, is from 17 April 1975 to 6 January 1979.

According to the Group of Experts, “consideration of human rights abuses by any parties before or after that period would detract from the unique and extraordinary nature of the crimes committed by the leaders of Democratic Kampuchea”.³⁰⁵

3.3.3. Territorial jurisdiction

Neither the ECCC Law nor the UN-RGC Agreement expressly set out the territorial jurisdiction of the Extraordinary Chambers. The Co-Prosecutors and Co-Investigating Judges considered that the ECCC’s territorial jurisdiction extended beyond Cambodia’s borders. In the Case 002 Closing Order, the Co-Investigating Judges included a section on “[c]rimes committed by the Revolutionary Army of Kampuchea on Vietnamese territory” and noted that the Co-Prosecutors seized them with crimes allegedly committed against Vietnamese during incursions into the territory of Vietnam by the Revolutionary Army of Cambodia.³⁰⁶ Due to the severance of Case 002, these allegations were not heard at trial.³⁰⁷

³⁰⁵ Report of the Group of Experts, para. 149.

³⁰⁶ Case 002, Closing Order, 15 September 2010, D427, paras 832-840.

³⁰⁷ See Case 002/02, Annex: List of Paragraphs and Portions of the Closing Order Relevant to Case 002/02, 4 April 2014, E301/9/1.1, stating that crimes committed by the Revolutionary Army of Kampuchea on Vietnamese territory would be excluded from Case 002/02. See also Case 002/02, Decision on Reduction of the Scope of Case 002, 27 February 2017, E439/5, terminating the proceedings concerning all facts set out in the Closing Order that were not included in Case 002/01 or 002/02.

3.3.4. Personal jurisdiction

Articles 1 and 2 (new) of the ECCC Law and Articles 1 and 2(1) of the UN-RGC Agreement provide that the ECCC has jurisdiction over the “senior leaders” of DK and “those most responsible” for the crimes enumerated in the ECCC Law.³⁰⁸ This wording was agreed after several years of discussions.

Initially, in its letter to the UN Secretary-General (“UNSG”) dated 21 June 1997, the Royal Government of Cambodia requested the assistance of the UN and the international community in “bringing to justice *those persons responsible* for the genocide and crimes against humanity during the rule of the Khmer Rouge from 1975 to 1979”.³⁰⁹ Although the request did not define intended targets, the UN summarised the Cambodian request as “the [i]nitial Cambodian request for United Nations assistance in bringing *Khmer Rouge leaders* to trial”.³¹⁰

The Group of Experts were tasked with considering the feasibility of bringing Khmer Rouge leaders to justice, as a response to Cambodia’s request. Their 1999 report considered who should be the “targets of investigation” in any future criminal proceedings against Khmer Rouge leaders. The topic was the subject of great discussion in the meetings that the Group of Experts held with Cambodian people, who suggested, by a majority, that only leaders of the Khmer Rouge be targeted and not lower-level cadres, even though the lower-level cadres would have physically committed the atrocities.³¹¹

The Group of Experts reached five conclusions:

- i. They considered that it would be logistically and financially impossible for a tribunal to bring to justice all or even most people who committed violations of international or Cambodian law during the relevant period. This would also impede national reconciliation efforts, and the legal questions surrounding the responsibility of lower-level offenders are too complex.

³⁰⁸ ECCC Law, articles 1, 2 (new); UN-RGC Agreement, articles 1, 2(1).

³⁰⁹ UNGA/UNSC, Identical Letters to the Presidents of the UNGA and UNSC, 24 June 1997, *A/51/930-S/1997/488* (emphasis added).

³¹⁰ Case 001, Appeal Judgment, 3 February 2012, *F28*, para. 46 (referring to UNGA/UNSC, Identical Letters to the Presidents of the UNGA and UNSC, 16 March 1999, *A/53/850-S/1999/231* (emphasis added)).

³¹¹ Report of the Group of Experts, paras 102-103.

- ii. Although they noted concerns regarding prosecuting those who have already surrendered to the government, they did not consider that such surrenders warranted precluding such prosecutions. This would ignore the principle that criminal culpability should be linked to the degree of personal responsibility and not a person's political partisanship. Moreover, because nearly all Khmer Rouge leaders had surrendered, there would be almost no prosecutions.
- iii. They did not consider that the term "leaders" should be equated with persons at the senior levels of the government of DK, as this list may not correspond with the list of persons most responsible for serious violations of human rights.
- iv. Any tribunal should focus on those most responsible for the most serious violations of human rights during the reign of DK, including senior leaders and those at lower levels directly implicated in the most serious atrocities. They estimated this group of people to be in the range of some 20 to 30 individuals.
- v. The above conclusions should not form an element of the jurisdiction of any tribunal but should be a guide for prosecutors. Thus, any legal instruments related to a court should give it personal jurisdiction over any person whose acts fall within its subject matter jurisdiction and the decision on whom to indict should rest with the prosecutor bearing in mind the above guidance.³¹²

In the National Assembly debate leading to the adoption of the original ECCC Law, the language of Article 1 was established (and did not change thereafter in the final version of the ECCC Law).

The proper definition of "senior leaders and those most responsible" has been addressed in ECCC case law. In Case 001, Duch argued that he fit neither category.³¹³ The Trial Chamber expressed the view that the term "senior leaders" and "those most responsible" referred to two distinct categories of suspects.³¹⁴ It concluded that Duch's acts and conduct placed him amongst those "most responsible", rendering it unnecessary to determine whether he also qualified as a "senior leader".³¹⁵

³¹² Report of the Group of Experts, paras 106-111.

³¹³ Case 001, Duch Appeal, 18 November 2010, F14, paras 11-65. See also Chapter 5.1.6.1. Appeals against the Trial Judgment.

³¹⁴ Case 001, Appeal Judgment, 3 February 2012, F28, para. 22.

³¹⁵ Case 001, Appeal Judgment, 3 February 2012, F28, para. 23.

The Supreme Court Chamber referred to the negotiations between the UN and Cambodia, including the Report of the Group of Experts, and considered that the drafting history revealed two categories – *senior leaders* who are most responsible on the one hand and *non-senior* leaders who are most responsible on the other.³¹⁶ Each suspect must be a Khmer Rouge official, and that this is a factual issue and therefore a jurisdictional requirement that was justiciable before the Trial Chamber.³¹⁷

Each suspect also must be “most responsible”. The Supreme Court Chamber found that this was *not* a jurisdictional requirement justiciable before the Trial Chamber, but rather an investigative and prosecutorial policy for the Co-Prosecutors and Co-Investigating Judges in exercising their independent discretion in investigating and prosecuting the most serious offenders falling within the ECCC’s jurisdiction.³¹⁸ The Supreme Court Chamber rejected the argument that meaning of the term “senior leaders” was limited to former members of the Standing Committee.³¹⁹

As for the definition of “most responsible”, the Supreme Court Chamber in Case 001 found that the “ordinary meaning of ‘most responsible’ denotes a degree of criminal responsibility in comparison to all Khmer Rouge officials responsible for crimes within the ECCC’s jurisdiction”.³²⁰ However, as the Chamber had found that the term was not a jurisdictional requirement, it noted that it was impossible to define it or seek to establish any clear criteria for who might be considered most responsible. This would be the job of the Co-Prosecutors and Co-Investigating Judges, pursuant to Articles 5(3) and 6(3) of the UN-RGC Agreement.³²¹

Cases 003, 004, 004/01, and 004/02 faced many challenges due to differing interpretations as to what was meant by “those who were most responsible”.³²² The National Co-Investigating Judge took the position that the term “most responsible” was included in the ECCC Law specifically so that Duch could be prosecuted and that including other individuals in this category would expand it beyond what was intended during negotiations.³²³

³¹⁶ Case 001, Appeal Judgment, 3 February 2012, F28, para. 57.

³¹⁷ Case 001, Appeal Judgment, 3 February 2012, F28, para. 61.

³¹⁸ Case 001, Appeal Judgment, 3 February 2012, F28, section III(A)(5)(b).

³¹⁹ Case 001, Appeal Judgment, 3 February 2012, F28, para. 76.

³²⁰ Case 001, Appeal Judgment, 3 February 2012, F28, para. 62.

³²¹ Case 001, Appeal Judgment, 3 February 2012, F28, paras 63-74.

³²² See Chapter 5.3.1. Challenges faced concerning Cases 003 and 004.

³²³ See Case 003, Dismissal Order, 15 February 2019, D266, paras 390-407; Case 004, Dismissal Order, 17 September 2019, D381, paras 632-638.

The International Co-Investigating Judge disagreed, finding that the individuals in Cases 003, 004, and 004/02 could be considered “most responsible”.³²⁴ The Pre-Trial Chamber as a whole considered that “the identification of those falling into the ‘most responsible’ category includes a quantitative and qualitative assessment of both the gravity of the crimes alleged or charged and the level of responsibility of the suspect”,³²⁵ but the National Pre-Trial Chamber Judges also stated that they agreed with the National Co-Investigating Judge, noting that the drafting history of the ECCC Law suggested that the number of persons to be tried by the ECCC was finite and established, and each of those individuals had already been tried in Cases 001 and 002.³²⁶ Due to procedural issues caused by the issuance of separate and opposing closing orders by the Co-Investigating Judges, none of these cases reached trial.³²⁷

3.4. Modes of liability

The modes of liability applicable at the ECCC are set out in Article 29 of the ECCC Law, which reads: “Any Suspect who *planned, instigated, ordered, aided and abetted, or committed* the crimes referred to in article 3 new, 4, 5, 6, 7 and 8 of this law shall be individually responsible for the crime”.³²⁸ Article 29 also provides that the fact that any of the acts referred to in such Articles were committed by a subordinate does not relieve the superior of personal criminal responsibility, and the fact that a person acted pursuant to an order of a superior or the government does not relieve such person of individual criminal responsibility.³²⁹ The first part of the provision has been interpreted as encompassing the mode of liability of superior or command responsibility, which is addressed in further detail below. The second

³²⁴ See Case 003, Closing Order (Indictment), 28 November 2018, D267; Case 004, Closing Order (Indictment), 28 June 2019, D382; Case 004/02, Closing Order (Indictment), 16 August 2018, D360.

³²⁵ Case 003, Considerations on Appeal Against Closing Orders, 7 April 2021, D266/27 & D267/35, para. 65; Case 004, Considerations on Appeal Against Closing Orders, 17 September 2021, D381/45 & D382/43, para. 53; Case 004/02, Considerations on Appeal Against Closing Orders, 19 December 2019, D359/24 & D360/33, para. 140.

³²⁶ Case 004, Considerations on Appeal Against Closing Orders, 17 September 2021, D381/45 & D382/43, Opinion of Judges Prak Kimsan, Ney Thol and Huot Vuthy, paras 128-129; Case 004/02, Considerations on Appeal Against Closing Orders, 19 December 2019, D359/24 & D360/33, Opinion of Judges Prak Kimsan, Ney Thol and Huot Vuthy, paras 223-227.

³²⁷ See Chapters 5.3.2.12. Termination of proceedings, 5.3.3.5.6. Termination of proceedings, 5.3.3.6.6. Termination of proceedings, 5.3.3.7.7. Termination of proceedings.

³²⁸ ECCC Law, article 29 (emphasis added). Additionally, article 4 of the ECCC Law refers to: “attempts to commit acts of genocide; conspiracy to commit acts of genocide; participation in acts of genocide”. However, these were found by the Pre-Trial Chamber not to constitute modes of liability *per se* but rather different punishable acts of the commission of the same crime. See Case 002, Decision on Ieng Sary’s Appeal Against the Closing Order, 11 April 2011, D427/1/30, para. 79. In the cases before the ECCC, no person was charged or convicted of either attempts or conspiracy to commit genocide.

³²⁹ ECCC Law, article 29.

part of the provision precludes as a defence that may exclude criminal responsibility the argument that an individual acted pursuant to the orders of his superiors.³³⁰

The mode of liability known as joint criminal enterprise (“JCE”) is not contained explicitly in the ECCC Law. Nevertheless, it has been found to constitute a form of commission, specifically applicable to international crimes.³³¹

The sections below describe the ECCC’s interpretation and approach to each of the applicable modes of liability.

3.4.1. Planning

The mode of liability of planning requires that “one or more persons design the criminal conduct that constitutes one or more crimes that are later perpetrated”.³³² The planning must have preceded, and been a substantially contributing factor to, the criminal conduct, and the Accused must have intended for the crime to be committed or have been aware of the substantial likelihood that the crime would be committed.³³³

Criminal responsibility for planning results “as soon as one or more people form the intention to commit criminal behaviour, constituting one or more crimes. This behaviour must involve determining the commission of crimes charged”.³³⁴ It need not be established that the crime would not have been committed without the Accused’s plan. For specific intent crimes (such as genocide and persecution), it must be found that the Accused had the requisite intent. The mode of liability of planning requires a positive act to materialise.³³⁵

³³⁰ Case 001, Judgment, 26 July 2010, E188, para. 550 *et seq.*

³³¹ See for example Case 002/02, Judgment, 16 November 2018, E465, para. 3706; Case 002/01, Judgment, 7 August 2014, E313, para. 690; Case 001, Judgment, 26 July 2010, E188, para. 511; Case 002, Decision on Ieng Sary’s Appeal Against the Closing Order, 11 April 2011, D427/1/30, para. 260, referring to Case 002, Closing Order, 15 September 2010, D427, paras 1318, 1521; Case 003, Closing Order (Indictment), 28 November 2018, D267, para. 116.

³³² Case 001, Judgment, 26 July 2010, E188, para. 518; Case 004/01, Closing Order (Reasons), 10 July 2017, D308/3, para. 80.

³³³ Case 001, Judgment, 26 July 2010, E188, para. 518; Case 002/01, Judgment, 7 August 2014, E313, para. 698; Case 004/01, Closing Order (Reasons), 10 July 2017, D308/3, para. 80.

³³⁴ Case 002, Closing Order, 15 September 2010, D427, para. 1544.

³³⁵ Case 002/02, Judgment, 16 November 2018, E465, para. 3717.

At the ECCC, no convictions were entered under this mode of liability because the Accused were found liable under the doctrine of joint criminal enterprise (“JCE”) instead. However, the Extraordinary Chambers examined evidence that the Accused planned underlying crimes in Case 001 and Case 002/01:

- **Kaing Guek Eav (alias Duch):** planned the location, design, and functioning of S-21 security centre, and selected Choeung Ek as an execution site³³⁶
- **Nuon Chea:** planned the displacement of the population from Phnom Penh (Phase I),³³⁷ and subsequent movements of population throughout the country (Phase II)³³⁸
- **Khieu Samphan:** planned the displacement of the population from Phnom Penh (Phase I),³³⁹ and subsequent movements of population throughout the country (Phase II).³⁴⁰

In Case 002/02, the Trial Chamber considered that Nuon Chea and Khieu Samphan’s responsibility for planning crimes was more accurately and appropriately characterised as *commission* through a JCE, and proceeded to examine these facts under JCE liability.³⁴¹

In the other cases before the ECCC, prior to their dismissal or termination, the International Co-Investigating Judge considered there was clear and consistent evidence to charge the planning of the following crimes:

- **Meas Muth:** planning, in the alternative to JCE liability:
 - Genocide of the Vietnamese³⁴²
 - Crimes against humanity of murder, extermination, imprisonment, enslavement, torture, political persecution, racial persecution, other inhumane acts (inhumane treatment, enforced disappearance, attacks on human dignity, forced labour, forced marriage, rape) in DK territorial waters and the Kampong Som area, three security centres (including S-21), two

³³⁶ Case 001, Judgment, 26 July 2010, E188, para. 521.

³³⁷ Case 002/01, Judgment, 7 August 2014, E313, section 15.4.1.1.

³³⁸ Case 002/01, Judgment, 7 August 2014, E313, section 15.4.2.1.

³³⁹ Case 002/01, Judgment, 7 August 2014, E313, section 16.3.1.1.

³⁴⁰ Case 002/01, Judgment, 7 August 2014, E313, section 16.3.2.1.

³⁴¹ Case 002/02, Judgment, 16 November 2018, E465, paras 4177-4179, 4309-4311.

³⁴² Case 003, Closing Order (Indictment), 28 November 2018, D267, section 12 (count 1).

worksites, an execution site and other places, and specifically relating to the purges of Divisions 164 and 117³⁴³

- Grave breaches of the Geneva Conventions related to the killing of Vietnamese and Thai by the DK Navy³⁴⁴
- Premeditated homicide under the 1956 Penal Code in seven contexts (except for crimes relating to Divisions 502 and 310).³⁴⁵
- **Im Chaem:** planning homicide under the 1956 Penal Code, and the crimes against humanity of murder, extermination, enslavement, imprisonment, political persecution, and other inhumane acts (enforced disappearances and attacks against human dignity);³⁴⁶
- **Ao An:** planning, in the alternative to JCE liability:
 - Genocide of the Cham in Kampong Cham province³⁴⁷
 - Crimes against humanity of murder at eight sites: murder, extermination, enslavement, imprisonment, torture, political persecution, religious persecution, other inhumane acts (including forced marriage)³⁴⁸
 - Homicide under the 1956 Penal Code at four sites.³⁴⁹
- **Yim Tith:** planning, in combination with other modes of liability:
 - Genocide of the Khmer Krom (11 instances)³⁵⁰
 - Crimes against humanity (22 instances) including murder, extermination, enslavement, imprisonment, torture, political persecution, racial persecution, and other inhumane acts (forced transfer, confinement and working in inhumane conditions, forced marriage)³⁵¹
 - Grave Breaches of the Geneva Conventions (four instances)³⁵²
 - Premeditated homicide under the 1956 Penal Code (21 instances).³⁵³

³⁴³ Case 003, Closing Order (Indictment), 28 November 2018, D267, section 12 (count 2).

³⁴⁴ Case 003, Closing Order (Indictment), 28 November 2018, D267, section 12 (count 3).

³⁴⁵ Case 003, Closing Order (Indictment), 28 November 2018, D267, section 12 (count 4).

³⁴⁶ Case 004/01, Dismissal Order (Disposition), 22 February 2017, D308, para. 4.

³⁴⁷ Case 004/02, Closing Order (Indictment), 16 August 2018, D360, section 14 (count 1).

³⁴⁸ Case 004/02, Closing Order (Indictment), 16 August 2018, D360, section 14 (count 2).

³⁴⁹ Case 004/02, Closing Order (Indictment), 16 August 2018, D360, section 14 (count 3).

³⁵⁰ Case 004, Closing Order (Indictment), 28 June 2019, D382, section 12 (count 1).

³⁵¹ Case 004, Closing Order (Indictment), 28 June 2019, D382, section 12 (count 2).

³⁵² Case 004, Closing Order (Indictment), 28 June 2019, D382, section 12 (count 3).

³⁵³ Case 004, Closing Order (Indictment), 28 June 2019, D382, section 12 (count 4).

3.4.2. Instigating

The mode of liability of instigating “requires that one person, through either an act or omission, prompts another person to commit a crime”.³⁵⁴ The prompting may be implicit, written, or non-verbal.³⁵⁵

The instigator must have done more than merely facilitate commission of a crime, in contrast to aiding and abetting. The instigation must be a substantially contributing factor to the criminal conduct.³⁵⁶ The Accused “must have intended to provoke or induce the commission of the crime or been aware of the substantial likelihood that a crime would be committed in the execution of the instigation”.³⁵⁷ The instigation must have preceded the commission of the crime.³⁵⁸

Instigating, as opposed to ordering, does not require that the Accused have any authority over the perpetrator.³⁵⁹ However, “a superior’s consistent failure to prevent or punish a perpetrator’s crimes may, in some instances, amount to instigating the perpetrator to commit further crimes”.³⁶⁰ Although the Khmer and French versions of Article 29 of the ECCC Law refer to “incitement”, the Trial Chamber has confirmed that the notions of instigation and incitement are considered synonymous.³⁶¹

At the ECCC, no convictions were entered under this mode of liability because the Accused were found liable under the doctrine of joint criminal enterprise (“JCE”) instead. However, the Extraordinary Chambers examined evidence that the Accused instigated underlying crimes in Case 001 and Case 002/01:

- **Kaing Guek Eav (alias Duch):** instigated crimes by indoctrinating S-21 staff to be cruel and to treat all detainees as enemies, and by providing practical training to interrogators on the use of physical and psychological violence³⁶²

³⁵⁴ Case 001, Judgment, 26 July 2010, [Ei88](#), para. 522.

³⁵⁵ Case 001, Judgment, 26 July 2010, [Ei88](#), para. 522.

³⁵⁶ Case 001, Judgment, 26 July 2010, [Ei88](#), para. 522.

³⁵⁷ Case 001, Judgment, 26 July 2010, [Ei88](#), para. 524.

³⁵⁸ Case 004/01, Dismissal Order (Reasons), 10 July 2017, [D308/3](#), para. 81.

³⁵⁹ Case 001, Judgment, 26 July 2010, [Ei88](#), para. 522.

³⁶⁰ Case 001, Judgment, 26 July 2010, [Ei88](#), para. 523.

³⁶¹ Case 002/01, Judgment, 7 August 2014, [E313](#), para. 699.

³⁶² Case 001, Judgment, 26 July 2010, [Ei88](#), para. 526.

- **Nuon Chea:** instigated and contributed to the commission of crimes during the displacement of the population from Phnom Penh (Phase I),³⁶³ and subsequent movements of population throughout the country (Phase II)³⁶⁴
- **Khieu Samphan:** instigated and contributed to the commission of crimes during the displacement of the population from Phnom Penh (Phase I),³⁶⁵ and subsequent movements of population throughout the country (Phase II).³⁶⁶

In Case 002/02, the Trial Chamber considered that Nuon Chea and Khieu Samphan's responsibility for instigating crimes was more accurately and appropriately characterised as *commission* through a JCE, and proceeded to examine these facts under JCE liability.³⁶⁷

In the other cases before the ECCC, prior to their dismissal or termination, the International Co-Investigating Judge considered there was clear and consistent evidence to charge the instigation of the following crimes:

- **Im Chaem:** homicide under the 1956 Penal Code, and the crimes against humanity of murder, extermination, enslavement, imprisonment, political persecution, and other inhumane acts (enforced disappearances and attacks against human dignity).³⁶⁸
- **Ao An:** in the alternative to JCE liability:
 - Genocide of the Cham in Kampong Cham province³⁶⁹
 - Crimes against humanity of murder at eight sites: murder, extermination, enslavement, imprisonment, torture, political persecution, religious persecution, other inhumane acts (including forced marriage).³⁷⁰
- **Yim Tith:** instigating, in combination with other modes of liability:
 - Genocide of the Khmer Krom (eight instances)³⁷¹

³⁶³ Case 002/01, Judgment, 7 August 2014, E313, section 15.4.1.3.

³⁶⁴ Case 002/01, Judgment, 7 August 2014, E313, section 15.4.2.3.

³⁶⁵ Case 002/01, Judgment, 7 August 2014, E313, section 16.3.1.4.

³⁶⁶ Case 002/01, Judgment, 7 August 2014, E313, section 16.3.2.3.

³⁶⁷ Case 002/02, Judgment, 16 November 2018, E465, paras 4177-4179; 4309-4311.

³⁶⁸ Case 004/01, Dismissal Order (Disposition), 22 February 2017, D308, para. 4.

³⁶⁹ Case 004/02, Closing Order (Indictment), 16 August 2018, D360, section 14 (count 1).

³⁷⁰ Case 004/02, Closing Order (Indictment), 16 August 2018, D360, section 14 (count 2).

³⁷¹ Case 004, Closing Order (Indictment), 28 June 2019, D382, section 12 (count 1).

- Crimes against humanity (18 instances) including murder, extermination, enslavement, imprisonment, torture, political persecution, racial persecution, and other inhumane acts (forced transfer, confinement and working in inhumane conditions, forced marriage)³⁷²
- Grave Breaches of the Geneva Conventions (two instances) including wilful killing and unlawful transfer of civilians.³⁷³

3.4.3. Ordering

The mode of liability of ordering requires that “a person in a position of authority instructs another person to commit a crime. No formal superior-subordinate relationship between the two persons is required. The person giving the order need only possess the authority, be it in law or in fact, to order the commission of the crime”.³⁷⁴ The order can be issued, passed down or transmitted, including through intermediaries. The order can take any form, and its existence can be proven through circumstantial evidence.³⁷⁵ The issuance of the order must be a substantially contributing factor to the criminal conduct, and the Accused must have intended, or been aware of the substantial likelihood, that the crime would be committed.³⁷⁶

At the ECCC, no convictions were entered under this mode of liability because the Accused were found liable under the doctrine of joint criminal enterprise (“JCE”) instead. However, as part of their assessment of the JCE, the Extraordinary Chambers examined evidence that the Accused ordered underlying crimes in Case 001 and Case 002/01:

- **Kaing Guek Eav (alias Duch):** ordered crimes at S-21 security centre by issuing, passing down or transmitting orders to staff to arrest, torture and execute detainees³⁷⁷
- **Nuon Chea:** ordered and contributed to the commission of crimes during the displacement of the population from

³⁷² Case 004, Closing Order (Indictment), 28 June 2019, D382, section 12 (count 2).

³⁷³ Case 004, Closing Order (Indictment), 28 June 2019, D382, section 12 (count 3).

³⁷⁴ Case 001, Judgment, 26 July 2010, E188, para. 527.

³⁷⁵ Case 001, Judgment, 26 July 2010, E188, para. 527.

³⁷⁶ Case 001, Judgment, 26 July 2010, E188, paras 527-528.

³⁷⁷ Case 001, Judgment, 26 July 2010, E188, para. 531.

Phnom Penh (Phase I),³⁷⁸ and subsequent movements of population throughout the country (Phase II).³⁷⁹

In Case 002/02, the Trial Chamber considered that Nuon Chea and Khieu Samphan's responsibility for ordering crimes was more accurately and appropriately characterised as *commission* through a JCE, and proceeded to examine these facts under JCE liability.³⁸⁰

In the other cases before the ECCC, prior to their dismissal or termination, the International Co-Investigating Judge considered there was clear and consistent evidence to charge the ordering of the following crimes:

- **Meas Muth:** in the alternative to JCE liability:
 - Genocide of the Vietnamese³⁸¹
 - Crimes against humanity of murder, extermination, imprisonment, enslavement, torture, political persecution, racial persecution, other inhumane acts (inhumane treatment, enforced disappearance, attacks on human dignity, forced labour, forced marriage, rape) in DK territorial waters and the Kampong Som area, three security centres (including S-21), two worksites, an execution site and other places, and specifically relating to the purges of Divisions 164 and 117³⁸²
 - Grave breaches of the Geneva Conventions related to the killing of Vietnamese and Thai by the DK Navy³⁸³
 - Premeditated homicide under the 1956 Penal Code in seven contexts (except for crimes relating to Divisions 502 and 310).³⁸⁴
- **Im Chaem:** homicide under the 1956 Penal Code, and the crimes against humanity of murder, extermination, enslavement, imprisonment, political persecution, and other inhumane acts (enforced disappearances and attacks against human dignity).³⁸⁵
- **Ao An:** in the alternative to JCE liability:

³⁷⁸ Case 002/01, Judgment, 7 August 2014, E313, section 15.4.1.2.

³⁷⁹ Case 002/01, Judgment, 7 August 2014, E313, section 15.4.2.2.

³⁸⁰ Case 002/02, Judgment, 16 November 2018, E465, paras 4177-4179, 4309-4311.

³⁸¹ Case 003, Closing Order (Indictment), 28 November 2018, D267, section 12 (count 1).

³⁸² Case 003, Closing Order (Indictment), 28 November 2018, D267, section 12 (count 2).

³⁸³ Case 003, Closing Order (Indictment), 28 November 2018, D267, section 12 (count 3).

³⁸⁴ Case 003, Closing Order (Indictment), 28 November 2018, D267, section 12 (count 4).

³⁸⁵ Case 004/01, Dismissal Order (Disposition), 22 February 2017, D308, para. 4.

- Homicide under the 1956 Penal Code at four sites³⁸⁶
- Genocide of the Cham in Kampong Cham province³⁸⁷
- Crimes against humanity of murder at eight sites: murder, extermination, enslavement, imprisonment, torture, political persecution, religious persecution, other inhumane acts (including forced marriage).³⁸⁸
- **Yim Tith:** ordering, in combination with other modes of liability:
 - Genocide of the Khmer Krom (eight instances)³⁸⁹
 - Crimes against humanity (18 instances) including murder, extermination, enslavement, imprisonment, torture, political persecution, racial persecution, and other inhumane acts (forced transfer, confinement and working in inhumane conditions, forced marriage)³⁹⁰
 - Grave Breaches of the Geneva Conventions (two instances) including wilful killing and unlawful transfer of civilians³⁹¹
 - Premeditated homicide under the 1956 Penal Code (18 instances).³⁹²

3.4.4. Aiding and abetting

The mode of liability of aiding and abetting consists of practical assistance, encouragement, or moral support which has a substantial effect on the commission of the crime by the perpetrator. Aiding involves the provision of assistance, while abetting involves “facilitating the commission of an act by being sympathetic thereto”.³⁹³

There is no requirement of a plan or agreement between the aider and abettor and the perpetrator. A crime must be carried out for an Accused to be convicted of aiding and abetting that crime, but the perpetrator need not be tried or identified.³⁹⁴ The Accused must know that a crime would

³⁸⁶ Case 004/02, Closing Order (Indictment), 16 August 2018, D360, section 14 (count 3).

³⁸⁷ Case 004/02, Closing Order (Indictment), 16 August 2018, D360, section 14 (count 1).

³⁸⁸ Case 004/02, Closing Order (Indictment), 16 August 2018, D360, section 14 (count 2).

³⁸⁹ Case 004, Closing Order (Indictment), 28 June 2019, D382, section 12 (count 1).

³⁹⁰ Case 004, Closing Order (Indictment), 28 June 2019, D382, section 12 (count 2).

³⁹¹ Case 004, Closing Order (Indictment), 28 June 2019, D382, section 12 (count 3).

³⁹² Case 004, Closing Order (Indictment), 28 June 2019, D382, section 12 (count 4).

³⁹³ Case 001, Judgment, 26 July 2010, E188, para. 533.

³⁹⁴ Case 001, Judgment, 26 July 2010, E188, para. 534.

probably be committed, the crime must have in fact been committed, and the Accused must be aware that his conduct assisted the commission.³⁹⁵ The Accused must have been aware of the perpetrator’s intent, though he or she need not share such intent.³⁹⁶

Aiding and abetting can also take the form of a culpable omission. As confirmed by the Trial Chamber, Nuremberg-era documents

recognised that an accused may be held criminally liable for an omission which aids and abets the commission of a crime. Whether an omission aids or abets a crime is a matter to be determined on a case-by-case basis. This determination will likely turn on the position and authority of an accused.³⁹⁷

The Trial Chamber also noted that although the French version of Article 29 of the ECCC Law equates aiding and abetting with the notion of complicity, complicity may encompass broader conduct and the phrase “*aidé et encouragé*” more clearly reflects the nature of this form of responsibility than does the notion of “*complicité*”.³⁹⁸

At the ECCC, one conviction was recorded under this mode of liability because the Accused were mostly found liable under the doctrine of joint criminal enterprise (“JCE”) instead.

In Case 002/02, the Trial Chamber considered that Nuon Chea and Khieu Samphan’s responsibility for aiding and abetting the vast majority of crimes across the country was more accurately and appropriately characterised as *commission* through a JCE and proceeded to examine the relevant facts under JCE liability.³⁹⁹ The Chamber nevertheless deemed that facts relating to deaths as a result of conditions at cooperatives, worksites and security centres could not fall within the common purpose of a JCE (and therefore could not attract JCE liability), and accordingly convicted Nuon Chea and Khieu Samphan for *aiding and abetting* the crime against humanity of murder with *dolus eventualis* at the Tram Kak Cooperatives, 1 January Dam Worksite, Trapeang Thma Dam Worksite, Kampong Chhnang

³⁹⁵ Case 001, Judgment, 26 July 2010, E188, para. 535.

³⁹⁶ Case 001, Judgment, 26 July 2010, E188, para. 535.

³⁹⁷ Case 002/01, Judgment, 7 August 2014, E313, para. 706.

³⁹⁸ Case 001, Judgment, 26 July 2010, E188, para. 532.

³⁹⁹ Case 002/02, Judgment, 16 November 2018, E465, paras 4177-4179, 4309-4311.

Airfield Construction Site, S-21 Security Centre, Kraing Ta Chan Security Centre, and Phnom Kraol Security Centre.⁴⁰⁰ On appeal, the Supreme Court Chamber overturned the Trial Chamber's approach as incorrect, and recharacterised Khieu Samphan's liability for these crimes to JCE liability.⁴⁰¹

Because Nuon Chea had died prior to the appeal, his conviction for aiding abetting the crime against humanity of murder with *dolus eventualis* at these sites remains but is not considered to be final.⁴⁰²

In Case 001 and Case 002/01, the Extraordinary Chambers examined evidence that the Accused aided and abetted crimes, but only entered convictions through the JCE mode of liability:

- **Kaing Guek Eav (alias Duch):** aided and abetted crimes by providing practical assistance, encouragement, and moral support to S-21 security centre staff⁴⁰³
- **Nuon Chea:** aided and abetted crimes committed during the displacement of the population from Phnom Penh (Phase I),⁴⁰⁴ and subsequent movements of population throughout the country (Phase II)⁴⁰⁵
- **Khieu Samphan:** aided and abetted crimes committed during the displacement of the population from Phnom Penh (Phase I),⁴⁰⁶ and subsequent movements of population throughout the country (Phase II).⁴⁰⁷

In another case before the ECCC, prior to its dismissal, the International Co-Investigating Judge considered there was clear and consistent evidence to charge the aiding and abetting of the following crimes:

- **Im Chaem:** homicide under the 1956 Penal Code, and the crimes against humanity of murder, extermination, enslavement,

⁴⁰⁰ Case 002/02, Judgment, 16 November 2018, E465, sections 17.3.1, 18.3.1.

⁴⁰¹ Case 002/02, Appeal Judgment, 23 December 2022, F76, section VIII(B)(g)(b).

⁴⁰² See Chapter 5.2.7.4.1. Nuon Chea's death and termination of proceedings.

⁴⁰³ Case 001, Judgment, 26 July 2010, E188, para. 537.

⁴⁰⁴ Case 002/01, Judgment, 7 August 2014, E313, section 15.4.1.4.

⁴⁰⁵ Case 002/01, Judgment, 7 August 2014, E313, section 15.4.2.4.

⁴⁰⁶ Case 002/01, Judgment, 7 August 2014, E313, section 16.3.1.3.

⁴⁰⁷ Case 002/01, Judgment, 7 August 2014, E313, section 16.3.2.4.

imprisonment, political persecution, and other inhumane acts (enforced disappearances and attacks against human dignity).⁴⁰⁸

3.4.5. Committing

The mode of liability of commission (except through JCE which is discussed separately below) consists of the physical perpetration or culpable omission of a criminal act. The perpetrator must have had the intent to commit the crime or have been aware of the substantial likelihood that the crime would occur as a consequence of the acts.⁴⁰⁹ With respect to culpable omissions, the Trial Chamber found in Case 002/02, that “an omission will be culpable only where there is a duty to act”.⁴¹⁰

The mode of liability of commission can be perpetrated by single or multiple co-perpetrators. According to the Pre-Trial Chamber, the domestic form of co-perpetration is a form of commission which falls under Article 29 of the ECCC Law and can be considered with regard to violations of the 1956 Cambodian Penal Code.⁴¹¹

At the ECCC, no convictions were entered under this mode of liability because the Accused were mostly charged under the doctrine of joint criminal enterprise (“JCE”). In Case 001, Kaing Guek Eav (alias Duch) was indicted for committing the crimes against humanity of torture or other inhumane acts, but was acquitted of these at trial.⁴¹²

In the other cases before the ECCC, prior to their dismissal or termination, the International Co-Investigating Judge considered there was clear and consistent evidence to charge the planning of the following crimes:

- **Meas Muth:** as a co-perpetrator of homicides related to (a) Vietnamese and Thai, (b) purges of four divisions, (c) two security centres; (d) one worksite; and (e) one execution site.⁴¹³
- **Im Chaem:** as a co-perpetrator of homicide under the 1956 Penal Code at two crime sites.⁴¹⁴

⁴⁰⁸ Case 004/01, Closing Order (Disposition), 22 February 2017, D308, para. 4.

⁴⁰⁹ Case 001, Judgment, 26 July 2010, E188, paras 480-481.

⁴¹⁰ Case 002/02, Judgment, 16 November 2018, E465, para. 627.

⁴¹¹ Case 003, Closing Order (Indictment), 28 November 2018, D267, paras 116-117.

⁴¹² Case 001, Judgment, 26 July 2010, E188, section 2.7.1.2.

⁴¹³ Case 003, Closing Order (Indictment), 28 November 2018, D267, section 12 (count 4).

⁴¹⁴ Case 004/01, Dismissal Order (Disposition), 22 February 2017, D308, para. 4(i).

- **Ao An:**
 - as a direct perpetrator of the crime against humanity of other inhumane acts related to forced marriage in Kampong Siem and Prey Chhor districts (Sector 41)⁴¹⁵
 - as a co-perpetrator of premeditated homicide under the 1956 Penal Code at eight sites.⁴¹⁶
- **Yim Tith:**
 - as a direct perpetrator of the crime against humanity of other inhumane acts (forced marriage) at Samlaut district⁴¹⁷
 - as a co-perpetrator of premeditated homicide under the 1956 Penal Code (22 instances).⁴¹⁸

3.4.6. Joint criminal enterprise

Participation in a Joint Criminal Enterprise (“JCE”) embraces situations where the Accused may be more remote from the actual perpetration of the *actus reus* of the crime than those foreseen by the direct participation required under domestic law.⁴¹⁹ Participation in a JCE amounts to commission within the scope of Article 29 of the ECCC Law.⁴²⁰ This form of commission requires the existence of a plurality of persons, a common purpose which amounts to or involves the commission of a crime, and that the Accused must participate in the common purpose, by making a significant, albeit not necessarily indispensable, contribution.⁴²¹

Moreover, “[p]articipation in a common purpose may be by positive act or culpable omission” and an Accused’s participation in a common purpose “need not involve commission of a specific crime provided for in the Agreement or ECCC Law (for example murder, extermination or torture), but may take the form of assistance in, or contribution to, the execution of the common purpose”.⁴²² Additionally, JCE participants “can incur liability for crimes committed by direct perpetrators who were not

⁴¹⁵ Case 004/02, Closing Order (Indictment), 16 August 2018, D360, section 14 (count 2).

⁴¹⁶ Case 004/02, Closing Order (Indictment), 16 August 2018, D360, section 14 (count 3).

⁴¹⁷ Case 004, Closing Order (Indictment), 28 June 2019, D382, section 12 (count 2).

⁴¹⁸ Case 004, Closing Order (Indictment), 28 June 2019, D382, section 12 (count 4).

⁴¹⁹ Case 002, Decision on the Appeals Against the Co-Investigative Judges Order on Joint Criminal Enterprise (JCE), 20 May 2010, D97/15/9, para. 101.

⁴²⁰ Case 002/01, Judgment, 7 August 2014, E313, para. 690.

⁴²¹ Case 002/01, Judgment, 7 August 2014, E313, para. 692.

⁴²² Case 002/01, Judgment, 7 August 2014, E313, para. 693.

JCE members, provided that it has been established that the crimes can be imputed to at least one JCE participant and that this participant, when using a direct perpetrator, acted to further the common purpose”.⁴²³

In international criminal law, there are three forms of JCE: the basic category (JCE I), where all participants act pursuant to a common purpose and share the same criminal intent; the systemic category (JCE II), which encompasses situations of ill-treatment in organised institutions, such as concentration camps; and the extended category (JCE III), where participants have agreed on a common purpose involving the perpetration of crimes, and are thus liable for criminal acts which, while not part of the common purpose, were a natural and foreseeable consequence of effecting that common purpose.⁴²⁴

For JCE I, the Accused must intend to participate in the common purpose and the intent must be shared with the other participants.⁴²⁵ For JCE II, the Accused must have knowledge of the criminal nature of a system of ill-treatment and intend to further the common system of such ill-treatment.⁴²⁶ For JCE III, the Accused must be aware that the crimes outside the common plan are a natural and foreseeable consequence of the plan and have willingly taken that risk.⁴²⁷

The question of JCE’s applicability at the ECCC arose several times and before the various Chambers, particularly the application of JCE III.⁴²⁸ In Case 001, the Co-Prosecutors argued that the Co-Investigating Judges erred by failing to include JCE in the Indictment, while Duch had argued that JCE was inapplicable at the ECCC.⁴²⁹ Nevertheless, the Pre-Trial Chamber, after having invited submissions from *amici curiae* on the issue,⁴³⁰ declined to rule on it, considering that JCE had not been included in the factual basis

⁴²³ Case 002/01, Judgment, 7 August 2014, E313, para. 693.

⁴²⁴ Case 002/01, Judgment, 7 August 2014, E313, para. 690.

⁴²⁵ Case 002/01, Judgment, 7 August 2014, E313, para. 694.

⁴²⁶ Case 002/01, Judgment, 7 August 2014, E313, para. 694.

⁴²⁷ See Case 002, Order on the Application at the ECCC of the Form of Liability Known As Joint Criminal Enterprise, 8 December 2009, D97/13, para. 16.

⁴²⁸ See Chapters 5.2.3.3. Jurisdictional challenges, 5.2.4. Pre-Trial Chamber proceedings.

⁴²⁹ Case 001, Co-Prosecutors’ Appeal of the Closing Order, 5 September 2008, D99/3/3, paras 43-63; Case 001, Response to OCP Closing Order Appeal, 16 September 2008, D99/3/8, para. 2.

⁴³⁰ See Case 001, Decision on Closing Order Appeal, 5 December 2008, D99/3/42, paras 14-15; Case 001, *Amicus Curiae* Brief of Professor Antonio Cassese and Members of the *Journal of International Criminal Justice* on Joint Criminal Enterprise Doctrine, 27 October 2008, D99/3/24; Case 001, *Amicus Curiae* Brief Submitted by the Centre for Human Rights and Legal Pluralism, McGill University, 27 October 2008, D99/3/25; Case 001, *Amicus Curiae* [of Professor Dr Kai Ambos] Concerning Criminal Case File No. 001/18-07-2007-ECCC/OCLI(PTC02), 27 October 2008, D99/3/27.

of the judicial investigation.⁴³¹ The Trial Chamber in Case 001, however, found that the notion of JCE was part of customary international law by 1975 and was included in the ECCC Law as a form of commission and found that Duch was liable via JCE II for crimes committed at the S-21 Security Centre.⁴³² In Case 002, the Co-Investigating Judges declared that JCE was applicable at the ECCC in each of its forms, although they stated that it could not be applied to domestic crimes.⁴³³ Most of the defence teams and some Civil Parties appealed,⁴³⁴ and the Pre-Trial Chamber determined that while JCE I and II had a sufficiently firm basis in applicable law by 1975, JCE III did not and thus could not be applied at the ECCC.⁴³⁵ At trial, the Trial Chamber rejected the Co-Prosecutors' request to find that JCE III was applicable at the ECCC, agreeing with the Pre-Trial Chamber that it was not.⁴³⁶ The Supreme Court Chamber later confirmed this position.⁴³⁷

In the other cases before the ECCC, prior to their dismissal or termination, the International Co-Investigating Judge considered there was clear and consistent evidence to charge the commission of crimes through participation in a JCE:

- **Meas Muth:** as the primary mode of liability:
 - Genocide of the Vietnamese⁴³⁸
 - Crimes against humanity of murder, extermination, imprisonment, enslavement, torture, political persecution, racial persecution, other inhumane acts (inhumane treatment, enforced disappearance, attacks on human dignity, forced labour, forced marriage, rape) in DK territorial waters and the Kampong Som area, three security centres (including S-21), two

⁴³¹ Case 001, Decision on Closing Order Appeal, 5 December 2008, [D99/3/42](#), paras 115-142.

⁴³² Case 001, Judgment, 26 July 2010, [E188](#), section. 2.7.1.3.

⁴³³ Case 002, Order on the Application at the ECCC of the Form of Liability Known as Joint Criminal Enterprise, 8 December 2009, [D97/13](#)

⁴³⁴ Case 002, Ieng Thirith Defence Appeal Against "Order on the Application at the ECCC of the Form of Liability Known as Joint Criminal Enterprise", 18 January 2010, [D97/15/1](#); Case 002, Ieng Sary's Appeal Against the OCIJ's Order on the Application at the ECCC of the Form of Liability Known as Joint Criminal Enterprise, 22 January 2010, [D97/14/5](#); Case 002, Appeal Against the Order on the Application at the ECCC of the Form of Liability Known as Joint Criminal Enterprise, 3 February 2010, [D97/16/1](#); Case 002, Appeal Brief Against the Order on the Application at the ECCC of the Form of Liability Known as Joint Criminal Responsibility, 8 January 2010, [D97/17/1](#). The Civil Parties argued the JCE should be applicable to national crimes as well as international crimes.

⁴³⁵ Case 002, Decision on the Appeals Against the Co-Investigative Judges Order on Joint Criminal Enterprise (JCE), 20 May 2010, [D97/15/9](#).

⁴³⁶ Case 002, Decision on the Applicability of Joint Criminal Enterprise, 12 September 2011, [E100/6](#), paras 2638.

⁴³⁷ Case 002/01, Appeal Judgment, 23 November 2016, [F36](#), para. 807.

⁴³⁸ Case 003, Closing Order (Indictment), 28 November 2018, [D267](#), section 12 (count 1).

worksites, an execution site, and other places, and related to the purge of four divisions⁴³⁹

- Grave breaches of the Geneva Conventions related to the killing of Vietnamese and Thai by the DK Navy.⁴⁴⁰
- **Im Chaem:** crimes against humanity of murder, extermination, enslavement, imprisonment, political persecution, and other inhumane acts (enforced disappearances and attacks against human dignity).⁴⁴¹
- **Ao An:** as the primary mode of liability:
 - Genocide of the Cham in Kampong Cham province⁴⁴²
 - Crimes against humanity of murder at nine sites: murder, extermination, enslavement, imprisonment, torture, political persecution, religious persecution, other inhumane acts (including forced marriage).⁴⁴³
- **Yim Tith:** in combination with other modes of liability:
 - Genocide of the Khmer Krom (11 instances of JCE I, one instance of JCE II)⁴⁴⁴
 - Crimes against humanity (22 instances of JCE I, one instance of JCE II) including murder, extermination, enslavement, imprisonment, torture, political persecution, racial persecution, and other inhumane acts (forced transfer, confinement and working in inhumane conditions, forced marriage)⁴⁴⁵
 - Grave Breaches of the Geneva Conventions (four instances) including wilful killing, unlawful transfer of civilians, and unlawful deportation or transfer of civilians.⁴⁴⁶

⁴³⁹ Case 003, Closing Order (Indictment), 28 November 2018, D267, section 12 (count 2).

⁴⁴⁰ Case 003, Closing Order (Indictment), 28 November 2018, D267, section 12 (count 3).

⁴⁴¹ Case 004/01, Dismissal Order (Disposition), 22 February 2017, D308, para. 4(ii).

⁴⁴² Case 004/02, Closing Order (Indictment), 16 August 2018, D360, section 14 (count 1).

⁴⁴³ Case 004/02, Closing Order (Indictment), 16 August 2018, D360, section 14 (count 2).

⁴⁴⁴ Case 004, Closing Order (Indictment), 28 June 2019, D382, section 12 (count 1).

⁴⁴⁵ Case 004, Closing Order (Indictment), 28 June 2019, D382, section 12 (count 2).

⁴⁴⁶ Case 004, Closing Order (Indictment), 28 June 2019, D382, section 12 (count 3).

3.4.7. Superior / command responsibility⁴⁴⁷

There are three requirements to superior responsibility:

(a) there must have been a superior-subordinate relationship between the accused and the person who committed the crime; (b) the accused must have known, or had reason to know, that the crime was about to be or had been committed; and (c) the accused must have failed to take the necessary and reasonable measures to prevent the crime or to punish the perpetrator.⁴⁴⁸

In considering whether this mode of responsibility existed in customary international law in 1975-1979, the Pre-Trial Chamber considered international sources of customary international law, including jurisprudence from the Nuremberg-era military tribunals as well as jurisprudence from the *ad hoc* international tribunals and found that:

the doctrine of superior responsibility as articulated under Article 29 new of the ECCC Law existed as a matter of customary international law by 1975. Although the articulation of the contours of fundamental elements of the doctrine was not always clear or complete in accordance with our understanding of them today, and the application of those elements to the specific facts in the post-World War II cases was at times inconsistent and incomplete, nevertheless, the principle that a superior may be held criminally responsible with respect to crimes committed by subordinates where there is a superior/subordinate relationship with effective control; the *mens rea* of actual or constructive knowledge; and the *actus reus* of failure to act was established.⁴⁴⁹

The Chamber further found that:

the doctrine of superior responsibility was understood not to be strictly limited to military commanders but it was also extended to include non-military superiors. Therefore, this jurisprudence indicates that

⁴⁴⁷The notions of “superior responsibility” and “command responsibility” constitute the same “indirect” mode of liability and the terms were used interchangeably by the Chambers. See Case 004/01, Dismissal Order (Reasons), 10 July 2017, [D308/3](#), para. 85.

⁴⁴⁸Case 001, Judgment, 26 July 2010, [E188](#), para. 538; Case 002/01, Judgment, 7 August 2014, [E313](#), paras 715-716; Case 002/02, Judgment, 16 November 2018, [E465](#), paras 3725-3726.

⁴⁴⁹Case 002, Decision on Ieng Sary’s Appeal Against the Closing Order, 11 April 2011, [D427/1/30](#), para. 458. Note that there is no Article 29 new of the ECCC Law. This is a typographical error, and the Pre-Trial Chamber was referring to Article 29.

the exact nature of one’s role or function as a superior and whether it is *de jure* or *de facto* is less important than the degree of command or authority exercised over one’s subordinates.⁴⁵⁰

The Pre-Trial Chamber applied the international standard for the principle of legality and found that because the notion of command responsibility existed in customary international law, it was a strong indicator that it was foreseeable and accessible to the Accused. The Trial Chamber agreed with the Pre-Trial Chamber and found that superior responsibility did indeed exist in customary law at the relevant time.⁴⁵¹

As for the contours of this mode of liability, the superior-subordinate relationship can arise by virtue of a superior’s power in law or in fact over the perpetrators. It must be established that the Accused exercised effective control over the subordinate – *i.e.*, the Accused had the “material ability to prevent or punish the subordinate’s commission of the crime”.⁴⁵²

Factors proving effective control can include the Accused’s position; the procedure for appointment and the actual tasks performed; the Accused’s capacity to issue orders and whether such orders are actually executed; the fact that subordinates show greater discipline in the presence of the Accused; authority to invoke disciplinary measures; and authority to release or transfer prisoners. Every person who exercises effective control over subordinates may be responsible for their crimes.⁴⁵³

The superior must know or have reason to know that the subordinate had committed or would commit crimes. Such knowledge must not be presumed, but established by evidence. The superior must also have knowledge of the criminal conduct of the subordinates and not simply knowledge of the occurrence of the crimes themselves. Knowledge may be proven by the possession of sufficient information – but such information may be general in nature and does not need to contain details of the crimes. A superior may not deliberately refrain from obtaining such relevant information where available.⁴⁵⁴

⁴⁵⁰ Case 002, Decision on Ieng Sary’s Appeal Against the Closing Order, 11 April 2011, [D427/1/30](#), para. 459.

⁴⁵¹ Case 002/01, Judgment, 7 August 2014, [E313](#), para. 718.

⁴⁵² Case 001, Judgment, 26 July 2010, [Ei88](#), para. 540.

⁴⁵³ Case 001, Judgment, 26 July 2010, [Ei88](#), paras 541-542.

⁴⁵⁴ Case 001, Judgment, 26 July 2010, [Ei88](#), paras 543-544.

If the superior failed to take necessary and reasonable measures (*i.e.*, measures showing a genuine effort, reasonably falling within the material powers of the superior) to prevent the commission of a crime or punish the perpetrators, the superior may be held liable under superior responsibility. The failure to prevent and the failure to punish are legally and factually distinct – the duty to prevent arises from the moment the superior knows or has reason to know a crime is about to be committed, and the duty to punish arises after the commission of the crime.⁴⁵⁵

An Accused cannot be tried or sentenced on the basis of superior responsibility *and* on the basis of direct responsibility for the same conduct.⁴⁵⁶ Rather, “[w]here an accused is found to be both directly responsible and responsible as a superior in relation to the same conduct, the chamber will convict on the basis of the former and consider an accused’s superior position as an aggravating factor in sentencing”.⁴⁵⁷

The ECCC convicted Nuon Chea under this mode of liability in Case 002/02 for the crime of genocide by killing members of the Cham ethnic and religious group.⁴⁵⁸

No other convictions were recorded under this mode of liability because the Accused were found liable under the doctrine of joint criminal enterprise (“JCE”) instead. However, the Extraordinary Chambers determined that two Accused were responsible as superiors, and this was taken into consideration at the sentencing stage:

- **Kaing Guek Eav (alias Duch):** exercised effective control over S-21 security centre staff, knew that his subordinates were committing crimes, and failed to take necessary or reasonable steps to prevent crimes or punish perpetrators.⁴⁵⁹
- **Nuon Chea:** held *de facto* and *de jure* authority over members of the CPK and RAK, knew or had reason to know that his subordinates were committing the following crimes, and failed to take necessary

⁴⁵⁵ Case 001, Judgment, 26 July 2010, E188, paras 545, 547.

⁴⁵⁶ Case 002, Closing Order, 15 September 2010, D427, para. 1557; Case 001, Judgment, 26 July 2010, E188, para. 539.

⁴⁵⁷ Case 002/02, Judgment, 16 November 2018, E465, para. 3702; Case 001, Judgment, 26 July 2010, E188, para. 539.

⁴⁵⁸ Case 002/02, Judgment, 16 November 2018, E465, sections 17.3.2-17.4. Regarding the finality of that judgment, see Chapter 5.2.7.4.1. Nuon Chea’s death and termination of proceedings.

⁴⁵⁹ Case 001, Judgment, 26 July 2010, E188, section. 2.7.10.4.

or reasonable steps to prevent the following crimes or punish perpetrators:⁴⁶⁰

- **Case 002/01:** crimes against humanity committed during the displacement of the population from Phnom Penh (Phase I),⁴⁶¹ and subsequent movements of population throughout the country (Phase II).⁴⁶²
- **Case 002/02:** crime against humanity of murder with *dolus eventualis* at the Tram Kak Cooperatives, 1 January Dam Worksite, Trapeang Thma Dam Worksite, Kampong Chhnang Airfield Construction Site, S-21 Security Centre, Kraing Ta Chan Security Centre, and Phnom Kraol Security Centre.⁴⁶³

In the other cases before the ECCC, prior to their dismissal or termination, the International Co-Investigating Judge considered there was clear and consistent evidence that the following were responsible for crimes as superiors or commanders:

- **Meas Muth,** in the further alternative to JCE liability and other modes of liability:
 - Genocide of the Vietnamese⁴⁶⁴
 - Crimes against humanity of murder, extermination, imprisonment, enslavement, torture, political persecution, racial persecution, other inhumane acts (inhumane treatment, enforced disappearance, attacks on human dignity, forced labour, forced marriage, rape) in DK territorial waters and the Kampong Som area, three security centres (including S-21), two worksites, an execution site, and other places⁴⁶⁵
 - Grave breaches of the Geneva Conventions related to the killing of Vietnamese and Thai by the DK Navy.⁴⁶⁶
- **Im Chaem:** homicide under the 1956 Penal Code, and the crimes against humanity of murder, extermination, enslavement,

⁴⁶⁰ Case 002/01, Judgment, 7 August 2014, E313, sections 15.4.1.5, 15.4.2.5; Case 002/02, Judgment, 16 November 2018, E465, section 17.3.2.

⁴⁶¹ Case 002/01, Judgment, 7 August 2014, E313, section 15.4.1.5.

⁴⁶² Case 002/01, Judgment, 7 August 2014, E313, section 15.4.2.5.

⁴⁶³ Case 002/02, Judgment, 16 November 2018, E465, sections 17.3.2-17.4.

⁴⁶⁴ Case 003, Closing Order (Indictment), 28 November 2018, D267, section 12 (count 1).

⁴⁶⁵ Case 003, Closing Order (Indictment), 28 November 2018, D267, section 12 (count 2).

⁴⁶⁶ Case 003, Closing Order (Indictment), 28 November 2018, D267, section 12 (count 3).

imprisonment, political persecution, and other inhumane acts (enforced disappearances and attacks against human dignity).⁴⁶⁷

- **Ao An**, in the further alternative to JCE liability and other modes of liability:
 - Genocide of the Cham of Kampong Cham province⁴⁶⁸
 - Crimes against humanity of murder at eight sites: murder, extermination, enslavement, imprisonment, torture, political persecution, religious persecution, other inhumane acts (including forced marriage).⁴⁶⁹
- **Yim Tith**, in combination with other modes of liability:
 - Genocide of the Khmer Krom (eight instances)⁴⁷⁰
 - Crimes against humanity (18 instances) including murder, extermination, enslavement, imprisonment, torture, political persecution, racial persecution, and other inhumane acts (forced transfer, confinement and working in inhumane conditions, forced marriage)⁴⁷¹
 - Grave Breaches of the Geneva Conventions (two instances) including wilful killing and unlawful transfer of civilians.⁴⁷²

3.5. Amnesties and pardons

Article 40 (new) of the ECCC Law provides:

The Royal Government of Cambodia shall not request an amnesty or pardon for any persons who may be investigated for or convicted of crimes referred to in Articles 3, 4, 5, 6, 7 and 8 of this law. The scope of any amnesty or pardon that may have been granted prior to the enactment of this Law is a matter to be decided by the Extraordinary Chambers.⁴⁷³

Similarly, Article 11 of the UN-RGC Agreement states:

⁴⁶⁷ Case 004/01, Dismissal Order (Disposition), 22 February 2017, D308, para. 4.

⁴⁶⁸ Case 004/02, Closing Order (Indictment), 16 August 2018, D360, section 14 (count 1).

⁴⁶⁹ Case 004/02, Closing Order (Indictment), 16 August 2018, D360, section 14 (count 2).

⁴⁷⁰ Case 004, Closing Order (Indictment), 28 June 2019, D382, section 12 (count 1).

⁴⁷¹ Case 004, Closing Order (Indictment), 28 June 2019, D382, section 12 (count 2).

⁴⁷² Case 004, Closing Order (Indictment), 28 June 2019, D382, section 12 (count 3).

⁴⁷³ ECCC Law, article 40 (new).

1. The Royal Government of Cambodia shall not request an amnesty or pardon for any persons who may be investigated for or convicted of crimes referred to in the present Agreement.
2. This provision is based upon a declaration by the Royal Government of Cambodia that until now, with regard to matters covered in the law, there has been only one case, dated 14 September 1996, when a pardon was granted to only one person with regard to a 1979 conviction on the charge of genocide. The United Nations and the Royal Government of Cambodia agree that the scope of this pardon is a matter to be decided by the Extraordinary Chambers.

The application of amnesties and pardons before the ECCC was considered in relation to Ieng Sary.⁴⁷⁴

3.6. Penalties and sentencing

Articles 38 and 39 of the ECCC Law and Article 10 of the UN-RGC Agreement set out the provisions in relation to penalties at the ECCC. Article 38 states that all penalties shall be limited to imprisonment, and Article 39 provides that those who have committed a crime within the jurisdiction of the Chamber shall be sentenced to a prison term from five years to life and that in addition to imprisonment, the ECCC could order the confiscation of personal property, money, and real property acquired unlawfully or by criminal conduct. Article 10 of the UN-RGC Agreement states that the maximum penalty shall be life imprisonment.

The ECCC Law underwent significant debate and reform in relation to the issue of the death penalty. Article 3 of the original ECCC Law referred to various crimes in the 1956 Cambodian Penal Code, each of which prescribed the death penalty as a punishment. This was contrary to the 1993 Cambodian Constitution, which had outlawed the death penalty. The original ECCC Law passed, but on review by the Cambodian Constitutional Council, the text was referred back to the Cambodian Parliament for an amendment to Article 3, as the Constitutional Council considered that the text as drafted contradicted the Constitution. Wording was ultimately introduced into Article 3 as follows:

⁴⁷⁴See Chapter 5.2.3.3. Jurisdictional challenges.

The penalty under Articles 209, 500, 506 and 507 of the 1956 Penal Code shall be limited to a maximum of life imprisonment, in accordance with Article 32 of the Constitution of the Kingdom of Cambodia, and as further stipulated in Articles 38 and 39 of this Law.⁴⁷⁵

Penalties imposed by the ECCC

<p>Case 001 Kaing Guek Eav (<i>alias Duch</i>)</p>	<p>30 years of imprisonment at trial (35 years' imprisonment with a reduction of five years due to illegal detention)⁴⁷⁶ Increased to life imprisonment on appeal.</p>
<p>Case 002/01 Nuon Chea <i>and</i> Khieu Samphan</p>	<p>Life imprisonment at trial. Upheld on appeal.</p>
<p>Case 002/02 Nuon Chea</p>	<p>Life imprisonment at trial, merged with the life sentence imposed in Case 002/01. The sentence is not considered final because Nuon Chea died after filing his notice of appeal to the Supreme Court Chamber challenging the sentence, among other aspects of his conviction by the Trial Chamber.⁴⁷⁷</p>
<p>Case 002/02 Khieu Samphan</p>	<p>Life imprisonment at trial, merged with the life sentence imposed in Case 002/01. Upheld on appeal. The Supreme Court Chamber clarified that the sentences imposed in Case 002/01 and Case 002/02 are legally a single life sentence, not two concurrent sentences.⁴⁷⁸</p>

3.7. Unique and hybrid features

The ECCC was established in accordance with Cambodian law as a special jurisdiction (“Extraordinary Chambers”) within the existing judicial system (“in the Courts of Cambodia”). As a national institution, the ECCC has its seat in Cambodia, the territory where alleged crimes under its jurisdiction were committed.⁴⁷⁹ Support from the international community

⁴⁷⁵ ECCC Law, article 3 (new).

⁴⁷⁶ Case 001, Judgment, 26 July 2010, E188, paras 631, 679.

⁴⁷⁷ See Chapter 5.2.7.4.1.

⁴⁷⁸ Case 002/02, Appeal Judgment, 23 December 2022, F76, section IX(B).

⁴⁷⁹ ECCC Law, articles 2(new); UN-RGC Agreement, article 2.

– provided through the United Nations – was included as an inherent structural element of the ECCC, giving it a unique national-international (or “hybrid”) organisation.

3.7.1. “National” and “international” components

The ECCC has a “co-head” system, with a Cambodian (“national”) and a foreign (“international”) appointed to share the responsibility for principal roles,⁴⁸⁰ as follows:

- National and International Co-Prosecutor, in charge of the prosecution of cases⁴⁸¹
- National and International Co-Investigating Judge, in charge of conducting the judicial investigation⁴⁸²
- National and International Co-Lawyer to represent each Suspect, Charged Person, and Accused⁴⁸³
- National and International Co-Lawyer to represent the consolidated interests of Civil Parties during the trial and appeal stages of proceedings.⁴⁸⁴

Although not following the same principle, the Office of Administration is headed by a Cambodian Director of Administration (“DOA”) as principal, deputised by a foreign Deputy Director of Administration (“DDOA”).⁴⁸⁵ In practice, the latter also served as the Coordinator of UNAKRT.⁴⁸⁶

3.7.2. Decisions by a “supermajority”

Judges of the chambers shall attempt to achieve unanimity in their decisions.⁴⁸⁷ However, where this is not possible, decisions by the Pre-Trial Chamber and Trial Chamber require an affirmative vote of at least four judges (out of five) and decisions of the Supreme Court Chamber require an affirmative vote of at least five judges (out of seven).⁴⁸⁸ This

⁴⁸⁰See UNGA, Extraordinary Chambers in the Courts of Cambodia – Residual Functions: Report of the Secretary-General, 19 March 2021, A/75/809, para. 9.

⁴⁸¹ECCC Law, articles 2, 43 (new); UN-RGC Agreement, article 6.

⁴⁸²ECCC Law, articles 23 (new)-28; UN-RGC Agreement, article 5.

⁴⁸³DSS Administrative Regulations, regulation 5.3.

⁴⁸⁴Internal Rules, rule 12 *ter* (4).

⁴⁸⁵ECCC Law, articles 30-31 (new); UN-RGC Agreement, article 8.

⁴⁸⁶See Chapter 4.8. United Nations Assistance to the Khmer Rouge Trials.

⁴⁸⁷ECCC Law, article 14 (new)(i); Internal Rules, rules 98(4), 11(6).

⁴⁸⁸ECCC Law, article 14 (new); Internal Rules, rules 71(4)(c), 72(4)(d), 77(13).

“supermajority” requirement effectively precludes block voting along the national-international divide.

Composition of judicial offices and chambers⁴⁸⁹

Judicial Offices or Chambers	Composition	Presiding Officer	Votes required to carry a decision (“supermajority”)
Office of the Co-Prosecutors	One (1) Cambodian prosecutor One (1) international prosecutor	None, as such	Not applicable
Office of the Co-Investigating Judges	One (1) Cambodian investigating judge One (1) international investigating judge	None, as such	Not applicable
Pre-Trial Chamber	Three (3) Cambodian judges Two (2) international judges	Cambodian judge presiding	At least four (4)
Trial Chamber	Three (3) Cambodian judges Two (2) international judges	Cambodian judge presiding	At least four (4)
Supreme Court Chamber	Four (4) Cambodian judges Three (3) international Judges	Cambodian judge presiding	At least five (5)

3.7.3. Innovation of a Pre-Trial Chamber

The UN-RGC Agreement and ECCC Law establish a Pre-Trial Chamber to settle differences between the Co-Prosecutors and between the Co-Investigating Judges.⁴⁹⁰ This is because these judicial offices do not have a presiding officer whose vote can carry a decision and a supermajority vote is not possible. The role of the Pre-Trial Chamber is unique since no other tribunal of a similar nature has a duty to resolve disputes between prosecutors and investigating judges of equal standing.⁴⁹¹

⁴⁸⁹ECCC Law, articles 9 (new), 16, 20 (new), 26; UN-RGC Agreement, articles 3(2), 5(1), 6(1), 7(2); Internal Rules, rules 19(1), 20(1).

⁴⁹⁰ECCC Law, articles 20 (new), 23 (new); UN-RGC Agreement, article 7.

⁴⁹¹Considerations of the Pre-Trial Chamber Regarding the Disagreement Between the Co-Prosecutors Pursuant to Internal Rule 71, 18 August 2009, D1/1.3, para. 20.

The Pre-Trial Chamber also has jurisdiction over appeals against decisions of the Co-Investigating Judges, applications to annul investigative action, and other appeals provided for in a number of Internal Rules.⁴⁹² In practice, the Pre-Trial Chamber adopted a broad interpretation of its jurisdiction, finding that it fulfilled the role of the Cambodian Investigation Chamber.⁴⁹³ In this way, the Pre-Trial Chamber’s role was similar to pre-trial chambers of other international and internationalised tribunals.

3.7.4. Limited jurisdiction and jurisdiction over international crimes

Unlike regular Cambodian courts, the ECCC’s jurisdiction is limited to “senior leaders of Democratic Kampuchea and those who were most responsible” for homicide, torture, and religious persecution as set forth in the 1956 Cambodian Penal Code, genocide, crimes against humanity, grave breaches of the Geneva Conventions, destruction of cultural property during armed conflict, and crimes against internationally protected persons during the period between 17 April 1975 and 6 January 1979.⁴⁹⁴

The ECCC has jurisdiction over international crimes and can apply forms of liability that existed in international law even where these crimes and forms of liability had not been set out in domestic Cambodian criminal law by 1975. The Pre-Trial Chamber rejected a challenge to the ECCC’s jurisdiction over international crimes, namely that international crimes had not been promulgated into national law at the time of commission, and that applying them would violate the national principle of legality. The Chamber noted that:

in requiring, in the ECCC Law, the ECCC to directly apply treaty law and custom criminalizing the core international crimes and to exercise its jurisdiction regarding these crimes in accordance with the international principle of legality, Cambodia has followed the approach adopted by a number of States which, following the language of the [International Covenant on Civil and Political Rights] and [the European Convention on Human Rights], have included an

⁴⁹² Internal Rules, rule 73.

⁴⁹³ See Case 001, Decision on Appeal Against Provisional Detention Order of Kaing Guek Eav Alias “Duch”, 3 December 2007, C5/45, para. 7; Case 001, Decision on Closing Order Appeal, 5 December 2008, D99/3/42, paras 40-44; Case 004/02, Considerations on Appeals Against Closing Orders, D359/24 & 360/33, 19 December 2019, para. 30. See also Case 004/02, Supreme Court Chamber, Decision on International Co-Prosecutors’ Immediate Appeal of the Trial Chamber’s Effective Termination of Case 004/02, E004/2/1/1/2, 10 August 2020, para. 61.

⁴⁹⁴ ECCC Law, articles 1-8. See Chapter 3.3, Jurisdiction regarding the ECCC’s jurisdiction.

exception for international crimes in their formulation of the principle of legality in national law. Also, even if this does not reflect a uniform or constant practice, a number of domestic courts have rendered decisions applying a different standard of the principle of legality for ordinary crimes and international crimes. As such, various States have applied directly international law based on treaty and/or custom without a specific provision in the domestic law criminalizing the conduct, or in some cases, generally incorporating international law. [...] None of the arguments [...] have convinced the Pre-Trial Chamber that it is bound to exercise its jurisdiction regarding international crimes in accordance with the national principle of legality and disregard the clear direction of the ECCC Law in this respect.⁴⁹⁵

The Pre-Trial Chamber further held, with respect to genocide and grave breaches of the Geneva Conventions specifically:

Despite the fact that neither treaty was implemented in Cambodian law during the period 1975-1979, they are governed by the principle of *pacta sunt servanda*. [...] Article 27 of the 1969 Vienna Convention on the Law of Treaties prohibits parties to a treaty from invoking internal law as justification for failure to perform their obligations. Hence, these clearly indicate that individuals may incur criminal liability for committing genocide or grave breaches of the Geneva Conventions.⁴⁹⁶

3.7.5. Languages

The ECCC operates in three languages: Khmer, English, and French.⁴⁹⁷ The “official language” of the ECCC is Khmer,⁴⁹⁸ while all three languages are considered to be “working languages”.⁴⁹⁹

All documents filed at the ECCC are required to be provided in Khmer and in either English or French to facilitate the multilingual process. While this is envisaged to occur simultaneously, the Co-Investigating Judges and

⁴⁹⁵Case 002, Decision on Appeals by Nuon Chea and Ieng Thirith Against the Closing Order, 15 February 2011, D427/3/15, para. 97.

⁴⁹⁶Case 002, Decision on Appeals by Nuon Chea and Ieng Thirith Against the Closing Order, 15 February 2011, D427/3/15, paras 109-111.

⁴⁹⁷ECCC Law, article 45 (new); UN-RGC Agreement, article 26(2).

⁴⁹⁸UN-RGC Agreement, article 26(1).

⁴⁹⁹ECCC Law, article 45 (new).

Chambers may authorise a party to file a document in English or in French in the first instance, with a Khmer translation to be filed later at the first opportunity.⁵⁰⁰

3.7.6. Victim participation

At the ECCC, victims could uniquely participate in the proceedings in several ways:

- As **complainants**, providing information to the Co-Prosecutors for use in prosecutions
- As **Civil Parties**, supporting prosecutions during trials and appeals and in court providing statements of suffering, where they were represented by lawyers
- As **witnesses**, testifying about their experiences under the Khmer Rouge
- By requesting moral and collective **reparations**, to officially recognise their suffering and victimhood
- Through participation in **outreach programs** and **non-judicial measures**

These various forms of participation are discussed further in Chapters 4.4.1 (Victim Support Section), 4.4.3 (Civil Party Lawyers and Civil Party Lead Co-Lawyers Section), 4.7.1.2 (Witness and Expert Support Unit), and 6 (Reparations).

⁵⁰⁰ Practice Direction on Filing Documents Before the ECCC (Rev. 8), articles 7.1-7.2.



COMPOSITION

4. COMPOSITION

This chapter describes the composition of the ECCC from its judicial offices and chambers to its various support sections, setting out its judicial organisation and administration.

4.1. Office of the Co-Prosecutors

The Office of the Co-Prosecutors (“OCP”) was responsible for the processing of complaints and conduct of preliminary investigations, was involved in the judicial investigations carried out by the Co-Investigating Judges, and led the prosecution of cases of senior leaders of Democratic Kampuchea and those most responsible for the atrocities committed during the DK period throughout the investigative, pre-trial, trial, and appellate stages of proceedings.⁵⁰¹

The OCP was an independent office within the ECCC, led by two Co-Prosecutors, one Cambodian (“National”) and one foreign (“International”), of “high moral character and integrity”, “high level of professional competence”, and “extensive experience in the conduct of investigations and prosecutions of criminal cases”.⁵⁰² The National Co-Prosecutor was appointed by the Supreme Council of the Magistracy (“SCM”), while the International Co-Prosecutor was nominated by the UN Secretary-General (“UNSG”) and ultimately appointed by the King upon approval of the SCM.⁵⁰³ The appointed Co-Prosecutors were responsible for choosing their deputy and assistant Co-Prosecutors.⁵⁰⁴ Chea Leang was the National Co-Prosecutor. The International Co-Prosecutors were Robert Petit (Canada), Andrew T. Cayley (United

⁵⁰¹ Internal Rules, rules 49-54.

⁵⁰² UN-RGC Agreement, article 6(2); ECCC Law, articles 16, 19; Internal Rules, rule 13(i).

⁵⁰³ ECCC Law, article 18 new.

⁵⁰⁴ Internal Rules, rule 13(1).

Kingdom), Nicholas Koumjian (USA), Brenda J. Hollis (USA) and Dale Lysak (Canada), respectively.

Although the Co-Prosecutors were required to aim at a common approach for prosecutions,⁵⁰⁵ they could delegate their powers to one of them by way of a joint written decision (except for specific actions that must be taken jointly).⁵⁰⁶ They could also delegate certain actions to their investigators, the judicial police, or their deputy prosecutors.⁵⁰⁷ Decisions of the Co-Prosecutors were not subject to appeal, and in the event of a disagreement between the two Co-Prosecutors, the default position was that the prosecution would proceed, unless one of them requested that their differences be settled by the Pre-Trial Chamber.⁵⁰⁸ The Pre-Trial Chamber was to settle any such disagreement by an affirmative vote of at least four judges, and if an affirmative vote could not be obtained, the prosecution would proceed.⁵⁰⁹

Prosecution of crimes at the ECCC could only be initiated by the Co-Prosecutors, “whether at their own discretion or on the basis of a complaint” submitted by any person, organisation or other source who witnessed or was a victim of the alleged crimes.⁵¹⁰ While the Co-Prosecutors were required to consider all written complaints lodged by victims and others who witnessed alleged crimes or who have knowledge of alleged crimes, such complaints did not automatically initiate criminal prosecutions.⁵¹¹ Rather, the Co-Prosecutors decided at their discretion “whether to reject the complaint, include the complaint in an ongoing preliminary investigation, conduct a new preliminary investigation, or forward the complaint directly to the Co-Investigating Judges”.⁵¹²

During the preliminary investigations, the Co-Prosecutors were responsible for identifying evidence showing that crimes within the jurisdiction of the ECCC may have been committed, as well as potential suspects and witnesses.⁵¹³ If the Co-Prosecutors had reason to believe that crimes within

⁵⁰⁵ UN-RGC Agreement, article 6(4).

⁵⁰⁶ Internal Rules, rule 13(3).

⁵⁰⁷ Internal Rules, rule 13(4).

⁵⁰⁸ ECCC Law, article 20 new; UN-RGC Agreement, articles 6-7; Internal Rules, rule 13(6).

⁵⁰⁹ UN-RGC Agreement, articles 6-7. See also Internal Rules, rule 71. See Public Redacted Version of Considerations of the Pre-Trial Chamber Regarding the Disagreement Between the Co-Prosecutors Pursuant to Internal Rule 71, 18 August 2009, D1/1.3.

⁵¹⁰ Internal Rules, rule 49(1)-(2).

⁵¹¹ Internal Rules, rule 49(2), (4).

⁵¹² Internal Rules, rule 49(4).

⁵¹³ Internal Rules, rule 50(i).

the ECCC’s jurisdiction had been committed, they filed an Introductory Submission to the Co-Investigating Judges, which listed the facts, alleged offences, applicable law, and, to the extent known, name(s) of the person(s) to be investigated.⁵¹⁴ If new facts came to light after the Introductory Submission had been filed that necessitated an amendment to the original allegations, or any additions, the Co-Prosecutors could file a Supplementary Submission to that effect.⁵¹⁵ A total of three Introductory Submissions⁵¹⁶ and 10 Supplementary Submissions⁵¹⁷ were filed in all cases.

Once the Co-Prosecutors sent the Introductory Submission to the Co-Investigating Judges, the preliminary investigation phase concluded, rendering the Co-Investigating Judges responsible for conducting a judicial investigation of the allegations.⁵¹⁸ However, during the judicial investigation, the Co-Prosecutors could take the following actions:

- Request that the Co-Investigating Judges make orders and undertake investigative acts that they considered “useful for the conduct of the investigation”⁵¹⁹
- Request that the Pre-Trial Chamber review any decisions made by the Co-Investigating Judges⁵²⁰
- At the end of the judicial investigation, file a Final Submission based on the evidence collected, either asking the Co-Investigating Judges to indict the Charged Person, or alternatively, to dismiss the case.⁵²¹

⁵¹⁴ Internal Rules, rule 53(1).

⁵¹⁵ Internal Rules, rules 55(2)-(3).

⁵¹⁶ Introductory Submission, 18 July 2007, D3 (which became Case File 001 and Case File 002 – confidential); Second Introductory Submission, 20 November 2008, D1 (which became Case File 003); Co-Prosecutors’ Third Introductory Submission, 20 November 2008, D1 (which became Case File 004).

⁵¹⁷ Case 002, Explanatory Note, 18 July 2007, D3/V; Case 002, Supplementary Submission of the Co-Prosecutors regarding North Zone Security Centre, 26 March 2008, D83; Case 002, Supplementary Submission of the Co-Prosecutors’ Response to the Forwarding Order of the Co-Investigating Judges and Supplementary Submission, 30 April 2009, D146/3; Case 002, Co-Prosecutors’ Supplementary Submission regarding Genocide of the Cham, 31 July 2009, D196; Case 003, International Co-Prosecutor’s Supplementary Submission Regarding Crime Sites Related to Case 003, 31 October 2014, D120; Case 004, Co-Prosecutors’ Supplementary Submission regarding Sector 1 Crime Sites and Persecution of Khmer Krom, 15 June 2011, D27; Case 004, Co-Prosecutors’ Supplementary Submission regarding Sector 1 Crime Sites and Persecution of Khmer Krom, 18 July 2011, D65; Case 004, Co-Prosecutors’ Supplementary Submission Regarding Forced Marriage and Sexual or Gender-Based Violence, 24 April 2014, D19; Case 004, Co-Prosecutors’ Response to Forwarding Order, 4 February 2015, D237/1; Case 004, Co-Prosecutors’ Response to Forwarding Order and Supplementary Submission Regarding Wat Ta Meak, 4 August 2015, D254/1; Case 004, Co-Prosecutors’ Response to Forwarding Order Dated 5 November 2015 and Supplementary Submission Regarding the Scope of Investigation into Forced Marriage in Sector 1 and 4, 20 November 2015, D272/1.

⁵¹⁸ Rule 55(2)-(3). See also Case 003, Order on International Co-Prosecutor’s Public Statement Regarding Case File 003, 18 May 2011, D14, para. 5; Case 003, Considerations of the Pre-Trial Chamber Regarding the International Co-Prosecutor’s Appeal Against the Co-Investigating Judges’ Order on International Co-Prosecutor’s Public Statement Regarding Case 003, 24 October 2011, D14/1/3, paras 30-31.

⁵¹⁹ Internal Rules, rule 55(10).

⁵²⁰ Internal Rules, rule 74(2).

⁵²¹ Internal Rules, rule 66(5). In Cases 004/01, 004/2, 003, and 004, while the International Co-Prosecutor requested Indictments, the National Co-Prosecutor requested that the Co-Investigating Judges dismiss the cases against Im

The Co-Investigating Judges then issued a Closing Order, containing either an Indictment or a dismissal of the case.⁵²²

During the trial proceedings, the Co-Prosecutors could:

- Question witnesses, Civil Parties, experts, and the Accused (if the Accused gave evidence), and present legal and factual arguments on the evidence and the charges⁵²³
- Give opening and closing statements at the beginning and at the end of the proceedings, respectively⁵²⁴
- File immediate appeals to the Supreme Court Chamber against the Trial Chamber’s decisions during the course of the trial, based on errors of law and fact and discernible errors of discretion⁵²⁵
- Following the Trial Judgment, appeal to the Supreme Court Chamber with a notice of appeal specifying how the Trial Chamber’s errors of law invalidated the Judgment and/or how its factual errors occasioned a miscarriage of justice⁵²⁶
- As soon as a decision from the Supreme Court Chamber became final, seek enforcement of the sentence and request assistance from law enforcement authorities to ensure that the sentence was implemented.⁵²⁷

In addition to its judicial responsibilities, the OCP conducted outreach activities, in collaboration with other units of the ECCC, such as the Public Affairs Section (“PAS”), the Victims Support Section (“VSS”), and the Civil Party Lead Co-Lawyers (“CPLCLs”) Section. These activities communicated the work of the ECCC, both in terms of its substance and procedural rules, to various audiences. These included the general Cambodian public, university and school students, judicial trainees, judges, and prosecutors from Cambodia and abroad, representatives from the government and from nongovernmental organizations (“NGOs”).

Chaem, Ao An, Meas Muth, and Yim Tith. See Case 004/01, National Co-Prosecutor’s Final Submission Concerning Im Chaem Pursuant to Internal Rule 66, 27 October 2016, [D304/1](#); Case 004/02, National Co-Prosecutor’s Final Submission Concerning Ao An Pursuant to Rule 66, 18 August 2017, [D351/4](#); Case 003, National Co-Prosecutor’s Final Submission Concerning Meas Muth Pursuant to Internal Rule 66, 14 November 2017, [D256/6](#).

⁵²² Internal Rules, rule 67(1).

⁵²³ Internal Rules, rules 80, 90- 91.

⁵²⁴ Internal Rules, rule 89 *bis* (2), 94.

⁵²⁵ Internal Rules, rules 104(1), 105(2).

⁵²⁶ Internal Rules, rules 104(1), 105(3).

⁵²⁷ Internal Rules, rule 113.

4.2. Office of the Co-Investigating Judges

The Office of the Co-Investigating Judges (“OCIJ”) was responsible for the conduct of judicial investigations before the ECCC.⁵²⁸ Judicial investigations were “compulsory for crimes within the jurisdiction of the ECCC”, meaning that one had to be carried out before any trial proceedings could take place.⁵²⁹ The mandate of the OCIJ derives from Cambodian law, which uses the French model of an “investigating judge” or “*juge d’instruction*”, who is responsible for carrying out pre-trial investigations.⁵³⁰

The OCIJ is an independent office, led by one Cambodian (“National”) and one foreign (“International”) Co-Investigating Judge, “of high moral character, impartiality, and integrity”, and who possessed the “qualifications required in their respective countries for appointment to such a judicial office”.⁵³¹ Similarly to the appointment process for the Co-Prosecutors, the SCM appointed the National Co-Investigating Judge and the UNSG nominated the International Co-Investigating Judge, who was ultimately appointed by the King upon approval by the SCM.⁵³² The Co-Investigating Judges were also “assisted by Cambodian and international staff as needed in their offices”.⁵³³ The National Co-Investigating Judge was You Bunleng throughout the operations of the ECCC. The International Co-Investigating Judges were Marcel Lemonde (France), Siegfried Blunk (Germany), Laurent Kasper-Ansermet (Reserve) (Switzerland), Mark Brian Harmon (USA), and Michael Bohlander (Germany), respectively.

Similar to the Co-Prosecutors, the Co-Investigating Judges could delegate their combined power to one of them by a joint written decision, or delegate the exercise of certain functions to their investigators or the judicial police by way of a rogatory letter.⁵³⁴ While the Co-Investigating Judges were required to cooperate with a view to arriving at a common approach to the judicial investigation, they were not required to achieve consensus.⁵³⁵ In the event of a disagreement as to whether the investigation

⁵²⁸ ECCC Law, article 23 new.

⁵²⁹ Internal Rules, rule 55(1).

⁵³⁰ See for example Case 002, Order Concerning the Co-Prosecutors’ Request for Clarification of Charges, 20 November 2009, D198/1; Case 001, Decision on Closing Order Appeal, 5 December 2008, D99/3/42, para. 35.

⁵³¹ ECCC Law, article 25; UN-RGC Agreement, article 5(1)-(3); Internal Rules, rule 14(1).

⁵³² ECCC Law, article 26 new.

⁵³³ ECCC Law, article 28.

⁵³⁴ Internal Rules, rule 14(4)-(5).

⁵³⁵ UN-RGC Agreement, article 5(4); ECCC Law, article 23 new. See also Internal Rules, rules 14(7), 72(1). See also Case 002, Decision on Ieng Sary’s Appeal Against the Closing Order, 11 April 2011, D427/1/30, para. 274.

would proceed, the default position pursuant to Article 5(4) of the UN-RGC Agreement was that the investigation proceeds unless the Co-Investigating Judges request that their differences be settled by the Pre-Trial Chamber. Crucially, the ECCC framework provides that the Co-Investigating Judges were not mandated to bring their disputes to the Pre-Trial Chamber for resolution and had discretion to register their disagreements internally.⁵³⁶ If the Co-Investigating Judges decided to bring their dispute to the Pre-Trial Chamber, a supermajority of four Pre-Trial Chamber judges was required for a decision.⁵³⁷ If there was no supermajority for a decision, the default position was that the investigation proceeds.⁵³⁸

Article 5(3) of the UN-RGC Agreement limited the scope of the OCIJ's investigations to those individuals over whom the ECCC had personal jurisdiction.⁵³⁹ In carrying out their investigations, the Co-Investigating Judges were required to act impartially and independently, without seeking or accepting instructions from any government or any other source.⁵⁴⁰ Their investigations were also conducted in confidence to protect the rights and interests of the parties⁵⁴¹ and to allow for the protection of witnesses and victims.⁵⁴²

The Co-Investigating Judges began investigating the facts following the receipt of the Introductory Submission and, where relevant, Supplementary Submissions from the Co-Prosecutors.⁵⁴³ Ultimately, the Co-Investigating Judges were responsible for collecting evidence to determine if the facts alleged by the Co-Prosecutors in their submissions fell within the ECCC's jurisdiction.⁵⁴⁴ The Co-Investigating Judges only investigated the facts set out in the Introductory and Supplementary Submissions, and if new facts came to the Co-Investigating Judges' knowledge, they were required to inform the Co-Prosecutors, unless those new facts were limited to aggravating circumstances relating to an existing submission.⁵⁴⁵ In conducting their investigations, the Co-Investigating Judges could take

⁵³⁶ Internal Rules, rule 72(1)-(2).

⁵³⁷ ECCC Law, article 23 new; UN-RGC Agreement, articles 5(4), 7(4).

⁵³⁸ UN-RGC Agreement, articles 5(4) and 7(4). See also Internal Rules, rule 72(4)(d).

⁵³⁹ UN-RGC Agreement, article 5(3). Regarding the ECCC's personal jurisdiction, see Chapter 3.3.4. Personal jurisdiction.

⁵⁴⁰ UN-RGC Agreement, article 5(3); Internal Rules, rules 14(1), 55(5).

⁵⁴¹ Internal Rules, rule 56(1).

⁵⁴² UN-RGC Agreement, article 23; Internal Rules, rule 55(5)(b).

⁵⁴³ Internal Rules, rule 55(2), (5).

⁵⁴⁴ Internal Rules, rule 55(2); UN-RGC Agreement, article 5(3).

⁵⁴⁵ Internal Rules, rule 55(2)-(3).

“any investigative action” they considered conducive to ascertaining the truth including:

- Summoning and questioning Suspects and Charged Persons
- Interviewing victims and witnesses
- Seizing exhibits, seeking expert opinions, and conducting onsite investigations
- Taking any appropriate measures to provide for the safety and support of potential witnesses and other sources
- Seeking the assistance of states, the UN, and other organisations that they deemed appropriate
- Issuing orders as may be necessary including summonses, arrest warrants, and arrest and detention orders.⁵⁴⁶

The Co-Investigating Judges had the power to charge any person referred to in the Co-Prosecutors’ submissions against whom there was “clear and consistent evidence indicating that such person may be criminally responsible” for the commission of a crime under the ECCC’s jurisdiction.⁵⁴⁷ In charging, the Co-Investigating Judges were not bound by the legal characterisations proposed by the Co-Prosecutors but were at liberty to characterise the facts as they saw fit. While the formal notification of the charges by the Co-Investigating Judges specified the legal characterisation of the facts, these characterisations were only provisional at the judicial investigation stage.⁵⁴⁸

One unresolved issue for the Co-Investigating Judges was whether they had the power to charge suspects *in absentia*. In Cases 003 and 004, International Co-Investigating Judge Mark Harmon concluded, based on his analysis of the ECCC framework, Cambodian law, and procedural rules at the international level, that the Co-Investigating Judges had discretion to charge suspects *in absentia* when they refused to make their initial appearance.⁵⁴⁹ However, since the suspects in Cases 003 and 004 eventually appeared before International Co-Investigating Judge Michael Bohlander,

⁵⁴⁶ Internal Rules, rule 55(5).

⁵⁴⁷ Internal Rules, rule 55(4).

⁵⁴⁸ Case 002, Order Concerning the Co-Prosecutors’ Request for Clarification of Charges, 20 November 2009, D198/1, para. 10.

⁵⁴⁹ Case 003, Decision to Charge Meas Muth *In Absentia*, 3 March 2015, D128; Case 004, Decision to Charge Im Chaem *In Absentia*, 3 March 2015, D239.

appeals against International Co-Investigating Judge Mark Harmon's decisions were rendered moot, and the Pre-Trial Chamber did not need to decide whether *in absentia* charging was permissible at the ECCC.⁵⁵⁰

At any time prior to the close of the judicial investigation, the Co-Prosecutors, Charged Persons, and Civil Parties could request the Co-Investigating Judges to make specific orders or undertake investigative actions that they considered necessary for the conduct of the investigation.⁵⁵¹ At the end of the investigation, the Co-Investigating Judges notified the parties of their conclusion, following which the parties had 15 days to request any further investigative action.⁵⁵² Once this period expired or was waived, the requested investigative actions had been performed, or any appeals against their refusal had been heard by the Pre-Trial Chamber, the Co-Investigating Judges forwarded the case file to the Co-Prosecutors, who filed their written Final Submission.⁵⁵³

The Co-Investigating Judges were not bound by the Co-Prosecutors' Final Submissions and could conclude the investigation by issuing a Closing Order either in the form of an Indictment or a Dismissal Order.⁵⁵⁴ An Indictment had to set out the identity of the Accused and a description of the material facts and their legal characterisation by the Co-Investigating Judges, including the relevant criminal provisions and the nature of the criminal responsibility.⁵⁵⁵ A Dismissal Order had to be issued where the acts did not amount to crimes within the ECCC's jurisdiction, the perpetrators had not been identified, or there was insufficient evidence of the charges against the Charged Person.⁵⁵⁶ The Co-Prosecutors, Charged Persons or Accused, and the Civil Parties had to be notified of the Closing Order.⁵⁵⁷

The Co-Prosecutors had a right to appeal the Closing Order, whether it was an Indictment or a Dismissal Order.⁵⁵⁸ The Charged Persons or Accused could also appeal the Closing Order to the extent that it "confirm[ed] the

⁵⁵⁰ Case 003, Decision on Meas Muth's Appeal Against Co-Investigating Judge Harmon's Notification of Charges Against Meas Muth, 3 February 2016, D128.1/1/11.

⁵⁵¹ Internal Rules, rule 55(10).

⁵⁵² Internal Rules, rule 66(1).

⁵⁵³ Internal Rules, rule 66(4)-(5)

⁵⁵⁴ Internal Rules, rule 67(1).

⁵⁵⁵ Internal Rules, rule 67(2).

⁵⁵⁶ Internal Rules, rule 67(3).

⁵⁵⁷ Internal Rules, rule 67(5).

⁵⁵⁸ Internal Rules, rule 74(2).

jurisdiction of the ECCC”.⁵⁵⁹ Additionally, the Civil Parties could appeal a Dismissal Order if it had been appealed by the Co-Prosecutors.⁵⁶⁰

If no appeal was filed against an Indictment (or if the Indictment stood following the appeal), the OCIJ greffier forwarded the case file to the Trial Chamber greffier to allow a date for the trial to be set.⁵⁶¹ If no appeal was filed against a Dismissal Order (or if the Dismissal Order stood following the appeal), the case file would be archived.⁵⁶² From this moment on, the Co-Investigating Judges did not play any further role in the case. However, if and when new evidence might become available after a Dismissal Order was issued, the judicial investigation could be re-opened by the Co-Investigating Judges at the initiative of the Co-Prosecutors.⁵⁶³

The OCIJ issued over 1,400 decisions, orders, and other judicial documents in the cases before it.

4.3. Judicial Chambers

4.3.1. Appointment of judges

The appointment of judges to each of the Pre-Trial, Trial, and Supreme Court Chambers is governed by Chapter IV of the ECCC Law.⁵⁶⁴ Article 10 new covers the appointment of judges from individuals of high moral character and relevant experience as a judge, particularly in the field of criminal law and international law, including international humanitarian law and human rights law.⁵⁶⁵ Judges were required to be independent in the performance of their functions, and could not accept or seek any instructions from any government or any other source.⁵⁶⁶

The SCM was responsible for the appointment of National Judges and chamber presidents, and also for the appointment of any reserve judges. The SCM also appointed individuals of foreign nationality to act as the

⁵⁵⁹ Internal Rules, rule 74(3)(a).

⁵⁶⁰ Internal Rules, rule 74(4)(f).

⁵⁶¹ Internal Rules, rule 69(2)(a).

⁵⁶² Internal Rules, rule 69(2)(b).

⁵⁶³ Internal Rules, rule 70.

⁵⁶⁴ ECCC Law, articles 10 (new)-13.

⁵⁶⁵ Internal Rules, article 10 (new). See also UN-RGC Agreement, article 3(4).

⁵⁶⁶ ECCC Law, article 10 (new); UN-RGC Agreement, article 3(3).

International Judges of the Chambers, based on a list of nominees from the UNSG.⁵⁶⁷ The president of each chamber could designate one or more reserve International Judges already appointed by the SCM to be present at any stage of the trial, or to replace an International Judge who was unable to sit at the trial.⁵⁶⁸

4.3.2. Pre-Trial Chamber

Neither the domestic Cambodian court system nor the French system, on which the ECCC was based, has a Pre-Trial Chamber.⁵⁶⁹ The reason for having a Pre-Trial Chamber at the ECCC is that during the protracted negotiations leading to the ECCC's establishment, the RGC and the UN foresaw that the Co-Investigating Judges might reasonably disagree over the course of their investigations, especially on the reach of the ECCC's personal jurisdiction. During negotiations in April 2000, the UN suggested that disagreements between the Co-Investigating Judges be resolved by a Pre-Trial Chamber of three National Judges and two International Judges, proposing a supermajority rule to ensure that the prosecution and investigation of suspects would not be halted by a stalemate between the Co-Investigating Judges. The ECCC Law, ultimately promulgated on 10 August 2001, enshrines the supermajority rule for the Pre-Trial Chamber: if there is no supermajority, "the investigation shall proceed". The UN-RGC Agreement mirrors the ECCC Law,⁵⁷⁰ and the Internal Rules reflect the UN-RGC Agreement and ECCC Law.⁵⁷¹ This dispute resolution role was the Pre-Trial Chamber's primary function.

The Pre-Trial Chamber comprised three National and two International Judges, and any decision of the Pre-Trial Chamber required the affirmative vote of at least four out of five judges.⁵⁷² The National Pre-Trial Chamber Judges were Prak Kimsan (President), Huot Vuthy, Ney Thol, and Pen Pichsaly (Reserve). The International Pre-Trial Chamber Judges over time were Rowan Downing (Australia), Kathinka Lahuis (Netherlands), Catherine Marchi-Uhel (France), Chang-Ho Chung (Republic of Korea),

⁵⁶⁷ ECCC Law, article 11 (new); UN-RGC Agreement, article 3.

⁵⁶⁸ ECCC Law, article 11 (new).

⁵⁶⁹ Both legal systems have an "Investigating Chamber", which is responsible for examining the regularity of the investigation and proper conduct of proceedings conducted by the investigating judges.

⁵⁷⁰ UN-RGC Agreement, article 7(4). See also ECCC Law, article 23 new.

⁵⁷¹ Internal Rules, rules 72(4)(d), 77(13).

⁵⁷² Internal Rules, rules 71(4)(c), 72(4)(d), 77(13).

Olivier Beauvallet (France), Kang Jin Baik (Republic of Korea), and Steven J. Bwana (Reserve) (Tanzania).

As mentioned above, the Co-Prosecutors and Co-Investigating Judges had discretion whether to register their disagreements internally or bring them to the Pre-Trial Chamber for resolution.⁵⁷³ If the Pre-Trial Chamber was seized by a disagreement but failed to reach a supermajority, the default position was that the prosecution or investigation proceeds.⁵⁷⁴ Illustrating the application of the default rule *obiter dicta* in the Case 001 Appeal Judgment on a hypothetical disagreement between the Co-Investigating Judges, the Supreme Court Chamber reasoned:

If for example, the Pre-Trial Chamber decides that neither [CIJ] erred in *proposing* to issue an Indictment or Dismissal Order for the reason that a charged person is or is not most responsible, and if the Pre-Trial Chamber is unable to achieve a supermajority on the consequence of such a scenario, “the investigation shall proceed”.⁵⁷⁵

The Pre-Trial Chamber also had jurisdiction over appeals against the Co-Investigating Judges’ decisions under the grounds for appeal provided in Internal Rule 74.⁵⁷⁶ The Co-Prosecutors could appeal against all orders by the Co-Investigating Judges.⁵⁷⁷ The Charged Person or Accused could appeal against orders or decisions which, *inter alia*, confirmed the ECCC’s jurisdiction, refused requests for investigative action, decided on provisional detention or bail, declared Civil Party applications admissible, and reduced the scope of judicial investigations.⁵⁷⁸ Civil Parties could appeal against the Co-Investigating Judges’ orders which, *inter alia*, refused requests for investigative action, declared Civil Party applications inadmissible, concerned protective measures, and reduced the scope of the judicial investigation. As mentioned above, they could also appeal against Dismissal Orders where the Co-Prosecutors also appealed.⁵⁷⁹

⁵⁷³ Internal Rules, rules 71(1)-(2), 72(1)-(2).

⁵⁷⁴ UN-RGC Agreement, article 7(4). See also Internal Rules, rules 71(4)(c), 72(4)(d), 77(13).

⁵⁷⁵ Case 001, Appeal Judgment, 3 February 2012, F28, para. 65 (emphasis added), citing ECCC Law, article 23 (new); UN-RGC Agreement, article 7(4). See also Internal Rules, rule 72(4)(d).

⁵⁷⁶ Internal Rules, rule 73.

⁵⁷⁷ Internal Rules, rule 74(2).

⁵⁷⁸ Internal Rules, rule 74(3).

⁵⁷⁹ Internal Rules, rule 74(4).

Another function of the Pre-Trial Chamber was to decide on requests for annulment of investigative action. Internal Rule 76 sets out the procedure for annulment of investigative action by the Pre-Trial Chamber. Under Internal Rule 76(2), where the parties considered that any part of the proceedings was null and void, they could submit a reasoned application to the Co-Investigating Judges requesting them to seize the Pre-Trial Chamber with a view to annulment.⁵⁸⁰ The Co-Investigating Judges' role was to then examine the request on two grounds: (1) the existence of a procedural defect; and (2) where there was such a defect, whether it caused an infringement of the rights of the party making the application.⁵⁸¹ If the Co-Investigating Judges granted the request to seize the Pre-Trial Chamber, the Pre-Trial Chamber then determined whether the request was admissible before deciding whether to annul the impugned investigative action(s).⁵⁸² The annulment procedure was “not designed to nullify investigations in general [...] but is designed to nullify those portions of the proceedings that harmed the [party’s] interests which have to be specified”.⁵⁸³ Thus, an annulment application had to be “reasoned, specific as to which investigative or judicial actions are procedurally defective and, where applicable, must prove the harmed interest”.⁵⁸⁴ When the Pre-Trial Chamber granted an application for annulment, the investigative or judicial actions declared null and void were expunged from the case file.⁵⁸⁵

Additionally, the Pre-Trial Chamber on numerous occasions considered itself as the “Cambodian Investigation Chamber” within the ECCC, with jurisdiction to review the procedure applied by the Co-Investigating Judges, cure procedural defects, and investigate the case itself when seized of a Dismissal Order.⁵⁸⁶ For instance, in Case 004/02, the Pre-Trial Chamber unanimously considered that when it acted as the Investigation Chamber, it was “the control body” with final jurisdiction over the judicial

⁵⁸⁰ Internal Rules, rule 76(2).

⁵⁸¹ Case 002, Decision on Nuon Chea’s Appeal against Order Refusing Request for Annulment, 26 April 2008, [D55/1/8](#), para. 22.

⁵⁸² Internal Rules, rule 76(4)-(5).

⁵⁸³ Case 002, Decision on Khieu Samphan’s Appeal against the Order on the Request for Annulment for Abuse of Process, 4 May 2010, [D197/5/8](#), para. 24.

⁵⁸⁴ Case 002, Decision on Ieng Thirith’s Appeal against the Co-Investigating Judges’ Order Rejecting the Request to Seize the Pre-Trial Chamber with a View to Annulment of All Investigations (D263/1), 25 June 2010, [D263/2/6](#), para. 24.

⁵⁸⁵ Case 002, Decision on Ieng Thirith’s Appeal against the Co-Investigating Judges’ Order Rejecting the Request to Seize the Pre-Trial Chamber with a View to Annulment of All Investigations (D263/1), 25 June 2010, [D263/2/6](#), para. 27.

⁵⁸⁶ See Case 001, Decision on Closing Order Appeal, 5 December 2008, [D99/3/42](#), paras 41-42; Case 001, Decision on Appeal Against Provisional Detention Order of Kaing Guek Eav alias “Duch”, 3 December 2007, [C5/45](#), para. 68; Case 004/01, Considerations on the International Co-Prosecutor’s Appeal of Closing Order (Reasons), 28 June 2018, [D308/3/1/20](#), para. 22; Case 004/02, Considerations on Appeal Against Closing Orders, 19 December 2019, [D359/24 & D360/33](#), paras 30, 35, 40-41, 44, 47-48, 50. See also Case 003, Considerations on Appeals Against Closing Orders, 7 April 2021, [D266/27 & D267/35](#), paras 129-130 (Opinion of Judges Olivier Beauvallet and Kang-Jin Baik).

pre-trial stage at the ECCC,⁵⁸⁷ could “operate as the second-degree court of investigation”,⁵⁸⁸ held “expansive powers to assess the integrity of an investigation”,⁵⁸⁹ and ultimately was “responsible for ensuring, at the investigation stage, that the fundamental principles underlying the criminal procedure applicable before the ECCC are respected”.⁵⁹⁰ The Pre-Trial Chamber considered that this review power as an Investigation Chamber was “first and foremost, to ensure that the conditions for the issuance of the closing order and the preparatory investigation are in accordance with the ECCC Internal Rules 21 and 76, and Article 261 of the Cambodian Code of Criminal Procedure”.⁵⁹¹

The Pre-Trial Chamber issued some 1,450 decisions, orders, and other judicial documents in the cases before it. In practice, due to the inability to reach unanimity on some or all issues, the Pre-Trial Chamber issued 82 “considerations”, namely judicial documents containing both a common part with findings of all judges followed by the individual or joint opinions of judges on discrete matters.

4.3.3. Trial Chamber

The Trial Chamber of the ECCC was the first instance chamber, responsible for conducting trial hearings and issuing Trial Judgments on the guilt or innocence of the Accused following the conclusion of the judicial investigation.⁵⁹² The Trial Chamber also issued decisions on the Civil Party claims in the Judgment, including on requests for reparations.⁵⁹³

The Trial Chamber comprised three National and two International Judges.⁵⁹⁴ A decision of the Trial Chamber required an affirmative vote of at least four out of the five judges.⁵⁹⁵ The National Trial Chamber Judges were Nil Nonn (President), Ya Sokhan, You Ottara, and Thou Mony (Reserve). The International Trial Chamber Judges

⁵⁸⁷ Case 004/02, Considerations on Appeals Against Closing Orders, 19 December 2019, D359/24 & D360/33, paras 34, 41, 49 (“Considerations”).

⁵⁸⁸ Case 004/02, Considerations, D359/24 & D360/33, para. 41 (internal citations omitted).

⁵⁸⁹ Case 004/02, Considerations, D359/24 & D360/33, para. 49 (internal citations omitted).

⁵⁹⁰ Case 004/02, Considerations, D359/24 & D360/33, para. 52.

⁵⁹¹ Case 004/02, Considerations, D359/24 & D360/33, para. 50.

⁵⁹² Internal Rules, rules 79, 98.

⁵⁹³ Internal Rules, rule 100.

⁵⁹⁴ UN-RGC Agreement, article 3(2)(a).

⁵⁹⁵ UN-RGC Agreement, article 4(i)(a).

through time included Silvia Cartwright (New Zealand), Jean-Marc Lavergne (France), Claudia Fenz (Austria), and Martin Karopkin (USA).

During the proceedings, the Trial Chamber heard evidence and the arguments presented, as well as the questioning of the Accused and the testimony of witnesses, experts, and Civil Parties.⁵⁹⁶ Hearings of the Trial Chamber were conducted in public, and the Office of Administration (“OA”) ensured that they were publicly broadcast, subject to any protective measures in place.⁵⁹⁷ The Trial Chamber’s decisions were based exclusively on evidence on the case file that was put before it and that had been subject to cross-examination.⁵⁹⁸ The Trial Chamber had discretion to reject certain evidence where it was irrelevant or repetitious, impossible to obtain within a reasonable time, unsuitable to proving the facts, not allowed by law, intended to prolong the proceedings, or was frivolous.⁵⁹⁹ When necessary, the Trial Chamber could order additional investigative action.⁶⁰⁰ The Trial Chamber could also, at any stage, order that the proceedings be separated when the interest of justice so required.⁶⁰¹ This was done in Case 002, where in September 2011, the Trial Chamber decided to sever the charges in the Closing Order into Case 002/01 and Case 002/02 respectively.⁶⁰²

The Trial Chamber’s deliberations were conducted *in camera* for the Judges to reach their verdict, and at that stage, no further submissions could be made.⁶⁰³ While the Trial Chamber’s Judgment was limited to the facts set out in the Indictment, it could change the legal characterisation of the crimes that were set out in the Indictment, as long as this did not introduce new constitutive elements.⁶⁰⁴ During its deliberations, the Trial Chamber examined whether the acts amounted to crimes falling within the jurisdiction of the ECCC and whether, on the basis of the evidence presented, the Accused committed the alleged acts.⁶⁰⁵ All Judgments were issued and announced during public hearings, and a summary of the

⁵⁹⁶ Internal Rules, rules 87, 90, 91, 94, 101(3).

⁵⁹⁷ Internal Rules, rule 79(6)(a).

⁵⁹⁸ Internal Rules, rule 87(2)-(3).

⁵⁹⁹ Internal Rules, rule 87(3). See for example Case 001, Decision on Admissibility of Material on the Case File as Evidence, 26 May 2009, E43/4, paras 16, 20; Case 002/02, Decision on Objections to the Admissibility of Witness, Victim and Civil Party Statements and Case 001 Transcripts Proposed by the Co-Prosecutors and Civil Party Lead Co-Lawyers, 15 August 2013, E299, para. 41.

⁶⁰⁰ Internal Rules, rule 93. See for example Case 002/02, Order to Initiate Investigation of Documents Received from Prof. Walter Heynowski, 28 December 2016, E443/5.

⁶⁰¹ Internal Rules, rule 89 *ter*.

⁶⁰² See Chapter 5.2.5.2. Severance.

⁶⁰³ Internal Rules, rule 96.

⁶⁰⁴ Internal Rules, rule 98(2).

⁶⁰⁵ Internal Rules, rule 98(3).

findings and the disposition was read out by the president or other Trial Chamber judge, along with a summary of any dissenting opinions.⁶⁰⁶ If a guilty verdict was entered, the Trial Chamber sentenced the Accused in accordance with the procedure outlined in the UN-RGC Agreement, ECCC Law, and the Internal Rules.⁶⁰⁷ If the required majority for an affirmative vote was not obtained, the default position was that the Accused would be acquitted, however this situation never occurred.⁶⁰⁸

The Trial Chamber issued some 430 orders and decisions in all cases before it, including three trial judgments.

4.3.4. Supreme Court Chamber

The Supreme Court Chamber served as both an appellate chamber and a chamber of final instance.⁶⁰⁹ It decided on appeals made by the Co-Prosecutors, the Accused, or by the Civil Parties against a decision or Judgment of the Trial Chamber on errors of law, errors of fact, or errors in the Trial Chamber's discretion.⁶¹⁰

The Supreme Court Chamber comprised seven judges, four of whom were National with one of them acting as president, and three of whom were International Judges.⁶¹¹ Any decision required the affirmative vote of at least five out of the seven judges.⁶¹² The National Supreme Court Chamber Judges were Kong Srim (President), Som Sereyvuth, Ya Narin, Mong Monichariya, and Sin Rith (Reserve). The International Supreme Court Chamber Judges were Chandra Nihal Jayasinghe (Sri Lanka), Motoo Noguchi (Japan), Florence Ndepele Mwachande Mumba (Zambia), Agnieszka Klonowiecka-Milart (Poland), Maureen Harding Clark (Ireland), Phillip Rapoza (USA), and Katrien Gabriël Witteman (Netherlands), respectively.

Both the Co-Prosecutors and the Accused could appeal Trial Chamber Judgments to the Supreme Court Chamber, while the Civil Parties could appeal Trial Chamber decisions on reparations.⁶¹³ Where the Co-

⁶⁰⁶ Internal Rules, rule 102.

⁶⁰⁷ Internal Rules, rule 98(5).

⁶⁰⁸ Internal Rules, rule 98(6).

⁶⁰⁹ UN-RGC Agreement, article 3(2)(b).

⁶¹⁰ Internal Rules, rules 104(1), 105(1).

⁶¹¹ UN-RGC Agreement, article 3(2)(b).

⁶¹² UN-RGC Agreement, article 4(1)(b); Internal Rules, rule 111(6).

⁶¹³ Internal Rules, rule 105(1)-(2).

Prosecutors had already appealed a Judgment, the Civil Parties could appeal the verdict, but not the sentence.⁶¹⁴ Internal Rule 104(1) provides for appeals to the Supreme Court Chamber from Trial Chamber Judgments on two grounds: “an error on a question of law invalidating the judgment [...] or an error of fact which has occasioned a miscarriage of justice”.⁶¹⁵ The appealing party had to specify in its notice of appeal the errors of law invalidating the decision and/or errors of facts occasioning a miscarriage of justice and the appeal briefs had to set out the arguments with authorities in support of each ground.⁶¹⁶

A number of Trial Chamber decisions were subject to immediate appeal, such as those which had the effect of terminating the proceedings, decisions on detention and bail, decisions on protective measures, and decisions on interference with the administration of justice.⁶¹⁷ In addition to errors of law and fact, Internal Rule 104(1) provided an additional ground of appeal against the Trial Chamber’s decisions, namely where there had been a discernible error in the exercise of the Trial Chamber’s discretion that resulted in prejudice.⁶¹⁸ Upon finding an error of law, error of fact, or error in the exercise of discretion, the Supreme Court Chamber could confirm, amend, or annul decisions in whole or in part.⁶¹⁹ Decisions of the Supreme Court Chamber are final.⁶²⁰

Whereas Internal Rule 104(1) and (4) provided that the Supreme Court Chamber shall hear appeals against an exhaustive set of decisions of the Trial Chamber, in practice the Supreme Court Chamber has adjudicated appeals against decisions beyond the scope of its immediate jurisdiction, including against decisions taken by the Pre-Trial Chamber when there was an “imperative need to ensure the good and fair administration of justice”.⁶²¹

⁶¹⁴ Internal Rules, rule 105.

⁶¹⁵ Internal Rules, rule 104(1).

⁶¹⁶ Internal Rules, rule 105(2).

⁶¹⁷ Internal Rules, rule 104(4).

⁶¹⁸ Internal Rules, rule 104(1).

⁶¹⁹ Internal Rules, rule 104(2).

⁶²⁰ ECCC Law, article 36 (new).

⁶²¹ See for example Case 003, SCC Termination Decision, 17 December 2021, [3/1/1/1](#); Case 004, SCC Termination Decision, 28 December 2021, [2/1/1/1](#); Case 004/02, SCC Termination Decision, 10 August 2020, [E004/2/1/1/2](#). See also Case 002, Decision on Co-Prosecutors’ Request for Clarification, 26 July 2013, [E284/2/1/2](#), para. 12; Case 002, Decision on Khieu Samphan’s Urgent Appeal Against the Summary of Judgment Pronounced on 16 November 2018, [E463/1/3](#), paras 16-17.

Like Trial Chamber hearings, Supreme Court Chamber hearings were also conducted in public, and the OA ensured that they were publicly broadcast, subject to any protective measures in place.⁶²² The enforcement of sentences was made at the Co-Prosecutors' initiative, and the enforcement of reparations was carried out by the appropriate national authorities in accordance with Cambodian law, on the initiative of any Civil Party member of the collective group.⁶²³

The Supreme Court Chamber issued some 160 orders and decisions in the cases before it, including three appeal judgments.

4.4. Support Sections

4.4.1. Victims Support Section

Originally established as Victims Unit and later renamed through a revision of the Internal Rules,⁶²⁴ the VSS is the point of contact between the ECCC, the victims, and their representatives. A victim is defined by the ECCC as “a natural person or legal entity that has suffered harm as a result of the commission of any crime within the jurisdiction of the ECCC”.⁶²⁵ The protection and safeguarding of the interests of victims is central to the ECCC's mandate, with the Internal Rules providing that the whole of the ECCC framework must be “interpreted so as to always safeguard the interests of Suspects, Charged Persons, Accused *and Victims*”.⁶²⁶ Although not explicitly required under the Internal Rules, the VSS also served to convene victims, lawyers, intermediary organisations, and those from other units of the ECCC.

The VSS, together with the Civil Party Lead Co-Lawyers (“CPLCLs”) Section,⁶²⁷ was established for the purpose of organising victim participation.⁶²⁸ The role of the VSS included assisting victims with lodging complaints and Civil Party applications, maintaining a list of lawyers who wished to represent victims before the ECCC, administering applications

⁶²² Internal Rules, rule 109(2).

⁶²³ Internal Rules, rule 113.

⁶²⁴ Internal Rules (rev. 5), 9 February 2010, rules 12, 12 *bis*.

⁶²⁵ Internal Rules, glossary.

⁶²⁶ Internal Rules, rule 21 (emphasis added).

⁶²⁷ For information on the Civil Party Lead Co-Lawyers Section, see Chapter 4.4.3. Civil Party Lawyers and Civil Party Lead Co-Lawyers Section.

⁶²⁸ Internal Rules, rule 12.

for admission to the list of victims associations approved to act on behalf of Civil Parties, providing general information to victims and Civil Parties, and assisting with, and supporting, Civil Party attendance in proceedings.⁶²⁹

The VSS conducted regular outreach activities to disseminate information about the ECCC and its cases, and to connect Civil Parties to each other and to the ECCC. To this end, the VSS, together with the CPLCLs Section and Civil Party lawyers, conducted regular regional forums for Civil Parties.

The VSS and the CPLCLs also cooperated with governmental organisations and NGOs to identify, design, and implement Civil Party reparations projects.⁶³⁰ The VSS signed memoranda of understanding with several partner organisations for the implementation of these projects.⁶³¹

The VSS also implemented several “non-judicial measures” as an additional means of recognising victim-survivors and the harm they suffered, regardless of their legal status before the ECCC. Four broad categories of projects were implemented:

1. Construction of a memorial to the victims of Khmer Rouge at Tuol Sleng Museum, in the form of a stupa and Golden Book (containing the names of victims who perished at S-21 Security Centre). The project was implemented in cooperation with the ECCC and the Ministry of Culture and Fine Arts.
2. Promotion of gender equality and the improvement of access to justice for female survivors and victims of gender-based violence (GBV) under the Khmer Rouge regime. Projects implemented include (a) access to justice and victims participation; (b) raising awareness and advocacy; (c) psychological interventions; and (d) capacity building. The project was implemented in cooperation with the Transcultural Psychosocial Organization (TPO).

⁶²⁹ Internal Rules, rule 12 *bis*.

⁶³⁰ Internal Rules, rules 12 *bis* (3), 23 *quinquies* (3)(b).

⁶³¹ For example, VSS signed a Memorandum of Understanding with Tuol Sleng Museum on the establishment of a memorial at the Museum as a non-judicial measure. The VSS also signed Memoranda of Understanding with: (1) the Documentation Center of Cambodia on the Permanent Exhibition on Forced Transfer and Toul Po Chrey; (2) Kdei Karuna and Youth for Peace on the Project of Mobile Exhibition of Forced Transfer and Toul Po Chrey; (3) Transcultural Psychosocial Organization on the Project of Testimonial Therapy and Self-Help Group; and (4) Youth for Peace on the Project of a Peace Learning Centre in Kraing Ta Chan in Takeo province.

3. The Community Peace Learning Centre project (CPLC) was developed to involve the communities of Kraing Ta Chan to help transform their negative past by converting Khmer Rouge execution sites into places of commemoration, remembrance, education, and dialogue.
4. Healing ceremonies for Civil Parties to mourn lost relatives alongside their communities.

4.4.2. Defence Support Section

The Defence Support Section (“DSS”) facilitated the legal representation of persons entitled to a defence lawyer before the ECCC.⁶³² The DSS managed the system of designation of lawyers and other personnel to assist Suspects, Charged Persons, Accused, and any other eligible person, including those deemed indigent.⁶³³ It also contracted defence lawyers and legal support teams,⁶³⁴ provided basic legal support to defence lawyers,⁶³⁵ including by liaising with relevant ECCC sections,⁶³⁶ and organised training for ECCC defence lawyers.⁶³⁷ As part of its special responsibilities, the DSS could also assist persons accused of interference with the administration of justice.⁶³⁸

The DSS was autonomous in substantive defence matters,⁶³⁹ but remained under the oversight of the Office of Administration for financial issues.⁶⁴⁰ It was thus entitled to develop its own administrative regulations upon consultation with the Bar Association of the Kingdom of Cambodia (“BAKC”),⁶⁴¹ so long as they remained compliant with the Internal Rules and subject to the Rules and Procedures Committee’s review.⁶⁴²

The DSS Administrative Regulations (“DSS Regulations”) set out the criteria and procedure for admitting lawyers on the ECCC lists of lawyers, the procedure for the selection and engagement of Co-Lawyers, their

⁶³² See generally *Internal Rules*, rule 11.

⁶³³ *Internal Rules*, rule 11(2)(a)-(f).

⁶³⁴ *Internal Rules*, rule 11(2)(g)-(i).

⁶³⁵ *Internal Rules*, rule 11(2)(j).

⁶³⁶ For example, the DSS was occasionally requested to inform the detention facility directly of any change in the composition of the defence teams for the purpose of authorising visits to their clients, in application of Rule 9.15 of the *Detention Facility Rules*.

⁶³⁷ *Internal Rules*, rule 11(2)(k).

⁶³⁸ *Internal Rules*, rule 35(3).

⁶³⁹ *Internal Rules*, rule 11(1).

⁶⁴⁰ The UN is responsible for the remuneration of defence counsel. See *UN-RGC Agreement*, article 17.

⁶⁴¹ *Internal Rules*, rule 11(2)(a).

⁶⁴² *Internal Rules*, rule 4.

duties as Co-Lawyers, as well as the duties of the members of defence legal teams.⁶⁴³ Additionally, to ensure the effective legal representation of ECCC defendants with insufficient means to pay for their defence, the ECCC developed the Legal Assistance Scheme which was overseen and applied by the DSS.

A core responsibility of the DSS was to curate, in consultation with the BAKC, a list of lawyers allowed to practice before the ECCC (the “ECCC List”).⁶⁴⁴ This list contained names of defence lawyers registered by the BAKC to appear before the ECCC,⁶⁴⁵ including both national and international lawyers admitted to practice law in a UN member state.⁶⁴⁶ In addition, the list was divided into two sub-lists: one comprising all lawyers and professionals remunerated by the UN for the defence of indigent persons,⁶⁴⁷ and one containing the names of lawyers paid privately by the defendant or those working *pro bono*.⁶⁴⁸ In practice, however, the DSS curated only the first list, as no defendant privately hired their Co-Lawyers.

The DSS invited candidates to apply for inclusion on the ECCC List and provided details on the necessary documents to be submitted.⁶⁴⁹ It also facilitated the application process for foreign lawyers to register with the BAKC,⁶⁵⁰ which included the payment of a one-time USD 500 registration fee.⁶⁵¹ In 2018, the BAKC instituted additional registration fees payable by foreign lawyers but this decision was reversed in 2020.⁶⁵² The DSS included a total of 97 lawyers (of whom 47 were national lawyers and 50 were foreign lawyers) on the ECCC List.

A defendant before the ECCC could generally select one National Co-Lawyer and one International Co-Lawyer,⁶⁵³ and was to be provided with the ECCC List and information to make an informed choice about their legal representation.⁶⁵⁴ If a defendant wished to select a lawyer from outside

⁶⁴³ DSS Regulations.

⁶⁴⁴ Internal Rules, rule 11(2)(b)-(e).

⁶⁴⁵ Internal Rules, rule 11(2)(b)-(c).

⁶⁴⁶ Internal Rules, rule 11(2)(c)(i)-(ii).

⁶⁴⁷ Internal Rules, rule 11(2)(d); DSS Regulations, regulation 1(2)(a). See also UN-RGC Agreement, article 17(c).

⁶⁴⁸ DSS Regulations, regulation 1(2)(b).

⁶⁴⁹ DSS Regulations, regulation 1(3).

⁶⁵⁰ DSS Regulations, regulation 4(7)-(8).

⁶⁵¹ DSS Regulations, regulation 4(9).

⁶⁵² BAKC Decision on Registration and Issuance of Licence for Foreign Lawyers to Practise the Legal Profession before the Extraordinary Chambers in the Courts of Cambodia, 18 December 2020.

⁶⁵³ DSS Regulations, regulation 5(3).

⁶⁵⁴ DSS Regulations, regulation 5(1).

the ECCC List, the DSS would assist.⁶⁵⁵ Once selected, the Co-Lawyers were expected to conduct the case to “finality”.⁶⁵⁶ Change or withdrawal of lawyers was permitted only under exceptional circumstances,⁶⁵⁷ while removal of a lawyer could be carried out by the ECCC if it was determined that the lawyer was no longer eligible to conduct the defendant’s defence.⁶⁵⁸ Throughout the years of ECCC operations, defendants were assisted by 34 Co-Lawyers (16 National Co-Lawyers and 18 International Co-Lawyers).

A defendant who claimed indigence and requested to be legally represented by a lawyer on the UN List had to demonstrate that they had insufficient means to pay for their defence before the ECCC.⁶⁵⁹ In particular, they had to share information with the DSS regarding their direct income, bank accounts, real or personal property, pensions, stocks, bonds or other assets, barring family and social benefits.⁶⁶⁰ The DSS, upon reviewing the information, decided whether the defendant lacked sufficient means to pay, in full or in part, for their defence.⁶⁶¹ If the defendant was deemed to have sufficient means to pay for legal representation, the request to be assigned a lawyer remunerated by the UN would be rejected, and instead the defendant would have to engage a lawyer directly.⁶⁶²

Decisions made by the DSS or its Head could be appealed before different organs of the ECCC. For example, the DSS’s decisions regarding the inclusion of lawyers applying to be admitted on the ECCC List was subject to the appellate review of the Pre-Trial Chamber.⁶⁶³ The DSS’s determinations related to the indigence of a defendant and assignment of a lawyer to their benefit were subject to appeal before the Co-Investigating Judges or the chamber where the defendant appeared.⁶⁶⁴ In practice, the Co-Lawyers also submitted motions to the chambers relating to the level of resources approved by the DSS. Decisions on these resourcing claims are provided in Annex 5(B).

⁶⁵⁵ DSS Regulations, regulation 5(1).

⁶⁵⁶ DSS Regulations, regulation 7(1).

⁶⁵⁷ DSS Regulations, regulations 7(2), 7(3).

⁶⁵⁸ DSS Regulations, regulation 7(4).

⁶⁵⁹ DSS Regulations, regulation 11(1).

⁶⁶⁰ DSS Regulations, regulation 11(3).

⁶⁶¹ DSS Regulations, regulations 11(4)-(6). In case the DSS found that a defendant had sufficient means to pay part of the legal representation fees, the ECCC would bear only a proportion of the fees: the selected Co-Lawyers would be paid under the Legal Assistance Scheme and the ECCC would recover the determined costs from the Accused if they were convicted. See *DSS Regulations*, regulation 11(6).

⁶⁶² DSS Regulations, regulation 11(5).

⁶⁶³ *Internal Rules*, rule 11(5).

⁶⁶⁴ *Internal Rules*, rule 11(6).

In addition, the Co-Lawyers could bring claims relating to their service contracts before an arbitrator appointed from among the ECCC’s International Judges. Ten such contractual claims were filed.

4.4.2.1. Co-Lawyers and their teams

In representing Charged Persons and Accused before the ECCC, the National and International Co-Lawyers were assisted by legal consultants, case managers, case assistants, evidence analysts, and interns. Together, they were referred to as the “defence team”.

The Co-Lawyers and their teams were bound by several ethical and professional obligations in the performance of their functions.⁶⁶⁵ For instance, the DSS Regulations provide, *inter alia*, that the Co-Lawyers had to be “available to provide effective legal advice and representation”,⁶⁶⁶ maintain the confidentiality of oral and written documents,⁶⁶⁷ refrain from communicating with clients of another Co-Lawyer except with permission,⁶⁶⁸ and more generally, refrain from engaging in activities incompatible with their duties as legal representatives of a defendant (such as accepting instructions from any government).⁶⁶⁹ The Co-Lawyers were also responsible for their defence team’s adherence to the standards and duties imposed on them.⁶⁷⁰

The Co-Lawyers had to put the interests of their clients before their own or those of other persons and exercise all care to ensure that no conflict of interest arose.⁶⁷¹ A Co-Lawyer could be assigned to more than one Accused, to the extent that there were no conflicts of interest. This occurred in one instance only, when the Co-Lawyers for Ieng Sary in Case 002 were assigned by the DSS to represent Meas Muth in Case 003. Their appointment was initially rejected by the International Co-Investigating Judge based on a “conflict of interest”,⁶⁷² but the Pre-Trial Chamber rejected the conflict as

⁶⁶⁵ DSS Regulations, regulations 15-18.

⁶⁶⁶ DSS Regulations, regulation 16(1).

⁶⁶⁷ DSS Regulations, regulation 17(1).

⁶⁶⁸ DSS Regulations, regulation 18(6).

⁶⁶⁹ DSS Regulations, regulation 9(1).

⁶⁷⁰ DSS Regulations, regulations 10(5), 18(9).

⁶⁷¹ DSS Regulations, regulation 9(2).

⁶⁷² Case 003, Decision on the International Co-Prosecutor’s Request to Reject the Appointment of the Co-Lawyers for Meas Muth on the Basis of Irreconcilable Conflicts of Interests, 10 January 2014, D56/18, para. 129. Ieng Sary had passed away by this time.

“too hypothetical” in the circumstances and permitted the Co-Lawyers to represent Meas Muth.⁶⁷³

Co-Lawyers were explicitly prohibited from engaging in certain financial practices, including accepting remuneration for legal representation of a defendant from another source than the ECCC,⁶⁷⁴ transferring or lending money or assets to a defendant, their relatives or acquaintances, or any third person or organisation with whom the client had a personal interest,⁶⁷⁵ and offering payment in exchange for being referred to the defendant.⁶⁷⁶ Any violation by a Co-Lawyer or other defence team member of any of these prohibited activities, or any request by a Co-Lawyer or defence team member to commit a violation, had to be reported to the DSS.⁶⁷⁷

4.4.3. Civil Party Lawyers and Civil Party Lead Co-Lawyers Section

A major innovation of the ECCC was the enhanced recognition in trial and appeal proceedings of victims who were allowed to participate as Civil Parties. The participation of victims as Civil Parties originates in the Cambodian Code of Criminal Procedure, and includes the right for victims to participate as parties to the criminal trial and in parallel to pursue a civil action for collective and moral reparations against the Accused.⁶⁷⁸ To be recognised as a Civil Party, a person had to show that they suffered some type of harm as a direct result of the crimes alleged in the case.⁶⁷⁹ Once recognised, the Civil Party became a party to the proceedings with procedural rights broadly similar to the prosecution and defence.

In practice, however, the criminal procedure from which the participation of Civil Parties derives was not designed to accommodate the large number of victims during an international criminal trial.⁶⁸⁰ The Chambers had to deal with several challenges that arose in the proceedings with regard to

⁶⁷³ Case 003, Decision on Meas Muth’s Appeal Against the International Co-Investigating Judge’s Decision Rejecting the Appointment of Ang Udom and Michael Karnavas as his Co-Lawyers, 17 July 2014, D56/19/38, para. 69.

⁶⁷⁴ DSS Regulations, regulation 15(1).

⁶⁷⁵ DSS Regulations, regulation 15(2).

⁶⁷⁶ DSS Regulations, regulation 15(6).

⁶⁷⁷ DSS Regulations, regulations 15(4)-(5).

⁶⁷⁸ See for example, Case 001, Judgment, 26 July 2010, E188, paras 660-661; Case 001, Decision on Civil Party Co-Lawyers’ Joint Request for a Ruling on the Standing of Civil Party Lawyers to Make Submissions on Sentencing and Directions Concerning the Questioning of the Accused, Experts and Witnesses Testifying on Character, 9 October 2009, E72/3, paras 28-40.

⁶⁷⁹ Internal Rules, rule 23 *bis* (1).

⁶⁸⁰ Case 002/01, Judgment, 7 August 2014, E313, para. 1109; Case 002/02, Judgment, 16 November 2018, E465, para. 4404.

Civil Party participation.⁶⁸¹ For example, in Case 001, the rules in force at the time required the Trial Chamber to decide on the admissibility of each individual Civil Party application, and thus their right to request reparations, in the Judgment, rather than at the beginning of the proceedings.⁶⁸² Therefore, even though 93 Civil Parties had participated throughout the trial proceedings in Case 001, the Trial Chamber ultimately confirmed the admissibility, and subsequent right to reparations, of only 64 Civil Party applications in its Judgment.⁶⁸³

The Supreme Court Chamber addressed this issue on appeal when it was raised on behalf of 22 Civil Parties whose applications the Trial Chamber had declared inadmissible. The Supreme Court Chamber corrected the Trial Chamber’s approach and admitted ten of the 22 applicants, bringing the final number of admitted Civil Parties in Case 001 to 74.⁶⁸⁴

Case 001 brought the challenges of the existing Civil Party framework to the forefront. As a result, the Internal Rules were revised by the ECCC Plenary in February 2010 to “balance the rights of all parties, to safeguard the ability of the ECCC to achieve its mandate while maintaining Civil Party participation, and to enhance the quality of Civil Party representation”.⁶⁸⁵ A significant amendment was the introduction of Civil Party Lead Co-Lawyers (“CPLCLs”) to “ensure the effective organization of Civil Party representation during the trial stage and beyond”.⁶⁸⁶ Additionally, the Internal Rules were changed so that Civil Party admissibility would be determined by the Co-Investigating Judges and finally, on appeal, by the Pre-Trial Chamber at the end of the judicial investigation, rather than at the end of the trial.⁶⁸⁷

Following the reforms, to participate in the proceedings, a Civil Party had to be represented by a Civil Party lawyer from the time of the issuance of

⁶⁸¹ Case 001, Trial Chamber Decision on Civil Party Co-Lawyers’ Joint Request for a Ruling on the Standing of Civil Party Lawyers to Make Submissions on Sentencing and Directions Concerning the Questioning of the Accused, Experts and Witnesses Testifying on Character, 9 October 2009, [E72/3](#) (Dissenting Opinion of Judge Lavergne).

⁶⁸² *Internal Rules (Rev. 1)*, 12 June 2007, rule 100(1): “The Chamber shall make a decision on any Civil Party claims in the judgment. It shall rule on the admissibility and the substance of such claims against the Accused”.

⁶⁸³ Case 001, Judgment, 26 July 2010, [E188](#), paras 637, 645-650.

⁶⁸⁴ Case 001, Judgment, 26 July 2010, [E188](#), section VI.

⁶⁸⁵ *7th Plenary Session of ECCC Concludes*.

⁶⁸⁶ *Internal Rules*, rule 12 *ter* (1).

⁶⁸⁷ Compare *Internal Rules (Rev. 1)*, 12 June 2007, rule 23 with *Internal Rules*, rule 23 *bis* (3) (requiring the Co-Investigating Judges to decide on the admissibility of all Civil Party applications by a separate order).

the Closing Order.⁶⁸⁸ However, from the trial stage onwards, the CPLCLs assumed the representation of the consolidated group of Civil Parties. From this point, the Civil Party lawyers' role was to support the work of the CPLCLs (by way of assistance with oral and written submissions, cross-examination and other procedural assistance) and to serve as a point of contact for individual Civil Parties.⁶⁸⁹ The CPLCLs thus represented the interests of the consolidated group of Civil Parties and bore the ultimate responsibility for the overall advocacy, strategy, and in-court presentation of the interests of the consolidated group of Civil Parties.⁶⁹⁰

The CPLCLs were nevertheless required, first and foremost, to seek the views of the Civil Party lawyers and endeavour to seek consensus, and to coordinate the representation of the Civil Parties at trial.⁶⁹¹ During the trial proceedings, the CPLCLs could:

- Question the Accused, witnesses, and experts, except on matters concerning their character⁶⁹²
- Make written submissions on behalf of the Civil Parties⁶⁹³
- Make closing statements⁶⁹⁴
- Appeal the verdict and the decision on reparations.⁶⁹⁵ Where the Co-Prosecutors appealed the verdict, the Civil Parties, through the CPLCLs, could also appeal the verdict but not the sentence.⁶⁹⁶

There was one Cambodian (“National”) and one foreign (“International”) CPLCL, both of whom were contracted by the ECCC. Their functions took effect once the Trial Chamber was seized of the case, and they had to act jointly on all matters, unless they decided jointly to delegate authority to one CPLCL for handling a particular matter.⁶⁹⁷ The National CPLCL was Pich Ang. The International CPLCLs were Elisabeth Simonneau-Fort

⁶⁸⁸ Internal Rules, rule 23 *ter* (1).

⁶⁸⁹ Internal Rules, rule 12 *ter* (6).

⁶⁹⁰ Internal Rules, rule 12 *ter* (5)(b).

⁶⁹¹ Internal Rules, rule 12 *ter* (3).

⁶⁹² Internal Rules, rule 90(2); Case 001, Decision on Civil Party Co-Lawyers' Joint Request for a Ruling on the Standing of Civil Party Lawyers to Make Submissions on Sentencing and Directions Concerning the Questioning of the Accused, Experts, and Witnesses Testifying on Character, 9 October 2009, E72/3, para. 48.

⁶⁹³ Internal Rules, rule 92; Case 001, Decision on the Request of the Co-Lawyers for Civil Party Group 2 to Make an Opening Statement During the Substantive Hearing, 27 March 2009, E23/4.

⁶⁹⁴ Internal Rules, rule 94(1)(a).

⁶⁹⁵ Internal Rules, rule 105(1)(c).

⁶⁹⁶ Internal Rules, rule 105(1)(c).

⁶⁹⁷ Internal Rules, rule 12 *ter* (4).

(France), Marie Guiraud (France), Megan Hirst (Australia), and Falguni Debnath (Canada), respectively. While the CPLCLs were not mentioned in the ECCC’s foundational documents such as the ECCC Law or the UN-RGC Agreement, they derived their powers from the Internal Rules.⁶⁹⁸

The CPLCLs represented a consolidated group of 3,869 Civil Parties in Case 002/01, and 3,867 Civil Parties in Case 002/02.⁶⁹⁹

In addition to in-court advocacy and representation, the CPLCLs conducted outreach activities to disseminate information about the ECCC and its ongoing trials and to connect Civil Parties with each other, the ECCC, and the Civil Party lawyers. The CPLCLs worked closely with the VSS in conducting and attending outreach events.⁷⁰⁰

Victims who were Civil Parties could claim collective and moral reparations against persons convicted before the ECCC. Reparations are discussed further in Chapter 6.

4.5. Judicial organisation and administration

4.5.1. Plenary sessions

Plenary sessions were meetings in which all judges of the Pre-Trial Chamber, Trial Chamber, and Supreme Court Chamber, the Co-Investigating Judges, the Co-Prosecutors and all their reserves, the Head of the DSS, the Head of the VSS, and the Director and Deputy Director of Administration (“DOA” and “DDOA” respectively) participated and voted on issues, including amendments, concerning the Internal Rules.⁷⁰¹ Plenary sessions were to be held every six months,⁷⁰² during which the participants also reviewed practice directions and related amendments.⁷⁰³ Extraordinary plenary sessions could also be convened for urgent matters by the president of the plenary *ex officio* or pursuant to a request supported by a supermajority vote of the judges with voting rights,⁷⁰⁴ though this was never done.

⁶⁹⁸ Internal Rules, rule 12 *ter* (2).

⁶⁹⁹ Case 002/01, Judgment, 7 August 2014, E313, para. 1111; Case 002/02, Judgment, 16 November 2018, E465, para. 4407.

⁷⁰⁰ Further information on victim outreach activities can be found under Chapter 4.4.1. Victims Support Section.

⁷⁰¹ Internal Rules, rules 18(1), (3).

⁷⁰² Internal Rules, rule 18(6).

⁷⁰³ Internal Rules, rules 18(6), 20(2), 20(3).

⁷⁰⁴ Internal Rules, rule 18(7).

The quorum for a plenary session reflects the supermajority rules for voting on amendments to different chapters of the Internal Rules. While the Co-Prosecutors, by virtue of their special status as judicial officers under Cambodian law, were entitled to vote along with the judges on issues and amendments relating to Chapters I and II of the Internal Rules concerning the administration of the ECCC,⁷⁰⁵ only the Co-Investigating Judges and judges of the Chambers were permitted to vote on issues and amendments relating to Chapter III of the Internal Rules – *i.e.*, the rules that govern ECCC procedure and proceedings.⁷⁰⁶ All other participants attended the plenary session in a consultative capacity.⁷⁰⁷ Thus, a supermajority (and quorum) of at least 15 of the 21 judges and Co-Prosecutors was required for a decision on Chapters I and II of the Internal Rules, while a decision on Chapter III of the Rules required an affirmative vote of at least 14 of the 19 judges entitled to vote.⁷⁰⁸ The quorum could be recalculated if the total number of judges entitled to vote changed.⁷⁰⁹

Proxy voting was available for judges and Co-Prosecutors who could not attend the plenary session.⁷¹⁰ Written records of the discussions and the decisions taken were made in Khmer, English, and French, and were kept by a secretariat composed of members selected by the Chambers, the OCIJ, and the OCP as appropriate.⁷¹¹ Discussions in the plenary sessions were confidential.⁷¹² A total of twelve plenaries were held.

4.5.2. Judicial Administration Committee

The Judicial Administration Committee (“JAC”) was an *ad hoc* body, responsible for advising and guiding the OA on the provision of administrative and judicial support to the Chambers, the OCIJ, and the OCP.⁷¹³ This included the preparation and implementation of the budget,⁷¹⁴ the initiation of disciplinary proceedings against staff, and the appointment of judges to disqualification panels.⁷¹⁵

⁷⁰⁵ Internal Rules, rule 18(3)(a).

⁷⁰⁶ Internal Rules, rule 18(3)(b).

⁷⁰⁷ Internal Rules, rule 18(3)(d).

⁷⁰⁸ Internal Rules, rule 18(3)(b).

⁷⁰⁹ Internal Rules, rule 18(3)(c).

⁷¹⁰ Internal Rules, rule 18(5).

⁷¹¹ Internal Rules, rule 18(9).

⁷¹² Internal Rules, rule 18(10).

⁷¹³ Internal Rules, rule 19(2).

⁷¹⁴ Internal Rules, rule 19(2).

⁷¹⁵ Internal Rules, rules 9(1), 34(6).

The JAC comprised five judges: three National Judges and two International Judges, as well as two substitutes in case of absence. The judges were all elected at a plenary session, and one of the National Judges served as president. The Co-Prosecutors, the DOA, and the DDOA assisted the JAC on a consultative basis.⁷¹⁶ External experts could advise the JAC.⁷¹⁷ Similarly to plenary sessions, JAC meetings were convened by its president and discussions were confidential.⁷¹⁸ To facilitate the JAC's operations, a secretariat was established and composed of members assigned from the Chambers, the OCIJ, and the OCP, as appropriate.⁷¹⁹

4.5.3. Rules and Procedure Committee

The Rules and Procedure Committee ("RPC") was an *ad hoc* body of the ECCC, which received and considered requests to amend the Internal Rules and drafted proposals on such amendments for discussion and adoption at the plenary sessions.⁷²⁰ If a lacuna in the Internal Rules was identified, a proposal for an amendment was to be submitted to the RPC as soon as possible.⁷²¹ Meetings dedicated to Internal Rules amendments were confidential and convened by the RPC president.⁷²²

The RPC was also in charge of adopting practice directions on the functioning of the ECCC which were reviewed in a plenary session thereafter. Such meetings were convened as necessary by the RPC president or by a judge, a Co-Prosecutor, the Head of the DSS, the Head of the VSS, a CPLCL, the DOA, or the DDOA.⁷²³

The RPC comprised nine judges: five National Judges and four International Judges, all elected in a plenary session, with one judge serving as president. There were also two substitute members: one national and one international.⁷²⁴ Participation could be in person or remote,⁷²⁵ and the RPC could receive advice from external experts.⁷²⁶ A secretariat established at the request of the RPC president assisted the committee in its operations.⁷²⁷

⁷¹⁶ Internal Rules, rule 19(1).

⁷¹⁷ Internal Rules, rule 19(5).

⁷¹⁸ Internal Rules, rule 19(3).

⁷¹⁹ Internal Rules, rule 19(5).

⁷²⁰ Internal Rules, rule 20(2).

⁷²¹ Internal Rules, rule 2.

⁷²² Internal Rules, rule 20(2).

⁷²³ Internal Rules, rule 20(3).

⁷²⁴ Internal Rules, rule 20(1).

⁷²⁵ Internal Rules, rule 20(5).

⁷²⁶ Internal Rules, rule 20(6).

⁷²⁷ Internal Rules, rule 20(6).

4.6. Legal Support

Greffiers are the “clerks of the Co-Prosecutors, [CIJs,] and Chambers”.⁷²⁸ They are accredited by the Ministry of Justice,⁷²⁹ and play an important role in the day-to-day operations of chambers and judicial offices, including generally:

- Keeping official records of the investigations and proceedings⁷³⁰
- Receiving filings and other original documents from the parties⁷³¹
- Ensuring that all judicial decisions are properly notified⁷³²
- Serving summonses⁷³³
- In the case of chambers and OCIJ greffiers: (i) supervising the transcription and recording of trial proceedings;⁷³⁴ (ii) archiving annulled investigative actions or orders of the OCIJ;⁷³⁵ and (iii) notifying the parties of Pre-Trial Chamber decisions.⁷³⁶

4.6.1. Interns

The ECCC offered the opportunity to students, recent graduates, and young professionals from Cambodia or abroad to work in one of the sections of the ECCC. The national and international components of the ECCC ran two separate internship programmes. Applicants had to either be enrolled in, or have completed, a graduate school program or be enrolled in or have completed the final academic year of a first university degree program.

Interns had the possibility to complete an initial internship of three months, with a possibility to extend it for another three months. An internship could not be shorter than two or longer than six months. Applicants could express their preferences for the sections of the ECCC they wished to join. During the COVID-19 pandemic, interns conducted their internships remotely as travel to Cambodia was restricted. Between May 2007 and December 2023,

⁷²⁸ Internal Rules, glossary.

⁷²⁹ Internal Rules, rule 16 *bis*.

⁷³⁰ Internal Rules, rule 71(1).

⁷³¹ Internal Rules, rule 39(6).

⁷³² Internal Rules, glossary.

⁷³³ Internal Rules, rule 41(3). For summonses to witnesses before their appearance before trial proceedings, see Internal Rules, rule 84(2).

⁷³⁴ Internal Rules, rule 97(2).

⁷³⁵ Internal Rules, rule 76(5).

⁷³⁶ Internal Rules, rule 77(14).

the ECCC offered over 1,900 internships (including over 600 administered by the national component, and some 1,300 administered by UNAKRT).

Specific functions of greffiers

OCP greffiers	<ul style="list-style-type: none"> Keeping disagreements between Co Prosecutors in a register⁷³⁷
OCIJ greffiers	<ul style="list-style-type: none"> Supervising the review of the case file⁷³⁸ Keeping a register of appeals and applications to the OCIJ⁷³⁹ Reading back written records of interviews to interviewees where necessary⁷⁴⁰ Accompanying the Co-Investigating Judges during on-site visits⁷⁴¹
PTC greffiers	<ul style="list-style-type: none"> Keeping a register of pre-trial appeals and applications⁷⁴²
TC greffiers	<ul style="list-style-type: none"> Receiving a list of witnesses prior to the trial proceedings⁷⁴³ Notifying the parties of hearing dates⁷⁴⁴ Attending remote examinations of an Accused during trial⁷⁴⁵
SCC greffiers	<ul style="list-style-type: none"> Receiving notices of appeals, appeal briefs,⁷⁴⁶ and appeal pleadings⁷⁴⁷ Notifying the parties of hearing dates⁷⁴⁸

4.7. Office of Administration

The Office of Administration (“OA”) “support[ed] the Chambers, the [OCP], the [OCIJ], and the plenary sessions in the performance of their

⁷³⁷ Internal Rules, rule 71(1).

⁷³⁸ Internal Rules, rule 55(6).

⁷³⁹ Internal Rules, rule 77(1).

⁷⁴⁰ Internal Rules, rule 55(7).

⁷⁴¹ Internal Rules, rule 55(8).

⁷⁴² Internal Rules, rule 77(1).

⁷⁴³ Internal Rules, rules 80(1)-(2).

⁷⁴⁴ Internal Rules, rule 80(6).

⁷⁴⁵ Internal Rules, rule 81(6).

⁷⁴⁶ Internal Rules, rule 106(5).

⁷⁴⁷ Internal Rules, rule 108(6).

⁷⁴⁸ Internal Rules, rule 108(3).

functions and [was] responsible for their administration and servicing”.⁷⁴⁹ The OA’s responsibilities included ensuring the security of the ECCC as per the Supplementary Agreement on Safety and Security,⁷⁵⁰ ensuring the provision of equipment, facilities management, information technology, supplies, vehicles, and transportation, as per the Utilities Agreement,⁷⁵¹ acting as the official channel for both internal and external communication of the ECCC,⁷⁵² maintaining proper storage, preservation and security of documents and elements in the case files,⁷⁵³ and coordinating and supporting the training of ECCC personnel.⁷⁵⁴ The OA comprised various sections with different functions and responsibilities, including the Court Management Section (“CMS”), the Public Affairs Section (“PAS”), the General Services Section (“GSS”), the Safety and Security Section (“SSS”), Information Communication Technology Section (“ICTS”), and various operational support units.

The OA was led by a national DOA and deputised by an international DDOA.⁷⁵⁵ Requirements for the position of DOA included significant experience in court administration, fluency in French or English, and high moral character and integrity.⁷⁵⁶ The DOA was responsible for the overall management of the OA, save for matters subject to UN rules and procedures.⁷⁵⁷ The DDOA was recruited internationally and was appointed by the UNSG.⁷⁵⁸ He/she was responsible for the recruitment of all international staff and the administration of the international components and sections of the ECCC.⁷⁵⁹ The role had distinct responsibilities to those of the UNAKRT Coordinator, however for operational efficiency the two roles were jointly held by the same individual. In this context, the DDOA/ UNAKRT Coordinator administered the resources provided through the UN.⁷⁶⁰

⁷⁴⁹ *Internal Rules*, rule 9(1). Regarding the OA, see also *UN-RGC Agreement*, article 8.

⁷⁵⁰ *Internal Rules*, rule 9(2).

⁷⁵¹ *Internal Rules*, rule 9(3).

⁷⁵² *Internal Rules*, rule 9(4).

⁷⁵³ *Internal Rules*, rule 9(5)-(6), 10(4).

⁷⁵⁴ *Internal Rules*, rule 9(7).

⁷⁵⁵ *ECCC Law*, articles 30 and 31; *Internal Rules*, rule 8. For more information on the appointment of the DOA and DDOA, see Chapter 4.8. United Nations Assistance to the Khmer Rouge Trials.

⁷⁵⁶ *ECCC Law*, article 31 new.

⁷⁵⁷ *UN-RGC Agreement*, article 8(2); *ECCC Law*, article 31 new.

⁷⁵⁸ *UN-RGC Agreement*, article 8(3); *ECCC Law*, article 31 new. These provisions clarify that once appointed, the DDOA must subsequently be assigned by the RGC.

⁷⁵⁹ *UN-RGC Agreement*, article 8(3); *ECCC Law*, article 31 new.

⁷⁶⁰ *ECCC Law*, article 31 new.

The DOA and DDOA, in consultation with the Head of the DSS, the Chambers, the OCP, and the OCII, were jointly responsible for ensuring that the OA was properly informed about the conditions of detention.⁷⁶¹ While the UN-RGC Agreement mandates their cooperation to ensure an effective and efficient functioning of the administration,⁷⁶² the ECCC legal framework does not provide any mechanism to settle any potential disagreements between the DOA and DDOA.

4.7.1. Court Management Section

The Court Management Section (“CMS”) coordinates and services all judicial offices and chambers in the performance of their functions. It comprises several sub-offices, including the Records and Archives Unit (“RAU”), the Front Office, the Interpretation and Translation Unit (“ITU”), the Transcription Unit (“TU”), the Audio-Visual Unit (“AVU”), and the Detention Liaison Unit (“DLU”).

4.7.1.1. Records and Archives Unit and Front Office

The RAU is the office responsible for maintaining the judicial records of the proceedings before the ECCC. The RAU preserves, stores, and secures the original case file records as well as electronic versions of “evidence [such] as exhibits, statements and documents obtained in the course of preliminary investigations, judicial investigations, trials, and appeals”.⁷⁶³ Together with the responsible greffier(s), the RAU is also in charge of the cataloguing and distribution of all judicial documents and exhibits.

During the judicial proceedings, the RAU worked closely with the Front Office, staffed by the Case File Officer and Court Officer, and was responsible for receiving filings and coordinating the management of case files with greffiers.⁷⁶⁴ During hearings and trials, the Front Office ensured that all practical arrangements were in place for court sessions to proceed smoothly and in accordance with the instructions of the judicial offices and chambers.

⁷⁶¹ Such conditions shall respect Cambodian law, the Standard Minimum Rules for the Treatment of Detainees, and the Basic Principles for the Treatment of Prisoners of the UN. See *Internal Rules*, rule 10(3). See also Chapter 4.7.1.6. Detention Liaison Unit regarding the Detention Liaison Unit.

⁷⁶² UN-RGC Agreement, article 8(4).

⁷⁶³ *Internal Rules*, rule 9(6). See also *Internal Rules*, rule 10(4).

⁷⁶⁴ See also *Internal Rules*, rule 10(4); Practice Direction on the Filing of Documents before the ECCC, article 2.1.

The RAU maintains the case file records under environmentally controlled conditions and security measures.⁷⁶⁵ Records are stored in acid-free folders and boxes in temperature and humidity-controlled repositories. Fire doors, secure access protocols and security cameras ensure the security and integrity of the records. With the commencement of residual functions and requirement to maintain, preserve and manage its archives in accordance with international standards, the repository was outfitted with compact (mobile) shelving, dehumidification units and thermal insulation to further protect the records from heat, humidity, pollutants, and insects.

The archive contains more than 2.5 million pages comprising some 233,000 documents in Khmer, French and English, including over 1,350 judicial decisions and orders, 670 hearing transcripts, and tens of thousands of evidentiary exhibits. The ECCC’s holdings are fully digitised and public case file documents are available online.

A specialised collection of over 1,800 books, electronic books and other publications is also managed by the RAU. It was previously offered as an internal service to judicial offices and chambers, including lawyers and other users, but has been opened for public reference, along with public case file documents, at the ECCC Resource Centre in Phnom Penh.

4.7.1.2. Witness and Expert Support Unit

WESU was established to facilitate the appearance of witnesses, experts, and Civil Parties before the ECCC.⁷⁶⁶ The unit supported witnesses at all stages of the judicial process (preliminary investigation, judicial investigation, trial, and appeal),⁷⁶⁷ by carrying out the following functions:

- Informing witnesses about their rights
- Ensuring a safe and secure environment for all witnesses in their interactions with the ECCC, including by providing, if necessary, 24-hour standby support during their stay in Phnom Penh
- Providing referrals for psychosocial and psychosocial support to the Transcultural Psychological Organization (“TPO”)

⁷⁶⁵ Internal Rules, rule 10(4).

⁷⁶⁶ UN-RGC Agreement, article 23; ECCC Law, article 33; Internal Rules, rule 29. See also Practice Direction on Protective Measures.

⁷⁶⁷ ECCC Law, articles 23 new, 33 new; Internal Rules, rules 24, 26, 31, 55(5), 60, 84, 91, 93(2), 108(7).

- Working closely with the judicial offices and/or Chambers, VSS, CMS, and the OA to provide operational, logistical and administrative support to enable the appearance of witnesses
- Actively avoiding further harm and re-traumatization of vulnerable victims

WESU's responsibilities included the implementation of protective measures for witnesses, in coordination with the ECCC Security Commission and/or local authorities. Prior to the adoption of any protective measures, WESU provided individualised risk assessments in relation to the measures sought.⁷⁶⁸ Protective measures were then ordered by the Co-Investigating Judges or the Chambers, either on their own motion or upon request of a party.⁷⁶⁹

Two types of protective measures were implemented. Out-of-court measures sought to limit witnesses' exposure to threats or provide an appropriate response to threats at their place of residence. In-court measures sought to protect witnesses' identities and/or whereabouts during their testimony before the ECCC. These measures included:

- Withholding a witness's name, address, whereabouts, and other information which may identify the witness
- Assigning a pseudonym and ordering the parties to refer to the witness by that pseudonym instead of their name
- Removing the witness's name from court documents, and sealing or redacting such information from public records
- Distorting the witness's voice and/or physical features on the in-court feed and/or placing screens around the witness to prevent the public seated in the courtroom gallery from recognising the witness
- Conducting proceedings behind closed doors.⁷⁷⁰

When ordering protective measures, the Co-Investigating Judges or the Chambers had to weigh different interests such as the needs of victims, Civil Parties and witnesses, the rights of the Suspects, Charged Persons

⁷⁶⁸ Practice Direction on Protective Measures, articles 2.3, 2.5.

⁷⁶⁹ Internal Rules, rule 29(3); Practice Direction on Protective Measures, article 1.

⁷⁷⁰ UN-RGC Agreement, article 23; ECCC Law, article 33; Internal Rules, rule 29(4). See also Practice Direction on Protective Measures, article 3.

or Accused Persons (depending on the stage of the proceedings), and the fairness of the proceedings.⁷⁷¹

When testifying, witnesses had the right to a lawyer when the testimony could incriminate them.⁷⁷² In this regard, WESU maintained a roster of duty counsel to provide legal advice to the witnesses. To further facilitate their appearance before the ECCC, WESU arranged logistics including travel, subsistence and allowances.

4.7.1.3. Interpretation and Translation Unit

The main role of the ITU was to advise on and provide translation and interpretation services in the three official languages of the ECCC: Khmer, English, and French. ECCC interpreters provided simultaneous or consecutive interpretations between the three languages at court hearings, judicial interviews, plenary session meetings, committee meetings, trainings, and other important events at the ECCC. Interpreters provided interpretation services during the preliminary and judicial investigation phases, at meetings between defendants and their counsel, during discussions with Civil Party applicants, and during hearings before ECCC Chambers.

The ITU also worked with freelancers and outsourced translation and interpretation work from time to time to ensure all judicial requirements were met. The ITU developed guidelines for freelancers and outsourcing companies to ensure that the interpretations and translations produced were harmonised with the work product of ECCC translators and interpreters and to ensure that they were properly formatted.

Due to the complexity of the language, translations into or out of Khmer were produced at a rate of four pages per day per translator, or five pages per day for urgent translations. One standard page is quantified as containing 1,500 characters of Khmer text, whereas the baseline of 300 words per page is used in English and French documents. To facilitate its work, and to increase linguistic harmonisation internally and in Cambodia, the ITU compiled a trilingual lexicon of terms based on various documents from the

⁷⁷¹ UN-RGC Agreement, article 23; ECCC Law, article 33; Internal Rules, rule 29. See also Practice Direction on Protective Measures.

⁷⁷² Internal Rules, rule 28(g).

ECCC and Cambodian legal framework. The lexicon is available publicly on the ECCC website.

4.7.1.4. Transcription Unit

The primary role of the TU was to provide a verbatim record of all court proceedings in the three official languages, and to make them available to the Chambers and parties in a timely fashion. This included assisting the OCIJ's field missions and interviews. ECCC transcribers were required to accurately record all words spoken in the proceedings, meaning that any grammatical errors, changes of thought, contractions, misstatements, or poorly constructed sentences were to be transcribed as spoken.

Transcribers worked together with court annotators. Court annotators were responsible for producing a log of all court proceedings and accompanying information so that the transcriber could produce complete and accurately typed transcripts. To do so, annotators prioritised speaker identification and listened to the recordings (as opposed to the source of the speech) to detect any recording anomalies.

Transcripts of proceedings were produced in two stages: first, a draft transcript was made available to the greffier of the relevant chamber and shared with authorised parties. Second, a final transcript was filed with the RAU for inclusion on the case file. A third stage might occur if the chamber issued a redaction order which required the transcript to be redacted, in which case the transcript was revised and refiled. The final version of a transcript in each language was available approximately five working days after a hearing. The TU then filed the final hard and soft copy versions of the transcripts with the RAU. Requests for transcripts were recorded and issued to the RAU.

Internal Rule 97 provides that the parties could apply to the Trial Chamber to correct any mistakes (such as transcription or interpretation errors) in the transcripts.⁷⁷³ The correction procedure is outlined in Articles 3.17 and 3.17(*bis*) of the Practice Direction on the Filing of Documents. If the correction changed the substance of the text, the old version was also kept on the case file for future reference.

⁷⁷³ Internal Rules, rule 97(4).

4.7.1.5. Audio-Visual Unit

The AVU was responsible for providing audio-visual services. It was responsible for recording and live broadcasting all judicial sessions conducted before the ECCC, as well as recording any interviews conducted by the Co-Investigating Judges. It also supported the CMS Front Office and RAU with the storage and retrieval of audio-visual material and ensured that sufficient tapes and labels were available before any hearing.

Generally, audio-visual recordings started when the chamber greffier rang the first bell. Recording of a session, with DVCam, was continuous for a maximum period of 184 minutes, this being the maximum duration of the tape. Recording ceased when the judges exited the courtroom. In public sessions, the live feed was available on monitors, speakers, and simultaneous interpretation headsets in the public gallery and the press room. During private and closed hearings, the live feed from the courtroom was temporarily turned off and replaced with a slate indicating that the proceedings were carrying on in private or closed session. In private sessions, the curtain of the courtroom remained open but in closed sessions, the curtain was closed, so as not to permit viewing from the public gallery.

When a protected witness testified in the courtroom, the AVU had to ensure that the appropriate technical measures were in place. For instance, during the testimony, the witness was visible to all participants in the courtroom (including the Accused) and the interpreters, but was obscured from the public gallery through the use of a physical screen and distortion. Distortion measures included distortion on the image (electronically pixilating the image of the witness on all monitors, save for the judges' bench) and/or on the voice of the witness (distorting the voice through all audio points outside the courtroom). Moreover, the audio-visual technician could not, at any time, focus the cameras on a monitor in the courtroom which might show the undistorted image of the witness, whether by wide shot or close-up (*e.g.*, on the judges' monitors). Finally, the courtroom was physically set up in a manner to ensure the protection of the witness' identity from the public gallery (*i.e.*, with a curtain in the courtroom and a protective screen).

Each judicial session was recorded on two DVDs: one with the full video in Khmer and with floor audio channels; and another with the full video recording accompanied by the English and French audio channels. If the chamber issued a release order, the full recording became available to the

public. However, if after reviewing the original tape, the chamber issued a redaction order, the AVU would remove all material covered by the redaction order.

4.7.1.6. Detention Liaison Unit

Under the UN-RGC Agreement, the RGC was responsible for the detention of ECCC defendants, with both the UN and RGC being responsible for ensuring that holding cells were safe and secure for use by the Accused.⁷⁷⁴ In this respect, the DLU was responsible for coordination and liaison between the ECCC and the Chief of the Detention Facility (“Chief of Detention”), which was operated under the auspices of the General Department of Prisons of the Ministry of the Interior. The unit also coordinated with other authorised national and international agencies, authorities, and organisations. The DLU ensured that any matter pertaining to the welfare, health, and conditions of detention of the detained persons was promptly reported and that appropriate action was taken.

The DOA and DDOA worked with Cambodian authorities to ensure that the OA and its personnel were properly informed about the conditions of detention, which “should respect Cambodian Law, the Standard Minimum Rules for the Treatment of Detainees and the Basic Principles for the Treatment of Prisoners of the United Nations”.⁷⁷⁵

The Detention Facility Rules cover the administration of the Detention Facility as well as all rights and procedures related to the detention of defendants.⁷⁷⁶ They provide detailed rules on the admission and separation of detainees, visits, uniform and cell equipment, the provision of food, the practice of religion, healthcare, telephone calls, requests and complaints, detainee property, death in custody, emergency procedures and reporting of incidents, searches, discipline of detainees, use of force by guards and methods of restraint, detainee movement and escort to court buildings, transfer to other detention facilities, discipline of guards, security, inspections, and media issues.⁷⁷⁷

⁷⁷⁴ Supplementary Agreement on Safety and Security, article 9(2).

⁷⁷⁵ Internal Rules, rule 10(3).

⁷⁷⁶ Detention Facility Rules.

⁷⁷⁷ Detention Facility Rules, rules 2-30. Rule 1 provides, however, that the application of these Rules to individual cases may be varied by the Co-Investigating Judges or ECCC Chambers.

A Suspect, Charged Person, or detainee would be admitted at the ECCC detention facility upon an order for police custody by the OCP, OCIJ, or a chamber, or a detention or arrest and detention order issued by the OCIJ or a chamber.⁷⁷⁸ Information on the detainees and their time at the detention facility was recorded in a personal and a medical file,⁷⁷⁹ which were stored in a secure location at the facility.⁷⁸⁰ Copies of these files were released to the DOA and DDOA upon a detainee's release or death, while originals were sent to the General Director of the General Department of Prisons.⁷⁸¹

During their time at the Detention Facility, detainees benefited from certain rights, including keeping items of personal property (after approval from the chief of detention),⁷⁸² making and receiving unmonitored telephone calls to and from pre-approved individuals, and sending and receiving letters and parcels.⁷⁸³ However, the latter right was exercised under the supervision of the Co-Investigating Judges or the relevant chamber who could open the letter or parcel sent or received in the detainee's presence, inspect its contents and decide whether the detainee was allowed to receive it, given the necessity to maintain good order at the detention facility.⁷⁸⁴ Detainees were prohibited from using offensive language in their correspondence.⁷⁸⁵

Detainees followed a strict routine (subject to any health conditions), and exercised for two hours minimum per day.⁷⁸⁶ In addition, the nutritional value of their meals was strictly regulated.⁷⁸⁷ Detainees had the right to practice their religion, including collectively with other detainees,⁷⁸⁸ and could receive visits from religious representatives.⁷⁸⁹

If a detainee violated the detention discipline regime (*e.g.*, by engaging in gambling, consuming alcohol, possessing a firearm, refusing to obey an order, or assaulting or intentionally injuring another person),⁷⁹⁰ they

⁷⁷⁸ Detention Facility Rules, rule 2(1).

⁷⁷⁹ Detention Facility Rules, rule 5.

⁷⁸⁰ Detention Facility Rules, rule 5(3).

⁷⁸¹ Detention Facility Rules, rule 5(3).

⁷⁸² Detention Facility Rules, rule 15(1).

⁷⁸³ Detention Facility Rules, rules 14(1), 30(2), 30(7).

⁷⁸⁴ Detention Facility Rules, rules 14(1), 14(4).

⁷⁸⁵ Detention Facility Rules, rule 14(4).

⁷⁸⁶ Detention Facility Rules, rule 27.

⁷⁸⁷ Detention Facility Rules, rule 7. Particularly, detainees must be provided with clean drinking water at all times and be served meals containing the following minimal elements: rice: 600 grams; fresh or salt fish/meat: 150 grams; vegetables: 150 grams; cooking oil: 10 ml; salt or fish sauce: 10 grams; soup ingredients: 20 grams.

⁷⁸⁸ Detention Facility Rules, rule 8(2).

⁷⁸⁹ Detention Facility Rules, rule 8(4).

⁷⁹⁰ Detention Facility Rules, rule 10(8).

could be subject to disciplinary measures.⁷⁹¹ The Chief of Detention could issue the following disciplinary sanctions, individually or in combination: counselling sessions, oral or written warnings, confinement of the detainee to their cell for three days with access to the open air under supervision for one hour per day, confiscation of an offending item, removal or reduction of privileges, or denial of visits or access to letters and parcels for a maximum of two weeks (save for communication with lawyers).⁷⁹² Generally, the Chief of Detention was precluded from applying collective punishment or subjecting detainees to shackling, solitary confinement, the reduction of food, or any cruel, inhumane, or degrading treatment as a form of discipline.⁷⁹³ If the Chief of Detention received a report of a serious breach of security or alleged crime committed by a detainee, the issue would be referred to the General Department of Prisons for further action.⁷⁹⁴

To ensure safety and security at the ECCC Detention Facility, detainees were subject to searches at various times: upon admission, when moving from one part of the facility to another, after a visit, upon leaving or returning to the facility, when a guard had reason to suspect a detainee was in possession of an unauthorised item, and upon an order of the chief of the Detention Facility.⁷⁹⁵ Detention accommodation areas were also searched at least once a week.⁷⁹⁶

Any use of physical force by detention guards had to be reasonable and necessary in the circumstances and was only authorised where no other means of control was available.⁷⁹⁷ Physical force could not be used arbitrarily or abusively.⁷⁹⁸ Subject to these restrictions, force could be used to compel a detainee to obey a necessary order, prevent threats to safety or welfare of another person, separate persons involved in a fight, defend oneself or another person, or subdue an unruly detainee.⁷⁹⁹ Detention guards were to regularly undergo training on the use of force, and any use had to be reported to the chief of detention.⁸⁰⁰ Use of handcuffs on detainees was also regulated.⁸⁰¹

⁷⁹¹ Detention Facility Rules, rule 10(1).

⁷⁹² Detention Facility Rules, rule 10(5).

⁷⁹³ Detention Facility Rules, rule 10(2).

⁷⁹⁴ Detention Facility Rules, rule 10(3).

⁷⁹⁵ Detention Facility Rules, rule 18(5).

⁷⁹⁶ Detention Facility Rules, rule 18(9).

⁷⁹⁷ Detention Facility Rules, rules 20(1), (3).

⁷⁹⁸ Detention Facility Rules, rule 20(6).

⁷⁹⁹ Detention Facility Rules, rule 20(2).

⁸⁰⁰ Detention Facility Rules, rules 20(7), (8).

⁸⁰¹ Detention Facility Rules, rule 23.

The ECCC's judges and Co-Prosecutors could inspect the detention facility, as could certain other individuals and organisations.⁸⁰² For instance, the International Committee of the Red Cross was entitled to inspect the detention facility, and its inspections were arranged directly by the DOA and DDOA, in consultation with the chief of detention.⁸⁰³ Other individuals who could inspect the detention facility included representatives of the National Assembly, Senate, King, Ministry of Justice, Ministry of Interior, and UN Office for the High Commissioner for Human Rights,⁸⁰⁴ as well as NGOs, upon a written request and prior authorisation.⁸⁰⁵

Media interviews with a detainee had to be approved by the Co-Investigating Judges or by a chamber who could impose certain conditions (*e.g.*, regarding the persons who could be interviewed and the use of certain equipment) and could only take place after the detainee had a chance to consult with their defence team, if the latter was not to be present at the interview.⁸⁰⁶

Release of a detainee was foreseen in only a limited number of circumstances, including when the detainee was granted bail, parole, temporary release, when their case is dismissed, or when they were acquitted.⁸⁰⁷ The Chief of Detention implemented any release upon an order from the Co-Investigating Judges or a chamber, and upon confirmation by the DOA and DDOA.⁸⁰⁸

The detention facility was vacated in February 2023, following the transfer of the last convicted person.

⁸⁰² Detention Facility Rules, rule 26(1)(1).

⁸⁰³ Detention Facility Rules, rules 26(1)(1), 26(4)(3).

⁸⁰⁴ Detention Facility Rules, rule 26(1)(1).

⁸⁰⁵ Detention Facility Rules, rule 26(4)(1)-(2).

⁸⁰⁶ Detention Facility Rules, rules 28(2)-(3).

⁸⁰⁷ Detention Facility Rules, rule 25(1).

⁸⁰⁸ Detention Facility Rules, rules 25(1)-(2).

Detention of Accused Persons at the ECCC

<p>Kaing Guek Eav <i>(alias Duch)</i></p>	<p>30 July 2007-6 June 2013 (5 years, 10 months)</p> <p>Transferred to Kandal Provincial Prison to serve the remainder of his life sentence.⁸⁰⁹</p>
<p>Ieng Thirith</p>	<p>12 November 2007-16 September 2012 (4 years, 10 months)</p> <p>Released under judicial supervision after being found unfit to stand trial.⁸¹⁰</p>
<p>Ieng Sary</p>	<p>12 November 2007-14 March 2013 (5 years, 4 months)</p> <p>Died at hospital while in detention.⁸¹¹</p>
<p>Nuon Chea</p>	<p>19 November 2007-4 August 2019 (11 years, 8 months)</p> <p>Died at hospital while in detention.⁸¹²</p>
<p>Khieu Samphan</p>	<p>19 November 2007-1 February 2023 (15 years, 2 months)</p> <p>Transferred to Kandal Provincial Prison to serve the remainder of his life sentence.⁸¹³</p>

4.7.2. Public Affairs Section

The Public Affairs Section (“PAS”) is responsible for the dissemination of information to the public about the operations of the ECCC,⁸¹⁴ as well as the cases under judicial investigation.⁸¹⁵

⁸⁰⁹ Case 001, Appeal Judgment, 3 February 2012, F28, disposition; Case 001, Request for Enforcement of Sentence, 7 March 2012, F29, where the OCP requested the Director General of the General Department of Prisons to agree on an appropriate facility to hold Duch for the remainder of his sentence.

⁸¹⁰ Case 002, Police Custody Detention of Ieng Thirith, 12 November 2007, C15; Case 002, Decision On Reassessment Of Accused Ieng Thirith’s Fitness To Stand Trial Following Supreme Court Chamber Decision of 13 December 2011, 13 September 2012, E138/1/10; Case 002, Decision on Immediate Appeal against the Trial Chamber Order to Unconditionally Release the Accused Ieng Thirith, 14 December 2012, E138/1/10/1/5/7.

⁸¹¹ Case 002, Provisional Detention Order of Ieng Sary, 14 March 2013, C22; Case 002, Termination of the Proceedings against the Accused Ieng Sary, 14 March 2013, E270/1.

⁸¹² Case 002, Provisional Detention Order of Nuon Chea, 19 September 2007, C9; Case 002/02, Decision to Terminate Proceedings against Nuon Chea, 13 August 2019, F46/3.

⁸¹³ Provisional Detention Order of Khieu Samphan, 19 November 2007, C26; Case 002/02, Request for Transfer of Convicted Person Khieu Samphan, 18 January 2023, F82; Case 002/02, Decision on Khieu Samphan’s Request for Information from the Co-Prosecutors on Planned Detention Conditions, 22 December 2022, F77/1/1.

⁸¹⁴ Internal Rules, rule 9(4).

⁸¹⁵ Internal Rules, rules 9(4), 56(2)(a).

The PAS undertakes various outreach activities aimed at informing Cambodians about the work of the ECCC and the trial process to facilitate their understanding and involvement in its work. Outreach is conducted in various formats, including through publications, public forums, seminars and conferences, the ECCC website, weekly radio programmes, and television programmes. In addition to organising its own outreach activities, the PAS partnered with other organisations (Cambodian and international NGOs, national, provincial, and local structures of government) to facilitate the dissemination of reading materials, videos, radio, and television programmes. The PAS also undertakes outreach activities relating to victims and Civil Parties in consultation with the VSS and the CPLCLs.⁸¹⁶

Through its various outreach programs, the PAS reached over 640,000 people during the judicial phase. The statistics are available in Annex 7.

The PAS shared public judicial information and developments, such as decisions, legal instruments, financial documents, reports, photographs, and biographies with the media and the general public through the ECCC website. Press releases and statements were circulated by email through mailing lists and were also posted on the website and social media. The PAS also served as the conduit for interview requests with judicial officers and OA personnel.

Public court proceedings at the ECCC were broadcast on Cambodian television. Videos of past trial hearings are also available on the ECCC website and YouTube. Pictures and other information are disseminated on social media including Facebook, Flickr, Instagram, Tik-Tok and X (formerly Twitter).

4.7.3. General Services Section



Responsibilities and duties related to the provision and maintenance of utilities, facilities, and services at the ECCC were shared between the RGC and the UN and are stipulated in the Supplementary Agreement on Utilities, Facilities, and Services.⁸¹⁷ A substantial number of responsibilities under this Agreement fell under the mandate of the GSS, which operated

⁸¹⁶ Internal Rules, rule 12 bis (1)(i).

⁸¹⁷ Supplementary Agreement on Utilities, Facilities, and Services.

under the OA and provided administrative and logistical support to the ECCC.

Main responsibilities under the Supplementary Agreement on Utilities, Facilities, and Services

 Royal Government of Cambodia	United Nations 
<ul style="list-style-type: none"> • Maintain, make improvements to and alter the premises as necessary and appropriate • Ensure that the premises are supplied with the necessary utilities and services on all days and at all times • Ensure that all necessary works are undertaken and all infrastructure is put and maintained in place for the utilities and services to be brought to and available on the premises • Make available on the premises adequate medical facilities for first aid, and ensure immediate hospital access and admission, including transport on all days and at all times • Provide adequate transport to and from the premises for staff and the public 	<ul style="list-style-type: none"> • Install on the premises telecommunications and electronic communications system and security devices • Bear the costs of establishing, maintaining, and using connectivity with the local land-based and cellular telecommunications network



4.7.4. Safety and Security Section

The Safety and Security Section (“SSS”) is responsible for safety and security at the ECCC. Within SSS, the RGC is primarily responsible for the external security of the ECCC premises, the safety of ECCC personnel and defendants, and the close protection of Cambodian personnel.⁸¹⁸ The UN is responsible for the security within the ECCC premises (up to and including the perimeter wall) and for the close protection of

⁸¹⁸ UN-RGC Agreement, article 24; Supplementary Agreement on Safety and Security, article 1(1).

international personnel.⁸¹⁹ Both components were jointly responsible for managing and directing security arrangements within the courtroom.⁸²⁰

Main responsibilities under the Supplementary Agreement on Safety and Security

 Royal Government of Cambodia	 United Nations
<ul style="list-style-type: none"> • Provide a Cambodian Chief of Security (“CCS”) responsible for the close protection of Cambodian officials, as well as their residences when necessary • Provide assessments of the security situation in Cambodia, notifications on possible or actual threats to principals • Ensure the availability of emergency services • Ensure security of Accused Persons • Provide, upon ICS’s request, additional close protection officers to reinforce protection of international officers 	<ul style="list-style-type: none"> • Provide an International Chief of Security (“ICS”) responsible for the close protection of international judicial officials • Establish policies and procedures for the conduct of security operations within the ECCC compound • Work under the technical supervision and guidance of the UN Department of Safety and Security (“UNDSS”) and the UN Resident Coordinator in Cambodia • Provide an information security officer

The Security Operations Centre (“SOC”) was the main point of contact for all ECCC-related safety and security matters. The SOC conducted regular security activities on ECCC premises, such as monitoring access of visitors and issuing parking permits and office keys. It also operated the CCTV and fire alarm and protection systems and was responsible for the provision of emergency security assistance.

SSS personnel attended and conducted regular trainings. In addition to their mandatory security training, they also took requalification training

⁸¹⁹ Supplementary Agreement on Safety and Security, article 2(a)(i), articles 2(a)(i)-(ii), 5(i).

⁸²⁰ Supplementary Agreement on Safety and Security, article 8(i).

courses every year. SSS personnel provided training to other ECCC staff, such as first aid training for zone wardens and floor wardens, and regularly conducted building evacuation exercises.

4.7.5. Information Communication Technology Section

The Information Communication Technology Section (“ICTS”) supports the ECCC’s digital infrastructure, including judicial case files, as well as communications equipment. The ICTS has four main components: (i) systems services, responsible for maintaining a secure local area network, databases, and backup; (ii) communications services, responsible for satellite feeds, remote testimony, and on-site communications; (iii) a helpdesk, responsible for troubleshooting and allocating resources; and (iv) an asset management service, responsible for maintaining inventory.

4.7.6. Operational Support Units

Due to their separate administrative and reporting frameworks within the Royal Government of Cambodia and United Nations, respectively, the ECCC’s operational support units consist of two components, a national and international component. The responsibility of each section is described below.

4.7.6.1. Budget and Finance Sections

The overall responsibility of the budget and finance section for each component is to provide support in budgetary and financial administration, which includes budget formulation, revision, forecasting, and implementation, as well as financial analysis and reporting to ensure smooth operations.

The national component is responsible for (i) developing, implementing and amending financial procedures manual in accordance with the Externally Assisted Project Financial and Procurement Manual Goods, Works and Services of the Royal Government of Cambodia, and establishing an accounting software system; (ii) identifying biennial resource requirements for internal consolidation; (iii) monitoring expenditure and cash flow management to ensure compliance with the approved budget; (iii) disbursing vendor payments and

staff remuneration and benefits; and (iv) preparing financial reports for internal, government, and external stakeholders.

The international component is responsible for (i) leading ECCC budget consolidation, preparation and revision efforts in line with the guidelines of the United Nations Office of Programme Planning, Finance and Budget to present to governing bodies; (ii) establishing standard operating procedure and tools which are consistent with UN Financial Regulations and Rules; (iii) monitoring expenditure to ensure it is within the authorised ceiling; and (iv) working closely with UN Headquarters on financial management to ensure resource safeguarding, preparation of financial reports and budget performance reports, and year-end closing accounts in accordance with IPSAS and donor agreements.

The international component was under the financial oversight of UNAKRT.⁸²¹ UNAKRT is entirely funded through voluntarily contributions of UN member states.⁸²² Voluntary contributions did not always cover the total amount of funding requested and approved in UNAKRT's biennial budget.⁸²³ This led the UNGA to authorise the UNSG to provide funds, known as subventions, to supplement the shortfall in voluntary contributions from 2014.⁸²⁴

UNAKRT's donor relations and trust fund management were handled by the UN Department of Economic and Social Affairs ("DESA") until 2024. The Trust Fund Manager performed the functions of a trustee and managed the funds received and disbursed by UNAKRT. UNAKRT consulted DESA in the preparation of the UNAKRT biennial budget.⁸²⁵

4.7.6.2. Human Resources Management Sections

The human resources section of each component is responsible for performing human resources management functions, which includes the recruitment and selection of staff and non-staff personnel, personnel

⁸²¹ UN-RGC Agreement, articles 16-17; ECCC Law, article 44 new.

⁸²² UNGA, Report of the Secretary-General on the Khmer Rouge trials, 31 March 2003, UN Doc. No. [A/57/769](#), paras 72-75.

⁸²³ See Case 004/02, Request for Submissions on the Budgetary Situation of the ECCC and its Impact on Cases 003, 004, and 004/02, 5 May 2017, [D349](#), paras 1-2, 24-33.

⁸²⁴ For UNGA resolutions on requests for subventions through the years, see Annex 6(C).

⁸²⁵ See Case 004/02, Office of Administration's Submission on the Budgetary Situation of the ECCC and its Impact on Cases 003, 004, and 004/02, 5 June 2017, [D349/3](#), para. 21.

contract, remuneration and benefit management, performance management, professional development, and personnel policy under their respective areas of responsibilities. The national component is responsible for conducting these functions internally, including the development and amendment of HR policies and procedures manual that align with the employment policies of the Ministry of Labour and Vocational Training. The international component's HR was managed within UNAKRT until 2017, when it was outsourced to the UN Economic and Social Commission for Asia and the Pacific (UN ESCAP) in Bangkok.

4.7.6.3. Procurement Units

The responsibility of procurement unit for each component is to procure goods, services, works according to the procurement plan, and to adhered to each procurement manual. The national component is responsible for overseeing all procurement activities in line with the established Government procurement manuals, issuing purchase orders, liaising with suppliers, and records management. The international component's procurement was managed within UNAKRT until 2018, when it was outsourced to UN ESCAP.

4.8. United Nations Assistance to the Khmer Rouge Trials

UNAKRT is the UN project providing international technical assistance to the ECCC within the framework of the UN-RGC Agreement and its Addendum. The UN's responsibilities to the ECCC under Article 17 of the Agreement are discharged through a Coordinator⁸²⁶ and include:

- a. Remuneration of the international judges, the international co-investigating judge, the international co-prosecutor, the Deputy Director of the Office of Administration and other international personnel
- b. Costs for utilities and services as agreed separately between the United Nations and the Royal Government of Cambodia
- c. Remuneration of defence counsel
- d. Witnesses' travel from within Cambodia and from abroad

⁸²⁶A UN director-level employee who in practice has also been appointed as the ECCC Deputy Director of Administration.

- e. Safety and security arrangements as agreed separately between the United Nations and the Government
- f. Such other limited assistance as may be necessary to ensure the smooth functioning of the investigation, the prosecution and the Extraordinary Chambers.

To ensure that ECCC proceedings progressed smoothly, including during peaks in workload in the chambers and judicial offices, UNAKRT contracted other personnel including consultants to support the work of the ECCC, including the Civil Party Lead Co-Lawyers. UNAKRT also engaged Cambodian personnel to support the functioning of the judiciary and operations.

PHOTO
COLLECTIONS



Senior leaders of Democratic Kampuchea including Pol Pot, Nuon Chea, Ieng Sary and Son Sen await foreign dignitaries at Pochentong Airport. The distinction between Party and Government was largely illusory - the CPK led the State. Learn more about the Khmer Rouge leadership: www.kr-hierarchy.eccc.gov.kh (ECCC Archive/Doc. E3/3233)



The entire population of at least two million people was forcibly displaced from Phnom Penh on 17 April 1975. The official CPK version of an “evacuation” on humanitarian and security grounds was rejected by the Trial Chamber, finding that the general displacement was a crime against humanity which was committed on a massive scale. (Photo: Royal Government of Cambodia)



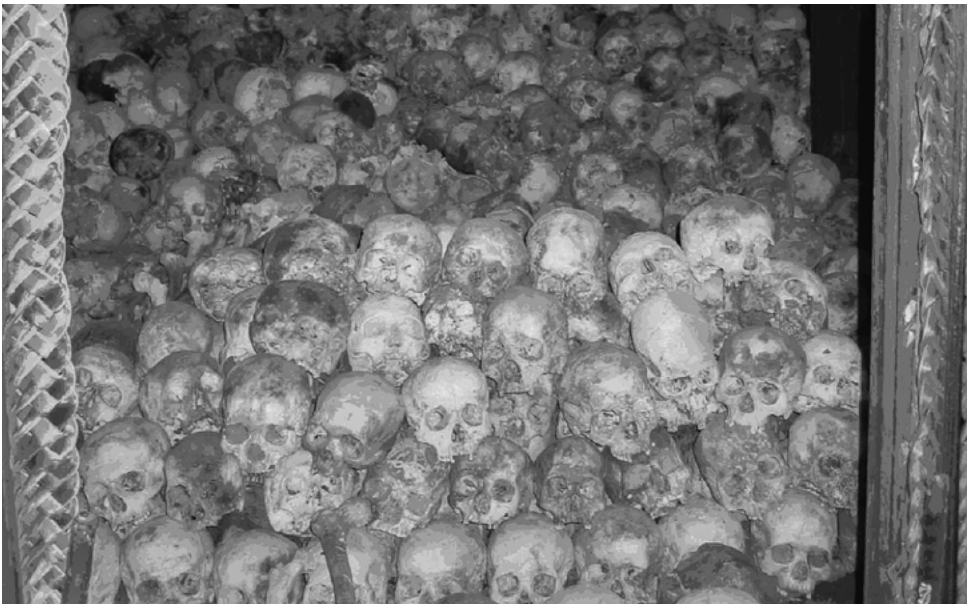
The Swedish-Kampuchea Friendship Association's 1978 visit to Leay Bour cooperative in Tram Kak district, hailed by the CPK as one of three "model" districts. By establishing cooperatives the regime sought to rapidly implement socialist revolution to transform the population into a society of worker-peasants. See Chapter 1.2.3.1 for more details. (ECCC Archive/Doc. D114/74.3:107)



The 1 January Dam worksite, as shown to visiting delegations. The CPK relocated people to worksites to "build the country" as part of its "great leap forward". According to the Supreme Court Chamber, this policy was criminal both in its design and implementation. See Chapter 1.2.3.1 for more details. (Photo: Royal Government of Cambodia)



S-21 in Phnom Penh was the largest security centre in Democratic Kampuchea. Based on the evidence, the Trial Chamber determined that at least 11,742 prisoners were detained, tortured and executed at S-21 and satellite locations. The CPK established over 200 security centres across Cambodia to identify, isolate and “smash” real and perceived enemies. See Chapter 1.2.3.2 for more details. (ECCC Archive/Doc. E3/357)



Skeletal remains at the Kraing Ta Chan memorial site, a former security centre in Sector 13 of the Southwest Zone. In Case 002/02, the Trial Chamber found that crimes against humanity were committed here. Co-Investigating Judges also investigated the site in Case 004 for the crime of genocide against the Khmer Krom, however the case did not proceed to trial. See Chapter 5.3.3.7 for more details. (ECCC Archive/Doc. D6.1.906)



The wedding of Nun Huy (aka Huy Sre, left) and Prok Khoenun (aka Prak Samuth, right). The CPK implemented a criminal policy of forcibly marrying couples and enforcing consummation to rapidly increase the population. Both men and women suffered as a result, and this constituted a serious attack on their human dignity. See Chapter 1.2.4 for more details. (Photo: Royal Government of Cambodia)



Agricultural grain awaits export in 1978. CPK commercial records showed that the regime exported large quantities of crop to a handful of "friendly" countries to generate capital for industrialisation. This was done at the expense of the population, which was knowingly deprived of adequate nourishment at worksites and cooperatives around the country. (ECCC Archive/Doc. D114/74.3.21)



An empty public square and destroyed market are seen in Kampong Cham in late 1978. The Khmer Rouge sought to erase the past by abolishing social classes, replacing private farms with collectives, and banning money, markets, traditional culture, and religion. This amounted to and involved mass atrocities which blighted the entire Cambodian population and destroyed the country. (Photo: Elizabeth Becker)



In April 1977, Minister of Social Affairs Ieng Thirith (in red box) visited the 1 January Dam and later reported food and medicine shortages in the provinces. Through regular reports from regional secretaries, the CPK Central Committee – particularly its Standing Committee members – were fully aware of the hardships faced by workers and peasants in bases, cooperatives and worksites. (ECCC Archive/Doc. E3/3282)



Members of the Democratic Kampuchea Air Force (Division 502) attend a rally at the Olympic Stadium in Phnom Penh. Division 502 was commanded by Sou Met, who was later named in the second Introductory Submission (Case 003) for participating in a criminal plan to purge the RAK of undesirable elements. (ECCC Archive/Doc. E3/3051R)

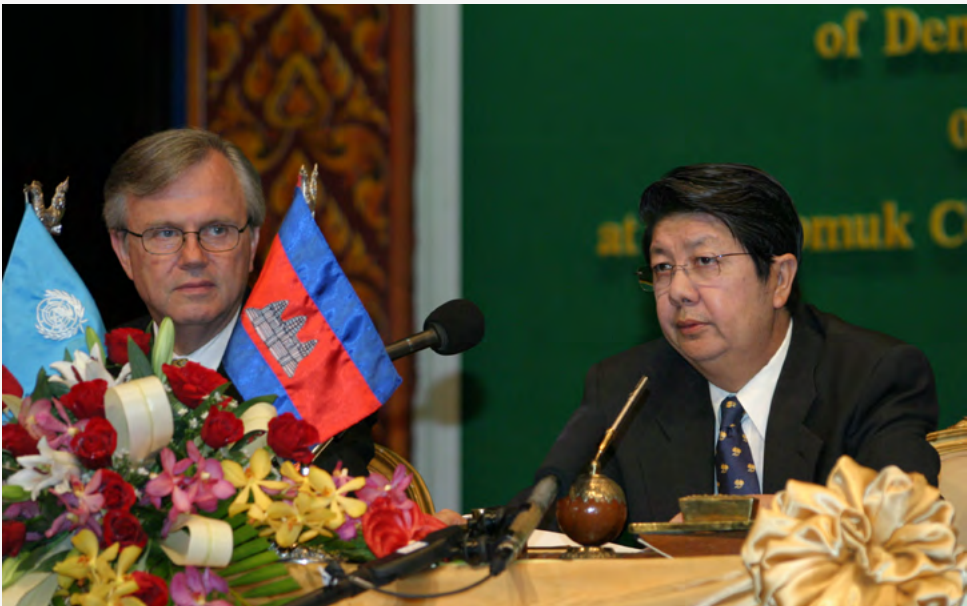


Footage by visiting Yugoslavian journalists in 1978 shows a navy (Division 164) combatant aboard a patrol boat on the Mekong. The International Co-Prosecutor's second Introductory Submission (Case 003) alleged that crimes were committed by Division 164 in the territorial waters of Democratic Kampuchea, coastal areas and sites including Kampong Som (Sihanoukville). (ECCC Archive/Doc. E3/E345.2R)



General view of the Third Committee of the UN General Assembly in session. The UNGA approved the draft UN-RGC Agreement on 13 May 2003, following the formal negotiations that began in 1999. (Photo credit: UN Audiovisual Library)

JUDICIAL MANDATE



United Nations Under-Secretary-General for Legal Affairs and Legal Counsel, Hans Corell (left), and Head of the Office of the Council of Ministers of the Kingdom of Cambodia, Sok An (right), at the signing ceremony of the UN-RGC Agreement on 6 June 2003.



Judges, Prosecutors and Investigating Judges are sworn in during a ceremony at the Royal Palace in Phnom Penh on 3 July 2006.



The ECCC's Courtroom building, located in Choam Chao on the outskirts of Phnom Penh.



The ECCC Plenary convenes in Phnom Penh in June 2007 to adopt the Internal Rules.

JUDICIAL MANDATE



Co-Investigating Judges You Bunleng (centre left) and Marcel Lemonde (centre right) announce the issuance of their Closing Order in Case 002 indicting Nuon Chea, Ieng Sary, Ieng Thirith, and Khieu Samphan at a press conference on 15 September 2010.



Members of the public - including survivors of the Khmer Rouge regime, students, monks, and foreign dignitaries - follow the pronouncement of the Case 002/02 judgment from the public gallery on 16 November 2018. More than 245,000 visitors observed proceedings between 2007 and 2022.



Defence teams for Nuon Chea, Khieu Samphan and Ieng Sary prepare for the first day of trial in Case 002 on 21 November 2011.

JUDICIAL MANDATE



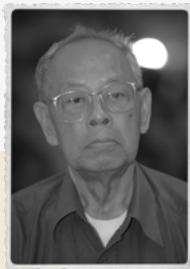


CASE 001



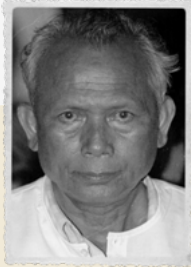
Case 001: concerned the charges against Kaing Guek Eav (alias Duch) the chairman of S-21 Security Centre in Phnom Penh.

CASE 002



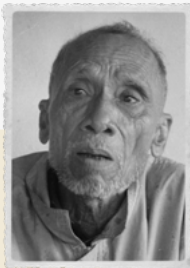
Case 002: concerned the charges against senior leaders Noun Chea, Khieu Samphan, Ieng Sary, and Ieng Thirith.

CASE 003



Case 003: concerned the charges against Meas Muth, Commander of Division 164 (the navy), and Sou Met, Commander of Division 502 (the air force), prior to his death.

CASE 004



Case 004: concerned the charges against Ao An, Im Chaem, and Yim Tith.



Civil Party Khouy Muoy testifies before the Trial Chamber in Case 002/02 on 1 March 2016 during a trial segment on the mistreatment of Vietnamese populations by the Khmer Rouge. Civil Parties and witnesses received psychosocial support at the ECCC, both inside and outside the courtroom. Here, a support person (right) from the Transcultural Psychological Organization (TPO) assists the Civil Party.

JUDICIAL MANDATE



Journalists jostle outside the courtroom to capture images of Kaing Guek Eav (alias Duch) during his appeal hearing against his provisional detention on 20 November 2007 (seen in the facing picture).



Due to the vast interest in the trials, members of the public were required to arrive early to secure a seat. Here they are ushered into the courtroom building by a security officer.



Duch stands in the dock as media capture his first public appearance in court during hearings on provisional detention on 20 November 2007.



The Pre-Trial Chamber hears submissions on the appeals against the closing orders in Case 003 on 29 November 2019. In Cases 003, 004/02 and 004, the Pre-Trial Chamber declared that the issuance of separate and opposing closing orders was illegal. The Supreme Court Chamber clarified that this finding effectively terminated the cases before the ECCC. See Chapter 5.3 for more details

JUDICIAL MANDATE



Appeal hearings in Case 002/02 were held in a hybrid format (in-person and remote) on 16-19 August 2021 due to the Covid-19 pandemic.



Nuon Chea (left) and Khieu Samphan (right) at the pronouncement of the appeal judgement in Case 002/01 on 23 November 2016. They were sentenced to life imprisonment for crimes against humanity for the forcible expulsion of the urban population from Phnom Penh in April 1975, displacements during a second phase between late 1975 and 1977, and executions of Khmer Republic officials at Tuol Po Chrey.



Khieu Samphan was transferred from the ECCC Detention Facility to Kandal Provincial Prison on 30 January 2023 to serve the remainder of his life sentence. His convictions for crimes against humanity, war crimes, and genocide against the Vietnamese population in Cambodia were overwhelmingly upheld by the Supreme Court Chamber in Case 002/02.

OUTREACH



Outreach activities at schools and villages informed Cambodians about the work of the ECCC and facilitated their understanding of its work. During the trials, the ECCC reached over 666,000 people in person. In addition to those who observed court hearings, 230,000 students joined study tours while 183,000 attended public screenings, lectures, and briefings.



Duch's statements of apology in court were screened at outreach events across the country in cooperation with Bophana Center. The Supreme Court Chamber determined that Duch's apologies carried limited weight when re-sentencing him to life imprisonment, pointing to his lack of sincerity when requesting acquittal and seeking to shift responsibility to others. (See Case 001 Appeal Judgement, para. 369)



Staff from the Victims Support Section assist victim-survivors to prepare their Civil Party Applications.



A regional forum for the Civil Parties in Case 002 held in Svay Rieng province in 2010. A unique aspect of the ECCC was the participation of victim-survivors as Civil Parties, thereby offering an opportunity to share their suffering, support the prosecutions, and request reparations.

REPARATIONS ENDORSED BY THE ECCC

Moral and collective reparations were endorsed by the ECCC, at the request of the Civil Parties, in recognition of the harm and suffering they endured under the Khmer Rouge regime.

Three main types of reparations were endorsed by the Trial Chamber: **memorialisation**, **rehabilitation**, and **guarantees of non-repetition** in the form of education and documentation.

Memorialisation



Memorialisation reparations ensure that victims' experiences and suffering are never forgotten. In this reparation, the statue entitled "For Those Who Are No Longer Here" honours evictees of Phnom Penh and other urban areas which the Khmer Rouge captured.

Rehabilitation



Victim-survivors of atrocity crimes continue to suffer physical and mental health issues years after the crimes. In Cambodia, these were especially pronounced among the elderly and ethnic minorities. The provision of psychological support constitutes one form of rehabilitative reparation. In this reparation, victim-survivors received psychological support and were provided means of establishing long-term self-help groups.

Guarantees of Non-Repetition



At the time of the trials, more than 70% of the Cambodian population had been born after the fall of the Khmer Rouge regime. Reparations were endorsed to guarantee non-repetition through educational activities and documentation initiatives. In this reparation, performing arts were deployed to educate students about Civil Party experiences and promote intergenerational dialogue.

RESIDUAL FUNCTIONS





Following the completion of judicial proceedings, the ECCC relocated to new premises in central Phnom Penh. A new Resource Centre serves as a public information point for the ECCC's work and its archives, as well as a hub for outreach and educational activities.



CASES

5. CASES

5.1. Case 001

“ The Co-Prosecutors did not exaggerate when they referred to S-21 as the ‘factory of death’. Kaing Guek Eav commanded and operated this factory of death for more than three years. He mercilessly terminated the lives of at least 12,272 individuals, including women and children. ”

Supreme Court Chamber ⁸²⁷

5.1.1. Overview of the Accused

Kaing Guek Eav alias Duch (1942-2020), born in Poev Vuey, Stoeung District, in Kampong Thom, ⁸²⁸ was charged with crimes against humanity and grave breaches of the Geneva Conventions for his role at S-21, a security centre in Phnom Penh tasked with interrogating and executing perceived opponents of the Communist Party of Kampuchea (“CPK”). S-21 included

⁸²⁷ Case 001, Appeal Judgment, 3 February 2012, F28, para. 380. The evidence in Case 001 was largely uncontested by Kaing Guek Eav (alias Duch). By contrast, Case 002/02 was contested by both Khieu Samphan and Nuon Chea, and the Trial Chamber conducted its own review of the evidence. The Chamber concluded that “at least 11,742 prisoners were executed at or in the vicinity of S-21” but that “this is a conservative minimum finding which does not account for all documentation created during S-21’s operations”. See Case 002/02, Judgment, 16 November 2018, E465, section 12.2.22.

⁸²⁸ Case 001, Judgment, 26 July 2010, E188, para. 1.

the detention centre and surrounding area as well as the execution and re-education camp branches Choeng Ek and Prey Sar (S-24).⁸²⁹

Duch was the Chairman of M-13 (a security office located in Amleang, Kampong Speu) from July 1971 to January 1975,⁸³⁰ Deputy Chairman of the S-21 Security Centre from 15 August 1975 to March 1976, and Chairman of S-21 from March 1976 until the fall of Democratic Kampuchea on 7 January 1979.⁸³¹

5.1.2. Preliminary investigation and Introductory Submission

On 10 July 2006, the Co-Prosecutors initiated a preliminary investigation into crimes that may have been committed by the senior leaders of Democratic Kampuchea and those most responsible for the crimes within the ECCC's jurisdiction that were committed between 17 April 1975 and 6 January 1979.⁸³² Following the completion of their preliminary investigation, on 18 July 2007 the Co-Prosecutors filed an Introductory Submission with the Co-Investigating Judges, opening a judicial investigation against Nuon Chea, Ieng Sary, Ieng Thirith, Khieu Samphan, and Duch.⁸³³ The case against Duch relating to “acts committed inside the framework of S-21” was later severed and became Case 001 while the crimes alleged to have been committed by all five suspects in the wider context of Democratic Kampuchea would become Case 002. The decision to sever was made because certain alleged facts required further detailed investigations, while the facts against Duch as Chairman of S-21 were uncomplicated and had not been objected to by him.⁸³⁴

5.1.3. Judicial investigation

5.1.3.1. Detention and charges

On 30 July 2007, the Co-Investigating Judges issued a warrant for Duch's arrest,⁸³⁵ and he appeared before them the following day. At this appearance, the Co-Investigating Judges informed Duch that he was charged with

⁸²⁹ Case 001, Appeal Judgment, 3 February 2012, F28, para. 2.

⁸³⁰ Case 001, Judgment, 26 July 2010, E188, para. 115.

⁸³¹ Case 001, Judgment, 26 July 2010, E188, paras 111, 119, 121, 130, 203. See also Case 002/02, Judgment, 16 November 2018, E465, paras 2135, 2148, 2157.

⁸³² Case 001, Closing Order, 8 August 2008, D99, para. 4.

⁸³³ Case 002, Closing Order, 15 September 2010, D427, para. 3.

⁸³⁴ Case 002, Separation Order, 19 September 2007, D18.

⁸³⁵ Case 001, Arrest Warrant, 30 July 2007, C5/2.

crimes against humanity and ruled on the Co-Prosecutors' request that Duch be provisionally detained.⁸³⁶

Duch's lawyer requested Duch's release on bail, stating that Duch had already been detained for more than eight years, since 10 May 1999, due to ongoing proceedings before the Military Court.⁸³⁷ The Co-Investigating Judges considered the question of whether Duch's detention in separate proceedings affected the current proceedings, including whether his detention was excessive and could prejudice his rights such that the ECCC proceedings against him should be stayed.⁸³⁸ They determined that the legality of Duch's prior detention was outside of their jurisdiction and found detention to be necessary in the context of the ECCC proceedings, therefore Duch was transferred to the ECCC Detention Centre.⁸³⁹ Although his detention was initially ordered for a period not exceeding one year,⁸⁴⁰ it was extended several times until the proceedings against him were completed.⁸⁴¹

On 2 October 2007, the Co-Investigating Judges informed Duch that in addition to crimes against humanity he would also be charged with grave breaches of the Geneva Conventions of 1949.⁸⁴² Following the completion of the judicial investigation, the Co-Prosecutors requested the Co-Investigating Judges to also charge Duch under Article 3 of the ECCC Law with the crimes of homicide and torture as defined in the 1956 Cambodian Penal Code. The Co-Investigating Judges rejected this request, considering that in the absence of any new elements, it was not necessary to re-open the investigation to lay any supplementary charges.⁸⁴³

5.1.3.2. Evidence on the case file

The evidence on the case file included 21 interviews with Duch,⁸⁴⁴ interviews with numerous witnesses including former S-21 personnel

⁸³⁶ Case 001, Order of Provisional Detention, 31 July 2007, C3.

⁸³⁷ Case 001, Order of Provisional Detention, 31 July 2007, C3, paras 1-2.

⁸³⁸ Case 001, Order of Provisional Detention, 31 July 2007, C3, para. 3.

⁸³⁹ Case 001, Order of Provisional Detention, 31 July 2007, C3, paras 20-23; Case 001, Closing Order, 8 August 2008, D99, para. 4.

⁸⁴⁰ Case 001, Order of Provisional Detention, C3, 31 July 2007, disposition.

⁸⁴¹ See Case 001, Judgment: Annex 1, 26 July 2010, E188, section 6.1.

⁸⁴² Case 001, Written Record of Interview of Duch, 2 October 2007, E3/26.

⁸⁴³ See Case 001, Order Concerning Requests for Investigative Actions, 4 June 2008, D94/I.

⁸⁴⁴ Case 001, Written Record of Interview, 23 August 2007, E3/25; Case 001, Written Record of Interview, 2 October 2007, E3/26; Case 001, Written Record of Interview, 3 October 2007, E3/2; Case 001, Written Record of Interview, 29 November 2007, E3/17; Case 001, Written Record of Interview, 21 January 2008, E3/11; Case 001, Written

and detainees, records of two crime scene reconstructions (at S-21 and Choeng Ek, also known as the “Killing Fields”),⁸⁴⁵ and various documents placed on the case file by the Co-Investigating Judges, the Co-Prosecutors, and Duch, in addition to the documents filed by the Co-Prosecutors with their Introductory Submission.⁸⁴⁶

5.1.3.3. Final Submission

On 15 May 2008, the Co-Investigating Judges concluded their investigation,⁸⁴⁷ and on 23 June 2008 they forwarded the case file to the Co-Prosecutors for their Final Submission.⁸⁴⁸ The Co-Prosecutors’ Final Submission requested the Co-Investigating Judges to indict Duch for crimes against humanity, grave breaches of the Geneva Conventions, and violations of the 1956 Cambodian Penal Code.⁸⁴⁹

Duch responded that his full cooperation and acknowledgement of his responsibility were not mentioned, and that the Final Submission included facts that were not established during the investigation, including facts based on documents and “testimonies” not subject to adversarial debate. He disputed that S-21 was at the top of the hierarchical system of security offices, S-21’s active participation in arrests, his personal involvement in interrogations and torture, that he decided on executions, and that he had full knowledge of what was happening throughout the country. Duch further argued that there was a climate of terror at S-21, that he could not elude his duties or escape, and that his main task was reading and annotating confessions.⁸⁵⁰

Record of Interview, 24 January 2008, E3/437; Case 001, Written Record of Interview, 27 March 2008, E3/380; Case 001, Written Record of Interview, 28 March 2008, E3/225; Case 001, Written Record of Interview, 1 April 2008, E3/5; Case 001, Written Record of Interview, 2 April 2008, E3/217; Case 001, Written Record of Interview, 29 April 2008, E3/3.

⁸⁴⁵ See for example Case 001, Report of Crime Scene Reenactment at Tuol Sleng on 27 February 2008, 11 April 2008, E3/244; Case 001, Report of Crime Scene Reenactment at Tuol Sleng on 27 February 2008, 11 April 2008, E3/245; Case 001, Report of Crime Scene Reenactment at Tuol Sleng on 27 February 2008, 11 April 2008, E3/246; Case 001, Report of Crime Scene Reenactment at Cheung Ek on 26 February 2008, 11 April 2008, E3/242.

⁸⁴⁶ See Case 001, Closing Order, 8 August 2008, D99, para. 9.

⁸⁴⁷ Case 001, Notice of Conclusion of Judicial Investigation, 15 May 2008, D89.

⁸⁴⁸ Case 001, Forwarding Order, 23 June 2008, D95.

⁸⁴⁹ Case 001, Final Submission, 18 July 2008, D96.

⁸⁵⁰ Case 001, Response to Final Submission, 24 July 2008, D96/1.

5.1.3.4. Closing Order

The Co-Investigating Judges issued a Closing Order on 8 August 2008, indicting Duch for crimes against humanity and grave breaches of the Geneva Conventions.⁸⁵¹

- i. **Part I** of the Closing Order contains a summary of the facts, discussing the historical and political background that led to the establishment of S-21, its establishment, the implementation of CPK policy at S-21, and the functioning of S-21.

- ii. **Part II** discusses the legal characterisation of the facts, with the Co-Investigating Judges' finding that while Duch was not a senior leader, he "may be considered in the category of most responsible for crimes and serious violations [...] due both to his formal and effective hierarchical authority and his personal participation as Deputy Secretary [and] then Secretary of S21".⁸⁵² The Co-Investigating Judges found that the crimes against humanity of imprisonment, enslavement, torture, rape, murder, extermination, persecution, and other inhumane acts and the grave breaches of the Geneva Conventions of unlawful confinement of a civilian, wilfully depriving rights to a fair trial, wilfully causing great suffering, torture and inhumane treatment, and wilful killing had all occurred, and that Duch was personally liable for committing the crimes, and liable through instigating, ordering, aiding and abetting, and command responsibility. The Closing Order made no reference to the form of liability known as joint criminal enterprise ("JCE") or any form of commission by co-perpetration. The Co-Investigating Judges stated that although certain acts could also constitute the national crimes of homicide and torture, they would not indict Duch for national crimes, as "these acts must be accorded the highest available legal classification, in this case: Crimes against Humanity or Grave Breaches of the Geneva Conventions of 1949".⁸⁵³

⁸⁵¹ Case 001, Closing Order, 8 August 2008, D99.

⁸⁵² Case 001, Closing Order, 8 August 2008, D99, para. 129.

⁸⁵³ Case 001, Closing Order, 8 August 2008, D99, para. 152.

- iii. **Part III** discusses Duch’s background and personal, professional, and political evolution, his acknowledgement of responsibility, and the results of his psychological evaluation. The Co-Investigating Judges made clear that Duch had consistently recognised his responsibility for the crimes committed at S-21 under his command and that he had willingly cooperated in the judicial investigation. They also found that he tried to escape S-21 but never succeeded and was unable to, due to constant surveillance.

5.1.4. Pre-Trial Chamber proceedings

5.1.4.1. Appeal against the Closing Order

The Co-Prosecutors appealed the Closing Order, submitting that:

- The Co-Investigating Judges failed to charge certain national crimes and the mode of liability of JCE, and that accordingly the “totality of Duch’s alleged criminality” was not reflected
- National crimes were not only established by the findings in the Closing Order, but that failure to include them in the Indictment along with international crimes could result in Duch’s full acquittal if the international crimes had not been proved at trial
- JCE was a widely accepted mode of liability; the Indictment was unduly narrow without this mode of liability; and that, as a result, Duch might not be held fully accountable for his actions.⁸⁵⁴

Duch responded that the Co-Prosecutors relied on an erroneous interpretation of the applicable rules of procedure before the ECCC and that the Co-Investigating Judges did not commit an error of law by not indicting him for national crimes and via JCE.⁸⁵⁵

On 23 and 25 September 2008, the Pre-Trial Chamber extended invitations to three selected *amici curiae* to submit written briefs on:

- The development of the theory of joint criminal enterprise and the evolution of the definition of that mode of liability, with specific reference to the time period 1975-1979

⁸⁵⁴ Case 001, OCP Closing Order Appeal, 5 September 2008, D99/3/3.

⁸⁵⁵ Case 001, Response to OCP Closing Order Appeal, 16 September 2008, D99/3/8.

- Whether joint criminal enterprise as a mode of liability could be applied before the ECCC, considering that the crimes were committed in 1975-1979.⁸⁵⁶

The three *amici curiae* each submitted briefs as requested. Professor Antonio Cassese and other members of the *Journal of International Criminal Justice* submitted that JCE liability in each of its three categories existed in customary international law by 1975 and could be applied at the ECCC.⁸⁵⁷ McGill University submitted that liability for some form of common plan existed in international law since at least 1945, JCE liability could be applied at the ECCC, and that “in particular, its third, extended form can be defined in a manner that does not infringe on the rights of defendants”.⁸⁵⁸ Professor Dr Kai Ambos submitted that only JCE I existed in customary international law unambiguously by 1975 and could be applied as a form of commission, and that JCE II existed and could be applied if construed as a subcategory of JCE I, but application of JCE III would conflict with the principle of culpability.⁸⁵⁹

Duch and two Civil Party lawyers responded to the *amicus curiae* briefs,⁸⁶⁰ while the Co-Prosecutors did not.

5.1.4.2. Pre-Trial Chamber’s decision on appeal against the Closing Order

The Pre-Trial Chamber partially granted the Co-Prosecutors’ first ground of appeal, finding that the national crimes of torture and premeditated murder as defined by the 1956 Cambodian Penal Code should be added to the Closing Order.⁸⁶¹ However, it dismissed the Co-Prosecutors’ second

⁸⁵⁶ Case 001, Invitation to *Amicus Curiae*, 25 September 2008, [D99/3/12](#); Invitation to *Amicus Curiae*, 25 September 2008, [D99/3/13](#); Invitation to *Amicus Curiae*, 25 September 2008, [D99/3/14](#).

⁸⁵⁷ Case 001, *Amicus Curiae* Brief of Professor Antonio Cassese and Members of the *Journal of International Criminal Justice* on Joint Criminal Enterprise Doctrine, 27 October 2008, [D99/3/24](#), paras 20-21.

⁸⁵⁸ Case 001, *Amicus Curiae* Brief Submitted by the Centre for Human Rights and Legal Pluralism, McGill University, 27 October 2008, [D99/3/25](#), paras 7-8.

⁸⁵⁹ *Amicus Curiae* [of Professor Dr Kai Ambos] Concerning Criminal Case File No. 001/18-07-2007-ECCC/OCLI(PTC02), 27 October 2008, [D99/3/27](#), paras 2-4.

⁸⁶⁰ Case 001, Response of Foreign Co-Lawyer [Silke Studzinsky] for the Civil Parties to the *Amicus Curiae* Briefs, 17 November 2008, [D99/3/32](#); Case 001, Response [of Martine Jacquin and Philippe Canonne] to the Submissions of *Amicus Curiae*, 17 November 2008, [D99/3/33](#); Case 001, Réponse de la Défense aux Mémoires d’*Amicus Curiae*, 25 November 2008, [D99/3/37](#). Requests to make submissions on the topic were also received from certain other Charged Persons in Case 002, but these requests were denied. See Case 001, Decision on Closing Order Appeal, 5 December 2008, [D99/3/42](#), paras 18-19.

⁸⁶¹ Case 001, Decision on Closing Order Appeal, 5 December 2008, [D99/3/42](#).

ground of appeal, finding that the Co-Investigating Judges had not erred in failing to include JCE as a form of responsibility in the Closing Order.⁸⁶²

In considering the first ground of appeal, the Pre-Trial Chamber found that the Co-Investigating Judges did not comply with the Internal Rules or international standards when they failed to give reasons why they considered international offences to constitute a higher legal classification than domestic offences.⁸⁶³ The Pre-Trial Chamber considered the definitions of the national and international crimes to determine whether the national crimes contained constitutive elements not included in the international crimes.⁸⁶⁴ It found that the crimes were distinct and that the national crimes of torture and premeditated murder (rather than homicide, as requested by the Co-Prosecutors) were not subsumed by the international crimes.⁸⁶⁵ It further found that including more than one legal offence in relation to the same acts does not “inherently threaten the *ne bis in idem* principle because it does not involve the actual assignment of liability or punishment”.⁸⁶⁶ Finding a sufficient factual basis to indict Duch for torture and premeditated murder under the 1956 Cambodian Penal Code, the Pre-Trial Chamber added the crimes to the Closing Order.⁸⁶⁷

Concerning the second ground of appeal, the Pre-Trial Chamber found that the Co-Investigating Judges had failed to reason why the proposal to include the allegation of a JCE was rejected and had failed to explain their chosen characterisation of the facts. Thus, the Pre-Trial Chamber itself conducted an examination of the investigative proceedings in Case 001.⁸⁶⁸

The Pre-Trial Chamber noted that the JCE in which Duch and others were allegedly involved was within the separated case file of Case 002.⁸⁶⁹ As there was no Supplementary Submission concerning a JCE occurring within S-21, and no request for further investigation into this form of liability had been initiated in Case 001, the Pre-Trial Chamber considered that JCE liability was not specifically part of the investigation.⁸⁷⁰

⁸⁶² Case 001, Decision on Closing Order Appeal, D99/3/42, disposition.

⁸⁶³ Case 001, Decision on Closing Order Appeal, D99/3/42, paras 56-57.

⁸⁶⁴ Case 001, Decision on Closing Order Appeal, D99/3/42, paras 50-84.

⁸⁶⁵ Case 001, Decision on Closing Order Appeal, D99/3/42, para. 85.

⁸⁶⁶ Case 001, Decision on Closing Order Appeal, D99/3/42, para. 88.

⁸⁶⁷ Case 001, Decision on Closing Order Appeal, D99/3/42, paras 99, 103, 105-107.

⁸⁶⁸ Case 001, Decision on Closing Order Appeal, D99/3/42, paras 115-116.

⁸⁶⁹ Case 001, Decision on Closing Order Appeal, D99/3/42, para. 123.

⁸⁷⁰ Case 001, Decision on Closing Order Appeal, D99/3/42, para. 125.

Nevertheless, the Pre-Trial Chamber considered whether an S-21 JCE formed part of the factual basis for the investigation despite the absence of a Supplementary Submission. It found that while some of the elements of JCE liability could be considered to have formed part of the investigation, other elements of the three forms of JCE were not investigated. Considering that it was thus not a mere question of characterisation as asserted by the Co-Prosecutors, it found that the factual basis was not sufficient to allow a characterisation under JCE.⁸⁷¹ Further, Duch was not informed of the allegation related to his participation in the S-21 JCE prior to the Final Submission, as was required to protect his right to be informed of the charges.⁸⁷² In view of its reasoning, the Pre-Trial Chamber did not consider it necessary to determine the customary international law status of JCE in 1975 or its applicability at the ECCC generally.⁸⁷³

The Pre-Trial Chamber amended the Closing Order to include premeditated murder and torture and ordered Duch's continued provisional detention.⁸⁷⁴

5.1.5. Trial Chamber proceedings

5.1.5.1. Initial hearing

The initial hearing took place on 17 and 18 February 2009.⁸⁷⁵ The Trial Chamber first discussed a preliminary objection by Duch with regards to the applicability of statutory limitations to national crimes.⁸⁷⁶ It considered the preliminary objection to be admissible but decided to determine the objection at the same time as its Judgment on the substance of the case, as requested by Duch.⁸⁷⁷

Next, the Co-Prosecutors indicated that they would, during the proceedings, invite the Trial Chamber to consider the applicability of the concept of JCE, asserting that they considered that the Pre-Trial Chamber erred and that JCE I and II would allow the Trial Chamber to consider the full breadth of Duch's culpable liability. The Defence stated that it intended to raise the illegality of Duch's continued preliminary detention.⁸⁷⁸

⁸⁷¹ Case 001, Decision on Closing Order Appeal, D99/3/42, paras 131-137.

⁸⁷² Case 001, Decision on Closing Order Appeal, D99/3/42, paras 138-142.

⁸⁷³ Case 001, Decision on Closing Order Appeal, D99/3/42, para. 142.

⁸⁷⁴ Case 001, Decision on Closing Order Appeal, D99/3/42, disposition.

⁸⁷⁵ Case 001, T. 17 February 2009, E1/3.1; Case 001, T. 18 February 2009, E1/4.2.

⁸⁷⁶ Case 001, T. 17 February 2009, E1/3.1, p. 7 (En).

⁸⁷⁷ Case 001, T. 17 February 2009, E1/3.1, pp. 7-8 (En).

⁸⁷⁸ Case 001, T. 17 February 2009, E1/3.1, pp. 9-11 (En).

The rest of the initial hearing dealt with the admissibility of certain Civil Party applications, lists of new documents and exhibits proposed by the parties, witnesses and experts to be heard at trial, and Civil Party participation in the trial.⁸⁷⁹

5.1.5.2. Substantive hearing

On 30 March 2009, the substantive hearing commenced.⁸⁸⁰ The trial was segmented into the following topics: (1) issues relating to M-13; (2) establishment of S-21 and the Takhmao prison; (3) implementation of CPK policy at S-21; (4) armed conflict; (5) functioning of S-21 including Choeung Ek; (6) establishment and functioning of Prey Sar (S-24); and (7) issues relating to Duch's character.⁸⁸¹

5.1.5.2.1. Agreed and contentious facts

The Co-Prosecutors and Defence sought to agree on certain facts prior to the substantive hearing, following directions from the Trial Chamber. The Co-Prosecutors had provided a list of 351 facts to the Defence for review and agreement, which had not yet been agreed upon at the time of the initial hearing, but to which the Defence indicated it would respond before the substantive hearing.⁸⁸²

During the substantive hearing, on 31 March 2009, the Co-Prosecutors and Defence made submissions on the agreed facts. Duch agreed to 157 of the 351 facts, while 81 factual allegations were “not disputed”. Duch disagreed with 21 factual allegations. Thus, 238 of the 351 facts would not be contested by Duch during trial.⁸⁸³ Duch filed a document⁸⁸⁴ setting out all the facts with which he agreed and did not agree, and on 1 April 2009, the Defence read out the agreed or “not disputed” facts during the hearing.⁸⁸⁵

⁸⁷⁹ See Case 001, T. 17 February 2009, E1/3.1, p. 2 (En).

⁸⁸⁰ Case 001, T. 30 March 2009, E1/5.1.

⁸⁸¹ Case 001, Order Scheduling the Start of the Substantive Hearing and Sitting Days for the First Three Months, 23 February 2009, E15, para. 9.1.

⁸⁸² See Case 001, T. 17 February 2009, E1/3.1, pp. 15-17 (En).

⁸⁸³ Case 001, T. 31 March 2009, E1/6.1, p. 95 (En).

⁸⁸⁴ Case 001, Defence Position on the Facts Contained in the Closing Order, 30 January 2009, E5/11/6.1.

⁸⁸⁵ Case 001, T. 1 April 2009, E1/7.1.

5.1.5.2.2. Civil Parties

The Office of the Co-Investigating Judges received 28 Civil Party applications during the investigation phase and 66 individuals applied during the trial stage, prior to a 2 February 2009 deadline. Four of these applications were subsequently withdrawn or rejected; therefore 93 Civil Parties participated in the Case 001 trial proceedings. The Civil Parties were organised into four groups, each group represented by their own counsel.⁸⁸⁶

The modalities concerning Civil Party participation in the proceedings were initially unclear.⁸⁸⁷ On the fiftieth day of trial, the Trial Chamber provided guidance on the Civil Parties' questioning of the Accused. It stated that the Civil Parties could use all of their time allocated for questioning a witness to instead question Duch if they wished, but there would be no additional time granted for such questioning and remaining questions for Duch that could not be asked within the allotted time period would not be permitted, considering the need to ensure the trial be fair and expeditious.⁸⁸⁸ During that hearing, the Civil Party Co-Lawyers noted that they had reached an agreement that, in the interest of time, only one Co-Lawyer would question each testifying Civil Party.⁸⁸⁹

A month later, debate arose on whether the Civil Parties should be permitted to question Duch, witnesses, and experts regarding Duch's character. The Co-Lawyers for the various Civil Party groups requested the Chamber to recognise their right as parties to put questions to the witnesses who would be testifying on Duch's character, while the Defence argued that since the Civil Parties have no right to make submissions on sentencing or legal matters related to sentencing, there was no point for them to put questions regarding Duch's character.⁸⁹⁰ The Chamber, Judge Jean-Marc Lavergne partly dissenting, decided that Civil Parties would not be allowed to ask questions relevant to character.⁸⁹¹ 28 Civil Parties submitted a letter

⁸⁸⁶ Case 001, Judgment, 26 July 2010, [Ei88](#), Annex I: Procedural History, para. 11. The number of Civil Parties participating in Case 001 was reviewed on appeal. See below, section 5.1.6.2. Appeal Judgment (vi).

⁸⁸⁷ See discussion at the initial hearing: Case 001, T. 18 February 2009, [Ei/4.1](#), pp. 8-19 (En). See also discussion at a trial management meeting: Case 001, T. 11 June 2009, [Ei/31.1](#), pp. 107-110 (En). See also discussion during the trial: Case 001, T. 22 June 2009, [Ei/35.1](#), pp. 91-97 (En).

⁸⁸⁸ Case 001, T. 27 July 2009, [Ei/54.1](#), pp. 27-31 (En).

⁸⁸⁹ Case 001, T. 27 July 2009, [Ei/54.1](#), p. 37 (En).

⁸⁹⁰ Case 001, T. 27 August 2009, [Ei/70.1](#), pp. 51-64 (En).

⁸⁹¹ Case 001, T. 27 August 2009, [Ei/70.1](#), p. 74 (En). Case 001, Decision on Civil Party Co-Lawyers' Joint Request for a Ruling on the Standing of Civil Party Lawyers to Make Submissions on Sentencing and Directions Concerning the Questioning of the Accused, Experts and Witnesses Testifying on Character, 9 October 2009, [E72/3](#).

of concern to the Chamber did not participate in proceedings for a week.⁸⁹² In addition, the lawyers for Civil Party Groups 2 and 3 seized the Supreme Court Chamber with an appeal against the Trial Chambers's decision, which was rejected as inadmissible.⁸⁹³

Discussions concerning issues regarding the role and representation of Civil Parties ultimately led to the Internal Rules being amended in the 7th Plenary Session, in advance of Case 002, however none of the amendments which were adopted applied to Case 001.⁸⁹⁴

5.1.5.2.3. Statements by the Accused

Duch addressed the Chamber nearly every day of the substantive proceedings. Out of 78 hearing days, he spoke during 65 of them.⁸⁹⁵

On the last day of the substantive hearing, Duch was asked to provide his final statement. He reiterated his cooperation with the ECCC, including answering all of the questions put to him.⁸⁹⁶ He acknowledged the suffering of those who died during the Khmer Rouge regime and apologised for the crimes committed by the CPK, noting that he was a member of the CPK.⁸⁹⁷ He confirmed his responsibility for the crimes at S-21 without any denial.⁸⁹⁸ He then concluded as follows:

Personally, I never challenged the crimes at S-21 and the reason that I had been detained from the 8th of May 1999 until now, it has been 10 years already – 10 years, six months, 18 days. So during this course of my detention I had been co-operating with the Chamber and I do not really challenge such detention as illegal. I will leave it to the Court to decide. So I would ask the Chamber to release me.⁸⁹⁹

⁸⁹² Case 001, Letter of Civil Parties in Case 001 to the President of Trial Chamber, 30 August 2009, E166.1.

⁸⁹³ Case 001, Decision on the Appeals Filed by Lawyers for Civil Parties (Groups 2 and 3) Against the Trial Chamber's Oral Decisions of 27 August 2009, 24 December 2009, E169/1/2, p. 4 (En).

⁸⁹⁴ For further information of the amendments to the Internal Rules, see Chapter 4.4.3. Civil Party Lawyers and Civil Party Lead Co-Lawyers Section.

⁸⁹⁵ See all transcripts in chronological order from Case 001, T. 30 March 2009, E1/5.1 to Case 001, T. 17 September 2009, E1/77.1. Duch did not address the Trial Chamber on the following dates: 17 February 2009, 18 February 2009, 19 May 2009, 20 May 2009, 21 May 2009, 2 May 2009, 29 June 2009, 21 July 2009, 23 November 2009, 24 November 2009.

⁸⁹⁶ Case 001, T. 27 November 2009, E1/82.1, pp. 53-55 (En).

⁸⁹⁷ Case 001, T. 27 November 2009, E1/82.1, pp. 55-56 (En).

⁸⁹⁸ Case 001, T. 27 November 2009, E1/82.1, p. 56 (En).

⁸⁹⁹ Case 001, T. 27 November 2009, E1/82.1, p. 59 (En).

The President of the Chamber asked whether Duch sought acquittal of the charges or a reduction in sentence based on his cooperation and length of detention.⁹⁰⁰ Duch referred the question to his National Co-Lawyer, who stated that the request to be released was based on the fact that Duch was not a senior leader and was not among those most responsible since he acted under the CPK's orders.⁹⁰¹

Judge Silvia Cartwright then asked whether this meant Duch sought an acquittal and Duch's National Co-Lawyer confirmed that he did.⁹⁰² This contrasted with an earlier statement made that day by Duch's International Co-Lawyer, who stated that Duch did not seek acquittal but requested his sentence to be reduced such that he could be freed following the Judgment.⁹⁰³

5.1.5.3. Dismissal of International Co-Lawyer

On 30 June 2010, a few weeks before the pronouncement of the Trial Judgment, the Chief of the Defence Support Section ("DSS") announced that he had received a request from Duch to withdraw his International Co-Lawyer due to a loss of confidence in his representation.⁹⁰⁴ This request was granted and the withdrawal was notified to the Trial Chamber on 5 July 2010.⁹⁰⁵ Duch's International Co-Lawyer was replaced by a National Co-Lawyer in August 2010.⁹⁰⁶

5.1.5.4. Trial Judgment

On 26 July 2010, the Trial Chamber pronounced⁹⁰⁷ and issued the Case 001 Trial Judgment, convicting Duch of crimes against humanity and grave breaches of the Geneva Conventions.⁹⁰⁸ The Trial Judgment is 409 pages in Khmer, 246 pages in English, and 289 pages in French, excluding its annexes. It is divided into five chapters:

- i. **Chapter 1** is the introduction, which discusses the establishment of the ECCC, a brief procedural overview of the case, the charges

⁹⁰⁰ Case 001, T. 27 November 2009, E1/82.1, p. 60 (En).

⁹⁰¹ Case 001, T. 27 November 2009, E1/82.1, pp. 60-62 (En).

⁹⁰² Case 001, T. 27 November 2009, E1/82.1, p. 62 (En).

⁹⁰³ Case 001, T. 27 November 2009, E1/82.1, p. 52 (En).

⁹⁰⁴ Case 001, Re: Request by Mr Kaing to Withdraw Co-Lawyer Francois Roux, 5 July 2010, E186.

⁹⁰⁵ Case 001, Notification of Withdrawal of Designation of Co-Lawyer, 9 July 2010, E186/1.

⁹⁰⁶ Case 001, Re: Kaing Guek Eav: Permanent Assignment of Kang Ritheary, 5 August 2010, E189.1.

⁹⁰⁷ Case 001, T. 26 July 2010, E1/83.1.

⁹⁰⁸ Case 002/02, T. 16 November 2018, E1/529.1.

against Duch, the Trial Chamber’s subject matter, temporal, and territorial jurisdiction, the principle of legality, and the Internal Rules and evidentiary principles. Concerning personal jurisdiction, the Trial Chamber noted that “[n]o preliminary objection to the jurisdiction of the ECCC as such was raised at the initial hearing” but that in his closing statement, Duch had made extensive submissions alleging the Chamber’s lack of jurisdiction.⁹⁰⁹ It stated that it did “not consider these belated submissions to constitute a preliminary objection” and did not further analyse the issue of personal jurisdiction.⁹¹⁰

- ii. **Chapter 2** sets out the Trial Chamber’s factual and legal findings. It covers the historical context and armed conflict, overview of the DK period, S-2,¹ and Duch’s role, facts relevant to crimes against humanity committed at S-21, the applicable law and findings on crimes against humanity, the applicable law and findings on grave breaches of the Geneva Conventions, and Duch’s individual criminal responsibility. In the subsection on individual criminal responsibility, the Trial Chamber discusses the concept of JCE and whether it was, on the one hand, applicable before the ECCC, and on the other, applicable in the context of Case 001,⁹¹¹ as argued by the Co-Prosecutors during trial.⁹¹² The Trial Chamber found that, as a preliminary matter, it was not bound by the legal characterisations adopted by the Co-Investigating Judges or the Pre-Trial Chamber.⁹¹³ It then discussed the notion of JCE, concluding that the notion of JCE was included in Article 29 of the ECCC Law,⁹¹⁴ and determined that JCE was part of customary international law during 1975-1979.⁹¹⁵ The Trial Chamber analysed the development and events at S-21 in the context of JCE and found, as a result, that Duch participated in a systemic JCE at S-21, and thus bore individual criminal responsibility via JCE for crimes against humanity and grave breaches of the Geneva Conventions.⁹¹⁶ The Trial Chamber also found that Duch

⁹⁰⁹ Case 001, Judgment, 26 July 2010, [Ei88](#), para. 14.

⁹¹⁰ Case 001, Judgment, 26 July 2010, [Ei88](#), para. 15.

⁹¹¹ Case 001, Judgment, 26 July 2010, [Ei88](#), section. 2.7.1.3.

⁹¹² Case 001, Co-Prosecutors’ Request for the Application of Joint Criminal Enterprise, 8 June 2009, [E73](#). See also Case 001, Defence Response to the Co-Prosecutors’ Request for the Application of the Joint Criminal Enterprise Theory in the Present Case, 17 September 2009, [E73/2](#). The Trial Chamber had indicated during trial that it would address the matter in the Trial Judgment. Case 001, T. 29 June 2009, [Ei/39.1](#), p. 8 (En).

⁹¹³ Case 001, Judgment, 26 July 2010, [Ei88](#), para. 492.

⁹¹⁴ Case 001, Judgment, 26 July 2010, [Ei88](#), para. 511.

⁹¹⁵ Case 001, Judgment, 26 July 2010, [Ei88](#), para. 512.

⁹¹⁶ Case 001, Judgment, 26 July 2010, [Ei88](#), paras 512-516.

was responsible for planning, instigating, ordering, and aiding and abetting the crimes for which he was convicted, and that he was responsible for these crimes as a superior.⁹¹⁷ The Chamber noted that the establishment of these additional modes of liability would not result in cumulative convictions but could assist in the sentencing stage, in confirming the full extent of Duch's responsibility.⁹¹⁸ Concerning cumulative convictions, the Trial Chamber found that a conviction for persecution as a crime against humanity necessarily includes proof of the other crimes against humanity on which the crime of persecution was based (*i.e.*, murder or other inhumane acts). Thus, it found that those offences were subsumed within the crime of persecution, and a conviction for persecution cannot be cumulated with other convictions as crimes against humanity if both such convictions are based on the same criminal conduct.⁹¹⁹

- iii. **Chapter 3** discusses sentencing. Duch was sentenced to 35 years in prison,⁹²⁰ Judge Lavergne dissenting. However, the Trial Chamber unanimously found that a reduction in the sentence of five years was appropriate as a result of the violation of Duch's rights due to his illegal detention by the Cambodian Military Court between 10 May 1999 and 30 July 2007.⁹²¹ He was also entitled to credit for the entirety of the time he spent in detention from 10 May 1999 until the date the Trial Judgment became final; *i.e.*, 11 years, 2 months, 17 days at that time.⁹²²

- iv. **Chapter 4** discusses Civil Party reparations. The Trial Chamber first assessed the Civil Party applications, reversing the Civil Party status of certain individuals,⁹²³ With regard to the Civil Parties who claimed to be survivors of crimes committed at S-21 and S-24, the Chamber rejected four applications on the basis that they did not demonstrate, to the required standard, that they were detained and mistreated in either security centre.⁹²⁴ The Chamber also rejected the applications of 19 Civil Parties who did not establish, to

⁹¹⁷ Case 001, Judgment, 26 July 2010, [Ei88](#), paras 518-549.

⁹¹⁸ Case 001, Judgment, 26 July 2010, [Ei88](#), para. 517.

⁹¹⁹ Case 001, Judgment, 26 July 2010, [Ei88](#), para. 565.

⁹²⁰ Case 001, Judgment, 26 July 2010, [Ei88](#), paras 677, 679.

⁹²¹ Case 001, Judgment, 26 July 2010, [Ei88](#), para. 680.

⁹²² Case 001, Judgment, 26 July 2010, [Ei88](#), para. 681.

⁹²³ Case 001, Judgment, 26 July 2010, [Ei88](#), paras 639-650.

⁹²⁴ Case 001, Judgment, 26 July 2010, [Ei88](#), para. 647.

the required standard, the existence of immediate victims or their kinship to those victims.⁹²⁵ Subsequently, the Chamber evaluated the claims for reparations.⁹²⁶ It noted that it was “constrained in its task by the requests before it and type of reparations permitted under its Internal Rules”.⁹²⁷ It pointed out that it had no jurisdiction over Cambodian or other national authorities or international bodies, nor could it impose obligations on or grant rights to persons or entities that were not parties to the proceedings before it.⁹²⁸ Thus, within the confines of permissibility, the Trial Chamber agreed to compile all statements of apology and acknowledgements of responsibility made by the Accused during the course of the trial and to post this compilation on the ECCC’s official website within 14 days of the Trial Judgment becoming final.⁹²⁹ It also agreed to include the names of the Civil Parties and their relatives who died at S-21 in the Judgment.⁹³⁰ However, the Trial Chamber rejected all other requests for either being outside the scope of the ECCC and its Internal Rules, for lack of specificity, or because they could not provide the basis of an enforceable order.⁹³¹

- v. **Chapter 5** sets out the disposition. Duch was found guilty of the crime against humanity of persecution on political grounds, which the Trial Chamber found subsumed the crimes against humanity of extermination (encompassing murder), enslavement, imprisonment, torture (including one instance of rape), and other inhumane acts. Duch was also found guilty of the following grave breaches of the Geneva Conventions: wilful killing, torture, and inhumane treatment, wilfully causing great suffering or serious injury to body or health, wilfully depriving a prisoner of war or civilian of the rights of fair and regular trial, and unlawful confinement of a civilian.

Judge Jean-Marc Lavergne issued a separate and dissenting opinion to the Trial Judgment with respect to the sentence imposed.⁹³² He considered

⁹²⁵ Case 001, Judgment, 26 July 2010, E188, paras 648-649.

⁹²⁶ Case 001, Judgment, 26 July 2010, E188, paras 651-675.

⁹²⁷ Case 001, Judgment, 26 July 2010, E188, para. 662.

⁹²⁸ Case 001, Judgment, 26 July 2010, E188, para. 663.

⁹²⁹ Case 001, Judgment, 26 July 2010, E188, paras 667-668, 682-683. See also Case 001, Appeal Judgment, 3 February 2012, F28, para. 8.

⁹³⁰ Case 001, Judgment, 26 July 2010, E188, para. 667.

⁹³¹ Case 001, Judgment, 26 July 2010, E188, paras 668-675.

⁹³² Case 001, Separate and Dissenting Opinion of Judge Jean-Marc Lavergne on Sentence, 26 July 2010, E188.1.

that a 35-year sentence was contrary to the sentencing standards found in international criminal law and Cambodian law, both of which provided that any sentence above 30 years is a life sentence. A sentence of 35 years was thus not permitted by the applicable laws. Moreover, he considered that “doubt must be resolved in favour of the accused”, and that “Rule 21(1) of the Internal Rules also provides that the ECCC Law and the Internal Rules must be interpreted so as to safeguard the interests of the accused”. As a result, he considered that the Trial Chamber should have sentenced Duch to 30 years of imprisonment.⁹³³

5.1.5.5. Trial Chamber decision regarding national crimes

The Trial Judgment did not discuss Duch’s preliminary objection concerning whether Article 3 (new) could be applied despite the existence of a statute of limitations, and did not convict Duch for the premeditated murder or torture charged in the Closing Order as amended by the Pre-Trial Chamber.⁹³⁴ Instead, the Trial Chamber issued a separate decision addressing this matter on the same day it issued the Judgment. The Trial Chamber noted that the Pre-Trial Chamber, in adding the charges of premeditated murder and torture to the Closing Order, did not consider the impact of the limitation period on the ECCC’s capacity to prosecute those crimes, and thus determined that it would need to decide: (1) whether the 10-year limitation period in the 1956 Cambodian Penal Code had been interrupted or suspended, and, if so, during which periods; and (2) whether extension of the limitation period is consistent with national and international standards; and if the limitation period had already expired prior to its “extension” by Article 3 (new), whether the Chamber could interpret Article 3 (new) as reinstating the right to prosecute these domestic crimes.⁹³⁵

The Trial Chamber found that between 1975-1979 there was no legal or judicial system in Cambodia and accordingly no criminal investigations or prosecutions were possible during that time, so the limitation period did not commence during those dates. However, the Chamber was unable to agree whether the applicable limitation period was suspended or interrupted

The scope of Judge Lavergne’s dissent did not concern the Judgment’s assessment of Duch’s culpability, the nature of the crimes committed, or the applicable aggravating or mitigating circumstances: “[T]he majority of the Chamber and I all agree that [sic] in this instance”.

⁹³³ Case 001, Separate and Dissenting Opinion of Judge Jean-Marc Lavergne on Sentence, 26 July 2010, [Ei88.1](#), paras 2-4, 8-9.

⁹³⁴ See Case 001, Judgment, 26 July 2010, [Ei88](#), para. 678.

⁹³⁵ Case 001, Decision on the Defence Preliminary Objection, 26 July 2010, [Ei87](#), para. 8.

between 1979 and 1993 and thus whether the period had extinguished by the time Article 3 and Article 3 (new) were promulgated.⁹³⁶ The National Judges considered that the limitation period started to run at the earliest on 24 September 1993 when the Kingdom of Cambodia was founded,⁹³⁷ while the International Judges considered that although judicial capacity was weakened following the DK regime, there was no proof to the requisite standard of the incapacity of the legal system to undertake investigations and prosecutions in the aftermath of the DK regime.⁹³⁸ The National Judges considered that Article 3 and Article 3 (new) could validly extend the statute of limitations,⁹³⁹ while the International Judges could not reach a similar conclusion.⁹⁴⁰ The absence of the required supermajority vote of four judges on this issue meant that the Trial Chamber was unable to consider Duch's guilt or innocence with respect to the domestic crimes of premeditated murder or torture.⁹⁴¹ However, the International Judges pointed out that this "had no impact on the Chamber's evaluation of the totality of the Accused's criminal culpability, or on the sentence ultimately imposed".⁹⁴²

5.1.6. Supreme Court Chamber proceedings

5.1.6.1. Appeals against the Trial Judgment

The Co-Prosecutors,⁹⁴³ Duch,⁹⁴⁴ and Civil Party Groups 1,⁹⁴⁵ 2,⁹⁴⁶ and 3⁹⁴⁷ appealed the Trial Judgment.

The Co-Prosecutors requested that the Supreme Court Chamber (1) increase Duch's sentence to life imprisonment; (2) enter separate convictions for all charges proved against Duch; and (3) enter a conviction recognising the enslavement of a majority of the detainees at S-21.⁹⁴⁸

⁹³⁶ Case 001, Decision on the Defence Preliminary Objection, 26 July 2010, [E187](#), para. 14.

⁹³⁷ Case 001, Decision on the Defence Preliminary Objection, 26 July 2010, [E187](#), para. 25.

⁹³⁸ Case 001, Decision on the Defence Preliminary Objection, 26 July 2010, [E187](#), paras 27-35.

⁹³⁹ Case 001, Decision on the Defence Preliminary Objection, 26 July 2010, [E187](#), paras 36-38.

⁹⁴⁰ Case 001, Decision on the Defence Preliminary Objection, 26 July 2010, [E187](#), paras 39-54.

⁹⁴¹ Case 001, Decision on the Defence Preliminary Objection, 26 July 2010, [E187](#), para. 65.

⁹⁴² Case 001, Decision on the Defence Preliminary Objection, 26 July 2010, [E187](#), para. 55.

⁹⁴³ Case 001, OCP Notice of Appeal, 16 August 2010, [E188/2](#); Case 001, OCP Appeal, 13 October 2010, [F10](#).

⁹⁴⁴ Case 001, Duch Notice of Appeal, 24 August 2010, [E188/8](#); Case 001, Duch Appeal, 18 November 2010, [F14](#).

⁹⁴⁵ Case 001, Group 1 Immediate Appeal, 14 September 2010, [F8](#); Case 001, Group 1 Notice of Intent of Supplemental Filing, 28 October 2010, [F12](#).

⁹⁴⁶ Case 001, Group 2 Notice of Appeal, 24 August 2010, [E188/6](#); Case 001, Group 2 Notice of Appeal of the Judgment, 6 September 2010, [E188/12](#); Case 001, Group 2 Notice of Appeal of the Reparation Order, 6 September 2010, [E188/14](#); Case 001, Group 2 Appeal against Rejection of Civil Party Applicants in the Judgment, 22 October 2010, [F11](#); Case 001, Group 2 Appeal on Reparations, 2 November 2010, [F13](#).

⁹⁴⁷ Case 001, Group 3 Notice of Appeal, 20 August 2010, [E188/4](#); Case 001, Group 3 Appeal, 5 October 2010, [F9](#).

⁹⁴⁸ Case 001, OCP Appeal, 13 October 2010, [F10](#), paras 8-10.

Concerning sentencing, the Co-Prosecutors argued that the Trial Chamber failed to consider relevant international sentencing frameworks and to properly weigh different aggravating factors, while attaching too much weight to mitigating circumstances.⁹⁴⁹ The Co-Prosecutors claimed that anything less than life imprisonment would not sufficiently reflect the domestic and international outrage expressed in respect of Duch's crimes and would not sufficiently deter the commission of future crimes of this nature.⁹⁵⁰

Concerning cumulative convictions, the Co-Prosecutors argued that the Trial Chamber failed to convict Duch: (1) for the crimes against humanity of enslavement, imprisonment, torture, rape, extermination, and other inhumane acts, by subsuming those crimes under the crime against humanity of persecution on political grounds; and (2) for the crimes against humanity of rape and of torture, when it characterised the former as torture.⁹⁵¹

Concerning enslavement, the Co-Prosecutors argued that the Trial Chamber erred when it employed a definition of the crime against humanity of enslavement that required forced labour as an essential element,⁹⁵² and as a result failed to convict Duch for the enslavement of S-21 detainees who were not subjected to forced labour.⁹⁵³

Duch raised certain grounds of appeal related to (personal) jurisdiction,⁹⁵⁴ and contended that the Trial Chamber failed to consider evidence showing that he had no personal decision-making power.⁹⁵⁵ He further argued that the sentence imposed was arbitrary and did not take into account principles of Cambodian law.⁹⁵⁶ As a result, he requested the Supreme Court Chamber to set aside the Trial Judgment and acquit him.⁹⁵⁷

The Co-Lawyers for Civil Party Group 1 appealed and sought to reinstate the status of the Civil Parties in Group 1 which were revoked in the Trial

⁹⁴⁹ Case 001, OCP Appeal, 13 October 2010, F10, para. 8.

⁹⁵⁰ Case 001, OCP Appeal, 13 October 2010, F10, para. 121.

⁹⁵¹ Case 001, OCP Appeal, 13 October 2010, F10, para. 9.

⁹⁵² Case 001, OCP Appeal, 13 October 2010, F10, para. 10.

⁹⁵³ Case 001, OCP Appeal, 13 October 2010, F10, para. 209.

⁹⁵⁴ Case 001, Duch Appeal, 18 November 2010, F14, paras 11-65, 66-71.

⁹⁵⁵ Case 001, Duch Appeal, 18 November 2010, F14, paras 72-90.

⁹⁵⁶ Case 001, Duch Appeal, 18 November 2010, F14, paras 91-92.

⁹⁵⁷ Case 001, Duch Appeal, 18 November 2010, F14, para. 101.

Judgment. They contended that once Civil Party status was recognised, it should remain unless “specific and identifiable evidence is presented that casts doubt on that status”.⁹⁵⁸

The Co-Lawyers for Civil Party Group 2 filed a similar appeal seeking to reinstate their status, as revoked by the Trial Chamber.⁹⁵⁹ It also appealed on behalf of a Civil Party in relation to the omission of the name of his sister-in-law and her child in the Trial Judgment.⁹⁶⁰ Finally, Group 2 submitted an appeal requesting the Supreme Court Chamber to overturn the rejection of the reparation requests and grant all requested reparations from Group 2,⁹⁶¹ on the basis that the Trial Chamber provided an inadequate and insufficient reasoning for rejecting several reparation requests.⁹⁶²

The Co-Lawyers for Civil Party Group 3 appealed the Trial Judgment on five grounds. They argued that the Trial Chamber: (1) violated the Internal Rules and the practice of other international tribunals by rejecting the Civil Party status of certain Civil Parties; (2) erred in applying the appropriate standard and criteria for the provision of information in the rules of evidence, thus invalidating the rejection of the Civil Parties; (3) relied on an erroneous interpretation of Internal Rule 23(2), which did not require proof of “special bonds of affection”, and that it erred in finding that no kinship or bonds of affection existed for a number of the Civil Parties; (4) erred in fact in refusing to admit a number of Civil Parties; and (5) misinterpreted Internal Rule 23(12) on moral and collective reparations.⁹⁶³

⁹⁵⁸ Case 001, Group 1 Immediate Appeal, 14 September 2010, [F8](#), para. 1. Although filed as an immediate appeal, the Supreme Court Chamber rejected the procedural basis upon which the immediate appeal was filed and decided to characterise the immediate appeal as a notice of appeal and appeal brief, and then allowed the Group 1 Co-Lawyers to file a supplementary notice of appeal and supplementary appeal brief on any other matters. See Case 001, Group 1 Notice of Intent of Supplemental Filing, 28 October 2010, [F12](#), paras 1-4.

⁹⁵⁹ Case 001, Group 2 Notice of Appeal, 24 August 2010, [E188/6](#).

⁹⁶⁰ Case 001, Group 2 Notice of Appeal, 6 September 2010, [E188/12](#), para. 2.

⁹⁶¹ Case 001, Group 2 Notice of Appeal, 6 September 2010, [E188/12](#), para. 9; Case 001, Group 2 Appeal on Reparations, 2 November 2010, [F13](#).

⁹⁶² Case 001, Group 2 Notice of Appeal, 6 September 2010, [E188/12](#), para. 1.

⁹⁶³ Case 001, Group 3 Notice of Appeal, 20 August 2010, [E188/4](#), paras 9-16. See also Case 001, Group 3 Appeal, [F9](#). Civil Party Group 3 also filed supplemental submissions concerning collective reparations for all victims of Case 001. See Case 001, Group 3 Supplemental Submissions concerning Reparations, 25 March 2011, [F25](#). The proposal for collective reparations was annexed to the supplemental submissions, and constituted a proposal to construct an S-21 Victims Memorial at Tuol Sleng Museum. See Case 001, Group 3, Proposal by the Ksem Ksan Victim Association for the Construction of an S-21 Victims Memorial at the Tuol Sleng Museum, 25 March 2011, [F25.1](#).

5.1.6.2. Appeal Judgment

The appeal hearing was held over three days from 28 to 30 March 2011.⁹⁶⁴ The Appeal Judgment was pronounced⁹⁶⁵ and issued on 3 February 2012.⁹⁶⁶ It is divided into nine chapters.

- i. **Chapter 1** is the introduction, which discusses the background and provides a procedural overview.
- ii. **Chapter 2** discusses the standard of appellate review.
- iii. **Chapter 3** discusses the alleged errors concerning personal jurisdiction. The Supreme Court Chamber rejected the Co-Prosecutors' submission that Duch's appeal on personal jurisdiction was inadmissible.⁹⁶⁷ It evaluated the term "senior leaders of the Democratic Kampuchea and those who were most responsible" to determine whether all or part of it constituted a jurisdictional requirement of the ECCC.⁹⁶⁸ The Supreme Court Chamber reviewed the history of the negotiations relating to the intended targets for criminal prosecution before the ECCC,⁹⁶⁹ and found that at a minimum:

the term "senior leaders of Democratic Kampuchea and those who were most responsible" reflects the intention of the United Nations and the Royal Government of Cambodia to focus finite resources on the criminal prosecution of certain surviving officials of the Khmer Rouge. The Supreme Court Chamber also finds that the term excludes persons who are not officials of the Khmer Rouge.⁹⁷⁰

⁹⁶⁴Case 001, T. 28 March 2011, [F1/2.1](#); Case 001, T. 29 March 2011, [F1/3.2](#); Case 001, T. 30 March 2011, [F1/4.1](#). Prior to the appeal hearing, the Supreme Court Chamber held a management meeting in closed session with counsel for each of the Appellants to allow exchanges between the Co-Prosecutors and the Co-Lawyers to facilitate the setting of the date of the hearing and to review the status of the case and issues that might be raised. Case 001, T. 23 March 2011, [F1/1.1](#), p. 1 (En).

⁹⁶⁵Case 001, T. 3 February 2012, [F1/5.1](#).

⁹⁶⁶Case 001, Appeal Judgment, 3 February 2012, [F28](#).

⁹⁶⁷Case 001, Appeal Judgment, 3 February 2012, [F28](#), paras 38, 43.

⁹⁶⁸Case 001, Appeal Judgment, 3 February 2012, [F28](#), para. 44.

⁹⁶⁹Case 001, Appeal Judgment, 3 February 2012, [F28](#), paras 46-51

⁹⁷⁰Case 001, Appeal Judgment, 3 February 2012, [F28](#), para. 52.

As to whether the term referred to one or two categories of surviving Khmer Rouge officials, the Chamber found that the drafting history demonstrated that it referred to two categories of Khmer Rouge official, one being senior leaders who are among the most responsible and the other being non-senior leaders who were among the most responsible.⁹⁷¹ The Chamber then considered whether the three terms “Khmer Rouge official”, “most responsible” and “senior leaders” constituted jurisdictional requirements. It found that the personal jurisdiction of the ECCC covered “Khmer Rouge officials”, and that the question of whether an Accused was a Khmer Rouge official was justiciable before the Trial Chamber. As for the term “most responsible”, it found that “interpreting the term ‘most responsible’ as a jurisdictional requirement of the ECCC would be inconsistent with the object and purpose of the UN-RGC Agreement and would lead to an unreasonable result”, because there would be no objective method for the Trial Chamber to decide on, and then rank, criminal responsibility. Moreover, the notion of comparative criminal responsibility would be inconsistent with Article 29, which sets out the principle that superior orders do not constitute a defence. The determination of whether an Accused is “most responsible” requires wide discretion, and there is no discretion in determining the ECCC’s other types of jurisdiction, which are expressed through sharp-contoured definitions. Instead, the Supreme Court Chamber found that the term “most responsible” should be interpreted as “investigatorial and prosecutorial policy for the Co-Investigating Judges and Co-Prosecutors that is not justiciable before the Trial Chamber”.⁹⁷² Finally, as for the term “senior leaders”, the Supreme Court Chamber also found that given its inherent flexibility as to which type of persons it might include, it did not operate as a jurisdictional requirement of the ECCC.⁹⁷³ This term was also described as “investigatorial and prosecutorial policy” to guide the Co-Investigating Judges and the Co-Prosecutors “in the exercise of their discretion as to the scope of investigations and prosecutions”.⁹⁷⁴

⁹⁷¹ Case 001, Appeal Judgment, 3 February 2012, F28, para. 57.

⁹⁷² Case 001, Appeal Judgment, 3 February 2012, F28, paras 61-63.

⁹⁷³ Case 001, Appeal Judgment, 3 February 2012, F28, para. 76.

⁹⁷⁴ Case 001, Appeal Judgment, 3 February 2012, F28, para. 78.

- iv. **Chapter 4** discusses the alleged errors concerning crimes against humanity.

The Chamber first considered *proprio motu* the principle of legality.⁹⁷⁵ It evaluated whether the Trial Chamber’s reliance on the *ad hoc* tribunals’ jurisprudence was appropriate, and considered the scope of ECCC jurisdiction over crimes against humanity in the context of the international principle of legality.⁹⁷⁶ It agreed with the Trial Chamber “that crimes against humanity were established as an international crime during the ECCC’s temporal jurisdiction”.⁹⁷⁷

The Supreme Court Chamber then turned to whether the crimes against humanity of persecution, torture, rape, and enslavement found under Article 5 of the ECCC Law constituted crimes against humanity under customary international law in 1975.⁹⁷⁸

With regard to enslavement, the Supreme Court Chamber found “that the Co-Prosecutors’ assertion that the Trial Chamber’s definition of enslavement as a crime against humanity requires proof of forced labour is without merit”.⁹⁷⁹ In light of international jurisprudence, the Supreme Court Chamber affirmed the Trial Chamber’s definition of enslavement, with the *actus reus* being “characterised by the exercise of any or all powers attaching to the right of ownership over a person” and the *mens rea* being the intentional exercise of “any or all of the powers attaching to the right of ownership”.⁹⁸⁰ The Supreme Court Chamber determined that the Trial Chamber’s reliance on the exploitation of forced labour as a premise for its finding of enslavement implied that the Trial Chamber was considering the element of an effort to accrue some gain through the exercise over the victim of the powers that attach to the right of ownership, which it explained is not an additional element of the crime, but is rather the purpose

⁹⁷⁵ Case 001, Appeal Judgment, 3 February 2012, F28, paras 87-97.

⁹⁷⁶ Case 001, Appeal Judgment, 3 February 2012, F28, paras 97-98.

⁹⁷⁷ Case 001, Appeal Judgment, 3 February 2012, F28, para. 104.

⁹⁷⁸ Case 001, Appeal Judgment, 3 February 2012, F28, para. 107.

⁹⁷⁹ Case 001, Appeal Judgment, 3 February 2012, F28, para. 129.

⁹⁸⁰ Case 001, Appeal Judgment, 3 February 2012, F28, para. 152.

implicit in the ownership powers.⁹⁸¹ The Supreme Court Chamber then considered whether the Trial Chamber erred in failing to find Duch guilty of the crime against humanity of enslavement, and found that it did not.⁹⁸²

With regard to rape, the Supreme Court Chamber found that “a survey of custom and treaties before and during the ECCC’s temporal jurisdiction indicates that rape was not a distinct crime against humanity under those sources of international law at the relevant time”.⁹⁸³ Accordingly, the Supreme Court Chamber found that the Trial Chamber erred in law in concluding that the rape that occurred at S-21 constituted rape as a crime against humanity and rejected the part of the Co-Prosecutors’ appeal arguing that the Trial Chamber erred in failing to cumulatively convict Duch for rape and torture as distinct crimes against humanity for the rape that took place at S-21.⁹⁸⁴

With regard to persecution as a crime against humanity, the Supreme Court Chamber found that “by 1975, there was evidence of State *opinio juris* and practice recognising persecution on racial, religious or political grounds as a crime against humanity under customary international law”.⁹⁸⁵ It then considered the definition, of persecution, concluding that:

[T]he Trial Chamber’s articulation of the definition of persecution as a crime against humanity by 1975 under customary international law was not in error. That said, this Chamber finds that the Trial Chamber erred, in part, in its interpretation of the discrimination in fact requirement under the *actus reus* element of persecution.⁹⁸⁶

The Supreme Court Chamber struck the Trial Chamber’s conviction of Duch for persecution as a crime against humanity with respect to an unspecified number of individuals who had been detained, interrogated, enslaved, and executed at S-21, not

⁹⁸¹ Case 001, Appeal Judgment, 3 February 2012, F28, para. 158.

⁹⁸² Case 001, Appeal Judgment, 3 February 2012, F28, para. 166.

⁹⁸³ Case 001, Appeal Judgment, 3 February 2012, F28, para. 180.

⁹⁸⁴ Case 001, Appeal Judgment, 3 February 2012, F28, para. 183.

⁹⁸⁵ Case 001, Appeal Judgment, 3 February 2012, F28, para. 225.

⁹⁸⁶ Case 001, Appeal Judgment, 3 February 2012, F28, para. 278.

on political grounds, but as a result of indiscriminate targeting. It therefore entered convictions for the other crimes against humanity perpetrated against them for which the Trial Chamber found Duch responsible, namely, extermination, enslavement, imprisonment, torture, and other inhumane acts.⁹⁸⁷

As to whether or not the Trial Chamber erred in failing to cumulatively convict Duch for all of the crimes against humanity for which he was ultimately found responsible, the Supreme Court Chamber noted that other international criminal tribunals have “permitted cumulative charging and entered cumulative convictions with respect to the same conduct where it meets the definition of multiple international crimes that are deemed materially distinct”.⁹⁸⁸ It concluded that a proper application of that test would lead to the conclusion that Duch should be cumulatively convicted for the crimes of extermination (encompassing murder), enslavement, imprisonment, torture, other inhumane acts, and persecution, as each offence charged has a materially distinct element not contained in the other.⁹⁸⁹ It held that the Trial Chamber erred by subsuming the other crimes against humanity under persecution and ordered separate convictions be entered for the other crimes against humanity.⁹⁹⁰

v. **Chapter 5** discusses the alleged errors concerning sentencing.

The Supreme Court Chamber first considered the applicable law, and rejected Duch’s argument that the sentence be limited to what is authorised in the 2009 Criminal Code.⁹⁹¹

It then turned to the Co-Prosecutors’ argument that the Trial Chamber erred in failing to impose the highest sentence available to it, namely life imprisonment.⁹⁹² The Supreme Court Chamber found that “the effect that mitigating factors had on the Trial Chamber’s determination of the sentence constituted an error of

⁹⁸⁷ Case 001, Appeal Judgment, 3 February 2012, [F28](#), para. 284.

⁹⁸⁸ Case 001, Appeal Judgment, 3 February 2012, [F28](#), para. 300.

⁹⁸⁹ Case 001, Appeal Judgment, 3 February 2012, [F28](#), para. 332.

⁹⁹⁰ Case 001, Appeal Judgment, 3 February 2012, [F28](#), para. 336.

⁹⁹¹ Case 001, Appeal Judgment, 3 February 2012, [F28](#), para. 352.

⁹⁹² Case 001, Appeal Judgment, 3 February 2012, [F28](#), para. 355.

law” and performed its own examination of the mitigating factors.⁹⁹³ The Supreme Court Chamber considered that the mitigating factors were limited and neutralised by the aggravating factors.⁹⁹⁴ As a result, it held that Duch’s 35-year sentence did not appropriately reflect the gravity of the crimes and Duch’s individual circumstances and the Trial Chamber erred in imposing that manifestly inadequate sentence. Accordingly, the Supreme Court Chamber decided to instead impose life imprisonment without parole.⁹⁹⁵

With respect to the issue of his prior illegal detention, the Supreme Court Chamber found, Judges Agnieszka Klonowiecka-Milart and Chandra Nihal Jayasinghe dissenting, that the Trial Chamber had no discretion to grant a remedy for the alleged violations, and this error of law affected Duch’s sentence. Therefore, the majority found that the Trial Chamber committed an error of law invalidating the sentence by affording a reduction in sentence of five years and credit for the time served in detention from 10 May 1999 to 30 July 2007.⁹⁹⁶

- vi. **Chapter 6** discusses the alleged errors concerning the admissibility of Civil Party applications.

The Supreme Court Chamber held that the Trial Chamber’s “two-step review process” for determining admissibility of Civil Parties was not “illegal”,⁹⁹⁷ and the Trial Chamber did not act outside the Internal Rules. Nevertheless, it found that the “legal framework for deciding the admissibility of Civil Parties was patently obscure” and “was exacerbated by multiple pronouncements at the juncture between investigation and trial as to Civil Party status that largely lacked a basis in actual scrutiny of the merits of Civil Party applications”.⁹⁹⁸ The Supreme Court Chamber also found that the standard of proof applied by the Trial Chamber of “more likely than not to be true” or “preponderance of evidence”

⁹⁹³ Case 001, Appeal Judgment, 3 February 2012, F28, paras 363-371.

⁹⁹⁴ Case 001, Appeal Judgment, 3 February 2012, F28, para. 371.

⁹⁹⁵ Case 001, Appeal Judgment, 3 February 2012, F28, paras 383-384.

⁹⁹⁶ Case 001, Appeal Judgment, 3 February 2012, F28, para. 399.

⁹⁹⁷ Case 001, Appeal Judgment, 3 February 2012, F28, para. 486.

⁹⁹⁸ Case 001, Appeal Judgment, 3 February 2012, F28, para. 493.

was in accordance with the law.⁹⁹⁹ The Supreme Court Chamber considered the evidence produced in relation to the specific Civil Parties appealing their rejection status, and admitted another ten Civil Party applicants as Civil Parties.¹⁰⁰⁰ The Supreme Court Chamber annexed a list to the Judgment to clarify which Civil Parties had been admitted to the trial or appeal proceedings in Case 001.¹⁰⁰¹

- vii. **Chapter 7** discusses alleged errors concerning reparations. The Supreme Court Chamber found that due to the constraints in the ECCC reparation framework, the specific requests could not be granted. However, considering that several requests were rejected due to Duch’s indigence, and appreciating that some of them may have been adequately specified, the Supreme Court Chamber “encourage[ed] national authorities, the international community, and other potential donors to provide financial and other forms of support to develop and implement these appropriate forms of reparation.¹⁰⁰² It thus rejected the reparations requests and affirmed the Trial Chamber’s findings.¹⁰⁰³

- viii. **Chapter 8** is the disposition.

- ix. **Chapter 9** is the partly dissenting joint opinion of Judges Agnieszka Klonowiecka-Milart and Chandra Nihal Jayasinghe on the majority’s decision to impose a life sentence. The Judges concurred that life imprisonment was warranted, but nevertheless disagreed with the decision of the majority to deny a remedy for the severe violation of Duch’s fundamental rights occasioned by his lengthy pre-trial detention. They considered that Duch’s pre-trial detention, which continued for ten years, was inconsistent with the International Covenant on Civil and Political Rights, to which Cambodia is a party and which constitutes binding law before the ECCC. Judges Klonowiecka-Milart and Jayasinghe agreed that there must be some link between the sentencing court and the illegality of detention for a remedy to be granted, but disagreed that

⁹⁹⁹ Case 001, Appeal Judgment, 3 February 2012, F28, para. 531.

¹⁰⁰⁰ Case 001, Appeal Judgment, 3 February 2012, F28, para 531 (and following paragraphs).

¹⁰⁰¹ Case 001, List of Civil Parties admitted in Trial or Appeal Proceedings in Case 001, 3 February 2012, F28.2.

¹⁰⁰² Case 001, Appeal Judgment, 3 February 2012, F28, para. 717.

¹⁰⁰³ Case 001, Appeal Judgment, 3 February 2012, F28, disposition.

adopting the *ad hoc* tribunals' approach was appropriate considering the ECCC's position within the national court system. They considered that Duch was entitled to a remedy for the infringement of his right to liberty and that in light of the Chamber's unanimous decision that the gravity of Duch's crimes warrants a sentence of life in prison, such a remedy could only be achieved by transforming his sentence into a fixed term of imprisonment. The Judges would have thus granted Duch a reduced sentence of thirty years' imprisonment as a remedy for the violation of his fundamental rights, noting that given his age, such remedy would be "purely symbolic".¹⁰⁰⁴

The Supreme Court Chamber also issued a summary of its judgment.¹⁰⁰⁵

5.1.7. Post-conviction phase

5.1.7.1. Detention and assistance in Case 002

On 7 March 2012, the Co-Prosecutors filed a request to the Ministry of the Interior to enforce Duch's sentence, requesting that Duch remain in the ECCC Detention Unit until his participation in ECCC proceedings was no longer necessary (Duch was to be a witness in Case 002), and that appropriate prison accommodation be identified for him in the national prison system.¹⁰⁰⁶

It was determined that Kandal Provincial Prison would best protect Duch's interests, and on 21 May 2013, the Co-Prosecutors requested the General Department of Prisons to transfer Duch to Kandal Provincial Prison. They also sought an undertaking from the General Department of Prisons that the place and conditions of Duch's detention would not be varied to his detriment during his prison term. Duch was transferred from the ECCC Detention Facility to Kandal Provincial Prison on 6 June 2013 to serve the remainder of his sentence.¹⁰⁰⁷

¹⁰⁰⁴ Case 001, Appeal Judgment, 3 February 2012, F28, section IX.

¹⁰⁰⁵ Case 001, Summary of Supreme Court Chamber Appeal Judgment in Case 001, 3 February 2012, F26/3.

¹⁰⁰⁶ Case 001, Co-Prosecutors' Request for Enforcement of Sentence, 7 March 2012, F29.

¹⁰⁰⁷ *Kaing Guek Eav Transferred to Kandal Prison*, 6 June 2013.

Duch testified in Case 002/01 for 13 days beginning on 19 March 2012 and ending on 10 April 2012.¹⁰⁰⁸ He later testified in Case 002/02 over 12 days, from 7 June 2016 through 27 June 2016.¹⁰⁰⁹

Duch died on 2 September 2020 at the Khmer-Soviet Friendship Hospital while serving his life sentence.¹⁰¹⁰

5.2. Case 002

5.2.1. Overview of the Accused

- **Nuon Chea** (1926-2019) was the Deputy Secretary of the CPK, Chairman of the People’s Representative Assembly, temporarily served as acting Prime Minister of DK and was a member of the CPK Standing Committee.¹⁰¹¹
- **Ieng Sary** (1925-2013) was the Deputy Prime Minister for Foreign Affairs of DK and a member of the CPK Standing Committee.¹⁰¹²
- **Ieng Thirith** (1932-2015) was the Minister of Social Affairs of DK.¹⁰¹³
- **Khieu Samphan** (born 1931) served as President of the State Presidium of DK.¹⁰¹⁴ He was also a member of the CPK Central Committee and attended CPK Standing Committee meetings on a regular basis.¹⁰¹⁵
- **Kaing Guek Eav (alias Duch)** was the Chairman of M-13 (a security office located in Amleang, Kampong Speu) from July 1971 to January 1975, Deputy Chairman of the S-21 Security Centre from 15 August 1975 to March 1976, and Chairman of S-21 from

¹⁰⁰⁸ Case 002, T. 19 March 2012, E1/50.1; Case 002, T. 20 March 2012, E1/51.1; Case 002, T. 21 March 2012, E1/52.1; Case 002, T. 26 March 2012, E1/53.1; Case 002, T. 27 March 2012, E1/54.1; Case 002, T. 28 March 2012, E1/55.1; Case 002, T. 29 March 2012, E1/56.1; Case 002, T. 2 April 2012, E1/57.1; Case 002, T. 3 April 2012, E1/58.1; Case 002, T. 4 April 2012, E1/59.1; Case 002, T. 5 April 2012, E1/60.1; Case 002, T. 9 April 2012, E1/61.1; Case 002, T. 10 April 2012, E1/62.1.

¹⁰⁰⁹ Case 002, T. 7 June 2016, E1/433.1; Case 002, T. 8 June 2016, E1/434.1; Case 002, T. 9 June 2016, E1/435.1; Case 002, T. 13 June 2016, E1/436.1; Case 002, T. 14 June 2016, E1/437.1; Case 002, T. 15 June 2016, E1/438.1; Case 002, T. 16 June 2016, E1/439.1; Case 002, T. 20 June 2016, E1/440.1; Case 002, T. 21 June 2016, E1/441.1; Case 002, 22 June 2016, E1/442.1; Case 002, T. 23 June 2016, E1/443.1; Case 002, T. 27 June 2016, E1/444.1.

¹⁰¹⁰ Case 001, Press Statement of the Spokesperson of the Prosecution attached to the Kandal Provincial Court of First Instance, 2 September 2020, F32.

¹⁰¹¹ Case 002/01, Judgment, 7 August 2014, E313, paras 304, 313-316, 319-323, 744; Case 002/02, Judgment, 16 November 2018, E465, paras 518, 530-532.

¹⁰¹² Case 002/02, Judgment, 16 November 2018, E465, paras 357, 412, 414, 419.

¹⁰¹³ Case 002/02, Judgment, 16 November 2018, E465, paras 412, 419.

¹⁰¹⁴ Case 002/01, Judgment, 7 August 2014, E313, paras 381-383; Case 002/02, Judgment, 16 November 2018, E465, paras 591, 596.

¹⁰¹⁵ Case 002/01, Judgment, 7 August 2014, E313, paras 745, 755; Case 002/02, Judgment, 16 November 2018, E465, paras 574, 600-604.

March 1976 until the fall of Democratic Kampuchea on 7 January 1979.¹⁰¹⁶ Duch was initially part of Case 002, but the Co-Investigating Judges issued a Dismissal Order on 14 September 2010, finding that his criminal activity had already been subject to extensive litigation in Case 001 and no new evidence in relation to his participation was revealed in the investigation of Case 002.¹⁰¹⁷

5.2.2. Preliminary investigation, Introductory and Supplementary Submissions

On 10 July 2006, the Co-Prosecutors initiated a preliminary investigation into crimes that may have been committed by the leaders of DK and those most responsible between 17 April 1975 and 6 January 1979.

On 18 July 2007, the Co-Prosecutors filed an Introductory Submission with the Co-Investigating Judges opening a judicial investigation. They submitted that crimes within the ECCC's jurisdiction were committed as part of a common criminal plan intended to effect a radical change of Cambodian society along ideological lines and identified and submitted for investigation 25 distinct factual situations of murder, torture, forcible transfer, unlawful detention, forced labour, and religious, political, and ethnic persecution as evidence of the crimes committed in the execution of this common criminal plan. The Co-Prosecutors considered that the factual allegations constituted crimes against humanity, genocide, grave breaches of the Geneva Conventions, and homicide, torture, and religious persecution under the 1956 Cambodian Penal Code, stating that they had identified five suspects in the Introductory Submission, but did not name them publicly.¹⁰¹⁸ One of these five suspects was Duch, who, as discussed above, was tried separately in Case 001 and later severed from Case 002.

The case file was transferred to the Co-Investigating Judges to undertake a judicial investigation.¹⁰¹⁹ During the course of the judicial investigation, the Co-Prosecutors filed six Supplementary Submissions and a clarification regarding five security centres and execution sites described in the Introductory Submission.¹⁰²⁰

¹⁰¹⁶ See Chapter 5.1.1. Overview of the Accused. See also Case 002/02, Judgment, 16 November 2018, E465, paras 2135, 2148, 2157.

¹⁰¹⁷ Case 002 Dismissal Order, 14 September 2010, D420.

¹⁰¹⁸ Case 001/002, Introductory Submission, 18 July 2007, D3.

¹⁰¹⁹ See Case 002, Closing Order, 15 September 2010, D427, para. 3.

¹⁰²⁰ See Case 002, Closing Order, 15 September 2010, D427, preamble.

5.2.3. Judicial investigation

5.2.3.1. Detention and charges

Between 19 September and 19 November 2007, Nuon Chea, Ieng Sary, Ieng Thirith, and Khieu Samphan were detained at the ECCC detention facility by order of the Co-Investigating Judges.¹⁰²¹ In the course of the judicial investigation, each was charged with crimes against humanity, grave breaches of the Geneva Conventions, genocide, and crimes under the 1956 Cambodian Penal Code.¹⁰²² Their provisional detention was periodically renewed.¹⁰²³

5.2.3.2. Evidence on the case file

In addition to the documents the Co-Prosecutors placed on the case file in support of the Introductory Submission, the records on the case file included 46 written records of interview of the Charged Persons, more than 1,000 written records of interview of witnesses and Civil Parties, 36 site identification reports, one demographic expert report, numerous medical expertise reports, and more than 11,600 substantive documents. The material placed on the case file by the Co-Investigating Judges, the Co-Prosecutors, the Charged Persons, and the Civil Parties and their lawyers comprised more than 350,000 pages, including 223,000 pages relating to the facts of the case.¹⁰²⁴

5.2.3.3. Jurisdictional challenges

The Defence teams raised several jurisdictional challenges before the Co-Investigating Judges and Pre-Trial Chamber during the investigative stage of Case 002.¹⁰²⁵ The Co-Investigating Judges indicated that they would

¹⁰²¹ Case 002, Nuon Chea Detention Order, 19 September 2007, C10; Case 002, Ieng Sary Detention Order, 14 November 2007, C23; Case 002, Ieng Thirith Detention Order, 14 November 2007, C21; Case 002, Khieu Samphan Detention Order, 19 November 2007, C27.

¹⁰²² Case 002, Nuon Chea Initial Appearance, 19 September 2007, E3/54; Case 002, Nuon Chea Written Record of Interview, 14 December 2009, D275; Case 002, Ieng Sary Initial Appearance, 12 November 2007, E3/92; Case 002, Ieng Sary Written Record of Interview, 16 December 2009, E3/525; Case 002, Ieng Thirith Initial Appearance, 12 November 2007, E3/664; Case 002, Ieng Thirith Written Record of Interview, 21 December 2009, E3/38; Case 002, Khieu Samphan Initial Appearance, 19 November 2007, D42; Case 002, Khieu Samphan Written Record of Interview, 18 December 2009, E3/576.

¹⁰²³ See for example Case 002, Order on Extension of Provisional Detention of Nuon Chea, 15 September 2009, C9/6; Case 002, Order on Extension of Provisional Detention of Khieu Samphan, 18 November 2009, C26/8; Case 002, Order on Extension of Provisional Detention of Ieng Sary, 10 November 2009, C22/8; Case 002, Order on Extension of Provisional Detention of Ieng Thirith, 10 November 2009, C20/8.

¹⁰²⁴ Case 002, Closing Order, 15 September 2010, D427, para. 17.

¹⁰²⁵ See Case 002, Ieng Sary's Motion against the Applicability of the Crime of Genocide at the ECCC, 30 October 2009, D240; Case 002, Ieng Sary's Motion against the Application of Crimes Against Humanity at the ECCC, 13 April 2010, D378; Ieng Sary's Alternative Motion on the Limits of the Applicability of Crimes Against

address most of these challenges when issuing a Closing Order,¹⁰²⁶ but decided to address arguments raised concerning Ieng Sary's amnesty and pardon, the issue of *ne bis in idem*, and the applicability of JCE prior to the issuance of a Closing Order.

5.2.3.3.1. Amnesty and pardon

The questions of amnesty and pardon and *ne bis in idem* were raised initially by the Co-Investigating Judges themselves. In issuing a decision on Ieng Sary's provisional detention, they first considered whether an amnesty and pardon he had been granted in 1996, or the fact that he had been tried *in absentia* for genocide in 1979, would bar his prosecution at the ECCC. They determined that neither the amnesty nor pardon would be a bar to prosecution since the amnesty covered acts under a different law and not offences subject to prosecution at the ECCC and the pardon affects only a sentence, rather than a conviction decision. They determined that the principle of *ne bis in idem* did not arise at that time, as the 1979 trial had been for genocide, yet Ieng Sary was not at that time charged with genocide and his previous trial did not appear to cover all acts for which he was charged at the ECCC.¹⁰²⁷ The Pre-Trial Chamber considered that the validity of the amnesty and pardon was uncertain, but it would not manifestly prevent conviction for genocide before the ECCC.¹⁰²⁸

5.2.3.3.2. Ne bis in idem

Concerning *ne bis in idem*, the principle that no one shall be liable to be tried or punished again for an offence for which he or she has already been finally convicted or acquitted, the Pre-Trial Chamber noted that the Internal Rules made no direct provision in respect of the *ne bis in idem* principle, and that the parties disagreed as to whether guidance should be sought in Cambodian law alone or also at the international level, each of which defined the principle differently concerning what constitutes the “same crime”, with Cambodian law referring to the “same act” while

Humanity at the ECCC, 23 June 2010, [D378/2](#); Case 002, Ieng Sary's Motion against the Application of Grave Breaches at the ECCC, 7 May 2010, [D379](#); Ieng Sary's Alternative Motion on the Limits of the Applicability of Grave Breaches of the Geneva Conventions at the ECCC, 1 June 2010, [D379/2](#); Case 002, Ieng Sary's Motion Against the Application at the ECCC of the Form of Liability Known as *Joint Criminal Enterprise*, 28 July 2008, [D97](#); Case 002, Ieng Sary's Motion Against the Application of Command Responsibility at the ECCC, 15 February 2010, [D345/2](#); Case 002, Ieng Sary's Alternative Motion on the Limits of the Applicability of Command Responsibility at the ECCC, 15 February 2010, [D345/3](#).

¹⁰²⁶ See for example Case 002, Order on Ieng Sary's Motion Against the Application of Command Responsibility, 19 March 2010, [D345/4](#).

¹⁰²⁷ Case 002, Provisional Detention Order of Ieng Sary, 14 November 2007, [C22](#), paras 7-14.

¹⁰²⁸ Case 002, Decision on Appeal against Provisional Detention Order of Ieng Sary, 17 October 2008, [C22/1/74](#), paras 55-63.

international law refers to the “same offence”. Under either interpretation, they noted that since Ieng Sary was not charged with genocide at that time, the current prosecution might be for different “offences” and that it was not possible at that stage of the case to determine whether the prosecution by the ECCC was for the “same acts” as were at issue in the 1979 trial, a point which might crystallise upon his indictment.¹⁰²⁹ Thus, the question of whether Ieng Sary’s amnesty and pardon or the principle of *ne bis in idem* would bar his prosecution at the ECCC was left until the issuance of a Closing Order.

5.2.3.3.3. Applicability of JCE

Regarding the applicability of JCE at the ECCC, the Co-Investigating Judges found that each form of JCE could be applied to international crimes, but not to national crimes, and that the *mens rea* for JCE III is the subjective acceptance of the natural and foreseeable consequences of the common plan. They found that JCE could be considered a form of commission under Article 29 of the ECCC Law and that its application would not violate the principle of legality as the jurisprudence relied upon in articulating JCE pre-existed the events under investigation at the ECCC.¹⁰³⁰

On appeal, the Pre-Trial Chamber considered whether JCE was recognised in customary international law 1975. It reviewed international cases, treaties and authoritative announcements, and found that JCE I and II were recognised in customary international law by that time. However, it could not conclude that JCE III formed part of customary international law at the relevant time. In such circumstances, it considered that the principle of legality required the ECCC to refrain from relying on JCE III in its proceedings. The Pre-Trial Chamber thus determined that JCE III could not be applied at the ECCC.¹⁰³¹

5.2.3.4. Civil Parties

During the judicial investigation, the Victims Support Section submitted 4,128 Civil Party applications to the Co-Investigating Judges. During the investigation, 104 Civil Party applicants requested to change their

¹⁰²⁹ Case 002, Decision on Appeal against Provisional Detention Order of Ieng Sary, 17 October 2008, C22/1/74, paras 41-54.

¹⁰³⁰ Case 002, Order on the Application at the ECCC of the Form of Liability Known as Joint Criminal Enterprise, 8 December 2009, D97/13, paras 12-13, 18-21, disposition.

¹⁰³¹ Case 002, Decision on the Appeals Against the Co-Investigative Judges Order on Joint Criminal Enterprise (JCE), 20 May 2010, D97/15/9, paras 69, 83, 87-88.

mode of participation to that of complainants; 11 applicants withdrew their applications; 19 duplicate applications were found to have been filed; and six applications were re-submitted at the victims' request. Accordingly, the Co-Investigating Judges issued orders in respect of the admissibility of a total of 3,988 applications, noting that 18 applicants had died after having filed their applications.¹⁰³²

A total of 2,123 Civil Parties were admitted by the Co-Investigating Judges. Certain applications were declared inadmissible as the victims had suffered harm that was not directly related to the factual circumstances set out in the Introductory and Supplementary Submissions. The inadmissible applications were, however, kept on the case file in the form of complaints, where they joined 4,151 victim complaints already placed on the case file by the Co-Prosecutors.¹⁰³³

5.2.3.5. Final Submission

On 14 January 2010, the Co-Investigating Judges notified the parties that they considered the judicial investigation in Case 002 to be completed.¹⁰³⁴ On 15 July 2010, the Pre-Trial Chamber advised that it had disposed of all remaining appeals.¹⁰³⁵ The case file was then transferred to the Co-Prosecutors to prepare a Final Submission.¹⁰³⁶

On 16 August 2010, the Co-Prosecutors filed their Final Submission, requesting the Co-Investigating Judges to indict Nuon Chea, Ieng Sary, Ieng Thirith, and Khieu Samphan and send them for trial for genocide, crimes against humanity, grave breaches of the Geneva Conventions, and crimes under the 1956 Cambodian Penal Code.¹⁰³⁷

5.2.3.6. Closing Order

On 15 September 2010, the Co-Investigating Judges issued the Closing Order.¹⁰³⁸ The Closing Order was divided into six parts.

¹⁰³² Case 002, Closing Order, 15 September 2010, D427, para. 10.

¹⁰³³ Case 002, Closing Order, 15 September 2010, D427, para. 12.

¹⁰³⁴ Case 002, Notice of Conclusion of Judicial Investigation, 14 January 2010, D317.

¹⁰³⁵ Case 002, Notification Under Internal Rule 66(4), 15 July 2010, o.

¹⁰³⁶ Case 002, Forwarding Order, 19 July 2010, D385.

¹⁰³⁷ Case 002, Co-Prosecutor's Rule 66 Final Submission, 16 August 2010, D390.

¹⁰³⁸ Case 002, Closing Order, 15 September 2010, D427.

- i. **Part one** discusses the Co-Investigating Judges' factual findings, going through the historical background, the administrative structures of the Party Centre and throughout the nation, the communication structure, the military structure, the armed conflict, factual findings concerning the JCE, factual findings concerning the crimes, and the roles of the Charged Persons.
- ii. **Part two** sets out the applicable law, discussing the ECCC's jurisdiction, defining the crimes and modes of liability, and finally setting out the standard of evidence.
- iii. **Part three** discusses the Co-Investigating Judges' legal findings, specifically on personal jurisdiction; amnesty, pardon, and *ne bis in idem*; genocide; crimes against humanity; grave breaches of the Geneva Conventions; and crimes punishable under the 1956 Cambodian Penal Code.
- iv. **Part four** sets out the personal information of each Accused.
- v. **Part five** sets out the conclusion that Nuon Chea, Ieng Sary, Khieu Samphan, and Ieng Thirith committed (via a JCE), planned, instigated, ordered, or aided and abetted, or were responsible by virtue of superior responsibility the crimes against humanity of murder, extermination, enslavement, deportation, imprisonment, torture, rape, persecution on political, racial, and religious grounds, and other inhumane acts; genocide by killing members of the Vietnamese and Cham groups; the grave breaches of the Geneva Conventions of wilful killing, torture or inhumane treatment, wilfully causing great suffering or serious injury to body or health, wilfully depriving a prisoner of war or civilian the rights of fair and regular trial, and unlawful deportation or unlawful confinement of a civilian; and homicide, torture, and religious persecution as violations of the 1956 Cambodian Penal Code.
- vi. **Part six** is the decision to maintain the Accused in detention pending their appearance before the Trial Chamber.

5.2.4. Pre-Trial Chamber proceedings

All four Accused Persons appealed the Closing Order.¹⁰³⁹ Their arguments centred around the ECCC's jurisdiction, as the Internal Rules did not permit appeals concerning the Co-Investigating Judges' factual findings.¹⁰⁴⁰

Nuon Chea submitted that the Co-Investigating Judges violated the principle of legality when they confirmed the ECCC's jurisdiction over genocide, crimes against humanity, war crimes, and modes of liability, submitting that they were not recognised under Cambodian law as applicable in 1975-1979. He requested the Pre-Trial Chamber to quash and/or amend the Closing Order to the extent that his alleged liability would be expressed with exclusive reference to the substantive crimes and modes of liability recognised in the 1956 Cambodian Penal Code.¹⁰⁴¹

Ieng Sary raised multiple grounds of appeal challenging the ECCC's jurisdiction over international crimes and modes of liability under international criminal law, and their application by the Co-Investigating Judges, as well as other grounds concerning his pardon and amnesty, and the Co-Investigating Judges' conclusion that it did not trigger the *ne bis in idem* principle and did not bar his prosecution.¹⁰⁴²

Khieu Samphan submitted that the Closing Order violated the rules governing the investigation and prematurely concluded an investigation that was incomplete and that was conducted exclusively to elicit inculpatory evidence. He requested the Pre-Trial Chamber to revoke the Closing Order, order the Co-Investigating Judges to continue the judicial investigation, and to rule that it is impossible to indict him and send him to trial at that stage of the proceedings.¹⁰⁴³

Ieng Thirith submitted that the ECCC had no jurisdiction to prosecute her for the crimes and forms of liability of genocide, crimes against humanity, grave breaches, national crimes, JCE, and superior responsibility. She

¹⁰³⁹ Case 002, Nuon Chea Closing Order Appeal, 18 October 2010, [D427/3/1](#); Case 002, Ieng Thirith Closing Order Appeal, 18 October 2010, [D427/2/1](#); Case 002, Khieu Samphan Closing Order Appeal, 18 October 2010, [D427/4/3](#); Case 002, Ieng Sary Closing Order Appeal, 25 October 2010, [D427/1/6](#).

¹⁰⁴⁰ See [Internal Rules](#), rule 74(3), setting out the decisions of the Co-Investigating Judges that may be appealed by the Charged Persons to the Pre-Trial Chamber.

¹⁰⁴¹ Case 002, Nuon Chea Closing Order Appeal, 18 October 2010, [D427/3/1](#), para. 38.

¹⁰⁴² Case 002, Ieng Sary Closing Order Appeal, 25 October 2010, [D427/1/6](#).

¹⁰⁴³ Case 002, Khieu Samphan Closing Order Appeal, 18 October 2010, [D427/4/3](#).

further raised violations of her fair trial rights, including insufficient and inappropriate reasonings in the Closing Order that led to arbitrariness. She therefore requested that the Pre-Trial Chamber quash the Closing Order in certain respects.¹⁰⁴⁴

The Pre-Trial Chamber issued three decisions on these appeals, amending the Closing Order in two respects and dismissing all other grounds of appeal, thereby formally forwarding the case to trial. The Pre-Trial Chamber's dispositions of the appeals were issued first, with the reasoned decisions following after.¹⁰⁴⁵ The Pre-Trial Chamber found that during the period covered by the ECCC's temporal jurisdiction, customary international law required a nexus between the underlying acts of crimes against humanity and an armed conflict.¹⁰⁴⁶ The Pre-Trial Chamber further found that from 1975 to 1979, rape did not exist as a standalone crime against humanity and struck rape from the Closing Order, noting that facts characterised as crimes against humanity in the form of rape could be categorised as the crime against humanity of other inhumane acts.¹⁰⁴⁷ The Closing Order was not reissued to incorporate these amendments and therefore must be read in conjunction with the Pre-Trial Chamber decisions.¹⁰⁴⁸

The Pre-Trial Chamber also issued a decision on the admissibility of several Civil Party applicants who had appealed against the Co-Investigating Judges' rejection of their Civil Party status. It granted appeals submitted by 1,728 Civil Party applicants to become Civil Parties, finding, Judge Catherine Marchi-Uhel dissenting in part, that the Co-Investigating Judges had incorrectly interpreted the necessary causal link between the crimes being investigated and the injury suffered.¹⁰⁴⁹

¹⁰⁴⁴ Case 002, Ieng Thirith Closing Order Appeal, 18 October 2010, [D427/2/1](#).

¹⁰⁴⁵ Case 002, Decision on Khieu Samphan's Closing Order Appeal, 13 January 2011, [D427/4/14](#); Case 002, Decision on Ieng Sary's Closing Order Appeal, 13 January 2011, [D427/1/26](#); Case 002, Decision on Ieng Thirith's and Nuon Chea's Closing Order Appeals, 13 January 2011, [D427/2/12](#) & [D427/3/12](#). These decisions were issued with reasons to follow. The reasoned decisions are here: Case 002, Decision on Khieu Samphan's Appeal against the Closing Order, 21 January 2011, [D427/4/15](#); Case 002, Decision on Appeals by Nuon Chea and Ieng Thirith against the Closing Order, 15 February 2011, [D427/2/15](#) & [D427/3/15](#); Case 002, Decision on Ieng Sary's Appeal against the Closing Order, 11 April 2011, [D427/1/30](#).

¹⁰⁴⁶ Case 002, Decision on Appeals by Nuon Chea and Ieng Thirith against the Closing Order, 15 February 2011, [D427/2/15](#) & [D427/3/15](#), paras 144-148; Case 002, Decision on Ieng Sary's Appeal against the Closing Order, 11 April 2011, [D427/1/30](#), paras 311-313.

¹⁰⁴⁷ Case 002, Decision on Appeals by Nuon Chea and Ieng Thirith against the Closing Order, [D427/2/15](#) & [D427/3/15](#), 15 February 2011, para. 154; Case 002, Decision on Ieng Sary's Appeal against the Closing Order, 11 April 2011, [D427/1/30](#), paras 371-372.

¹⁰⁴⁸ See Case 002/02, Judgment, Annex I: Procedural History, 16 November 2018, [E465.1](#), para. 6.

¹⁰⁴⁹ Case 002, Decision on Appeals against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, 24 June 2011, [D404/2/4](#).

5.2.5. Trial Chamber proceedings

5.2.5.1. Preliminary objections and initial hearing

Internal Rule 89(1) provides parties the opportunity to file preliminary objections at the trial stage concerning, *inter alia*, the jurisdiction of the Chamber. The Trial Chamber required the parties to file these preliminary objections in summary form within a single document and rejected a request that the deadline to file preliminary objections be extended until after the Pre-Trial Chamber had issued reasons for its decisions on the appeals against the Closing Order.¹⁰⁵⁰ Each Defence team submitted preliminary objections to the Chamber's jurisdiction.

In addition to challenges to the fairness of the investigation and the legality of the Internal Rules, Nuon Chea submitted that the ECCC lacked jurisdiction to prosecute him due to the statute of limitations for domestic crimes and because domestic law did not provide a legal basis for the criminalisation of genocide, crimes against humanity, and grave breaches of the Geneva Conventions in 1975.¹⁰⁵¹

Ieng Sary challenged the ECCC's jurisdiction on various grounds, including based on his amnesty and pardon, the *ne bis in idem* principle, and in relation to some of the crimes and modes of liability charged.¹⁰⁵² He also filed a motion to strike portions of the Closing Order due to procedural defects,¹⁰⁵³ which was in some instances considered by the Trial Chamber to be a preliminary objection.¹⁰⁵⁴

Ieng Thirith similarly challenged the jurisdiction of the ECCC in relation to several crimes and modes of liability charged.¹⁰⁵⁵

¹⁰⁵⁰ Case 002, Trial Chamber's Amended Procedures for the Filing of Preliminary Objections and Clarification of Envisaged Response Deadlines, 14 February 2011, E51; Case 002, Advance Notifications of Chamber's Disposition of Motions E14, E15, E9/2, E9/3, E24 and E27, 3 February 2011, E35. See also Case 002, Trial Chamber Memorandum: Preliminary Objections, 18 February 2011, E51/1; Case 002, Order to Ieng Sary Defence on Filing of Preliminary Objections, 25 February 2011, E51/6; Case 002, Directions to Parties Concerning Preliminary Objections and Related Issues, 5 April 2011, E51/7.

¹⁰⁵¹ Case 002, Consolidated Preliminary Objections, 25 February 2011, E51/3.

¹⁰⁵² Case 002, Summary of Ieng Sary's Rule 89 Preliminary Objections & Notice of Intent of Noncompliance with Future Informal Memoranda Issued In Lieu of Reasoned Judicial Decisions Subject to Appellate Review, 25 February 2011, E51/4. See also Case 002, Ieng Sary's Rule 89 Preliminary Objection (Statute of Limitations for Grave Breaches), 14 February 2011, E43; Case 002, Ieng Sary's Rule 89 Preliminary Objection (Rule 89(1)(C)), 14 February 2011, E48.

¹⁰⁵³ Case 002, Ieng Sary's Motion to Strike Portions of the Closing Order Due to Defects, 24 January 2011, E58.

¹⁰⁵⁴ See Case 002/02, Appeal Judgment, 23 December 2022, F76, paras 508-516 discussing whether this was a true preliminary objection and noting that the Trial Chamber had sometimes referred to it as such.

¹⁰⁵⁵ Case 002, Ieng Thirith Defence's Preliminary Objections, 14 February 2011, E44.

Khieu Samphan submitted that the ECCC lacked personal jurisdiction over him, lacked subject matter jurisdiction over the crimes charged,¹⁰⁵⁶ and could similarly not apply the 1956 Cambodian Penal Code due to expiry of the applicable statute of limitations.¹⁰⁵⁷

After receiving the summary preliminary objections, and responses from the Co-Prosecutors and Civil Parties,¹⁰⁵⁸ the Trial Chamber invited parties to make further submissions on certain preliminary objections. It indicated that because the resolution of the issue of personal jurisdiction raised by Khieu Samphan entailed a mixed assessment of law and fact, it would not be dealt with at the initial hearing but oral argument could be held on the matter during an early stage of the trial, followed by hearing evidence in relation to the roles and responsibilities of all four Accused. It also stated that it would issue further directives or a reasoned decision in due course concerning Nuon Chea's arguments related to the judicial investigation, political interference, and the Internal Rules.¹⁰⁵⁹

The initial hearing took place between 27 and 30 June 2011.¹⁰⁶⁰ It covered the provision of a tentative list of witnesses for the first phases of the trial and any objections to this witness list, the preliminary objections concerning *ne bis in idem*, amnesty and pardon, a statute of limitations in relation to grave breaches of the Geneva Conventions, a statute of limitations in relation to offences contained in the 1956 Penal Code, and an initial specification of the substance of reparations for the Civil Parties.¹⁰⁶¹

The Trial Chamber issued separate decisions on the preliminary objections related to the following:

- **The constitutionality of the Internal Rules:** The Chamber found that nothing in the UN-RGC Agreement prohibited the adoption of procedural rules and agreeing with the Pre-Trial Chamber that the Internal Rules formed a self-contained regime of

¹⁰⁵⁶ Case 002, Preliminary Objections Concerning Jurisdiction, 14 February 2011, E46.

¹⁰⁵⁷ Case 002, Preliminary Objections Concerning Termination of Prosecution (Domestic Crimes), 14 February 2010, E47.

¹⁰⁵⁸ Case 002, Co-Prosecutors' Joint Response to Defence Rule 89 Preliminary Objections, 21 March 2011, E51/5/3/1; Case 002, Civil Parties' Joint Response to Defence Rule 89 Preliminary Objections, 7 March 2011, E51/5/4.

¹⁰⁵⁹ Case 002, Directions to Parties Concerning Preliminary Objections and Related Issues, 5 April 2011, E51/7.

¹⁰⁶⁰ Case 002, T. 27 June 2011, E1/4.1; Case 002, T. 28 June 2011, E1/5.1; Case 002, T. 29 June 2011, E1/6.1; Case 002, T. 30 June 2011, E1/7.1.

¹⁰⁶¹ See Case 002, Scheduling of Initial Hearing, 11 May 2011, E86.

procedural law related to the unique circumstances of the ECCC and were not in opposition to the Cambodian Code of Criminal Procedure.¹⁰⁶²

- **National crimes:** The Trial Chamber acknowledged that the Closing Order did not set out a description of the material facts giving rise to the charges of domestic crimes or the modes of liability applicable to them, and although the Trial Chamber agreed with the Co-Prosecutors that motions to strike or amend a Closing Order do not form part of the ECCC's legal framework, it did not consider that the portions of the Closing Order dealing with national crimes met the preconditions for validity. Since there was no possibility for the Trial Chamber to amend the Closing Order or to remit it to the Co-Investigating Judges for amendment, it determined that it had no basis to try the Accused for offences in the 1956 Cambodian Penal Code.¹⁰⁶³
- **Amnesty and pardon, and *ne bis in idem*:** The Trial Chamber noted that it was confronted with preliminary objections addressing substantially similar issues to those addressed by the Pre-Trial Chamber and stated that although it was not a review or appellate body from decisions of that Chamber, for reasons of judicial economy it would not issue lengthy decisions where it concurs with the Pre-Trial Chamber.¹⁰⁶⁴ It stated that it agreed with the Pre-Trial Chamber's findings on the deficiencies in the 1979 trial of Ieng Sary and in the Pre-Trial Chamber's disposition of the issue, and further considered that as Ieng Sary sought to rely on the combined effects of the 1979 trial and his 1996 pardon to obtain immunity from prosecution for any crimes relating to the facts tried, applying the *ne bis in idem* principle would amount to a *de facto* amnesty for the facts prosecuted in 1979.¹⁰⁶⁵

¹⁰⁶² Case 002, Decision on Nuon Chea's Preliminary Objection Alleging the Unconstitutional Character of the ECCC Internal Rules, 8 August 2011, E51/14, paras 6-7.

¹⁰⁶³ Case 002, Decision on Defence Preliminary Objections (Statute of Limitations on Domestic Crimes), 22 September 2011, E122, paras 15-16, 22-23.

¹⁰⁶⁴ Case 002, Decision on Ieng Sary's Rule 89 Preliminary Objections (*Ne bis in idem* and Amnesty and Pardon), 3 November 2011, E51/15, para. 23.

¹⁰⁶⁵ Case 002, Decision on Ieng Sary's Rule 89 Preliminary Objections (*Ne bis in idem* and Amnesty and Pardon), 3 November 2011, E51/15, paras 23, 32-36.

The Trial Chamber decided to defer consideration on certain issues relating to jurisdiction until a later date.¹⁰⁶⁶

5.2.5.2. Severance

On 22 September 2011, in order to safeguard its ability to reach a timely Judgment in Case 002 given the length and complexity of the Closing Order as well as the physical frailty and advanced age of the Accused, the Trial Chamber, on its own motion severed Case 002 into discrete cases.¹⁰⁶⁷ The first case, Case 002/01, was to focus on the factual allegations described in the Indictment as population movement phases one and two, and the crimes against humanity of murder, extermination, persecution (except on religious grounds), forced transfer, and enforced disappearances (related to phases one and two).¹⁰⁶⁸

Following the initial severance decision, the Co-Prosecutors requested the Trial Chamber to reconsider and to expand the scope of Case 002/01 with nine additional crime sites.¹⁰⁶⁹ The Trial Chamber rejected the Co-Prosecutors' request, but did not exclude the possibility of adding additional charges or counts to the first trial.¹⁰⁷⁰ The Co-Prosecutors then requested to add three crimes sites (Kampong Tralach Leu District, Tuol Po Chrey, and S-21 including its related site Choeung Ek) to Case 002/01.¹⁰⁷¹ The Trial Chamber denied the majority of the Co-Prosecutors' request, only allowing charges related to killings of former Khmer Republic officials at Tuol Po Chrey in the immediate aftermath of the evacuation of Phnom Penh to be incorporated into Case 002/01.¹⁰⁷² It made this decision based on the need for expeditious proceedings,

¹⁰⁶⁶ See Case 002/01, Severance Order Pursuant to Internal Rule 89ter, 22 September 2011, E124, para. 9 and fn. 7.

¹⁰⁶⁷ Case 002/01, Severance Order Pursuant to Internal Rule 89ter, 22 September 2011, E124.

¹⁰⁶⁸ See Case 002/02 Judgment, Annex I: Procedural History, 16 November 2018, E465-1, para. 7 and accompanying footnote.

¹⁰⁶⁹ Case 002/01, Co-Prosecutors' Request for Reconsideration of "Severance Order Pursuant to Internal Rule 89ter", 3 October 2011, E124/2. The nine sites listed in the request were the Kampong Tralach Leu District (District 12); Tuol Po Chrey execution sites; S-21 Security Centre and Choeung Ek (excluding the Prey Sar worksite); the North Zone, Kraing Ta Chan, and Au Kanseng security centres; Kampong Chhnang Airport construction site; and Tram Kok cooperatives.

¹⁰⁷⁰ Case 002/01, Decision on Co-Prosecutors' Request for Reconsideration of the Terms of the Trial Chamber's Severance Order (E124/2) and Related Motions and Annexes, 18 October 2011, E124/7, para. 12.

¹⁰⁷¹ Case 002/01, Co-Prosecutors' Request to Include Additional Crime Sites Within the Scope of the Trial in Case 002/1, 27 January 2012, E163.

¹⁰⁷² Case 002/01, Notification of Decision on Co-Prosecutors' Request to Include Additional Crime Sites within the Scope of Trial in Case 002/01 (E163) and Deadline for Submission of Applicable Law Portion of Closing Briefs, 8 October 2012, E163/5, paras 2-3. See also Case 002, Closing Order, 15 September 2010, D427, paras 705-711; Case 002/01, List of Paragraphs and Portions of the Closing Order Relevant to Case 002/01, Amended Further to the Trial Chamber's Decision on Ieng Thirith's Fitness to Stand Trial (E138) and the Trial Chamber's Decision on Co-Prosecutors' Request to Include Additional Crime Sites within the Scope of Trial in Case 002/01 (E163), E124/7.3, 18 October 2012, para. 1(vii).

the frail health of Ieng Thirith and Ieng Sary, and the apparent disconnect between the other crime sites suggested and the established scope of Case 002/01.¹⁰⁷³ The Trial Chamber then indicated that no additional extensions of scope would be considered.¹⁰⁷⁴

The Co-Prosecutors appealed, arguing that the scope should be expanded to include Kampong Tralach Leu District, S-21, and Choeng Ek.¹⁰⁷⁵ The Supreme Court Chamber considered that it was appropriate for the Trial Chamber to consider expeditiousness and the sequence of Case 002/01 but that there was a *prima facie* paucity of reasoning and consideration of other relevant factors, such as reasonable representativeness of the Indictment. The Supreme Court Chamber also expressed concern that the severance order was issued without the parties' views having been sought. It held that the way the Trial Chamber severed Case 002 violated the parties' right to a reasoned opinion and right to be heard. These errors required the severance order to be annulled. It also noted that the ECCC should explore the establishment of a second panel within the Trial Chamber to support the timely adjudication of Case 002.¹⁰⁷⁶

After hearing from the parties involved,¹⁰⁷⁷ the Trial Chamber once again severed Case 002.¹⁰⁷⁸ Through this second severance decision, the Trial Chamber limited the scope of Case 002/01 to the same scope it had chosen prior to the Supreme Court Chamber's decision, to charges concerning "forced movement of population phases one and two and executions committed at Tuol Po Chrey".¹⁰⁷⁹

¹⁰⁷³ Case 002/01, Notification of Decision on Co-Prosecutors' Request to Include Additional Crime Sites within the Scope of Trial in Case 002/01 (E163) and Deadline for Submission of Applicable Law Portion of Closing Briefs, 8 October 2012, E163/5, para. 2. See also Case 002, Trial Management Meeting, 17 August 2012, E1/114.1, pp. 93-94, 97-98 (En).

¹⁰⁷⁴ See Case 002/01, Forthcoming Document Hearings and Response to Lead Co-Lawyers' Memorandum Concerning the Trial Chamber's Request to Identify Civil Party Applications for Use at Trial (E208/4) and Khieu Samphan Defence Request to Revise Corroborative Evidence Lists (E223), 19 October 2012, E223/2, para. 3.

¹⁰⁷⁵ Case 002/01, Co-Prosecutors' Immediate Appeal of Decision Concerning the Scope of Trial in Case 002/01 with Annex I and Confidential Annex II, 7 November 2012, E163/5/1/1.

¹⁰⁷⁶ Case 002/01, Decision on the Co-Prosecutors' Immediate Appeal of the Trial Chamber's Decision Concerning the Scope of Case 002/01, 8 February 2013, E163/5/1/13, paras 36-51.

¹⁰⁷⁷ Case 002/01, T. 18 February 2013, E1/171.1; Case 002/01, T. 20 February 2013, E1/172.1; Case 002/01, T. 21 February 2013, E1/173.1. Note that these hearing were initially scheduled on 14 and 15 February 2013, respectively. See Case 002/01, Directions to the Parties in Consequence of the Supreme Court Chamber's Decision on Co-Prosecutors' Immediate Appeal of the Trial Chamber's Decision Concerning the Scope of Case 002/01 (E163/5/1/13), 12 February 2013, E163/5/1/13/1. Ieng Sary passed away on 14 March 2013, before the Trial Chamber rendered its Second Severance Decision.

¹⁰⁷⁸ Case 002/01, T. 29 March 2013, E1/176.1, pp. 2-4 (En); Case 002/01, Decision on Severance of Case 002 Following Supreme Court Chamber Decision of 8 February 2013, 26 April 2013, E284.

¹⁰⁷⁹ Decision on Severance of Case 002 Following Supreme Court Chamber Decision of 8 February 2013, 26 April 2013, E284, para. 4.

The Co-Prosecutors appealed, seeking inclusion of charges related to S-21 Security Centre within the scope of Case 002/01.¹⁰⁸⁰ Nuon Chea also appealed, seeking inclusion of genocide and crimes committed at worksites and cooperatives.¹⁰⁸¹ The Supreme Court Chamber considered that the Trial Chamber's failure to comply with the Supreme Court Chamber's previous instructions that severance must give due consideration to reasonable representativeness of the Indictment constituted an error of law and an error in the exercise of the Trial Chamber's discretion. However, considering that the Trial Chamber was apparently unprepared to adjudicate the remaining charges in the Closing Order within Case 002/01, and that ordering the Trial Chamber to expand Case 002/01 at that time would result in unnecessary delays, it instructed that the charges that should have been included in Case 002/01 instead form part of Case 002/02 and that Case 002/02 commence as soon as possible. For this to happen, it considered that the establishment of a second panel "has now become imperative". It instructed the Office of Administration immediately to explore the possibility of establishing a second panel judges within the Trial Chamber.¹⁰⁸²

A trial management meeting, during which the Acting Director and Deputy Director of the Office of Administration were consulted, was held to discuss the various aspects of constituting a second panel.¹⁰⁸³ Thereafter, the Trial Chamber president concluded that the appointment of a second Trial Chamber panel would not be in the interests of justice, as it would be less expeditious than proceeding with the existing bench who were already familiar with the case.¹⁰⁸⁴

During the planning of Case 002/02, the issue of severance arose again.¹⁰⁸⁵ Parties were heard on the scope of Case 002/02.¹⁰⁸⁶ The Co-Prosecutors

¹⁰⁸⁰ Case 002/01, Co-Prosecutors' Immediate Appeal of Second Decision on Severance of Case 002, 10 May 2013, E284/2/1, para. 84.

¹⁰⁸¹ Case 002/01, Immediate Appeal against Trial Chamber's Second Decision on Severance and Response to Co-Prosecutors' Severance Appeal, 27 May 2013, E284/4/1, para. 84.

¹⁰⁸² Case 002, Decision on Immediate Appeals Against Trial Chamber's Second Decision on Severance of Case 002 Summary of Reasons, 23 July 2013, E284/4/7, paras 9-11.

¹⁰⁸³ See Case 002/01, President's Memorandum on the Proposal to Appoint a Second Panel of the Trial Chamber to Try the Remaining Charges in Case 002, 20 December 2013, E301/4, para. 2.

¹⁰⁸⁴ Case 002/01, President's Memorandum on the Proposal to Appoint a Second Panel of the Trial Chamber to Try the Remaining Charges in Case 002, 20 December 2013, E301/4, para. 10.

¹⁰⁸⁵ See Case 002/02, Trial Chamber Workplan for Case 002/02 and Schedule for Upcoming Filings, 24 December 2013, E301/5; Case 002/02, Trial Chamber Workplan (Detailed), 24 December 2013, E301/5.1.

¹⁰⁸⁶ Case 002/02, Co-Prosecutors' Submission Regarding the Scope of Case 002/02 and Trial Schedule with Annex A, 5 December 2013, E301/2; Case 002/02, Co-Prosecutors' Submission Regarding the Scope of Case 002/02, 31 January 2014, E301/5/1; Case 002/02, Conclusions de la Défense de M. Khieu Samphân relatives à la portée du procès 002/02, 31 January 2014, E301/5/2; Case 002/02, Civil Parties' Submission on the Scope of Case 002/02, 31 January 2014, E301/5/3; Case 002/02, Nuon Chea's Response to Trial Chamber's Request for Submissions

proposed that certain crime sites and events be included in the scope of Case 002/02 and that the remaining sites be excluded permanently.¹⁰⁸⁷ The Civil Party Lead Co-Lawyers supported the Co-Prosecutors' proposal but requested a broader scope, and argued that no charges or related factual circumstances should be dropped.¹⁰⁸⁸ Khieu Samphan opposed further severance,¹⁰⁸⁹ while Nuon Chea supported the Co-Prosecutors' request that sites excluded from Case 002/02 be excluded permanently, but argued that any evidence on any subject within the scope of the Case 002 Closing Order should be admissible even if it does not directly link to a crime site at issue in Case 002/02.¹⁰⁹⁰ Thereafter, the Trial Chamber severed Case 002 further and stated that Case 002/02 would include:

- Genocide of the Cham and the Vietnamese (excluding crimes committed by the Revolutionary Army of Kampuchea (“RAK”) on Vietnamese territory)
- Forced marriages and rape in the context of forced marriage (nationwide)
- Internal purges
- S-21 Security Centre, Kraing Ta Chan Security Centre, Au Kanseng Security Centre, and Phnom Kraol Security Centre
- 1 January Dam Worksite, Kampong Chhnang Airport Construction Site, Trapeang Thma Dam Worksite
- Tram Kok Cooperative
- Treatment of Buddhists (limited to Tram Kok Cooperatives), the Cham (excluding Kroch Chhmar Security Centre), and the Vietnamese (excluding crimes committed by the RAK on Vietnamese territory)
- Targeting of former Khmer Republic officials (limited to Tram Kok Cooperatives, 1 January Dam Worksite, S-21 Security Centre, and Kraing Ta Chan Security Centre).¹⁰⁹¹

Concerning the Scope of Case 002/02, 31 January 2014, [E301/5/4](#); Case 002/02, T. 11 December 2013, [E1/238.1](#); Case 002/02, T. 12 December 2013, [E1/238.2](#); Case 002/02, T. 11 February 2014, [E1/239.1](#).

¹⁰⁸⁷ Case 002/02, Co-Prosecutors' Submission Regarding the Scope of Case 002/02 and Trial Schedule with Annex A, 5 December 2013, [E301/2](#).

¹⁰⁸⁸ Case 002/02, Civil Parties' Submission on the Scope of Case 002/02, 31 January 2014, [E301/5/3](#).

¹⁰⁸⁹ Case 002/02, Conclusions de la Défense de M. Khieu Samphan relatives à la portée du procès 002/02, 31 January 2014, [E301/5/2](#), paras 3-6; Case 002/02, Nuon Chea's Response to Trial Chamber's Request for Submissions Concerning the Scope of Case 002/02, 31 January 2014, [E301/5/4](#), paras 6-7.

¹⁰⁹⁰ Case 002/02, Nuon Chea's Response to Trial Chamber's Request for Submissions Concerning the Scope of Case 002/02, 31 January 2014, [E301/5/4](#).

¹⁰⁹¹ Case 002/02, Decision on Additional Severance of Case 002 and Scope of Case 002/02, 4 April 2014, [E301/9/1](#);

It stated that it would address the charges in the Closing Order which were not included in Cases 002/01 or 002/02 in due course.¹⁰⁹² Khieu Samphan appealed, contending that the Trial Chamber erred in its exercise of discretion, acted contrary to the interests of justice, and caused prejudice such that annulment was required.¹⁰⁹³ The Supreme Court Chamber, on 29 July 2014, upheld the severance decision but considered that the status of the remaining charges was unclear due to the Trial Chamber's repeated indecision regarding the remaining charges and in the interests of legal certainty issued a stay of proceedings in relation to the charges outside the scope of Cases 002/01 and 002/02.¹⁰⁹⁴

While the Trial Chamber then provided clarification regarding "practical and legal consequences, including evidentiary, of the severance proceedings",¹⁰⁹⁵ Khieu Samphan voiced the need for additional clarification concerning the scope of Case 002/02 on the topic of internal purges.¹⁰⁹⁶ After hearing the parties on the subject, the Trial Chamber provided such clarification and affirmed the scope of Case 002/02 as set out in its most recent severance decision.¹⁰⁹⁷ Later, prompted by a further request for clarification on part of the Civil Party Lead Co-Lawyers and following a hearing on the subject,¹⁰⁹⁸ and a request by the Co-Prosecutors to terminate the proceedings in respect of facts not included in the scope of Cases 002/01 and 002/02,¹⁰⁹⁹ the Trial Chamber in February 2017 terminated the proceedings related to facts not included in Cases 002/01 and 002/02.¹¹⁰⁰

Case 002/02, List of Paragraph and Portions of the Closing Order Relevant to Case 002/02, 4 April 2014, [E301/9/1.1](#). See also Case 002/02, Decision on Sequencing of Trial Proceedings in Case 002/02, 12 September 2014, [E315](#).

¹⁰⁹² Case 002/02, Decision on Additional Severance of Case 002 and Scope of Case 002/02, 4 April 2014, [E301/9/1](#), disposition.

¹⁰⁹³ Case 002/02, Mr Khieu Samphan's Immediate Appeals against the Decision on Additional Severance of Case 002 and Scope of Case 002/02, 5 May 2014, [E301/9/1/1/1](#), paras 6-66.

¹⁰⁹⁴ Case 002/02, Decision on Khieu Samphan's Immediate Appeal against the Trial Chamber's Decision on Additional Severance of Case 002 and Scope of Case 002/02, 29 July 2014, [E301/9/1/1/3](#), paras 88-91.

¹⁰⁹⁵ Case 002/02, Clarification on the Consequences of the Severance of Case 002, 13 October 2014, [E318](#), paras 1, 3.

¹⁰⁹⁶ Case 002/02, Urgent Request for Clarification of the Scope of Case 002/02 Concerning Internal Purges, 24 June 2016, [E420](#).

¹⁰⁹⁷ Case 002, T. 27 June 2016, [E1/444.1](#); Case 002/02, Decision on Khieu Samphan Urgent Request for Clarification of the Scope of Case 002/02 Concerning Internal Purges, [E420/1](#), 1 July 2016, paras 4-9.

¹⁰⁹⁸ Case 002/02, Civil Party Lead Co-Lawyers' Request for Clarification Relating to Remaining Charges in Case 002, 9 September 2016, [E439](#); Case 002/02, Observations de la Défense de M. Khieu Samphan en réponse à la demande de clarification des Parties civiles concernant les poursuites restantes du dossier 002, 19 September 2016, [E439/1](#); Case 002/02, Nuon Chea's Response to Civil Party Lead Co-Lawyers' Request for Clarification Relating to the Remaining Charges in Case 002, 19 September 2016, [E439/2](#); Case 002/02, T. 11 January 2017, [E1/519.1](#).

¹⁰⁹⁹ Case 002, Co-Prosecutors' Response to Civil Party Lead Co-Lawyers' Request for Clarification Relating to Remaining Charges in Case 002, 19 September 2016, [E439/3](#). See also Case 002, Decision on Reduction of the Scope of Case 002, 27 February 2017, [E439/5](#), para. 1.

¹¹⁰⁰ Case 002, Decision on Reduction of the Scope of Case 002, 27 February 2017, [E439/5](#), para. 1.

5.2.6. Case 002/01



This trial is important for Cambodia, but not just Cambodia. It is important for the entire world. It demonstrates that crimes of such magnitude and severity will not be forgotten and that those responsible will be held to account

Closing Statement by
the National Co-Prosecutor¹¹⁰¹



5.2.6.1. Conduct of the trial

Prior to the commencement of the trial, the Trial Chamber ordered all parties to file lists of proposed witnesses, experts, and Civil Parties, and lists of documents and exhibits they intended to put before the Chamber.¹¹⁰² The parties proposed a cumulative total of 1,054 witnesses and requested to tender into evidence approximately 7,600 documents.¹¹⁰³ During the initial hearing in June 2011, during trial management meetings in April 2011, August 2012, and June 2013, and during trial, the Trial Chamber informed the parties about the witnesses it intended to call.¹¹⁰⁴

The Trial Chamber determined that the trial would begin with the following sequence of topics:

One, the structure of Democratic Kampuchea; **two**, roles of each accused during the period prior to the establishment of Democratic Kampuchea, including when these roles were assigned; **three**, role of each accused in the Democratic Kampuchean government, their assigned responsibilities, the extent of their authority and the lines

¹¹⁰¹ T. 17 October 2013, E1/229.1, p. 3 (En).

¹¹⁰² Case 002, Order to File Material in Preparation for Trial, 17 January 2011, E9.

¹¹⁰³ See Case 002/01, Judgment, 7 August 2014, E313, para. 4.

¹¹⁰⁴ See for example Case 002, Final Decision on Witnesses and Civil Parties to be Heard in Case 002/01, 7 August 2014, E312; Case 002, Scheduling of Trial Management Meeting to Enable Planning of the Remaining Trial Phases in Case 002/01 and Implementation of Further Measures Designed to Promote Trial Efficiency, 3 August 2012, E218.

of communication, throughout the temporal period with which the ECCC is concerned; **four**, policies of Democratic Kampuchea on the issues raised in the indictment.¹¹⁰⁵

Opening statements in Case 002/01 commenced on 21 November 2011.¹¹⁰⁶ All parties, except for Ieng Sary, presented an opening statement.¹¹⁰⁷ Evidentiary hearings were held beginning 5 December 2011.¹¹⁰⁸ The hearing of evidence concluded on 23 July 2013,¹¹⁰⁹ and closing statements took place between 16 and 31 October 2013.¹¹¹⁰ The trial, including closing statements, lasted for a total of 222 hearing days.¹¹¹¹

Over the course of the trial proceedings, 92 individuals appeared before the Chamber concerning the substance of the proceedings, including 58 witnesses (five of whom were character witnesses called on behalf of Khieu Samphan), three experts, and 31 Civil Parties.¹¹¹² Five appeared via video-link. The Trial Chamber admitted 1,124 written statements and transcripts of witnesses and Civil Parties who did not appear before it. It admitted 5,824 pieces of documentary evidence, including contemporaneous and analytical documents, audio and video recordings, and the written evidence of witnesses, experts, and Civil Parties.¹¹¹³

5.2.6.2. Ieng Thirith's fitness to stand trial, severance, and death

A few days before the opening statements in Case 002 and following examinations of her fitness to stand trial by an expert geriatrician and a group of psychiatric experts and hearing from the parties, the Trial Chamber found Ieng Thirith unfit to stand trial due to the impact of progressive dementia. It ordered the severance of the charges against her from Case 002, a stay of the proceedings against her, and her unconditional release.¹¹¹⁴ The Trial Chamber lacked four affirmative votes to decide whether it had the jurisdiction to impose conditions on Ieng Thirith's

¹¹⁰⁵ See Case 002, Ieng Sary's Motion to Add New Trial Topics to Trial Schedule, 23 May 2011, E89, para. 1.

¹¹⁰⁶ Case 002, T. 21 November 2011, E1/13.1.

¹¹⁰⁷ Ieng Sary waived his right to make an opening statement. See Case 002/01, T. 22 November 2011, E1/14.1, pp. 117-121 (En).

¹¹⁰⁸ Case 002/01, T. 5 December 2011, E1/16.1.

¹¹⁰⁹ Case 002, T. 23 July 2013, E1/227.1.

¹¹¹⁰ See Case 002/01, Judgment, 7 August 2014, E313, para. 8.

¹¹¹¹ Case 002/01, Judgment, Procedural History, 7 August 2014, E313.1, para. 45.

¹¹¹² Case 002/01, Judgment, 7 August 2014, E313, para. 32. See also Case 002/01, Final Decision on Witnesses, Experts and Civil Parties to be Heard in Case 002/01, 7 August 2014, E312.

¹¹¹³ Case 002/01, Judgment, 7 August 2014, E313, paras 32-33.

¹¹¹⁴ Case 002, Decision on Ieng Thirith's Fitness to Stand Trial, 17 November 2011, E138.

release (whether she should be ordered to seek medical treatment or be released without condition), but unanimously agreed that the consequence of such disagreement was that she would be released.¹¹¹⁵

Following an appeal by the Co-Prosecutors,¹¹¹⁶ the Supreme Court Chamber, Judge Chandra Nihal Jayasinghe dissenting, found that the Trial Chamber erred in law in concluding that Ieng Thirith should be unconditionally released, and set aside the Trial Chamber's order to release her. It directed the Trial Chamber to request Ieng Thirith's additional treatment, then order that she undergo examination to determine whether she became fit to stand trial and make a new determination on her fitness to stand trial following this examination.¹¹¹⁷

The Trial Chamber, following consultation with medical experts, oversaw further medical treatment of Ieng Thirith during the first half of 2012 and re-called the court-appointed experts to assess her fitness to stand trial in August 2012. Based on the experts' conclusions, the Trial Chamber affirmed its finding that Ieng Thirith was unfit to stand trial on 13 September 2012, again ordering her release.¹¹¹⁸

Following a further appeal by the Co-Prosecutors,¹¹¹⁹ the Supreme Court Chamber set aside the Trial Chamber's second decision insofar as it declined to order measures of judicial supervision and ordered a regime of judicial supervision for Ieng Thirith.¹¹²⁰ She was required to: (1) inform the Trial Chamber (or its designee) prior to any change of her residential address; (2) not leave the country without the authorisation of the Chamber; (3) undergo six-monthly medical examination by medical practitioners to

¹¹¹⁵ Case 002, Decision on Ieng Thirith's Fitness to Stand Trial, 17 November 2011, E138, para. 62.

¹¹¹⁶ Case 002, Immediate Appeal Against Trial Chamber Decision To Order the Release of Accused Ieng Thirith, 18 November 2011, E138/1/1; Case 002, Co-Prosecutors' Supplementary Submissions on Appeal Concerning the Release of Accused Ieng Thirith, 22 November 2011, E138/1/4.

¹¹¹⁷ Case 002, Decision on Immediate Appeal Against Trial Chamber's Order to Release Ieng Thirith, 13 December 2011, E138/1/7, disposition.

¹¹¹⁸ Case 002, Decision on Reassessment of Accused Ieng Thirith's Fitness to Stand Trial following Supreme Court Chamber Decision of 13 December 2011, 13 September 2012, E138/1/10.

¹¹¹⁹ Case 002, Immediate Appeal Against Decision on Reassessment of Accused Ieng Thirith's Fitness to Stand Trial Following the Supreme Court Chamber Decision of 13 December 2011, 14 September 2012, E138/1/10/1/1.

¹¹²⁰ Case 002, Decision on Immediate Appeal Against the Trial Chamber's Order to Unconditionally Release Ieng Thirith, 14 December 2012, E138/1/10/1/5/7. See also Case 002, Ieng Thirith Defence Request for Clarification of the Execution of the Supreme Court Chamber's Decision on Immediate Appeal Against the Trial Chamber's Order to Unconditionally Release the Accused Ieng Thirith (E138/1/10/1/5/8), 27 June 2013, E138/1/10/1/5/8/3; Case 002, Order on Measures to be Imposed on Ieng Thirith, 19 July 2013, E138/1/10/1/5/8/4.

be appointed by the Chamber; and (4) make herself available for security checks to be performed by judicial police once a month.¹¹²¹

Ieng Thirith died at home in Pailin province, on 22 August 2015.¹¹²² On 27 August 2015, the Trial Chamber terminated all criminal and civil actions against Ieng Thirith.¹¹²³

5.2.6.3. Ieng Sary's fitness to stand trial and death

Prior to the start of trial, Ieng Sary requested that the trial be conducted through half-day sessions, because his age and state of health made sitting in a courtroom for long periods difficult.¹¹²⁴ The Trial Chamber appointed an expert geriatrician to examine Ieng Sary, along with Nuon Chea and Ieng Thirith, who had requested experts to assess their fitness to stand trial.¹¹²⁵ Ieng Sary did not challenge the expert's report concluding that he was fit to stand trial, but requested the implementation of certain recommendations by the expert concerning his in-court seating.¹¹²⁶ The Trial Chamber declined to implement the request to conduct proceedings through half-day sessions.¹¹²⁷

In mid-May 2012, six months into the substantive hearing, the Trial Chamber invited Ieng Sary's treating physician to testify on Ieng Sary's ability to participate in the proceedings following medical difficulties. The physician recommended that Ieng Sary participate via audio-visual means from his holding cell and considered that Ieng Sary's state of health prohibited his presence in the courtroom. The Trial Chamber adjourned the hearings for the week, considering that Ieng Sary's health prevented his presence in the courtroom or the holding cell, and he had not waived his right to be present.¹¹²⁸

¹¹²¹ Case 002, Decision on Immediate Appeal Against the Trial Chamber's Order to Unconditionally Release Ieng Thirith, 14 December 2012, [E138/1/10/1/5/7](#), disposition.

¹¹²² Case 002, Letter of Death of Ieng Thirith, 24 August 2015, [E359](#); Case 002, Report of Death of Ieng Thirith, 24 August 2015, [E359.1](#); Case 002, Death Certificate of Ieng Thirith, 24 August 2015, [E359.3](#).

¹¹²³ Case 002, Termination of the Proceedings Against the Accused Ieng Thirith, 27 August 2015, [E359/1](#).

¹¹²⁴ Case 002, Ieng Sary's Motion to Conduct the Trial Through Half-Day Sessions, 19 January 2011, [E20](#).

¹¹²⁵ See Case 002/01, Judgment, Procedural History, 7 August 2014, [E313.1](#), para. 20.

¹¹²⁶ Case 002, Scheduling Order for Preliminary Hearing on Fitness to Stand Trial, 11 August 2011, [E110](#).

¹¹²⁷ See Case 002, Decision on Accused Ieng Sary's Fitness to Stand Trial, 26 November 2012, [E238/9](#), para. 5.

¹¹²⁸ Case 002, Decision on Accused Ieng Sary's Fitness to Stand Trial, 26 November 2012, [E238/9](#), para. 7.

Ieng Sary was medically assessed on his fitness to stand trial. Based on these assessments, the Trial Chamber determined Ieng Sary to be fit to stand trial.¹¹²⁹

Ieng Sary withdrew waivers he had issued of his right to be present during the testimony of certain witnesses and Civil Parties and notified the Trial Chamber that he intended to exercise his right to be present in the courtroom during all witness testimony.¹¹³⁰ When proceedings resumed, Ieng Sary participated from his holding cell on recommendation from the Detention Facility's medic, who noted that Ieng Sary was easily fatigued and was experiencing medical difficulties.¹¹³¹ The Trial Chamber rejected a request that Ieng Sary be monitored and video recorded in the holding cell so that there would be a record of whether he was participating remotely in the proceedings.¹¹³² After further litigation on this matter¹¹³³ and whether an additional expert should be appointed to determine Ieng Sary's fitness to stand trial,¹¹³⁴ Ieng Sary appealed the denial of the request for audio-video recordings and the decision on his fitness to stand trial.¹¹³⁵

Ieng Sary died on 14 March 2013 at the Khmer-Soviet Friendship Hospital.¹¹³⁶ That day, the Trial Chamber issued an order to terminate all criminal and civil actions before the ECCC against him.¹¹³⁷

5.2.6.4. Trial Judgment

On 7 August 2014, the Trial Chamber pronounced¹¹³⁸ and issued the Case 002/01 Trial Judgment, convicting Nuon Chea and Khieu Samphan of various crimes against humanity and sentencing them

¹¹²⁹ Case 002, Decision on Accused Ieng Sary's Fitness to Stand Trial, 26 November 2012, E238/9, paras 7-13.

¹¹³⁰ Case 002, Ieng Sary's Withdrawal of Waivers of Right to Be Present, 3 December 2012, E237/2; Case 002, Ieng Sary's Notice of Withdrawal of Waivers of Right to Be Present During the Testimony of Certain Witnesses and Civil Parties, 6 December 2012, E249.

¹¹³¹ Case 002, T. 4 December 2012, E1/147.1, pp. 1-4 (En).

¹¹³² Case 002, T. 4 December 2012, E1/147.1, pp. 17-20, 27-28 (En).

¹¹³³ See Case 002, Ieng Sary's Appeal Against the Trial Chamber's 16 January 2013 Decision to Deny his Request to be Audio and/or Video Recorded in the Holding Cell, 5 February 2013, E254/3/1/1, paras 2, 5, 11.

¹¹³⁴ See Case 002, Ieng Sary's Appeal Against the Trial Chamber's Decision That He Is Fit to Stand Trial and Its Refusal to Appoint An Additional Expert to Assess Fitness, 3 January 2013, E238/9/2/1, paras 17-19, 22.

¹¹³⁵ Case 002, Ieng Sary's Appeal Against the Trial Chamber's 16 January 2013 Decision to Deny his Request to be Audio and/or Video Recorded in the Holding Cell, 5 February 2013, E254/3/1/1; Case 002, Ieng Sary's Appeal Against the Trial Chamber's Decision That He Is Fit to Stand Trial and Its Refusal to Appoint An Additional Expert to Assess Fitness, 3 January 2013, E238/9/2/1. Ieng Sary died prior to the issuance of decisions on these appeals.

¹¹³⁶ Case 002, Certificate of Death of Ieng Sary, 14 March 2013, E270.

¹¹³⁷ Case 002, Termination of the Proceedings Against the Accused Ieng Sary, 14 March 2013, E270/1.

¹¹³⁸ Case 002, T. 7 August 2014, E1/241.1.

to life imprisonment.¹³⁹ The Trial Judgment is 981 pages in Khmer, 623 pages in English, and 777 pages in French, excluding its annexes. It is divided into 20 chapters.

- i. **Chapter 1** is the introduction, which contains a brief procedural overview of the case and a summary of the charges.
- ii. **Chapter 2** discusses the preliminary issues of jurisdiction, the principle of legality, evidentiary and procedural principles, and fair trial rights.
- iii. **Chapter 3** discusses the historical background of the case.
- iv. **Chapter 4** discusses the law and legal findings concerning the *chapeau* requirements for crimes against humanity as set out in Article 5 of the ECCC Law.
- v. **Chapter 5** discusses the relevant administrative structures of the CPK, DK, and the CPK military forces.
- vi. **Chapter 6** discusses the communication structure inside DK between 1975 and 1979.
- vii. **Chapter 7** discusses Nuon Chea's roles and functions. The Trial Chamber found that Nuon Chea:
 - was Deputy Secretary of the Communist Party of Kampuchea, and controlled not only political decisions but also DK government, administration, and military matters
 - was a full rights member of both the CPK Central Committee and its Standing Committee
 - was Chairman of the Standing Committee of the People Representative Assembly
 - was Acting Prime Minister of Democratic Kampuchea from September 1976 to September 1977 during Pol Pot's absence
 - was involved in military and security matters which was intrinsically linked with his long-standing authority within the Party

¹³⁹ Case 002/01, Judgment, 7 August 2014, E313.

- actively participated in the operations of the RAK, particularly concerning the war against Vietnam, received regular reports and gave instructions regarding security matters, either directly or through decisions of the Party
- was formally responsible for propaganda, political education, party discipline, internal security matters, and the enemy situation, advocating for the uncovering of enemies and their elimination
- oversaw all Party activities extending beyond the roles and responsibilities formally entrusted to him
- exercised the ultimate decision-making power of the Party alongside Pol Pot
- was empowered to (and did in fact) make and implement CPK policies and decisions

viii. **Chapter 8** discusses Khieu Samphan's roles and functions. The Trial Chamber found that Khieu Samphan:

- was President of the State Presidium, *i.e.*, the head of state representing DK at home and overseas
- was a full rights member of the CPK Central Committee who regularly attended the Standing Committee meetings to share and make critical decisions
- previously served as Deputy Prime Minister, Minister of National Defence, and CPNLA Commander-in-Chief, and was trusted to represent the FUNK, GRUNK, and the DK regime publicly, within Cambodia and abroad
- had an important role in relation to the DK economy in his capacity as the member of Office 870 responsible for commerce
- was a confident and trusted member of the Party centre who lived and worked closely with the CPK senior leaders, both prior to 1975 and subsequently at K3 and K1
- was aware of the CPK's policies and had access to information about the situation in Cambodia generally, including knowledge of arrests of senior cadres.

- ix. **Chapter 9** covers the applicable law concerning the crimes against humanity of murder, extermination, persecution on political grounds, and the other inhumane acts of enforced disappearances, forced transfer, and attacks against human dignity.
- x. **Chapter 10** details the Trial Chamber's findings concerning the population movement phase one, in which people were forcibly evacuated from Phnom Penh and the crimes of murder, extermination, political persecution, and the other inhumane acts of attacks against human dignity and forced transfer as crimes against humanity were found to have occurred.
- xi. **Chapter 11** details the Trial Chamber's findings concerning the population movement phase two, in which people were forcibly moved from the Central (old North), Southwest, West, and East Zones to Sector 103 (Preah Vihear), Sector 106 (Siem Reap), and the Northwest Zone and the crimes of extermination, political persecution, and other inhumane acts comprising enforced disappearances, forced transfer, and attacks against human dignity as crimes against humanity were found to have occurred.
- xii. **Chapter 12** details the Trial Chamber's findings concerning Tuol Po Chrey, wherein it found that large-scale killings of former Khmer Republic officials were carried out that amounted to murder, extermination, and persecution on political grounds as crimes against humanity.
- xiii. **Chapter 13** discusses the applicable law concerning individual criminal responsibility, specifically commission through a JCE, planning, instigating, ordering, aiding and abetting, and superior responsibility.
- xiv. **Chapter 14** discusses the Trial Chamber's factual findings concerning the JCE. The Trial Chamber was satisfied that by June 1974 until December 1977 there was a plurality of persons who shared a common purpose to "implement rapid socialist revolution through a 'great leap forward' and defend the Party against internal and external enemies, by whatever means necessary"; and members of

the Standing and Central Committees, government ministries, and Zone and Autonomous Sector secretaries, including the Accused, were part of this group with a specified common purpose to rapidly build and defend the country through a socialist revolution, based on the principles of secrecy, independence-sovereignty, democratic centralism, self-reliance, and collectivisation. It noted that this common purpose was not in itself necessarily or entirely criminal, but found that it was implemented through criminal means, namely the population movement policy and the targeting policy, which resulted in and/or involved crimes.¹⁴⁰

xv. **Chapter 15** considers Nuon Chea's criminal responsibility. The Trial Chamber found that Nuon Chea committed, through JCE I, the crimes against humanity of:

- population movement phase one:
 - murder
 - political persecution
 - other inhumane acts (comprising forced transfer and attacks against human dignity)
- population movement phase two:
 - political persecution
 - other inhumane acts (comprising forced transfer and attacks against human dignity)
- Tuol Po Chrey:
 - murder
 - extermination.
- With regard to the other modes of liability charged, the Trial Chamber considered that Nuon Chea's participation in the JCE encompassed all the conduct forming the basis of the other forms of liability, and thus entered a conviction only for commission of the crimes through a JCE.¹⁴¹

¹⁴⁰ Case 002/01, Judgment, 7 August 2014, E313, paras 777-837.

¹⁴¹ Case 002/01, Judgment, 7 August 2014, E313, section 15.4-15.5 (especially para. 940).

- xvi. **Chapter 16** considers Khieu Samphan’s criminal responsibility. The Trial Chamber found that Khieu Samphan committed, through JCE I, the crimes against humanity of:
- population movement phase one:
 - murder
 - political persecution
 - other inhumane acts (comprising forced transfer and attacks against human dignity)
 - population movement phase two:
 - political persecution
 - other inhumane acts (comprising forced transfer and attacks against human dignity)
 - Tuol Po Chrey:
 - murder
 - extermination at Tuol Po Chrey
 - With regard to the other modes of liability charged, the Trial Chamber considered that Khieu Samphan’s participation in the JCE encompassed all the conduct forming the basis of the other forms of liability, and thus entered a conviction only for commission of the crimes through a JCE.¹¹⁴²
- xvii. **Chapter 17** discusses cumulative convictions. The Trial Chamber noted that its findings on murder and extermination in relation to the population movement phase one were based on the same killings and that its findings on murder and extermination at Tuol Po Chrey were based upon the same killings. It therefore entered convictions for extermination only in relation to those killings.¹¹⁴³ It noted that the underlying acts concerning political persecution were largely based on the same conduct underlying the Chamber’s findings on the other crimes, but, noting that the crimes of persecution, extermination, and other inhumane acts contain materially distinct elements, convicted the Accused of the crimes of persecution

¹¹⁴² Case 002/01, Judgment, 7 August 2014, E313, sections 16.3-16.4 (especially para. 1053).

¹¹⁴³ Case 002/01, Judgment, 7 August 2014, E313, para. 1057.

on political grounds, extermination, and other inhumane acts (comprising forced transfer, enforced disappearances and attacks against human dignity), as each offence has a materially distinct element not contained in the others.¹¹⁴⁴

- xviii. **Chapter 18** discusses sentencing.
- xix. **Chapter 19** discusses Civil Party reparations, wherein the Trial Chamber reviewed 13 proposed initiatives and endorsed 11 of them.
- xx. **Chapter 20** is the disposition.

5.2.6.5. Supreme Court Chamber proceedings

5.2.6.5.1. Appeals against the Trial Judgment

Nuon Chea, Khieu Samphan, and the Co-Prosecutors appealed the Trial Judgment.¹¹⁴⁵ Nuon Chea's Notice of Appeal listed 223 grounds of appeal.¹¹⁴⁶ Khieu Samphan's Notice of Appeal advanced 148 grounds of appeal.¹¹⁴⁷ The Co-Prosecutors submitted only that the Trial Chamber erred in law by excluding the possibility that the Accused could be criminally liable via the form of liability known as JCE III, and requested that the Supreme Court Chamber declare that this form of liability could be applied at the ECCC.¹¹⁴⁸

In the course of the appeal proceedings, Nuon Chea, through numerous written submissions, requested that the Supreme Court Chamber obtain, admit, and consider additional evidence; his requests included seeking to obtain audio-visual material, summoning sixteen individuals as witnesses, and admitting into evidence other documentary or audio-visual material.¹¹⁴⁹ The Supreme Court Chamber granted, in part, Nuon Chea's requests,

¹¹⁴⁴ Case 002/01, Judgment, 7 August 2014, E313, paras 1058-1060.

¹¹⁴⁵ Case 002/01, Co-Prosecutors' Appeal Against the Judgment of the Trial Chamber in Case 002/01, 28 November 2014, F11; Case 002/01, Nuon Chea's Appeal Against the Judgment in Case 002/01, 29 December 2014, F16; Case 002/01, Mr Khieu Samphan's Defence Appeal Brief Against the Judgment in Case 002/01, 29 December 2014, F17.

¹¹⁴⁶ Case 002, Notice of Appeal Against the Judgment in Case 002/01, E313/1/1.

¹¹⁴⁷ Case 002, Déclaration d'appel de M. Khieu Samphan contre le jugement rendu dans le procès 002/01, 29 September 2014, E313/2/1.

¹¹⁴⁸ Case 002/01, Co-Prosecutors' Appeal Against the Judgment of the Trial Chamber in Case 002/01, 28 November 2014, F11.

¹¹⁴⁹ See Case 002, Decision on Pending Requests for Additional Evidence on Appeal and Related Matters - Disposition, 21 October 2015, F2/9.

initiating an additional investigation, which was to be conducted by two delegate judges.¹¹⁵⁰ On 2, 3, and 6 July 2015, the Supreme Court Chamber held hearings to examine three witnesses, the summoning of whom had been requested by Nuon Chea.¹¹⁵¹

The Supreme Court Chamber scheduled the appeal hearing for 16 to 18 November 2015 and notified the parties that it was considering a potential change to the legal characterisation of the crimes in respect of the mode of liability by which Nuon Chea and Khieu Samphan were held responsible for the crimes, inviting the parties to file submissions thereupon.¹¹⁵² The start of the appeal hearing, for logistical reasons, was subsequently postponed to 17 November 2015,¹¹⁵³ and then, due to issues involving Nuon Chea's counsel,¹¹⁵⁴ to 16 February 2016.¹¹⁵⁵ The hearings continued through 18 February 2016.¹¹⁵⁶

5.2.6.5.2. Appeal Judgment

The Appeal Judgment was pronounced¹¹⁵⁷ and issued on 23 November 2016.¹¹⁵⁸ It is divided into six chapters.

- i. **Chapter 1** is the procedural history of the case.
- ii. **Chapter 2** discusses requests the Supreme Court Chamber had received for additional evidence.
- iii. **Chapter 3** discusses the standard of appellate review.
- iv. **Chapter 4** considers the appeals of Nuon Chea and Khieu Samphan together:
 - a. **Section A** discusses the constitutionality of the ECCC Internal Rules. The Supreme Court Chamber rejected Nuon Chea's

¹¹⁵⁰ Case 002, Interim Decision on Part of Nuon Chea's First Request to Obtain and Consider Additional Evidence in Appeal Proceedings of Case 002/01, 1 April 2015, F2/4/3, paras 24-26.

¹¹⁵¹ See Case 002/01, Decision on Part of Nuon Chea's Requests to Call Witnesses on Appeal, 29 May 2015, F2/5; Case 002/01, T. 2 July 2015, F1/1.1; Case 002/01, T. 3 July 2015, F1/2.1; Case 002/01, T. 6 July 2015, F1/3.1.

¹¹⁵² Case 002/01, Order Scheduling the Appeal Hearing, 9 October 2015, F30.

¹¹⁵³ Case 002/01, Order Setting the Final Timetable for the Appeal Hearing and Informing the Parties of Issues to be Addressed, 5 November 2015, F30/4.

¹¹⁵⁴ See Chapter 5.2.7.2. The start of Case 002/02 proceedings and issues caused by severance.

¹¹⁵⁵ Case 002/01, Order Scheduling the Resumption of the Appeal Hearing, 23 December 2015, F30/17.

¹¹⁵⁶ Case 002/01, T. 16 February 2016, F1/5.1; Case 002/01, T. 17 February 2016, F1/6.1; Case 002/01, T. 18 February 2016, F1/7.1, p. 102 (En).

¹¹⁵⁷ Case 002, T. 23 November 2016, F1/8.1.

¹¹⁵⁸ Case 002/01, Appeal Judgment, 23 November 2016, F36.

arguments regarding the purported unconstitutionality of the Internal Rules.

- b. **Section B** covers the fairness of the proceedings. The Supreme Court Chamber considered and rejected arguments concerning (1) bias or impartiality of the judges; (2) unfairness caused by the failure to summon certain witnesses; (3) the process for admitting and using documents; (4) time and page limits; (5) the Trial Chamber's procedural orders; (6) alleged breaches of the right to a reasoned decision; and (7) alleged breaches of the right to be informed of the charges and scope of the trial.

- c. **Section C** covers the Trial Chamber's approach to the evidence. The Supreme Court Chamber considered arguments that the Trial Chamber: (1) limited opportunities for investigations at trial; (2) permitted witnesses to review prior statements before testifying and to answer leading questions based on those statements; (3) unduly restricted the scope of cross examination; (4) admitted and relied on written statements *in lieu* of oral testimony; (5) relied on hearsay evidence; (6) relied on Civil Party testimony as material evidence; (7) relied on expert testimony and secondary sources as direct evidence; (8) incorrectly assessed fact witnesses; (9) held that evidence produced by torture was inadmissible under all circumstances; (10) presented witnesses with documents that were unknown to them; (11) rejected defence demands regarding the production of original versions of documents and their chain of custody; (12) admitted documents without adversarial debate; and (13) relied on the wrong standard of the burden of proof. It rejected each of these arguments.

- d. **Section D** covers the crimes of which the Accused were convicted. It examines: (1) murder; (2) extermination; (3) other inhumane acts; (4) persecution; (5) contextual elements of crimes against humanity; and (6) foreseeability and the principle of legality.
 1. Concerning murder, the Supreme Court Chamber first considered the question of whether the *mens rea* of murder could include *dolus eventualis*, rather than the direct intent

to kill.¹¹⁵⁹ It found that the Trial Chamber did not err by relying on the lower *mens rea* standard.¹¹⁶⁰ The Supreme Court Chamber next considered whether the Trial Chamber erred in its findings concerning murder committed during the population movement phase one, and found no error in the Trial Chamber's overall finding that murder occurred.¹¹⁶¹ It also considered whether the Trial Chamber erred in its findings concerning murder committed at Tuol Po Chrey and found no error.¹¹⁶²

2. Concerning extermination, the Supreme Court Chamber first considered whether the definition of extermination included a *mens rea* of *dolus eventualis*, as found by the Trial Chamber, and whether an element of extermination was the existence and knowledge of a vast murderous enterprise.¹¹⁶³ It determined that the Trial Chamber erred in law concerning the *mens rea*, which it found to require direct intent.¹¹⁶⁴ The Chamber did not agree with Nuon Chea that an element of extermination was the existence and awareness of a vast murderous enterprise, and found that the Trial Chamber had not erred by rejecting this argument.¹¹⁶⁵ Next, the Supreme Court Chamber considered whether the Trial Chamber erred in its factual findings concerning extermination during the population movement phase one. It found that the Trial Chamber erred in concluding that the crime against humanity of extermination was established in respect of the civilians who had died because of the conditions of the evacuation of Phnom Penh, as the requisite level of intent had not been established. It also found that the Trial Chamber erred concerning the extermination of Khmer Republic soldiers and officials, as the scale element had not been met.¹¹⁶⁶ Similarly, the Supreme Court Chamber determined that neither the scale element nor the necessary

¹¹⁵⁹ Case 002/01, Appeal Judgment, 23 November 2016, F36, section 4(D)(1)(a).

¹¹⁶⁰ Case 002/01, Appeal Judgment, 23 November 2016, F36, para. 410. The Supreme Court Chamber considered this question in Case 002/02 as well. See Chapter 5.2.7.4.3. Appeal Judgment.

¹¹⁶¹ Case 002/01, Appeal Judgment, 23 November 2016, F36, section 4(D)(1)(b).

¹¹⁶² Case 002/01, Appeal Judgment, 23 November 2016, F36, section 4(D)(1)(c).

¹¹⁶³ Case 002/01, Appeal Judgment, 23 November 2016, F36, section 4(D)(2)(a).

¹¹⁶⁴ Case 002/01, Appeal Judgment, 23 November 2016, F36, section 4(D)(2)(a)(1).

¹¹⁶⁵ Case 002/01, Appeal Judgment, 23 November 2016, F36, section 4(D)(2)(a)(2).

¹¹⁶⁶ Case 002/01, Appeal Judgment, 23 November 2016, F36, paras 529-541.

mens rea had been reasonably established with regard to population movement phase two, and reversed the Trial Chamber's finding of extermination.¹¹⁶⁷ It considered that the facts would, however, support a finding of murder, and changed the legal characterisation of the crime to murder.¹¹⁶⁸ The Supreme Court Chamber found that the Trial Chamber did not err with regard to its finding of extermination at Tuol Po Chrey.¹¹⁶⁹

3. Concerning other inhumane acts, the Supreme Court Chamber determined that the Trial Chamber's approach of setting out elements of enforced disappearance and forced transfer as other inhumane acts demonstrated methodological confusion, as they did not form discrete crimes against humanity with specific legal definitions and elements in 1975. Instead, the Trial Chamber should have assessed the relevant conduct during the population movements phases one and two holistically to determine whether the elements of other inhumane acts had been met.¹¹⁷⁰ The Supreme Court Chamber decided that since the Trial Chamber failed to carry out the required analysis, it would do so, after first considering the relevant factual findings that had been challenged on appeal.¹¹⁷¹ The Supreme Court Chamber then considered the challenged factual findings, determining that certain findings were unreasonable, while upholding others, then, having performed the holistic assessment, determined that the evacuation of Phnom Penh and the population movement phase two amounted to other inhumane acts.¹¹⁷²
4. Concerning persecution, the Supreme Court Chamber determined that the Trial Chamber did not err in holding that persecution on political grounds maybe committed against groups other than members of a political group or those

¹¹⁶⁷ Case 002/01, Appeal Judgment, 23 November 2016, F36, paras 546-560.

¹¹⁶⁸ Case 002/01, Appeal Judgment, 23 November 2016, F36, paras 561-562.

¹¹⁶⁹ Case 002/01, Appeal Judgment, 23 November 2016, F36, paras 563-566.

¹¹⁷⁰ Case 002/01, Appeal Judgment, 23 November 2016, F36, paras 572-589.

¹¹⁷¹ Case 002/01, Appeal Judgment, 23 November 2016, F36, para. 590.

¹¹⁷² Case 002/01, Appeal Judgment, 23 November 2016, F36, paras 591-660.

holding political views.¹¹⁷³ It rejected arguments that “New People” were not a sufficiently discernible group,¹¹⁷⁴ and that the Trial Chamber erred in finding that persecution was committed during the population movement phase one.¹¹⁷⁵ The Supreme Court Chamber found that the Trial Chamber erred, however, in finding that persecution occurred during the population movement phase two, as the movement of people appeared to have been a widespread practice that affected all parts of the population and was thus not an emanation of persecutory intent.¹¹⁷⁶

5. Concerning the contextual elements of crimes against humanity, the Supreme Court Chamber determined that the Trial Chamber did not err in finding that there was no nexus to armed conflict requirement by 1975,¹¹⁷⁷ nor a state or organisational plan or policy requirement as an independent contextual element of the definition of crimes against humanity.¹¹⁷⁸ The Supreme Court Chamber also found no error in the Trial Chamber’s findings that the charged acts had a nexus to the widespread and systematic attack directed against the civilian population of Cambodia on political grounds during the temporal period at issue in Case 002/01 and that the Accused had knowledge of the attack and that their acts formed part thereof.¹¹⁷⁹

6. Concerning foreseeability and the principle of legality, the Supreme Court Chamber rejected arguments that the Trial Chamber erred concerning the foreseeability and accessibility of the crimes, stating that it would consider the foreseeability and accessibility of the modes of liability in the following section.¹¹⁸⁰

e. **Section E** discusses individual criminal responsibility.

¹¹⁷³ Case 002/01, Appeal Judgment, 23 November 2016, F36, paras 667-680.

¹¹⁷⁴ Case 002/01, Appeal Judgment, 23 November 2016, F36, paras 681-686.

¹¹⁷⁵ Case 002/01, Appeal Judgment, 23 November 2016, F36, paras 687-697.

¹¹⁷⁶ Case 002/01, Appeal Judgment, 23 November 2016, F36, paras 698-706.

¹¹⁷⁷ Case 002/01, Appeal Judgment, 23 November 2016, F36, paras 711-721.

¹¹⁷⁸ Case 002/01, Appeal Judgment, 23 November 2016, F36, paras 722-732.

¹¹⁷⁹ Case 002/01, Appeal Judgment, 23 November 2016, F36, paras 733-757.

¹¹⁸⁰ Case 002/01, Appeal Judgment, 23 November 2016, F36, paras 758-766.

1. Concerning the Accused's contribution to a JCE, the Supreme Court Chamber found that the Trial Chamber erred by finding that the policy of population movement "resulted in and/or involved" the commission of crimes, as this indicated that the Trial Chamber considered that crimes that had generally resulted from the common purpose could be attributed to the Accused (which would involve JCE III, not applicable at the ECCC), but stated that not every error leads to reversal on appeal and it would consider the Trial Chamber's error in its review of the Trial Chamber's factual findings on JCE.¹¹⁸¹
2. Concerning the criminality of the common purpose, the Supreme Court Chamber found that while the Trial Chamber's distinction between the common purpose (which it considered may not have been criminal) and the criminal policies was unfortunate and misleading, this did not amount to an appealable error.¹¹⁸²
3. Concerning the existence and content of the population movement policy, the Supreme Court Chamber found no overall error that would invalidate the Judgment.¹¹⁸³
4. Concerning the existence and content of the targeting policy, the Supreme Court Chamber found that the evidence the Trial Chamber relied on was weak, ambivalent, of low probative value, and called into question by other evidence. Therefore, it was not reasonable to find that a policy contemplating the execution of Khmer Republic soldiers and officials existed at the time of the events at Tuol Po Chrey. Thus, the Accused could not be held criminally liable.¹¹⁸⁴
5. Concerning overall political context, the Supreme Court Chamber considered arguments about the Trial Chamber's

¹¹⁸¹ Case 002/01, Appeal Judgment, 23 November 2016, F36, paras 773-810.

¹¹⁸² Case 002/01, Appeal Judgment, 23 November 2016, F36, paras 814-817.

¹¹⁸³ Case 002/01, Appeal Judgment, 23 November 2016, F36, paras 818-868.

¹¹⁸⁴ Case 002/01, Appeal Judgment, 23 November 2016, F36, paras 970-972.

finding that the CPK adopted a policy of armed struggle, the legal standard in respect of the contribution to the common purpose, the finding that a contribution to a JCE could be made by way of a culpable omission, the findings on Nuon Chea’s contribution to the implementation of the common purposes, the findings concerning Khieu Samphan’s contribution to the implementation of the common purpose, the finding that the CPK was a unified and hierarchical party and that the armed forces involved in the evacuation of Phnom Penh were unified, findings concerning the role of the Central Committee, findings concerning democratic centralism, findings concerning the law in respect of the requisite intent, and findings on Nuon Chea’s and Khieu Samphan’s intent. The Supreme Court Chamber found no overall error that would invalidate the Judgment.¹¹⁸⁵

6. Concerning the principle of legality as it relates to modes of liability, the Supreme Court Chamber found no error by the Trial Chamber, considering that JCE liability was sufficiently foreseeable and accessible.¹¹⁸⁶
7. Concerning the Trial Chamber’s findings in relation to other modes of liability, the Supreme Court Chamber did not consider it appropriate to address these arguments as they could not invalidate the Judgment or occasion a miscarriage of justice since “irrespective of the correctness of the Trial Chamber’s legal and factual findings in relation to those modes of liability, the Accused’s conviction for the crimes in question based on JCE would still stand”.¹¹⁸⁷
8. Concerning the crimes related to Tuol Po Chrey, since the Supreme Court Chamber found that liability did not arise under JCE because the existence of the targeting policy was not reasonably established, and since the Supreme Court Chamber found that the Trial Chamber had relied to

¹¹⁸⁵ Case 002/01, Appeal Judgment, 23 November 2016, F36, section 4(E)(1)(e)-(o).

¹¹⁸⁶ Case 002/01, Appeal Judgment, 23 November 2016, F36, section (4)(E)(2).

¹¹⁸⁷ Case 002/01, Appeal Judgment, 23 November 2016, F36, para. 1099.

a decisive degree on the targeting policy when finding liability for planning, instigating, ordering (Nuon Chea only), and aiding and abetting as well as superior responsibility (Nuon Chea only), the Supreme Court Chamber overturned the Trial Chamber's findings.¹¹⁸⁸

- f. **Section F** covers the grounds of appeal related to sentencing. The Supreme Court Chamber dismissed Khieu Samphan's grounds of appeal relating to sentencing, finding that he had failed to establish error in the Trial Chamber's approach.¹¹⁸⁹ It considered the impact of its findings on the sentence and determined that the imposition of a life sentence for each of the Accused was appropriate and therefore confirmed the sentences imposed by the Trial Chamber.¹¹⁹⁰
- v. **Chapter 5** considers the Co-Prosecutors' appeal relating to the applicability of JCE III at the ECCC. The Supreme Court Chamber found the appeal inadmissible, noting that the Co-Prosecutors did not argue that the legal error that they alleged invalidated the Trial Judgment and thus "fail[ed] to comply with a mandatory requirement for their appeal, namely to specify an error 'invalidating the decision'".¹¹⁹¹ The Supreme Court Chamber considered whether the question raised by the Co-Prosecutors was an issue of general significance to the ECCC's jurisprudence such that the Supreme Court Chamber should exercise its discretion to pronounce on the issue. It found that there was no need to consider the Co-Prosecutors' appeal on an exceptional basis, noting that the appeals brought by Nuon Chea and Khieu Samphan provided the Supreme Court Chamber an opportunity to analyse the notion of JCE.¹¹⁹²
- vi. **Chapter 6** is the disposition. The Supreme Court Chamber, insofar as they related to facts carried out in the course of the population movement phase one: (1) reversed Nuon Chea's and Khieu Samphan's convictions for the crime against humanity of

¹¹⁸⁸ Case 002/01, Appeal Judgment, 23 November 2016, F36, paras 1100-1101.

¹¹⁸⁹ Case 002/01, Appeal Judgment, 23 November 2016, F36, paras 1110-1116.

¹¹⁹⁰ Case 002/01, Appeal Judgment, 23 November 2016, F36, paras 1117-1121.

¹¹⁹¹ Case 002/01, Appeal Judgment, 23 November 2016, F36, paras 1130-1137.

¹¹⁹² Case 002/01, Appeal Judgment, 23 November 2016, F36, paras 1138-1143.

extermination; and (2) affirmed Nuon Chea’s and Khieu Samphan’s convictions for the crimes against humanity of murder, persecution on political grounds, and other inhumane acts. Insofar as they related to facts carried out in the course of the population movement phase two; (1) reversed Nuon Chea’s and Khieu Samphan’s convictions for the crimes against humanity of extermination and persecution on political grounds; and (2) affirmed Nuon Chea’s and Khieu Samphan’s convictions for the crime against humanity of other inhumane acts, and, recharacterising the facts, entered a conviction for the crime against humanity of murder; and insofar as they related to facts carried out at Tuol Po Chrey: (1) reversed Nuon Chea’s and Khieu Samphan’s convictions for the crimes against humanity of extermination, murder, and persecution on political grounds; (2) affirmed the sentence of life imprisonment imposed by the Trial Chamber on both Nuon Chea and Khieu Samphan; (3) dismissed the Co-Prosecutors’ appeal as inadmissible; and (4) ordered that Nuon Chea and Khieu Samphan remain in the custody of the ECCC pending the finalisation of arrangements for their transfer, in accordance with the law, to the prison in which their sentence would continue to be served.

5.2.7. Case 002/02



The present case, known as ‘Case 002/02’, involves some of the most heinous events that occurred during one of the most tragic and catastrophic periods in human history

President of the Supreme Court Chamber ¹¹⁹³



¹¹⁹³ Case 002/02, Summary of the Appeal Judgment in Case 002/02, 22 September 2022, F76.1, para. 5.

5.2.7.1. Conduct of the trial

The Trial Chamber decided that the following crime sites and factual allegations would form the basis for Case 002/02 and would be sequenced as follows:

- i. Cooperatives:
 - Tram Kak Cooperatives
- ii. Worksites:
 - 1 January Dam Worksite
 - Trapeang Thma Dam Worksite
 - Kampong Chhnang Airport Construction Site
- iii. Treatment of targeted groups:
 - Treatment of Cham
 - Treatment of Vietnamese
 - Treatment of former Khmer Republic officials
- iv. Security centres and internal purges:
 - Au Kanseng
 - Phnom Kraol
 - S-21
- v. Regulation of marriage
- vi. Nature of the armed conflict
- vii. Role of the Accused.¹¹⁹⁴

The Trial Chamber recalled that in Case 002/01 it had deferred consideration of several preliminary objections until later trials.¹¹⁹⁵ It noted that certain issues raised as preliminary objections did not concern the jurisdiction of the Chamber and would be dealt with in the Judgment.¹¹⁹⁶ It rejected

¹¹⁹⁴ Case 002/02, List of Paragraph and Portions of the Closing Order Relevant to Case 002/02, 4 April 2014, E301/9/1.1; Case 002/02, Decision on Additional Severance of Case 002 and Scope of Case 002/02, 4 April 2014, E301/9/1; Case 002/02, Decision on Sequencing of Trial Proceedings in Case 002/02, 12 September 2014, E315.

¹¹⁹⁵ Case 002/02, Further Information regarding Remaining Preliminary Objections, 25 April 2014, E306, para. 1.

¹¹⁹⁶ Case 002/02, Further Information regarding Remaining Preliminary Objections, 25 April 2014, E306, para. 2.

a request by the Civil Party Lead Co-Lawyers to add charges of rape outside the context of forced marriage, considering that it had no authority to add new facts or charges to the Closing Order that were dismissed by the Co-Investigating Judges.¹¹⁹⁷ It also noted that two preliminary objections, regarding the customary international law basis for the definition of torture and a request to recharacterise rape as a separately enumerated crimes against humanity, had been rejected by the Supreme Court Chamber and so it would not consider them.¹¹⁹⁸

This left two remaining preliminary objections which had been raised by Ieng Sary, one concerning a statute of limitations for grave breaches of the Geneva Conventions and the other concerning jurisdiction over the crime against humanity of deportation.¹¹⁹⁹ The Trial Chamber requested the parties to indicate whether they adhered to these objections following Ieng Sary's death and to clarify their positions prior to the initial hearing.¹²⁰⁰ Both Nuon Chea and Khieu Samphan adhered to the objection relating to grave breaches and Khieu Samphan maintained the objection relating to deportation.¹²⁰¹

The further initial hearing for issues relevant to Case 002/02 was conducted on 30 July 2014 and discussed Civil Party reparations, the status of preliminary objections, a review of legal issues relevant to Case 002/02, and the sequence of trial proceedings with an initial review of potential witnesses, Civil Parties, and experts.¹²⁰² The Trial Chamber stated that it was sufficiently briefed on the issues and would issue a written decision as soon as possible.¹²⁰³

In September and October 2014, the Trial Chamber issued decisions rejecting the two remaining preliminary objections, ruling that

These included questions relating to the crime against humanity of imprisonment, whether the facts in the Closing Order met the legal requirements to establish genocide, and legal challenges to forced marriage and rape within forced marriage.

¹¹⁹⁷ Case 002/02, Further Information regarding Remaining Preliminary Objections, 25 April 2014, E306, para. 3.

¹¹⁹⁸ Case 002/02, Further Information regarding Remaining Preliminary Objections, 25 April 2014, E306, para. 4.

¹¹⁹⁹ Case 002/02, Further Information regarding Remaining Preliminary Objections, 25 April 2014, E306, para. 4.

¹²⁰⁰ Case 002/02, Further Information regarding Remaining Preliminary Objections, 25 April 2014, E306, para. 5.

¹²⁰¹ Conclusions de la Défense de M. Khieu Samphan sur les exceptions préliminaires sur lesquelles la Chambre n'a pas encore statué, 20 May 2014, E306/2; Position on Remaining Objections Raised by the Ieng Sary Defence Team, 20 May 2014, E306/1. See also Case 002/02, Decision on Defence Preliminary Objection Regarding Jurisdiction over the Crime Against Humanity of Deportation, 29 September 2014, E306/5, paras 2-3; Case 002/02, Decision on Defence Preliminary Objection Regarding a Statute of Limitations for Grave Breaches of the Geneva Conventions of 12 August 1949, 31 October 2014, E306/6, para. 2.

¹²⁰² Case 002/02, Agenda for Further Initial Hearing in Case 002/02 (30 July 2014), 7 July 2014, E311/1; Case 002/02, T. 30 July 2014, E1/240.1.

¹²⁰³ Case 002/02, T. 30 July 2014, E1/240.1, p. 21 (En).

the challenge concerning deportation should have been raised at the pre-trial stage,¹²⁰⁴ and determining that there was no statute of limitations applicable to the grave breaches provision in the ECCC Law.¹²⁰⁵

Evidentiary hearings in Case 002/02 commenced with opening statements on 17 October 2014 and concluded on 11 January 2017.¹²⁰⁶ The trial, including closing statements, lasted for a total of 283 hearing days.¹²⁰⁷ During the trial, the Chamber heard the testimony of 185 individuals, including 114 witnesses, 63 Civil Parties, and eight expert witnesses.¹²⁰⁸ The evidentiary base in Case 002/02 included more than 10,800 documents for analysis and consideration by the Trial Chamber.¹²⁰⁹

5.2.7.2. The start of Case 002/02 proceedings and issues caused by severance

On 5 February 2014, Khieu Samphan requested the Trial Chamber to stay the commencement of Case 002/02 until the Case 002/01 Judgment was issued and the Supreme Court Chamber had ruled on all Case 002/01 appeals.¹²¹⁰ The Trial Chamber denied this request, finding that Khieu Samphan had not established any valid reason for delay.¹²¹¹

On 25 August 2014, Khieu Samphan requested reconsideration of his request, citing both the Supreme Court Chamber's decision on additional severance and the scope of Case 002¹²¹² and the Trial Chamber's delivery of the Case 002/01 Judgment¹²¹³ as new circumstances warranting reconsideration.¹²¹⁴ In the alternative, he requested a new panel of judges

¹²⁰⁴ Case 002/02, Decision on Defence Preliminary Objection Regarding Jurisdiction over the Crime Against Humanity of Deportation, 29 September 2014, E306/5.

¹²⁰⁵ Case 002/02, Decision on Defence Preliminary Objection Regarding a Statute of Limitations for Grave Breaches of the Geneva Conventions of 12 August 1949, 31 October 2014, E306/6.

¹²⁰⁶ Case 002/02, T. 17 October 2014, E1/242.1; Case 002/02, T. 11 January 2017, E1/519.1.

¹²⁰⁷ See Case 002/02 Judgment, Annex I: Procedural History, 16 November 2018, E465.1, para. 66.

¹²⁰⁸ Case 002/02 Judgment, Annex I: Procedural History, 16 November 2018, E465.1, para. 66. See also Case 002/02, Decision on Witnesses, Civil Parties and Experts Proposed to be Heard during Case 002/02, 18 July 2017, E459.

¹²⁰⁹ Case 002/02 Trial Judgment, 16 November 2018, E465, para. 56.

¹²¹⁰ Case 002/02, Khieu Samphan's Submissions on the need to wait for a Final Judgment in Case 002/01 before commencing Case 002/02, 5 February 2014, E301/5/5, para. 67.

¹²¹¹ Case 002/02, Decision on Khieu Samphan Request to Postpone Commencement of Case 002/02 Until a Final Judgment is Handed Down in Case 002/01, 21 March 2014, E301/5/5/1, para. 16.

¹²¹² Case 002/02, Decision on Khieu Samphan's Immediate Appeal against the Trial Chamber's Decision on Additional Severance of Case 002 and Scope of Case 002/02, 29 July 2014, E301/9/1/1/3.

¹²¹³ Case 002/01, Judgment, 7 August 2014, E313.

¹²¹⁴ Case 002/02, Mr Khieu Samphan's Request for Reconsideration of the Need to Await Final Judgment in Case 002/01 Before Commencing Case 002/02 and the Appointment of a New Panel of Trial Judges, 25 August 2014, E314/1, paras 6-10, 54.

to adjudicate Case 002/02.¹²¹⁵ The Trial Chamber rejected the request, considering a stay unwarranted and noting that the other parties and the Supreme Court Chamber had urged Case 002/02 to start as soon as possible. It forwarded the alternative request to disqualify the judges to the Judicial Administration Committee.¹²¹⁶ On the same day it rejected his request, the Trial Chamber issued a scheduling order for the hearing on the substance in Case 002/02. It noted that the parties were in the process of preparing their notices of appeal against the Case 002/01 Judgment and preparing their appeal briefs and considered that the parties would benefit from starting the evidentiary proceedings after the filing of the notices of appeal and from a reduced hearing schedule while they were preparing their appeal briefs, and scheduled the commencement of the initial segment of evidentiary proceedings to begin 17 October 2014, with the Chamber sitting three days per week.¹²¹⁷ The Trial Chamber rejected a request by Khieu Samphan to reconsider this scheduling order and to postpone the start of trial until the appeal briefs had been filed in Case 002/01, finding there to be no new circumstances warranting reconsideration.¹²¹⁸

On 17 October 2014, the substantive hearing in Case 002/02 commenced with the Co-Prosecutors' opening statements, followed by statements from Nuon Chea and Khieu Samphan. Both Nuon Chea and Khieu Samphan informed the Trial Chamber that they had instructed their respective Co-Lawyers to abstain from attending proceedings in Case 002/02, citing the need to focus on the preparation of the Case 002/01 appeal briefs and the pending application for disqualification of the Trial Chamber judges in Case 002/02.¹²¹⁹ Subsequently, both Defence teams exited the courtroom.¹²²⁰ After hearing from the remaining parties present, the Trial Chamber adjourned the hearing until a 21 October 2014 trial management meeting.¹²²¹ Nuon Chea's and Khieu Samphan's Co-Lawyers did not attend the trial management meeting and did not provide a justification for their absence.¹²²² The Trial Chamber warned the Co-Lawyers that they were obstructing

¹²¹⁵ Case 002/02, Mr Khieu Samphan's Request for Reconsideration of the Need to Await Final Judgment in Case 002/01 Before Commencing Case 002/02 and the Appointment of a New Panel of Trial Judges, 25 August 2014, E314/1, paras 48-54.

¹²¹⁶ Case 002/02, Decision on Khieu Samphan's Request to Postpone the Commencement of Case 002/02, 19 September 2014, E314/5. For an overview of disqualification decisions, see Annex 5.

¹²¹⁷ Case 002/02, Scheduling Order for Hearing on the Substance in Case 002/02, 19 September 2014, E316.

¹²¹⁸ Case 002, Decision on Khieu Samphan's Urgent Request for Reconsideration of Scheduling Order on the Substance of Case 002/02, 16 October 2014, E314/5/3.

¹²¹⁹ Case 002/02, T. 17 October 2014, E1/242.1, pp. 64-79 (En).

¹²²⁰ Case 002/02, T. 17 October 2014, E1/242.1, pp. 87, 91 (En).

¹²²¹ Case 002/02, T. 17 October 2014, E1/242.1, pp. 87-93 (En).

¹²²² Case 002/02, Warning to Counsel for Nuon Chea and Khieu Samphan, 24 October 2014, E320, paras 3-4.

the proceedings, and ordered them to attend a new trial management meeting scheduled for 28 October 2014, while cancelling the other scheduled hearings. The Trial Chamber announced that new hearing dates would be provided in due course.¹²²³ After further attempts to begin the trial proceedings and non-attendance of Khieu Samphan's Co-Lawyers,¹²²⁴ on 5 December 2014, the Trial Chamber ordered that standby counsel for Khieu Samphan be appointed for the duration of Case 002/02.¹²²⁵ Tuoch Vorleak and Calvin Saunders were appointed as Khieu Samphan's standby Co-Lawyers and retained those positions until the conclusion of the evidentiary hearings in Case 002/02.¹²²⁶

5.2.7.3. Trial Judgment

On 16 November 2018, the Trial Chamber pronounced the verdict in Case 002/02 along with a summary of reasons, convicting Nuon Chea and Khieu Samphan of crimes against humanity, grave breaches of the Geneva Conventions, and genocide, and sentencing them to life imprisonment. Taking into consideration the life sentences already imposed in Case 002/01, the Trial Chamber merged the two sentences into a single term of

¹²²³ Case 002/02, Warning to Counsel for Nuon Chea and Khieu Samphan, 24 October 2014, E320, paras 6-10.

¹²²⁴ Counsel for Nuon Chea and Khieu Samphan restated the reasons for their non-attendance at the Trial Management Meeting. See Case 002/02, T. 28 October 2014, E1/244.1. On 31 October 2014, the Trial Chamber ordered both the Accused and their counsels to attend Case 002/02 hearings, which would begin on 17 November 2014. See Case 002/02, Ruling Following TMM of 28 October 2014, 31 October 2014, E320/1, para. 10. Counsel for Khieu Samphan reaffirmed their position. See Case 002/02, Mr. Khieu Samphan's Position Following Trial Chamber Ruling E320/1, 13 November 2014, E320/1/1, para. 8. On 17 November 2014, the Trial Chamber attempted to commence proceedings, but Khieu Samphan's counsels were not present. After hearing submissions from Khieu Samphan and the other parties, the Trial Chamber advised Khieu Samphan that his right to counsel of his own choosing was not absolute and that it may appoint counsel against his wishes if the interests of justice required. It ordered Khieu Samphan to inform the Trial Chamber by 4:30 p.m. on 18 November 2014 whether he had withdrawn his previous instruction to counsel not to participate in proceedings in Case 002/02 and adjourned the proceedings until 24 November 2014. See Case 002/02, T. 17 November 2014, E1/245.1, pp. 2-17 (En). On 21 November 2014, the Trial Chamber appointed Khieu Samphan's counsels, Kong Sam Onn, Arthur Vercken, and Anta Guissé, as court-appointed counsel for Khieu Samphan and ordered them to appear at the rescheduled commencement of Case 002/02. See Case 002/02, Decision on the Appointment of Court Appointed Counsel for Khieu Samphan, 21 November 2014, E320/2. See also Case 002/02, Interoffice Memorandum from DSS Providing the Decision on Withdrawal of the Assignment of Mr. Arthur Vercken as International Co-Lawyer for Mr. Khieu Samphan, 24 February 2016, F32/2. On 23 November 2014, the day prior to the new commencement date, Khieu Samphan's counsel sent a letter informing the Trial Chamber that they would continue to not take part in proceedings before completion of the appeal brief despite the Trial Chamber's decision appointing them as court-appointed counsel. See *Lettre à l'Attention de la Chambre de Première Instance*, 24 November 2014, E320/2/1. See also Case 002/02, Decision on the Appointment of Court Appointed Standby Counsel for Khieu Samphan, 5 December 2014, E321/2, para. 12. The Trial Chamber cancelled all trial dates in 2014, and adjourned proceedings until 8 January 2015. Case 002/02, T. 24 November 2014, E1/246.1, p. 4 (En).

¹²²⁵ Case 002, Decision on the Appointment of Court Appointed Standby Counsel for Khieu Samphan, 5 December 2014, E321/2.

¹²²⁶ Case 002/02, Decision on the Termination of Appointments of Court Appointed Standby Counsel for Khieu Samphan, 28 March 2017, E321/3.

life imprisonment for both the Accused.¹²²⁷ The written Trial Judgment was issued on 28 March 2019.¹²²⁸

The Trial Judgment is 3,883 pages in Khmer, 2,259 pages in English, and 2,686 pages in French, excluding its annexes. It is divided into 23 chapters.

- i. **Chapter 1** is the introduction, which contains a brief procedural overview of the case and a summary of the charges.
- ii. **Chapter 2** addresses the preliminary issues of jurisdiction, the principle of legality, the case file, evidentiary and procedural principles, and fair trial rights.
- iii. **Chapter 3** discusses the historical background of the case.
- iv. **Chapter 4** discusses the general overview of the period at issue in the Indictment, 17 April 1975 to 6 January 1979. It covers the factual overview of the temporal scope of the case, including the nature of the armed conflict, the *chapeau* requirements for crimes against humanity, and the general requirements for grave breaches of the Geneva Conventions.
- v. **Chapter 5** covers administrative structures, including the structure of the CPK, DK, and the CPK military forces.
- vi. **Chapter 6** covers communication structures and discusses methods of communication, lines of communication, and military communication.
- vii. **Chapter 7** discusses Nuon Chea's roles and functions. The Trial Chamber found that Nuon Chea:
 - was Deputy Secretary of the Communist Party of Kampuchea since the First Party Congress in 1960

¹²²⁷ Case 002/02, T. 16 November 2018, E1/529.1.

¹²²⁸ Case 002/02 Trial Judgment, 16 November 2018, E465. See also Case 002/02, Appeal Judgment, 23 December 2022, F76, para. 51.

- served as Chairman of the People's Representative Assembly
- was Acting Prime Minister of Democratic Kampuchea from September 1976 to September 1977 during Pol Pot's absence
- controlled not only political decisions, but also the DK government, administration, and military matters
- was involved in military and security matters, which was intrinsically linked with his long-standing authority within the Party
- actively participated in decisions concerning RAK's operations, particularly concerning the war against Vietnam
- was involved in the supervision of the operation of S-21, received regular reports and gave instructions on security matters, either directly or through decisions of the Party
- was involved in propaganda and education which extended to and encompassed Party discipline and internal security matters, as well as the enemy situation, advocating for the uncovering of enemies and their elimination
- oversaw all Party activities extending beyond the roles and responsibilities formally entrusted to him during the DK period, and exercised, together with Pol Pot.

viii. **Chapter 8** covers Khieu Samphan's role and functions. The Trial Chamber found that Khieu Samphan:

- served as President of the State Presidium after the adoption of the DK Constitution and was responsible for conducting diplomatic relations, issuing statements on behalf of the DK and supporting the DK line
- became a candidate member of the CPK Central Committee at the Party's Third Congress, and became a full-rights member at the Fourth Congress
- previously served as Deputy Prime Minister of the GRUNK, Minister of National Defence and CPNLA Commander-in-Chief after 17 April 1975, and although he did not have operational military authority during the DK period he

publicly legitimised the resistance movement that would ultimately reveal itself as the CPK

- performed functions within Office 870 either on appointment to that office or as part of his residual responsibilities as a senior Party member
 - exercised considerable oversight and was therefore thoroughly apprised of DK trade and commerce matters, both domestic and international, between October 1976 and early 1979
 - was a well-informed CPK member who had a unique standing within the Party by virtue of his attendance at the Standing Committee meetings, where important matters were discussed, and crucial decisions were made.
- ix. **Chapter 9** discusses the applicable law of crimes against humanity, grave breaches of the Geneva Conventions, and genocide.
- x. **Chapter 10** discusses cooperatives, specifically Tram Kak Cooperatives.
- xi. **Chapter 11** discusses worksites, specifically the Trapeang Thma Dam Worksite, the 1 January Dam Worksite, and the Kampong Chhnang Airfield Construction Site.
- xii. **Chapter 12** discusses security centres, execution sites, and internal purges, first discussing Nuon Chea's arguments concerning the threat from Vietnam, internal factions, and justification of the DK security policy before discussing the security centres of S-21, Kraing Ta Chan, Au Kanseng, and Phnom Kraol.
- xiii. **Chapter 13** discusses the treatment of targeted groups, specifically the Buddhists, Cham, Vietnamese, and former Khmer Republic officials.
- xiv. **Chapter 14** discusses the regulation of marriage.

- xv. **Chapter 15** discusses the applicable law concerning individual criminal responsibility, specifically commission through a JCE, planning, instigating, ordering, aiding and abetting, and superior responsibility.
- xvi. **Chapter 16** discusses the Trial Chamber’s findings on the JCE, including that senior Khmer Rouge leaders shared the common purpose of “rapidly implementing a socialist revolution in Cambodia through a ‘great leap forward’ designed to build the country, defend it from enemies and radically transform the population into an atheistic and homogeneous Khmer society of work peasants”. Of note, the Trial Chamber found that murder committed with *dolus eventualis* was not part of the common purpose of the JCE, and thus in the following chapters found Nuon Chea and Khieu Samphan to be liable for these murders through aiding and abetting.¹²²⁹
- xvii. **Chapter 17** discusses Nuon Chea’s criminal responsibility.
- xviii. **Chapter 18** discusses Khieu Samphan’s criminal responsibility.
- xix. **Chapter 19** discusses cumulative convictions. Specifically, the Trial Chamber considered that the convictions for murder and extermination as crimes against humanity arising out of the same conduct were cumulative and entered a conviction for extermination only, and that the convictions for inhuman treatment and wilfully causing great suffering or serious injury to body or health as grave breaches of the Geneva Conventions arising out of the same conduct were cumulative, entering a conviction only for wilfully causing great suffering or serious injury to body or health.¹²³⁰
- xx. **Chapter 20** discusses sentencing.

¹²²⁹ Case 002/02 Trial Judgment, 16 November 2018, E465, paras 3921, 3977, 4179, 4183, 4186, 4199, 4311, 4315, 4317-4318, 4328.

¹²³⁰ Case 002/02 Trial Judgment, 16 November 2018, E465, para. 4341.

- xxi. **Chapter 21** discusses Civil Party reparations, wherein the Trial Chamber reviewed 14 proposed initiatives and endorsed 13 of them.
- xxii. **Chapter 22** sets out the disposition. In it, the Trial Chamber noted that it rejected Khieu Samphan's requests to limit the scope of the trial in Case 002/02, recharacterised the crime against humanity of extermination to the crime against humanity of murder including with *dolus eventualis* due to the conditions and circumstances imposed on the victims at the cooperatives and worksites examined in Case 002/02 and the S-21, Kraing Ta Chan, and Phnom Kraol security centres, and found Nuon Chea and Khieu Samphan guilty of crimes against humanity,¹²³¹ grave breaches of the Geneva Conventions,¹²³² and genocide.¹²³³
- xxiii. **Chapter 23** sets out Judge You Ottara's separate opinion on genocide. Judge You Ottara presented his interpretation of the definition of genocide under the Genocide Convention, namely that there could have been a clear basis to examine the broader context of events in Cambodia between 17 April 1975 and 6 January 1979, in particular whether there existed an intention to destroy a substantial part of the very fabric of the Cambodian national group as it then existed. He considered that this has little to do with any discussion of political groups and/or cultural genocide, and that if it had been proved that the Khmer Rouge intended to purify Cambodia by intentionally destroying a substantial part of the Cambodian national group, both in terms of numbers and the qualitative features of the society – its religion, leaders and the political, social and cultural features which defined the *national* group between 17 April 1975 and 6 January 1979 – the ECCC might have been able to give to such deaths and destruction their proper meaning.

¹²³¹ These were murder, extermination, deportation, enslavement, imprisonment, torture, persecution on political, religious, and racial grounds, and other inhumane acts through attacks against human dignity and conduct characterised as enforced disappearances, forced transfer, forced marriage, and rape in the context of forced marriage.

¹²³² These were wilful killing, torture, inhuman treatment, wilfully causing great suffering or serious injury to body or health, wilfully depriving a prisoner of war or civilian the rights of fair and regular trial, and unlawful confinement of a civilian.

¹²³³ For Nuon Chea, this was genocide of the Vietnamese and the Cham. Khieu Samphan was convicted of genocide of the Vietnamese only.

The Trial Chamber also filed a summary of its judgment.¹²³⁴

5.2.7.4. Supreme Court Chamber proceedings

5.2.7.4.1. Nuon Chea's death and termination of proceedings

Nuon Chea passed away on 4 August 2019,¹²³⁵ less than a month after filing a notice of appeal against the Case 002/02 Trial Judgment.¹²³⁶ Two days later, his Defence team seized the Supreme Court Chamber with an urgent request concerning the impact Nuon Chea's death would have on the appeal proceedings. It requested the Supreme Court Chamber to either terminate the appellate proceedings concerning Nuon Chea, in which case the Trial Judgment would be vacated in relation to Nuon Chea since he continued to enjoy a presumption of innocence on appeal, or, alternatively, allow the appellate proceedings concerning Nuon Chea to continue in the interests of justice, while ensuring Nuon Chea's continued representation after his death by counsel of his choice.¹²³⁷

The Supreme Court Chamber terminated the appellate proceedings against Nuon Chea, stating that it remained seized of the urgent request.¹²³⁸ It later decided that the termination of proceedings did not vacate the Trial Judgment, the appeal could not proceed after Nuon Chea's death, and thus a final Judgment on Nuon Chea's guilt or innocence could not be delivered as his death prevented any appellate review. It explained that the presumption of innocence applies at all stages of the proceedings, but does not equate to a *post mortem* finding of not guilty. It also stated that his death did not affect the awarding of Civil Party reparations.¹²³⁹

5.2.7.4.2. Appeals of the Case 002/02 Trial Judgment and appeal hearings

Khieu Samphan and the Co-Prosecutors appealed the Trial Judgment. Khieu Samphan raised approximately 1,824 grounds of appeal.¹²⁴⁰

¹²³⁴ Case 002/02, Summary of Judgment in Case 002/02, 21 September 2023, E465/5.

¹²³⁵ Case 002/02, Nuon Chea Death Certificate, 4 August 2019, F46/1.1.

¹²³⁶ Case 002/02, Nuon Chea's Notice of Appeal Against the Trial Judgment in Case 002/02, 1 July 2019, E465/3/1.

¹²³⁷ Case 002/02, Urgent Request Concerning the Impact on Appeal Proceedings of Nuon Chea's Death Prior to the Appeal Judgment, 6 August 2019, F46/2.

¹²³⁸ Case 002/02, Decision to Terminate Proceedings Against Nuon Chea, 13 August 2019, F46/3.

¹²³⁹ Case 002, Decision on Urgent Request Concerning the Impact on Appeal Proceedings of Nuon Chea's Death Prior to the Appeal Judgment, 22 November 2019, F46/2/4/2.

¹²⁴⁰ See Case 002/02, Appeal Judgment, 23 December 2022, F76, para. 15; Case 002/02, Khieu Samphan's Notice of Appeal (002/02), 1 July 2019, E465/4/1.

The Co-Prosecutors raised a single ground of appeal, that the Trial Chamber erred by finding that rape in the context of forced marriage did not constitute the crime against humanity of other inhumane acts with regard to male victims.¹²⁴¹ On 16 August 2021, Khieu Samphan’s Defence, the Co-Prosecutors, and the Civil Party Co-Lawyers appeared remotely before the Supreme Court Chamber, due to the Covid-19 pandemic, in an appeal hearing against the Case 002/02 Trial Judgment.¹²⁴² The Supreme Court Chamber heard from each party in turn during the four-day hearings held on 16-19 August 2021.¹²⁴³

5.2.7.4.3. Appeal Judgment

On 22 September 2022, the Supreme Court Chamber pronounced the verdict on the appeals in Case 002/02 along with a summary of reasons.¹²⁴⁴ During the drafting of the Appeal Judgment, Judge Maureen Harding Clark resigned and was replaced by Reserve Judge Phillip Rapoza.¹²⁴⁵ The written Appeal Judgment was issued on 23 December 2023.¹²⁴⁶

The Appeal Judgment is divided into ten chapters and two annexes.

- i. **Chapter 1** discusses the factual background and procedural history of the case and introduces Khieu Samphan’s and the Co-Prosecutors’ appeals.
- ii. **Chapter 2** discusses the standard of appellate review.
- iii. **Chapter 3** discusses the structure of the appeal briefs, and the value of precedent at the ECCC.
- iv. **Chapter 4** addresses Khieu Samphan’s main ground of appeal, an alleged error in the issuance and pronouncement of the Trial Judgment. The Supreme Court Chamber dismissed his argument that the Trial Chamber erred by announcing the Trial Judgment

¹²⁴¹ Case 002/02, Co-Prosecutors’ Appeal Against the Case 002/02 Trial Judgment, 20 August 2019, F50.

¹²⁴² Case 002/02, T. 16 August 2021, F1/9.1.

¹²⁴³ Case 002/02, T. 16 August 2021, F1/9.1, T. 17 August 2021, F1/10.1; Case 002/02, T. 18 August 2021, F1/11.1; Case 002/02, T. 19 August 2021, F1/12.1.

¹²⁴⁴ T. 22 September 2022, F1/13.1.

¹²⁴⁵ Order Designating Reserve Judge to Replace Sitting Judge, 12 September 2022, F73.

¹²⁴⁶ Case 002/02, Appeal Judgment, 23 December 2023, F76.

and issuing the full-reasoned Judgment at a later date, which he alleged violated the procedural framework and rendered the Judgment void.

- v. **Chapter 5** addresses alleged errors in the fairness of the proceedings, rejecting allegations that the principle of legality had been violated, that the Trial Chamber misapplied the law on recharacterisation, that the Trial Chamber lacked impartiality, and that the Trial Chamber erred in evidentiary decisions made during trial and in its evidentiary approach.

- vi. **Chapter 6** addresses alleged errors in the scope of the judicial investigation and trial, rejecting allegations that the Trial Chamber erred in dealing with challenges to the scope of the judicial investigation, in dealing with insufficiently supported charges in the Closing Order, in alleged errors related to lack of materially qualified facts and facts excluded from Case 002/02 through severance, and in relying on out of scope but relevant evidence.

- vii. **Chapter 7** addresses errors relating to the crimes, specifically murder, extermination, enslavement, deportation, torture, persecution, other inhumane acts as crimes against humanity, and genocide. The Supreme Court Chamber rejected most of Khieu Samphan's allegations related to errors concerning murder as a crime against humanity but agreed that the Trial Chamber erred in finding that murder had been committed at Phnom Kraol Security Centre. It rejected Khieu Samphan's allegations concerning errors related to extermination, enslavement, deportation, and torture as crimes against humanity. It also rejected most of Khieu Samphan's arguments relating to persecution as a crime against humanity but agreed that the Trial Chamber erred in finding that persecution of New People had occurred at the 1 January Dam Worksite. It rejected Khieu Samphan's allegations concerning errors related to genocide of the Vietnamese.

- viii. **Chapter 8** addresses alleged errors relating to individual criminal responsibility, rejecting allegations that the Trial Chamber erred

with regard to Khieu Samphan's roles and functions and its findings on the applicable law of JCE, its findings on the criminality of the common purpose of the JCE, its findings on the criminal policies, its findings on Khieu Samphan's contribution to the JCE and his knowledge and intent. The Supreme Court Chamber on its own motion addressed an error it found the Trial Chamber to have made related to whether JCE could apply to crimes committed with *dolus eventualis*. It found that the Trial Chamber erred in finding that such crimes could not form part of the common plan of the JCE and in finding that Khieu Samphan aided and abetted murder with *dolus eventualis*. The Supreme Court Chamber considered that such crimes could have been, and were, encompassed by the JCE and that Khieu Samphan's mode of contribution should be recharacterised from aiding and abetting to JCE.

- ix. **Chapter 9** addresses sentencing, setting out the law relevant to the sentencing of senior leaders, clarifying that Khieu Samphan serves a single life sentence for the crimes at issue in Case 002/01 and 002/02, rather than two concurrent life sentences, considering Khieu Samphan's alleged errors relating to the sentence, and considering the impact of the Supreme Court Chamber's findings on the sentence.
- x. **Chapter 10** sets out the disposition. The Supreme Court Chamber reversed Khieu Samphan's conviction for aiding and abetting the crime against humanity of murder with *dolus eventualis* and entered a conviction for murder committed with *dolus eventualis* through JCE, reversed Khieu Samphan's conviction for the crime against humanity of murder at Phnom Kraol Security Centre, reversed Khieu Samphan's conviction for the crime against humanity of persecution on political grounds of New People at the 1 January Dam Worksite, affirmed Khieu Samphan's other challenged convictions, and granted the Co-Prosecutors' appeal, entering a conviction for the crime against humanity of other inhumane acts through conduct characterised as forced marriage and additionally categorised as crime against humanity of other inhumane acts in the form of sexual violence, understood to

constitute forced sexual intercourse in the context of forced marriage with regard to male victims.

The Supreme Court Chamber also filed a summary of its judgment.¹²⁴⁷

5.2.7.5. Post-conviction phase

After the parties made submissions on appropriate detention conditions,¹²⁴⁸ Khieu Samphan was transferred to the Kandal Provincial Prison on 30 January 2023 to continue to serve his life sentence.¹²⁴⁹

5.3. Cases 003 and 004

5.3.1. Challenges faced concerning Cases 003 and 004

5.3.1.1. Disagreements concerning whether to open further cases

Cases 003 and 004 began following a disagreement between the Co-Prosecutors concerning whether additional cases beyond Cases 001 and 002 should be opened. In late 2008, the International Co-Prosecutor brought a formal disagreement before the Pre-Trial Chamber pursuant to Internal Rule 71 concerning the forwarding of Introductory Submissions to the Co-Investigating Judges to open Cases 003 and 004.¹²⁵⁰ While the International Co-Prosecutor favoured opening the cases, the National Co-Prosecutor argued, among other things, that opening new cases was unnecessary, since the specified facts and crimes in the new Introductory Submissions were being investigated by the Co-Investigating Judges in Case 002, who could extend their investigation to new Suspects even if they had not been named in the Introductory Submission opening that case.¹²⁵¹

¹²⁴⁷ Case 002/02, Summary of Supreme Court Chamber Judgment on Appeal in Case 002/02, 22 September 2022, F76.1.

¹²⁴⁸ See Case 002/02, Decision on Khieu Samphan's Request for Information from the Co-Prosecutors on Planned Detention Conditions, 22 December 2022, F77/1/1, sections 1-2.

¹²⁴⁹ *Statement by the Co-Prosecutors on the Transfer of Khieu Samphan to Kandal Provincial Prison*, 1 February 2023. Note that the statement incorrectly refers to Khieu Samphan serving two life sentences. On this point, see Case 002/02, Appeal Judgment, 23 December 2022, F76, paras 2018-2034.

¹²⁵⁰ The International Co-Prosecutor submitted the "International Co-Prosecutor's Written Statement of Facts and Reasons for Disagreement pursuant to Rule 71(2)" on 20 November 2008, and this was forwarded by the Office of Administration to the Pre-Trial Chamber on 3 December 2008. See Disagreement No. 001/18-11-2008-ECCC/PTC, Considerations of the Pre-Trial Chamber Regarding the Disagreement Between the Co-Prosecutors Pursuant to Internal Rule 71, 18 August 2009, D1/1.3 ("PTC Considerations on Disagreement"). The disagreement also involved whether to file a Supplementary Submission in Case 002.

¹²⁵¹ PTC Considerations on Disagreement, 18 August 2009, D1/1.3, para. 29.

The Pre-Trial Chamber judges were unable to reach the supermajority of votes required to decide on the disagreement and issued “Considerations” setting out their respective opinions.¹²⁵² The National Judges considered that as the preliminary investigations had been conducted unilaterally by the International Co-Prosecutor without notice to the National Co-Prosecutor they were in violation of the ECCC Law, UN-RGC Agreement, and Internal Rules and considered that there was no reason to open a new case since the facts and alleged crimes at issue in Cases 003 and 004 were already under judicial investigation in Case 002.¹²⁵³ The International Judges, on the other hand, compared the new Introductory Submissions that would open Cases 003 and 004 with the Introductory Submission being investigated in Case 002 and considered that they contained new facts as well as facts that overlapped with those being investigated in Case 002. They considered that while the International Co-Prosecutor could have chosen to file a Supplementary Submission in Case 002 concerning the new facts, it was at his discretion to choose to file new Introductory Submissions rather than a Supplementary Submission.¹²⁵⁴

As the Pre-Trial Chamber was unable to reach a decision, the International Co-Prosecutor was required to forward the new Introductory Submissions to the Co-Investigating Judges to open Cases 003 and 004, in accordance with Internal Rule 74(1), which provides that the action of one Co-Prosecutor shall be executed. The then-acting International Co-Prosecutor confidentially filed the Second Introductory Submission requesting judicial investigation into what would become Case 003¹²⁵⁵ and the Third Introductory Submission requesting judicial investigation into what would become Case 004.¹²⁵⁶

5.3.1.2. Disagreements during the judicial investigation

After Case 003 and 004 were opened, International Co-Investigating Judge Marcel Lemonde recorded a disagreement with National Co-Investigating Judge You Bunleng concerning the timing of their judicial investigations. The International Co-Investigating Judge wanted to proceed to investigate

¹²⁵² PTC Considerations on Disagreement, 18 August 2009, D1/1.3, para. 44.

¹²⁵³ PTC Considerations on Disagreement, 18 August 2009, D1/1.3, Opinion of Judges Prak Kimsan, Ney Thol and Huot Vuthy.

¹²⁵⁴ PTC Considerations on Disagreement, 18 August 2009, D1/1.3, Opinion of Judges Katinka Lahuis and Rowan Downing.

¹²⁵⁵ Case 003, Acting International Co-Prosecutor’s Notice of Filing of the Second Introductory Submission, 7 September 2009, D1/1.

¹²⁵⁶ Case 004, Acting International Co-Prosecutor’s Notice of Filing of the Third Introductory Submission, 7 September 2009, D1/1.

Cases 003 and 004 while the National Co-Investigating Judge wanted to wait until the conclusion of the Case 002 investigations.¹²⁵⁷ Disagreements were registered confidentially and were not automatically part of the case file of each case. According to the subsequent Closing Orders issued in the cases, five other disagreements were recorded in Case 003¹²⁵⁸ and five other disagreements were recorded in Case 004 (including its subcases).¹²⁵⁹ The Co-Investigating Judges did not forward these disagreements to the Pre-Trial Chamber to resolve.¹²⁶⁰

On 1 December 2010, Dr Siegfried Blunk, who had been the Reserve International Co-Investigating Judge, was appointed as the new International Co-Investigating Judge, replacing International Co-Investigating Judge Marcel Lemonde, upon his resignation. Laurent Kasper-Ansermet was appointed as the new Reserve International Co-Investigating Judge.¹²⁶¹ International Co-Investigating Judge Siegfried Blunk issued a press release together with National Co-Investigating Judge You Bunleng explaining that the work in Cases 003 and 004 was focused on examining and analysing the documents on the case files, particularly documents from Cases 001 and 002, and at that stage, no field investigation was being conducted.¹²⁶²

On 10 October 2011, International Co-Investigating Judge Siegfried Blunk resigned,¹²⁶³ and the Reserve International Co-Investigating Judge began working to reopen the investigation into Case 003 that his predecessor

¹²⁵⁷ *Statement from the Co-Investigating Judges*, 9 June 2010.

¹²⁵⁸ See Case 003, Closing Order (Indictment), 28 November 2018, D267, paras 5, 7, 15, 27, referring to five disagreements which were registered between the Co-Investigating Judges on 7 February 2013, 22 February 2013, 17 July 2014, 16 January 2017, and 17 September 2018 but referring to the disagreement registered on 16 January 2017 as the third disagreement. No mention is made of the 2010 disagreement registered between International Co-Investigating Judge Marcel Lemonde and the National Co-Investigating Judge.

¹²⁵⁹ See Case 004, Closing Order (Indictment), 28 June 2019, D382, paras 3, 7, 21, referring to five disagreements which were registered on 22 February 2013, 5 April 2013, 21 October 2015, 16 January 2017, and 21 January 2019. This number includes disagreements related to the Case 004 subcases. No mention is made of the 2010 disagreement registered between International Co-Investigating Judge Marcel Lemonde and the National Co-Investigating Judge.

¹²⁶⁰ See Case 004, Decision on International Co-Prosecutor's Appeal of the Pre-Trial Chamber's Failure to Send Case 004 to Trial as Required by the ECCC Legal Framework, 28 December 2021, 2/1/1/1, Dissenting Opinion of Judge Maureen Harding Clark, paras 7, 16, discussing the disagreements in Case 004 and stating that like in Case 003, none were brought before the Pre-Trial Chamber, but without mention of the 2010 disagreement. See also Case 003, Considerations on Appeals Against Closing Orders, 7 April 2021, D266/27 & D267/35, para. 4; Case 004, Considerations on Appeals Against Closing Orders, 17 September 2021, D381/45 & D382/43, para. 4; Case 004/02, Considerations on Appeals Against Closing Orders, 19 December 2019, D359/24 & D360/33, para. 3. See also *Internal Rules*, rule 72(2) which provides that either Co-Investigating Judge "may" bring the disagreement before the Pre-Trial Chamber.

¹²⁶¹ *Dr. Siegfried Blunk Appointed as New International Co-Investigating Judge*, 1 December 2010. International Co-Investigating Judge Marcel Lemonde served as International Co-Investigating Judge until 31 November 2010.

¹²⁶² *Statement from the Co-Investigating Judges*, 2 February 2011.

¹²⁶³ *Press Release by the International Co-Investigating Judge*, 10 October 2011.

and the National Co-Investigating Judge had closed, and carry out field investigations into Cases 003 and 004.¹²⁶⁴ He also notified the suspects of their rights.¹²⁶⁵ The National Co-Investigating Judge considered the Reserve International Co-Investigating Judge did not have the authority to commence any duties until he was officially appointed as the (standing) International Co-Investigating Judge.¹²⁶⁶ Reserve Co-Investigating Judge Laurent Kasper-Ansermet resigned effective 4 May 2012.¹²⁶⁷ On 20 June 2012, Mark Harmon was appointed as the new International Co-Investigating Judge.¹²⁶⁸

5.3.1.3. Consideration of a permanent stay of proceedings

On 5 May 2017, the Co-Investigating Judges confidentially informed the parties and the Office of Administration that they were considering a permanent stay of the proceedings in Cases 003, 004, and 004/02 due to their “deep concerns over the funding arrangements currently in place for the ECCC both on the national and the international sides and because of [their] considered opinion that the current situation and the outlook going forward [had] become incompatible with the basic principles of fair trial the rule of law and judicial independence”. The Co-Investigating Judges invited the parties and Office of Administration to file submissions about the funding situation of the ECCC.¹²⁶⁹

The defence submissions across all teams supported a permanent stay of proceedings at the earliest opportunity, while the International Co-Prosecutor, although sharing the Co-Investigating Judges’ frustration over the funding situation, considered a stay to be fundamentally unsound and beyond the Co-Investigating Judges’ powers. The Office of Administration detailed the budget and funding developments, and

¹²⁶⁴ See Case 003, Order on Resuming the Judicial Investigation, 2 December 2011, D28; *Press Release by the International Reserve Co-Investigating Judge*, 9 February 2012; *Press Release by the International Reserve Co-Investigating Judge*, 28 March 2012.

¹²⁶⁵ Case 003, Notification of Suspect’s Rights [Rule 21(1)(D)], 24 February 2012, D30; Case 004, Notification of Suspect’s Rights [Rule 21(1)(D)], 24 February 2012, D108; Case 004, Notification of Suspect’s Rights [Rule 21(1)(D)], 24 February 2012, D109; Case 004/02, Notification of Suspect’s Rights [Rule 21(1)(D)], 29 February 2012, D110.

¹²⁶⁶ Case 003, Opinion of Pre-Trial Chamber Judges Downing and Chung on the Disagreement Between the Co-Investigating Judges pursuant to Internal Rule 72, 1002012, 10 February 2012, para. 7; *Press Release by the International Reserve Co-Investigating Judge*, 6 December 2011; *Press Release of the National Co-Investigating Judge (unofficial translation)*, 6 December 2011.

¹²⁶⁷ *Press Release by Reserve International Co-Investigating Judge*, 19 March 2012. See also Note of the International Reserve Co-Investigating Judge to the Parties on the Egregious Dysfunctions within the ECCC impeding the Proper Conduct of Investigations in Cases 003 and 004, 21 March 2012, D38.

¹²⁶⁸ *Deployment of New International Co-Investigating Judge*, 30 July 2012.

¹²⁶⁹ Case 004, Request for Submissions on the Budgetary Situation of the ECCC and its Impact on Cases 003, 004, and 004/2, 5 May 2017, D349.

the recent (at that time) increase in voluntary funding, which was said to have closed the previous funding gap to a little over USD two million. The UN, the Principal Donor Group, and the Special Expert of the UN Secretary General also filed submissions centred around the argument that the Co-Investigating Judges' mandate did not encompass ruling on financial aspects related to the budget and funding of the ECCC and that the focus should be on conducting and investigations and deciding the cases on their legal merits.¹²⁷⁰

On 11 August 2017, the Co-Investigating Judges issued a decision on the impact of the budgetary situation, deferring a decision on a stay but remaining actively seized of the matter until they had issued the last Closing Order, and inviting the Office of Administration to report on the status of funding on at least a quarterly basis.¹²⁷¹

5.3.1.4. Disagreements concerning whether the cases would proceed to trial

As can be seen below, except with regard to Im Chaem, who the Co-Investigating Judges agreed did not fall within the ECCC's personal jurisdiction, the Co-Investigating Judges disagreed whether the cases should proceed to trial, with the International Co-Investigating Judge considering that the cases should proceed because there was sufficient evidence that persons within the ECCC's jurisdiction had committed crimes within the ECCC's jurisdiction and the National Co-Investigating Judge considering that the cases should not proceed as the personal jurisdiction requirement had not been satisfied. As a result of their disagreements, they issued conflicting Closing Orders, with the International Co-Investigating Judge issuing Indictments and the National Co-Investigating Judge issuing Dismissal Orders. This led to multiple appeals and cross-appeals being filed against each Closing Order and Dismissal Order, which the Pre-Trial Chamber addressed together in each case. The Pre-Trial Chamber Judges were unable to reach a supermajority on the ultimate issue addressed by the appeals of whether the cases should proceed to trial, leading to procedural confusion which resulted in the termination of the cases.

¹²⁷⁰ Case 004, Combined Decision on the Impact of the Budgetary Situation on Cases 003, 004, and 004/02 and Related Submissions by the Defence for Yim Tith, 11 August 2017, D349/6, paras 5-7.

¹²⁷¹ Case 004, Combined Decision on the Impact of the Budgetary Situation on Cases 003, 004, and 004/02 and Related Submissions by the Defence for Yim Tith, 11 August 2017, D349/6, paras 69-70.

5.3.2. Case 003

5.3.2.1. Overview of the suspects

Case 003 involved two suspects.

- **Sou Met:** According to the International Co-Prosecutor, Sou Met was the Secretary of Division 502 of the RAK and commander of the RAK air force from June 1975 until January 1979 and a member of the Assisting Committee of the Central Committee of the CPK, which was considered one of the highest ranks within the CPK hierarchy, exercising considerable influence within the General Staff, RAK's highest body.¹²⁷²

In separate proceedings, the Trial Chamber in Case 002/02 found on the available evidence that Sou Met was a member of the General Staff and commander of Division 502 (the air force).¹²⁷³

- **Meas Muth:** According to the International Co-Prosecutor, Meas Muth was the Secretary of Division 164 of the RAK and commander of the RAK navy from April 1975 until January 1979 and either a member of the CPK's Central Committee, or a member of the Assisting Committee of the Central Committee, effectively controlling the town of Kompong Som, its surrounding area, and Cambodia's coastal islands.¹²⁷⁴

In separate proceedings, the Trial Chamber in Case 002/02 found on the available evidence that Meas Muth was commander of Division 164 (the navy) and a member of the RAK General Staff.¹²⁷⁵

5.3.2.2. Introductory Submission

The Second Introductory Submission alleged that Sou Met and Meas Muth participated in a criminal plan to purge the RAK of undesirable elements, resulting in at least thousands of deaths and in crimes including forced

¹²⁷² Case 003, Second Introductory Submission, 20 November 2008, D1, para. 2.

¹²⁷³ Case 002/02, Judgment, 16 November 2018, E465, paras 380, 428, 438. Due to his prior death, Sou Met was unable to contest this finding in Case 002/02. No final judicial determination regarding Sou Met's position was possible in Case 003 because the case was not heard at trial.

¹²⁷⁴ Case 003, Second Introductory Submission, 20 November 2008, D1, para. 3.

¹²⁷⁵ Case 002/02, Judgment, 16 November 2018, E465, paras 386-387, 428, 433. Because he was not a party to proceedings, Meas Muth could not contest this finding in Case 002/02. No final judicial determination regarding Meas Muth's position was possible in Case 003 because the case was not heard at trial.

labour, inhumane living conditions, unlawful arrest and detention, physical and mental abuse, torture, and killing.¹²⁷⁶ These crimes were characterised as crimes against humanity, grave breaches of the Geneva Conventions, and the crimes of homicide and torture under the 1956 Cambodian Penal Code.¹²⁷⁷

5.3.2.3. Judicial investigation

On 10 April 2010, the Co-Investigating Judges placed the Introductory Submission on the Case 003 case file, opening the case.¹²⁷⁸ International Co-Investigating Judge Marcel Lemonde issued a rogatory letter commissioning the Office of the Co-Investigating Judges investigators to undertake field investigations. Pursuant to this rogatory letter, 17 witness statements were taken by the investigators between 13 July 2010 and 2 December 2010, although they were not placed on the case file or notified to the parties until 10 March 2011.¹²⁷⁹

On 29 April 2011, Co-Investigating Judges You Bunleng and Siegfried Blunk issued a notice of conclusion of the judicial investigation in Case 003, issuing a press release the same day stating the case file contained more than 2,000 pieces of evidence, comprising more than 48,000 pages.¹²⁸⁰ However, following International Co-Investigating Judge Siegfried Blunk's resignation, Reserve International Co-Investigating Judge Laurent Kasper-Ansermet¹²⁸¹ and International Co-Investigating Judge Mark Harmon¹²⁸² considered further investigation to be required and continued such investigation.

The International Co-Prosecutor filed a Supplementary Submission regarding new allegations against Meas Muth on 31 October 2014,¹²⁸³ and on 3 March 2015, International Co-Investigating Judge Mark Harmon charged

¹²⁷⁶ Case 003, Second Introductory Submission, 20 November 2008, D1, para. 4.

¹²⁷⁷ Case 003, Second Introductory Submission, 20 November 2008, D1, para. 9.

¹²⁷⁸ Case 003, International Co-Prosecutor's Appeal Against the "Decision on Time Extension Request and Investigative Requests by the International Co-Prosecutor Regarding Case 003", 7 July 2011, D20/4/2.1, para. 3.

¹²⁷⁹ Case 003, International Co-Prosecutor's Appeal Against the "Decision on International Co-Prosecutor's Re-Filing of Three Investigative Requests in Case 003", 26 August 2011, D26/1/1, para. 4.

¹²⁸⁰ Case 003, Notice of Conclusion of Judicial Investigation, 29 April 2011, D13; *Statement from the Co-Investigating Judges*, 29 April 2011.

¹²⁸¹ Case 003, Order on Resuming the Judicial Investigation, 2 December 2011, D28.

¹²⁸² Case 003, Closing Order (Indictment), 28 November 2018, D267, paras 4-5.

¹²⁸³ International Co-Prosecutor's Supplementary Submission Regarding Crime Sites Related to Case 003, 31 October 2014, D120.

Meas Muth *in absentia* with homicide, torture, crimes against humanity, and grave breaches of the Geneva Conventions.¹²⁸⁴

Meas Muth was summoned for an initial appearance on 14 December 2015 by International Co-Investigating Judge Michael Bohlander, who rescinded certain charges laid by former International Co-Investigating Judge Mark Harmon, and added the charge of genocide, as well as additional counts of crimes against humanity, grave breaches of the Geneva Conventions, national crimes.¹²⁸⁵

On 10 January 2017, the International Co-Investigating Judge notified the parties that the judicial investigation against Meas Muth¹²⁸⁶ had concluded, and that the parties had 30 days to request any further investigative action.¹²⁸⁷ He also reduced the scope of the investigations, excluding all allegations relating to the S-22 Security Centre, the Kampong Chhnang Airport Construction Site, the Stung Tauch Killing Site, and RAK involvement in the purges of the Central Zone, the New North Zone, and the East Zone, except alleged purges of members of the RAK units in these areas.¹²⁸⁸

Following the filing and consideration of several investigative requests,¹²⁸⁹ the International Co-Investigating Judge issued a second notice of conclusion of the judicial investigation against Meas Muth on 24 May 2017.¹²⁹⁰

5.3.2.4. Death of Sou Met

Sou Met died on 14 June 2013 while he was a suspect under judicial investigation. The Co-Investigating Judges sought and obtained the death certificate and video footage of Sou Met's funeral. On 22 October 2013, the Co-Investigating Judges notified the parties that Sou Met had died, and on

¹²⁸⁴ Case 003, Decision to Charge Meas Muth in Absentia, 3 March 2015, [D128.1](#).

¹²⁸⁵ Case 003, Written Record of Initial Appearance, 14 December 2015, [D174](#).

¹²⁸⁶ The judicial investigation against Sou Met had terminated by this time due to his death. See Chapter 5.3.2.4. Death of Sou Met.

¹²⁸⁷ Case 003, Notice of Conclusion of Judicial Investigation against Meas Muth, 10 January 2017, [D225](#).

¹²⁸⁸ Case 003, Decision to Reduce the Scope of Judicial Investigation Pursuant to Internal Rule 66 bis, 10 January 2017, [D226](#).

¹²⁸⁹ Case 003, Decision on International Co Prosecutor Request for Investigative Action in Case 003, 19 April 2017, [D233/2](#); Case 003, Decision on International Co Prosecutor's Request for Investigative Action to Place Materials onto Case File 003, 28 April 2017, [D234/2](#); Case 003, Consolidated Decision on Meas Muth's Requests for Investigative Action Regarding Potential Use of Torture-Tainted Evidence, 24 May 2017, [D251](#).

¹²⁹⁰ Case 003, Closing Order (Indictment), 28 November 2018, [D267](#), para. 16.

2 June 2015 that criminal action against him was extinct.¹²⁹¹ This completed proceedings in Case 003 against Sou Met.

5.3.2.5. Issue concerning a chapeau requirement of crimes against humanity

During the judicial investigation, the International Co-Investigating Judge invited the parties in Cases 003 and 004 to make submissions and “any qualified person or organisation to submit *amicus curiae* briefs” on the issue of whether, under customary international law applicable during the temporal jurisdiction of the ECCC, “an attack by a state or organisation against members of its own armed forces may amount to an attack directed against a civilian population for the purpose of Article 5 of the ECCC Law”. The International Co-Investigating Judge noted:

an argument could be made that the previous discussion about the interpretation of the concept may from the very beginning have overlooked a rather banal logical policy aspect, which is that the entire distinction between combatants and civilians might only make sense if we are talking about combatants and civilians of the enemy population. Leaving the contentious issue about the nexus to an armed conflict under the ECCC’s jurisdiction aside, on which I have positioned myself elsewhere, one could further argue that it would a) seem beyond dispute that a regime which in peace times tried to cleanse its own armed forces of, for example, all soldiers holding a particular ethnicity or faith, would under international customary law be engaging in a variety of crimes against humanity, because the victims’ combatant quality merely because they are soldiers would be entirely irrelevant in this context, and that b) there is no reason to think otherwise if such a campaign happened in the course of or otherwise connected to an armed conflict.¹²⁹²

Eleven *amicus curiae* briefs were received,¹²⁹³ as were submissions from the International Co-Prosecutor and the Defence teams for Meas Muth,

¹²⁹¹ Case 003, Dismissal of Allegations Sou Met, 2 June 2015, [D86/3](#).

¹²⁹² Case 003, Call for Submissions by the Parties in Cases 003 and 004 and Call for *Amicus Curiae* Briefs, 19 April 2016, [D191](#), paras 3, 5, 7.

¹²⁹³ Case 003, *Amicus Curiae* Brief in Cases 003 and 004 – Professor Ben Saul, 19 May 2016, [D191/3](#); Case 003, *Amicus Curiae* Brief for in Cases 003 and 004 – Catherine Drummond, Philippa Webb and Dapo Akande, 19 May 2016, [D191/4](#); Case 003, *Amicus Curiae* Brief for Cases 003 and 004 – TRIAL (Track Impunity Always), 19 May 2016, [D191/5](#); Case 003, *Amicus Curiae* Brief of Professors Robinson, De Guzman, Jalloh and Cryer on Crimes Against

Ao An, and Yim Tith.¹²⁹⁴ The Defence teams were of the view that an attack by a state or organisation against members of its own armed forces could never amount to an attack against a civilian population.

The remaining responses were split into three categories: (1) those that considered that an attack against members of one's own armed forces may amount to an attack directed against a civilian population; (2) those that considered that only in times of peace can members of the armed forces be the sole targets of an attack that otherwise fulfils the *chapeau* requirements of a crime against humanity; and (3) those that considered that only when the underlying crime is persecution can an attack on a state or organisation's own armed forces amount to an attack on a civilian population.

Ultimately, the International Co-Investigating Judge decided that as a matter of principle, an attack by a state or organisation against its own armed forces could amount to an attack against a civilian population under relevant customary international law, but he found that this did *not* apply insofar as the attacked armed forces were allied with or otherwise supporting an opposing side to an armed conflict.¹²⁹⁵ The Trial Chamber reached an opposing conclusion in Case 002/02, noting that “[b]eyond reference to the decision of the International Co-Investigating Judge [...] while an interpretation of the protections afforded by crimes against humanity to include domestic armed forces may be considered desirable, it is not clear that a legal framework affording such protection was either foreseeable or accessible by 1975”.¹²⁹⁶

Humanity for Cases 003 and 004, 17 May 2016, [D191/6](#); Case 003, Amicus Curiae Brief for Cases 003 and 004 – Ido Rosenzweig, 19 May 2016, [D191/7](#); Case 003, Amicus Curiae Brief for Cases 003 and 004 – Dr Joanna Nicholson, 19 May 2016, [D191/8](#); Case 003, Amicus Curiae Brief for Cases 003 and 004 – Professor Nicholas Tzagourias, 17 May 2016, [D191/9](#); Case 003, Amicus Curiae Brief for Cases 003 and 004 – Oliver Windridge, 19 May 2016, [D191/10](#); Case 003, Amicus Curiae Brief Filed by Drs Williams and Grey in Response to Call for Amicus Curiae Briefs in Cases 003 and 004, 19 April 2016, [D191/11](#); Case 003, Amicus Brief Filed by the Center for International and Comparative Law, University of Baltimore School of Law on the Legality of Targeting Members of One Own Military, 18 May 2016, [D191/12](#); Case 003, Queen's University Belfast Human Rights Centre Response to the ECCC Office of the Co-Investigating Judges “Call for Submissions by the Parties in Cases 003 and 004 and Call for Amicus Curiae Briefs”, 12 May 2016, [D191/13](#).

¹²⁹⁴ Case 003, International Co-Prosecutor's Response to the International Co-Investigating Judge's Call for Submissions Regarding Crimes Against Humanity, 19 May 2016, [D191/1](#); Case 003, Meas Muth's Submission on the Question of Whether Under Customary International Law in 1975-1979 an Attack by State or Organization Against its Own Armed Forces Could Amount to an Attack Directed Against Civilian Population for Purposes of Article 5 of the Establishment Law, 19 May 2016, [D191/2](#); Case 003, Ao An's Submission on Whether an Attack by State or Organisation Against Members of Its Own Armed Forces Could Qualify as Crime Against Humanity Under Customary International Law in 1975-1979, 19 May 2016, [D306/3](#); Case 003, Yim Tith's Submission on the Interpretation of the Term ‘Civilian Population’ for the Purposes of Article of the Establishment Law, 19 May 2016, [D306/1](#).

¹²⁹⁵ Case 003, Notification on the Interpretation of ‘Attack Against the Civilian Population’ in the Context of Crimes Against Humanity with regard to a State's Or Regime's Own Armed Forces, 7 February 2017, [D191/18](#), para. 69.

¹²⁹⁶ Case 002/02, Judgment, 16 November 2018, [E465](#), para. 309.

5.3.2.6. Final Submissions

After the conclusion of the judicial investigation, the case file was forwarded to the Co-Prosecutors to prepare a Final Submission. The National Co-Prosecutor filed a Final Submission, requesting that the allegations against Meas Muth be dismissed on the basis that he did not fall within the ECCC's personal jurisdiction.¹²⁹⁷ The International Co-Prosecutor filed a separate Final Submission requesting that Meas Muth be indicted for the charges set out in that submission.¹²⁹⁸

5.3.2.7. Closing Orders

The National and International Co-Investigating Judges each issued opposing Closing Orders.

The National Co-Investigating Judge issued a Closing Order dismissing the case.¹²⁹⁹ The NCIJ's Closing Order discussed the history of the CPK and its administrative structure,¹³⁰⁰ military structure,¹³⁰¹ the CPK's policy to purge the military's ranks,¹³⁰² and Meas Muth's role and participation in the alleged crimes.¹³⁰³ It discussed evidentiary considerations,¹³⁰⁴ stating that the National Co-Investigating Judge referred only to materials that had been filed in the case file before 29 April 2011, the point at which he and International Co-Investigating Judge Siegfried Blunk had agreed to conclude the investigation.¹³⁰⁵ The National Co-Investigating Judge then considered the criteria for personal jurisdiction¹³⁰⁶ and finally found that Meas Muth's participation in the crimes was neither active nor proximate to the commission of the crimes.¹³⁰⁷ Therefore, the National Co-Investigating Judge concluded that the ECCC did not have jurisdiction to try Meas Muth and dismissed the charges against him.¹³⁰⁸

¹²⁹⁷ See Case 003, Final Submission Concerning Meas Muth pursuant to Internal Rule 66, 14 November 2017, D256/6.

¹²⁹⁸ Case 003, International Co-Prosecutor's Rule 66 Final Submission, 14 November 2017, D256/7.

¹²⁹⁹ Case 003, Dismissal Order, 28 November 2018, D266.

¹³⁰⁰ Case 003, Dismissal Order, 28 November 2018, D266, chapter 3, sections A and B.

¹³⁰¹ Case 003, Dismissal Order, 28 November 2018, D266, chapter 3, section 3.

¹³⁰² Case 003, Dismissal Order, 28 November 2018, D266, chapter 3, section 4.

¹³⁰³ Case 003, Dismissal Order, 28 November 2018, D266, chapter 3, section 5.

¹³⁰⁴ Case 003, Dismissal Order, 28 November 2018, D266, chapter 4.

¹³⁰⁵ Case 003, Dismissal Order, 28 November 2018, D266, para. 359.

¹³⁰⁶ Case 003, Dismissal Order, 28 November 2018, D266, chapter 5.

¹³⁰⁷ Case 003, Dismissal Order, 28 November 2018, D266, chapter 6.

¹³⁰⁸ Case 003, Dismissal Order, 28 November 2018, D266, paras 429-430.

The International Co-Investigating Judge's Closing Order discussed the applicable law, including personal jurisdiction at the ECCC,¹³⁰⁹ evidentiary considerations,¹³¹⁰ factual analysis and findings,¹³¹¹ legal findings on personal jurisdiction,¹³¹² legal findings on the crimes,¹³¹³ legal findings on modes of liability,¹³¹⁴ and the necessity of pre-trial detention,¹³¹⁵ before terminating the judicial investigation concerning facts he had previously excluded from investigation and dismissing the certain charges.¹³¹⁶ The ICIJ's Closing Order indicted Meas Muth on the crimes of genocide, crimes against humanity, war crimes, and on violations of the 1956 Cambodian Penal Code.¹³¹⁷

5.3.2.8. Civil Party applications

Throughout the Case 003 investigation, 646 people applied to become Civil Parties.¹³¹⁸ During the course of investigations, 18 applicants died and two withdrew their applications.¹³¹⁹

On the same day the Closing Orders were issued, the Co-Investigating Judges issued two separate orders on Civil Party applications. The National Co-Investigating Judge dismissed all 642 Civil Party applications that had been filed in Case 003 after 14 May 2011; this being the date he considered to be the deadline for Civil Party applications (following the conclusion of the investigation on 29 April 2011),¹³²⁰ while the International Co-Investigating Judge examined the Civil Party applications on the merits and declared some applications admissible and others inadmissible.¹³²¹ The Civil Parties rejected by the International Co-Investigating Judge appealed his rejection of their applications,¹³²² but the Pre-Trial Chamber judges were unable to reach the supermajority necessary to decide on the appeal,¹³²³ leaving

¹³⁰⁹ Case 003, Closing Order (Indictment), 28 November 2018, [D267](#), section 3.

¹³¹⁰ Case 003, Closing Order (Indictment), 28 November 2018, [D267](#), section 4.

¹³¹¹ Case 003, Closing Order (Indictment), 28 November 2018, [D267](#), section 5.

¹³¹² Case 003, Closing Order (Indictment), 28 November 2018, [D267](#), section 6.

¹³¹³ Case 003, Closing Order (Indictment), 28 November 2018, [D267](#), section 7.

¹³¹⁴ Case 003, Closing Order (Indictment), 28 November 2018, [D267](#), section 8.

¹³¹⁵ Case 003, Closing Order (Indictment), 28 November 2018, [D267](#), section 9.

¹³¹⁶ Case 003, Closing Order (Indictment), 28 November 2018, [D267](#), sections 10-11.

¹³¹⁷ Case 003, Closing Order (Indictment), 28 November 2018, [D267](#), section 12.

¹³¹⁸ Case 003, Order on Admissibility of Civil Party Applications, 28 November 2018, [D269](#).

¹³¹⁹ Case 003, Considerations on Appeal Against Order on the Admissibility of Civil Party Applicants, 10 June 2021, [D269/4](#), paras 6, 7.

¹³²⁰ Case 003, Order on the Civil Party Applications, 28 November 2018, [D268](#).

¹³²¹ Case 003, Order on Admissibility of Civil Party Applications, 28 November 2018, [D269](#).

¹³²² Case 003, Appeal against Order on the Admissibility of Civil Party Applicants, 7 March 2019, [D269/3](#).

¹³²³ Case 003, Considerations on Appeal Against Order on the Admissibility of Civil Party Applicants, 10 June 2021, [D269/4](#).

the Civil Party applicants without a definitive answer about their status. The National Pre-Trial Chamber Judges stated that they would have decided to reject all the Civil Party applications in Case 003, since they considered that the two Closing Orders are of the same value and that Case 003 should be archived, while the International Pre-Trial Chamber Judges stated that they would have overturned the International Co-Investigating Judge's order in part, to admit five of the rejected applicants.¹³²⁴

5.3.2.9. Appeals against the Closing Orders

Following the issuance of the Closing Orders, the National Co-Prosecutor¹³²⁵ and Meas Muth¹³²⁶ appealed the International Co-Investigating Judge's Closing Order. Meas Muth raised two grounds of appeal, namely that: (i) the International Co-Investigating Judge erred in law by interpreting that Internal Rule 77(13) requires both Closing Orders or only the Indictment to stand unless the Pre-Trial Chamber upholds one of them by supermajority and (ii) in the absence of fundamentally determinative errors or abuses by the National Co-Investigating Judge in the issuance of his Dismissal Order, the Dismissal Order must prevail as a result of the application of the *in dubio pro reo* principle.

The International Co-Prosecutor appealed the National Co-Investigating Judge's Dismissal Order, challenged the admissibility of Meas Muth's appeal, and responded to the National Co-Prosecutor's appeal submitting several factual and legal errors of the National Co-Investigating Judge.¹³²⁷

¹³²⁴ Case 003, Considerations on Appeal Against Order on the Admissibility of Civil Party Applicants, 10 June 2021, D269/4, paras 44-46, iii.

¹³²⁵ Case 003, National Co-Prosecutor's Appeal against the International Co-Investigating Judge's Closing Order in Case 003, 5 April 2019, D267/3.

¹³²⁶ Case 003, Meas Muth's Appeal against the International Co-Investigating Judge's Indictment, 8 April 2019, D267/4. See also Case 003, Meas Muth's Response to the International Co-Prosecutor's Appeal of the Dismissal Order, 24 June 2019, D266/5; Meas Muth's Reply to the International Co-Prosecutor's Response to Meas Muth's Appeal Against the International Co-Investigating Judge's Indictment, 19 August 2019, D267/12; Case 003, Meas Muth's Supplement to His Appeal Against the International Co-Investigating Judge's Indictment, 5 May 2020, D267/27.

¹³²⁷ Case 003, International Co-Prosecutor's Appeal of the Order Dismissing the Case against Meas Muth (D266), 8 April 2019, D266/2. See also Case 003, International Co-Prosecutor's Response to the National Co-Prosecutor's Appeal of the Case 003 Indictment, 14 June 2019, D267/9; Case 003, International Co-Prosecutor's Response to Meas Muth's Appeal Against the International Co-Investigating Judge's Indictment (D267), 28 June 2019, D267/10; Case 003, Case 003, International Co-Prosecutor's Reply to Meas Muth's Response to the Appeal of the Order Dismissing the Case Against Meas Muth (D266), 9 August 2019, D266/6; International Co-Prosecutor's Response to Meas Muth's Supplement to His Appeal Against the International Co-Investigating Judge's Indictment, 29 May 2020, D267/29.

Oral arguments were heard on 27 to 29 November 2019.¹³²⁸ The Pre-Trial Chamber issued a public report on the case and appeals.¹³²⁹

5.3.2.10. Considerations on appeals against the Closing Orders

The Pre-Trial Chamber decided to join the appeal proceedings and consider the three appeals together.¹³³⁰ It determined that Meas Muth’s appeal was inadmissible.¹³³¹

The Pre-Trial Chamber found that the Co-Investigating Judges erred in law by issuing separate and conflicting Closing Orders rather than referring their disagreement on the issue to the Pre-Trial Chamber or abiding by the default position that the proceedings would continue.¹³³² It considered that the Co-Investigating Judges “wilfully [...] evade[d]” the mechanism entrusted to the Pre-Trial Chamber to resolve disagreements between the Co-Investigating Judges.¹³³³ The Pre-Trial Chamber found that the Co-Investigating Judges’ issuance of conflicting Closing Orders “violated the very foundations of the ECCC legal system”,¹³³⁴ and that the ECCC’s legal texts left no room for ambiguity, referring to Internal Rule 67(1)’s stipulation that Co-Investigating Judges shall conclude the investigation by issuing a Closing Order and finding that the Closing Order from the Co-Investigating Judges is consequentially a single decision.¹³³⁵

While the Pre-Trial Chamber agreed on the illegal character of the Co-Investigating Judges’ agreement to issue two separate Closing Orders, the judges could not attain the supermajority vote required to enter a decision on the merits of the Co-Prosecutors’ appeals, and the Judges provided their separate opinions. The National Pre-Trial Chamber Judges considered that the two Closing Orders were of the same value and both stood valid, and in accordance with presumption of innocence, the law did not allow the Pre-Trial Chamber to rule that the act of either Co-Investigating Judge had

¹³²⁸ Case 003, T. 27 November 2019, D266/16.1 & D267/21.1; Case 003, T. 28 November 2019, D266/17.1 & D267/22.1; Case 003, T. 29 November 2019, D266/18.1 & D267/23.1. The Pre-Trial Chamber publicly filed a transcript of questions put to the parties on the third day of the hearings. See Case 003, T. 29 November 2019, D266/18.2 & D267/23.2.

¹³²⁹ Case 003, Report of the Case and Appeals, 27 November 2019, D266/15 & D267/20.

¹³³⁰ Case 003, PTC Considerations on Appeals Against Closing Orders, 7 April 2021, D266/27 & D267/35, paras 37-40 (“PTC Considerations”).

¹³³¹ Case 003, PTC Considerations, D266/27 & D267/35, paras 54-77.

¹³³² Case 003, PTC Considerations, D266/27 & D267/35, para. 106.

¹³³³ Case 003, PTC Considerations, D266/27 & D267/35, para. 90.

¹³³⁴ Case 003, PTC Considerations, D266/27 & D267/35, para. 91.

¹³³⁵ Case 003, PTC Considerations, D266/27 & D267/35, para. 103.

preponderance. Therefore, the National Pre-Trial Chamber Judges were of the view that Case File 003 should be held at the ECCC archives.¹³³⁶ The International Pre-Trial Chamber Judges, on the other hand, considered that the Dismissal Order was incomplete and invalid, and thus void, as it ignored seven years of evidence and criminal allegations of which the National Co-Investigating Judge was seized.¹³³⁷ They did not consider that the National Co-Prosecutor's appeal met the standard of appellate review and therefore considered that it should be summarily dismissed;¹³³⁸ however, they assessed some of the points she had raised before rejecting them on the merits.¹³³⁹ They considered that the International Co-Investigating Judge's Closing Order was valid and should stand, despite the error of issuing separate Closing Orders.¹³⁴⁰ The International Pre-Trial Chamber Judges agreed overall with the International Co-Investigating Judge's legal and factual determinations on the scale, nature, scope, and impact of the crimes alleged against Meas Muth and their gravity and considered that the International Co-Investigating Judge properly determined that Meas Muth fell within the ECCC's personal jurisdiction.¹³⁴¹ They considered that the Indictment should be confirmed and that the Trial Chamber should be seized of Case 003.¹³⁴²

5.3.2.11. Litigation concerning the status of Case 003

Following the issuance of the Pre-Trial Chamber's Considerations, the International Co-Prosecutor requested the Co-Investigating Judges to forward Case File 003 to the Trial Chamber. She argued that all the Pre-Trial Chamber judges had unanimously concluded that the Indictment was valid and that consequently the Trial Chamber was automatically seized of the case.¹³⁴³

The Co-Investigating Judges denied the request, considering that the International Co-Prosecutor took the considerations of the National Pre-Trial Chamber judges out of context by claiming that the decision

¹³³⁶ Case 003, PTC Considerations, D266/27 & D267/35, Opinion of Judges Prak Kimsan, Ney Thol and Huot Vuthy, paras 115-117.

¹³³⁷ Case 003, PTC Considerations, D266/27 & D267/35, Opinion of Judges Olivier Beauvallet and Kang Jin Baik, paras 119, 226-250, 284.

¹³³⁸ Case 003, PTC Considerations, D266/27 & D267/35, para. 192.

¹³³⁹ Case 003, PTC Considerations, D266/27 & D267/35, paras 193-197.

¹³⁴⁰ Case 003, PTC Considerations, D266/27 & D267/35, paras 262, 284.

¹³⁴¹ Case 003, PTC Considerations, D266/27 & D267/35, paras 287-340.

¹³⁴² Case 003, PTC Considerations, D266/27 & D267/35, paras 341-344.

¹³⁴³ Case 003, International Co-Prosecutor's Request to the Co-Investigating Judges to Forward Case File 003 to the Trial Chamber, 19 April 2021, D270.

that the Indictment was valid was unanimous, as the National Pre-Trial Chamber Judges had consistently denied the existence of personal jurisdiction over Meas Muth and had clearly indicated that they did not wish the Indictment to proceed to trial. The Co-Investigating Judges stated that they considered Case 003 to be “entirely identical on the crucial issues of personal jurisdiction and the matter of split [Closing Orders]” as Case 004/02 and considered that since like cases should be treated alike, the case should not proceed to trial but should be archived. They expressly urged the International Co-Prosecutor to appeal this decision to the Pre-Trial Chamber to allow it to reconsider or at least clarify its views on the unanimous acceptance of all the Pre-Trial Chamber Judges on the validity of the International Co-Investigating Judge’s Closing Order and certain other matters.¹³⁴⁴

Meas Muth subsequently motioned to terminate, seal and archive Case 003,¹³⁴⁵ while the International Co-Prosecutor requested the Pre-Trial Chamber to conclude the pre-trial stage of the proceedings in Case 003 and order that Meas Muth be sent to trial, consistent with its unanimous findings that the Indictment was valid.¹³⁴⁶

The Pre-Trial Chamber issued a consolidated decision on these requests and found them to be inadmissible, stating that while the Co-Investigating Judges have the unilateral power to terminate the judicial investigation alone, the Pre-Trial Chamber does not. The Pre-Trial Chamber considered that it had already fulfilled its duty in Case 003 by issuing its considerations on the appeals against the Closing Orders and had already ruled on the points raised in the requests.¹³⁴⁷

Following this decision, the Co-Investigating Judges ordered the parties to file submissions on their residual jurisdiction to terminate Case 003. The Co-Investigating Judges the informed the parties that unless the International Co-Prosecutor intended to seize the Supreme Court Chamber with the case, as had been done in Case 004/02, the Co-Investigating

¹³⁴⁴ Case 003, Decision on International Co-Prosecutor’s Request to Forward Case File 003 to the Trial Chamber, 20 May 2021, [D270/7](#), paras 30-33, 43.

¹³⁴⁵ Case 003, Meas Muth’s Request to Terminate, Seal and Archive Case File 003, 17 June 2021, [D272](#).

¹³⁴⁶ Case 003, International Co-Prosecutor’s Request for Conclusion of the Pre-Trial Stage of the Case 003 Proceedings, 21 June 2021, [D271/1](#).

¹³⁴⁷ Case 003, Consolidated Decision on the Request of the International Co-Prosecutor and the Co-Lawyers for Meas Muth Concerning the Proceedings in Case 003, 8 September 2021, [D271/5](#) & [272/3](#).

Judges’ residual jurisdiction to terminate the case still remained to be decided.¹³⁴⁸ That same day, the International Co-Prosecutor informed the Co-Investigating Judges of her intent to appeal the case to the Supreme Court Chamber.¹³⁴⁹

5.3.2.12. Termination of proceedings

The International Co-Prosecutor appealed the Pre-Trial Chamber’s failure to send Case 003 to trial, submitting that the appeal was admissible and that the Supreme Court Chamber should exercise its inherent jurisdiction to safeguard the interests of justice and maintain the integrity of the proceedings.¹³⁵⁰ She contended that the Pre-Trial Chamber’s and the Co-Investigating Judges’ failure to forward Case 003 to the Trial Chamber perpetuated the procedural impasse and risked irreparable harm to the administration of justice in the case, and that without the intervention of the Supreme Court Chamber, the proceedings would remain in limbo, amounting to a denial of justice which would be in violation of the mandate and fundamental principles of the ECCC.¹³⁵¹

The Supreme Court Chamber determined that the International Co-Prosecutor’s “appeal” did not constitute an appeal within the competence of the Supreme Court Chamber and should more accurately be referred to as an “application”, noting that “the ECCC legal compendium does not include provisions that support a Party catapulting an appeal from the Pre-Trial Chamber to the Supreme Court Chamber in proceedings”.¹³⁵² It noted that in Case 004/02, the International Co-Prosecutor had sought legal clarity and certainty from it following the Pre-Trial Chamber’s unanimous declaration that the Co-Investigating Judges’ issuance of two Closing Orders was illegal and that, in the interests of justice and fairness, it had considered the International Co-Prosecutor’s motion.¹³⁵³ It stated that it would consider the application in this case in the same spirit, without

¹³⁴⁸ Case 003, Order to File Submissions on Residual Jurisdiction to Terminate Case 003, 16 September 2021, [D273](#).

¹³⁴⁹ Case 003, International Co-Prosecutor’s Response to the Co-Investigating Judges’ Request to Declare Whether She Intends to Seize the Supreme Court Chamber, 16 September 2021, [D273/1](#).

¹³⁵⁰ Case 003, International Co-Prosecutor’s Appeal of the Pre-Trial Chamber’s Failure to Send Case 003 to Trial as Required by the ECCC Legal Framework, 8 October 2021, [3](#).

¹³⁵¹ Case 003, International Co-Prosecutor’s Appeal of the Pre-Trial Chamber’s Failure to Send Case 003 to Trial as Required by the ECCC Legal Framework, 8 October 2021, [3](#), paras 1-4.

¹³⁵² Case 003, Decision on International Co-Prosecutor’s Appeal of the Pre-Trial Chamber’s Failure to Send Case 003 to Trial as Required by the ECCC Legal Framework, 17 December 2021, [3/1/1/1](#), paras 27-29 (“SCC Termination Decision”).

¹³⁵³ Case 003, SCC Termination Decision, [3/1/1/1](#), para. 32. See also Case 004/02, Decision on International Co-Prosecutor’s Appeal of the Trial Chamber’s Effective Termination of Case 004/02, 10 August 2020, [E004/2/1/1/2](#).

relitigating similar issues, but “for the strictly limited purpose of reiterating its unchanged position and correcting the misapprehensions expressed in the International Co-Prosecutor’s Application”.¹³⁵⁴

The Supreme Court Chamber first considered the effect of the Pre-Trial Chamber’s Considerations, noting that they were unanimously pronounced as not being subject to appeal and as complete. It determined that the unambiguous consequence of this unanimous declaration “undoubtedly concluded the case”, solidifying the Pre-Trial Chamber’s decision that the International Co-Prosecutor’s appeal was unsuccessful and “putting an end to the case”. The Supreme Court Chamber rejected the International Co-Prosecutor’s submission that the Indictment was unanimously found to be valid by the Pre-Trial Chamber. The Supreme Court Chamber clarified the status of Case 003, reiterating its decision in Case 004/02 that in the absence of a definitive and enforceable Indictment an application to forward the case to the Trial Chamber could not be entertained, and noting that in Case 003, there had been no transmission of the case file by the Co-Investigating Judges or the Pre-Trial Chamber to the Trial Chamber, unambiguously confirming that Case 003 was concluded during the pre-trial stage of the proceedings.¹³⁵⁵

Judge Maureen Harding Clark appended a Dissenting Opinion to the Supreme Court Chamber’s decision. She referenced the fundamental disagreements between the Co-Prosecutors, the Co-Investigating Judges, and the Judges of the Pre-Trial Chamber in this case, acknowledging that the original disputes relating to Cases 003 and 004 did not commence with a legal impasse or limbo arising from opposing Closing Orders or from the Pre-Trial Chamber’s inability to reach consensus, but that these issues stemmed from a 2008 disagreement between the Co-Prosecutors, and she proceeded to examine this disagreement in detail and to further examine the procedural history of the case. Judge Harding Clark considered the Pre-Trial Chamber’s Considerations to be illogical and considered that as there is no appeal against decisions of the Pre-Trial Chamber, the only remedy would be for the Supreme Court Chamber to use its inherent powers to quash the order and direct the Pre-Trial Chamber to reconsider the conflicting Closing Orders to arrive at a legally sound decision. She considered that the Pre-Trial Chamber’s decision had no validity and

¹³⁵⁴ Case 003, SCC Termination Decision, 3/1/1, para. 33.

¹³⁵⁵ Case 003, SCC Termination Decision, 3/1/1, paras 34-43.

must be quashed as no reasonable decision maker could have arrived at the illogical determinations the Pre-Trial Chamber had, and that accordingly the case should be terminated in the circumstances.¹³⁵⁶

On 20 December 2021, the Co-Investigating Judges issued an order to formally seal and archive case file 003.¹³⁵⁷ This completed proceedings in Case 003 against Meas Muth.

5.3.3. Case 004

5.3.3.1. Overview of the Suspects

Case 004 involved three suspects.

- **Im Chaem:** According to the International Co-Prosecutor and Co-Investigating Judges, Im Chaem (born 1946) was Secretary of Preah Net Preah District in Sector 5 (Northwest Zone).¹³⁵⁸

In separate proceedings, the Trial Chamber in Case 002/02 also found on the available evidence that Im Chaem was Secretary of Preah Net Preah District.¹³⁵⁹

- **Ao An:** According to the International Co-Prosecutor, Ao An (1933-2020) was a Secretary of Sector 41 before being appointed as Deputy Secretary of the Central Zone.¹³⁶⁰

In separate proceedings, the Trial Chamber in Case 002/02 found on the available evidence that Ao An was Sector 41 Secretary and later acting head of the Central Zone.¹³⁶¹

- **Yim Tith:** According to the International Co-Prosecutor, Yim Tith (born 1936) was Secretary of Sectors 1, 3, 4 (Northwest Zone) and 13 (Southwest Zone), and Secretary of Kirivong district.¹³⁶²

¹³⁵⁶ Case 003, SCC Termination Decision, 3/1/1, Dissenting Opinion of Judge Maureen Harding Clark.

¹³⁵⁷ Case 003, Order Sealing and Archiving Case File 003, 20 December 2021, D275.

¹³⁵⁸ Case 004/01, Closing Order (Reasons), 10 July 2017, D308/3, paras 140, 158.

¹³⁵⁹ Case 002/02, Judgment, 16 November 2018, E465, para. 1233. Because she was not a party to proceedings, Im Chaem could not contest this finding in Case 002/02.

¹³⁶⁰ Case 004/02, Closing Order (Indictment), 16 August 2018, D360, paras 233, 245-47, 250.

¹³⁶¹ Case 002/02, Judgment, 16 November 2018, E465, paras 376, 1465, 1470, 3202. Because he was not a party to proceedings, Ao An could not contest this finding in Case 002/02. No final judicial determination regarding Ao An's position was possible in Case 004/02 because the case was not heard at trial.

¹³⁶² Case 004, Closing Order (Indictment), 28 June 2019, D382, paras 323, 327, 357.

In separate proceedings, the Trial Chamber in Case 002/02 found on the available evidence that Yim Tith was Secretary of Sector 13.¹³⁶³

5.3.3.2. Introductory Submission

The Third Introductory Submission alleged that Ao An, Im Chaem, and Yim Tith were criminally responsible for a number of national and international crimes committed in the territory of the Kingdom of Cambodia between 17 April 1975 and 6 January 1979. It alleged that Ao An led a group of cadre from the Southwest Zone who purged and replaced the existing cadre of the Central (old North) Zone and the Secretary of Sector 41; that Yim Tith and Ta Mok led another group of Southwest Zone cadre to purge and replace the existing cadre of the Northwest Zone; and that as part of a broader purge of the Northwest Zone led by Ta Mok and Yim Tith, Im Chaem led a purge of Preah Net Preah District of Sector 5 of the Northwest Zone and became its secretary.¹³⁶⁴

5.3.3.3. Judicial investigation

During the course of the judicial investigation, the International Co-Prosecutor filed several Supplementary Submissions and related clarifications to seize the Co-Investigating Judges with: (1) new crime sites in Sector 1 of the Northwest Zone and crimes committed against the Khmer Krom in the Southwest and Northwest Zones, and clarifying and supplementing the crimes to be investigated in relation to the Tuol Po Chrey Execution Site, based primarily on Civil Party applications, complaints, and interviews received or notified in Case 002 after the filing of the Introductory Submission; (2) information concerning forced marriage and sexual or gender-based violence; and (3) facts relating to Wat Ta Meak.¹³⁶⁵

¹³⁶³ Case 002/02, Judgment, 16 November 2018, E465, para. 915. Because he was not a party to proceedings, Yim Tith could not contest this finding in Case 002/02. No final judicial determination regarding Yim Tith's position was possible in Case 004 because the case was not heard at trial.

¹³⁶⁴ Case 004, Third Introductory Submission, 20 November 2008, D1.

¹³⁶⁵ Case 004, Co-Prosecutors' Supplementary Submission regarding Sector 1 Crime Sites and Persecution of Khmer Krom, 18 July 2011, D65; Case 004, Co-Prosecutors' Supplementary Submission Regarding Forced Marriage and Sexual or Gender-based Violence, 24 April 2014, D191; Case 004, Response to Forwarding Order D237, 4 February 2015, D237/1; Case 004, Response to Forwarding Order and Supplementary Submission Regarding Wat Ta Meak, 4 August 2015, D254/1; Case 004, Response to Forwarding Order Dated 5 November 2015 and Supplementary Submission regarding the Scope of Investigation into Forced Marriage in Sectors 1 and 4, 20 November 2015, D272/1.

International Co-Investigating Judge Mark Harmon formally charged Im Chaem and Ao An.¹³⁶⁶ International Co-Investigating Judge Michael Bohlander later charged Ao An with additional crimes,¹³⁶⁷ charged Yim Tith,¹³⁶⁸ later amended the charges against him,¹³⁶⁹ and provisionally discontinued the investigations against Ao and Yim Tith concerning certain facts.¹³⁷⁰

5.3.3.4. Issues concerning forced pregnancy and forced impregnation

The Civil Party Co-Lawyers filed a request for investigative action requesting that the Co-Investigating Judges investigate forced pregnancy as the crime against humanity of other inhumane acts.¹³⁷¹ The International Co-Prosecutor supported the request but differed in his interpretation of the state of customary international law in 1975.¹³⁷²

The International Co-Investigating Judge denied the Civil Parties' request, holding that there was no settled definition of the concept of forced pregnancy or forced impregnation in Cambodian or international law between 1975 and 1979, and no clear human rights standard tied to conduct amounting to forced pregnancy, a violation of which could rise to the level of other inhumane acts. He considered that investigation would therefore be precluded by the principle of *nullum crimen sin lege*. He noted that, after years of investigation into forced marriage, there was no evidence that would support a policy of forced impregnation or forced pregnancy.¹³⁷³

¹³⁶⁶ Case 004, Decision to Charge Im Chaem In Absentia, 3 March 2015, D239; Case 004/02, Written Record of Initial Appearance of Ao An, 27 March 2015, D242.

¹³⁶⁷ Case 004/02, Written Record of Further Appearance of Ao An, 14 March 2016, D303.

¹³⁶⁸ Case 004, Written Record of Initial Appearance of Yim Tith, 9 December 2015, D281.

¹³⁶⁹ Case 004, Order Amending the Charges against Yim Tith, 29 March 2017, D350; Case 004, Notification of Amended Charges against Yim Tith, Annex 1 to Order Amending the Charges, 29 March 2017, D350.1.

¹³⁷⁰ Case 004, Notification Pursuant to Internal Rule 66 *bis* (2), 9 November 2016, D307/4; Case 004, Notice of Provisional Discontinuance regarding Facts Relating to Six Crime Sites, 17 March 2017, D349; Case 004, Notice of Intention to Add Modes of Liability by Way of Judicial Order and of Provisional Discontinuance, 20 January 2017, D342; Case 004, Notification pursuant to Internal Rule 66 *bis* (2), 4 May 2017, D354.

¹³⁷¹ Case 004, Civil Party Lawyers' Request for Investigative Action against Ao An and Yim Tith concerning the Crime of Forced Pregnancy, 4 March 2016, D301.

¹³⁷² Case 004/02, International Co-Prosecutor's Response to Civil Party Lawyers' Request for Investigative Action Concerning the Crime of Forced Pregnancy, 1 April 2016, D301/2.

¹³⁷³ Case 004, Consolidated Decision on the Requests for Investigative Action concerning the Crime of Forced Pregnancy and Forced Impregnation, 13 June 2016, D301/5.

5.3.3.5. Severance of Im Chaem and creation of Case 004/01

On 24 July 2015, the Co-Investigating Judges invited the parties to file submissions on whether Im Chaem should be considered a “senior leader” or among “those most responsible” such that she fell under the ECCC’s jurisdiction.¹³⁷⁴ Im Chaem submitted that she was a low-level cadre who was not a “senior leader” nor was there evidence that she was among “those who were most responsible” for crimes under the ECCC’s jurisdiction.¹³⁷⁵ Similarly, the National Co-Prosecutor submitted that Im Chaem, like the other Suspects in Cases 003 and 004, was neither a senior leader nor among those who were most responsible, and thus did not fall under the ECCC’s jurisdiction.¹³⁷⁶ The International Co-Prosecutor, on the other hand, submitted that, having: (1) exercised near absolutely authority over the lives of the 100,000 people living in her district as Preah Net Preah District Secretary from June 1977 to January 1979; (2) led meetings to instruct other district and commune cadres on the implementation of the CPK’s forced labour, enemy and forced marriage policies; and (3) played a key role in the purge of the Northwest Zone and the establishment and operation of the Phnom Trayoung security centre, one of the largest security offices in DK, Im Chaem qualified as a non-senior leader of the Khmer Rouge who is among “those most responsible” for the crimes committed on a massive scale that caused suffering to a population of over 100,000 Cambodian citizens and resulted in the death of tens of thousands during the regime.¹³⁷⁷

On 18 December 2015, the Co-Investigating Judges notified the parties that they intended to sever the proceedings against Im Chaem and dismiss the case against her due to lack of personal jurisdiction, and invited the parties to file submissions on the severance.¹³⁷⁸ On 5 February 2016, considering that the investigation into the allegations against Im Chaem had been concluded, while investigation against other Charged Persons in Case 004 continued, the Co-Investigating Judges decided to sever Im Chaem from Case 004. They instructed the greffier to arrange

¹³⁷⁴ See Case 004/01, National Co-Prosecutor’s Observations Relating to CIJs’ Exercise of Discretion Over the Case of Im Chaem Regarding D251, 21 September 2015, D251/6, para. 1.

¹³⁷⁵ Case 004/01, Im Chaem’s Observations on Whether She Should Be Considered a “Senior Leader” or Among “Those Who Were Most Responsible”, 21 September 2015, D251/4, para. 2.

¹³⁷⁶ Case 004/01, National Co-Prosecutor’s Observations Relating to CIJs’ Exercise of Discretion Over the Case of Im Chaem Regarding D251, 21 September 2015, D251/6, para. 13.

¹³⁷⁷ Case 004, Submission on Whether Im Chaem Should Be Considered a “Senior Leader” or Among “Those Who Were Most Responsible” for the Crimes Committed in Democratic Kampuchea, 21 September 2015, D251/5, paras 44-49, 51.

¹³⁷⁸ Case 004, Notice of Intent to Dismiss the Charges Against Im Chaem and to Sever the Proceedings Against Her, 18 December 2015, D286.

the creation of a new case file, Case 004/01, and directed the parties to Case 004/01 to file any remaining requests for investigative action.¹³⁷⁹

5.3.3.5.1. Final Submissions

On 27 July 2016, the Co-Investigating Judges forwarded Case File 004/01 to the Co-Prosecutors to file a Final Submission.¹³⁸⁰ The National Co-Prosecutor filed a Final Submission requesting that the allegations against Im Chaem be dismissed,¹³⁸¹ while the International Co-Prosecutor filed a separate Final Submission requesting that Im Chaem be indicted.¹³⁸² Im Chaem responded to the International Co-Prosecutor's Final Submission, submitting that the ECCC lacks personal jurisdiction over her.¹³⁸³

5.3.3.5.2. Closing Order

On 22 February 2017, the Co-Investigating Judges issued the disposition of a Closing Order dismissing the charges against Im Chaem and informing the parties that a reasoned Closing Order would be provided at a later date. The Co-Investigating Judges stated that they were of the view that there is no evidence that Im Chaem was a senior leader or one of those most responsible for the alleged crimes, based on the overall evaluation of her acts and participation in the Khmer Rouge regime and of the evidence relating to all crime sites and modes of liability she had been charged with as well as those listed in the Introductory and Supplementary Submissions with which she was not charged. For this reason, they found that the ECCC has no personal jurisdiction over her.¹³⁸⁴

The full Closing Order with reasons was issued 10 July 2017.¹³⁸⁵ The first chapter is an introduction, and the second chapter deals with the applicable law, including personal jurisdiction, the crimes under the ECCC's jurisdiction, and modes of liability. The third chapter concerns evidentiary considerations dealing with the reliability and probative value of categories of evidence. The Co-Investigating Judges considered the vast majority of

¹³⁷⁹ Case 004/01, Order for Severance of Im Chaem from Case 004, 5 February 2016, D286/7.

¹³⁸⁰ See Case 004/01, Closing Order (Disposition), 22 February 2017, D308, para. 7.

¹³⁸¹ Case 004/01, Final Submission Concerning Im Chaem Pursuant to Internal Rule 66, D304/1, para. 38.

¹³⁸² Case 004/01, International Co-Prosecutor's Rule 66 Final Submission Against Im Chaem (Public Redacted Version), 27 October 2016, D304/3, para. 541.

¹³⁸³ Case 004/01, Im Chaem's Response to the International Co-Prosecutor's Rule 66 Final Submission Against Her, 27 October 2016, D304/6.

¹³⁸⁴ Case 004/01, Closing Order (Disposition), 22 February 2017, D308.

¹³⁸⁵ Case 004/01, Closing Order (Reasons), 10 July 2017, D308/3.

evidence relied on in Case 004/01, consisting of written records of interviews generated by the Office of the Co-Investigating Judges and transcripts of trial proceedings from other ECCC cases, to be entitled to a presumption of relevance and reliability.¹³⁸⁶ They afforded Civil Party applications little or no probative value if the circumstances in which they were recorded were not known.¹³⁸⁷ Similarly, they considered that the number of victims provided in the Documentation Center of Cambodia’s 1997 and 1998 reports, as well as a 1984 government report, were unreliable and had little probative value.¹³⁸⁸ The fourth chapter covers the Co-Investigating Judges’ factual analysis and findings, wherein they discussed, among other findings, Im Chaem’s background, her role and authority in the Southwest Zone, the Southwest Zone’s takeover of the Northwest Zone, and Im Chaem’s role and authority in the Northwest Zone. Chapters 5 to 7 are redacted and are not publicly available. The Co-Investigating Judges ultimately concluded that Im Chaem was not one of those “most responsible” within the meaning of the law applicable before the ECCC.¹³⁸⁹

5.3.3.5.3. Civil Party applications

On the same day they issued the disposition of the Closing Order, the Co-Investigating Judges issued a separate decision dismissing all 1,842 Civil Party applicants since they jointly considered that the charges against Im Chaem should be dismissed.¹³⁹⁰

5.3.3.5.4. Appeal against the Closing Order

The International Co-Prosecutor appealed the dismissal of Case 004/01, outlining six grounds of appeal related to legal and factual errors by the Co-Investigating Judges in the Closing Order.¹³⁹¹ Broadly, these grounds of appeal related to:

- (i) the failure of the [Co-Investigating Judges] to consider all of the facts of which they were seised in the Initial and Supplementary

¹³⁸⁶ Case 004/01, Closing Order (Reasons), 10 July 2017, D308/3, paras 103, 108.

¹³⁸⁷ Case 004/01, Closing Order (Reasons), 10 July 2017, D308/3, para. 107.

¹³⁸⁸ Case 004/01, Closing Order (Reasons), 10 July 2017, D308/3, para. 135.

¹³⁸⁹ Case 004/01, Closing Order (Reasons), 10 July 2017, D308/3, para. 325.

¹³⁹⁰ Case 004/01, Order on Admissibility of Civil Party Applications, 22 February 2017, D307.

¹³⁹¹ Case 004/01, International Co-Prosecutor’s Appeal of Closing Order (Reasons), 9 August 2017, D308/3/1/1. See also Case 004/01, Im Chaem’s Response to the International Co-Prosecutor’s Appeal of the Closing Order (Reasons), 22 September 2017, D308/3/1/11; Case 004/01, International Co-Prosecutor’s Reply Regarding Appeal of Closing Order (Reasons), 16 October 2017, D308/3/1/13.

Submissions for the Im Chaem case and how these facts could impact on the issue as to whether Im Chaem was among those “most responsible” for the crimes within the jurisdiction of the ECCC; (ii) errors in how the [Co-Investigating Judges] analysed and applied the elements of the crimes of extermination and enforced disappearances; and (iii) errors in the findings regarding Im Chaem’s position at the district and sector level in Sector 13.¹³⁹²

The Co-Lawyers for the former Civil Party applicants did not appeal, but filed a submission on the position of the ECCC within the Cambodian legal system, submitting that the Co-Investigating Judges erred by concluding that the ECCC Law excludes personal or subject-matter jurisdiction by the regular Cambodian courts over the events under the ECCC’s temporal jurisdiction, and arguing that this error “could have a profound adverse impact” on the interests of Civil Party applicants and other victims of the Khmer Rouge, and “severely tarnishes the ECCC’s legacy by recasting the tribunal as the mechanism through which a near total amnesty for Khmer Rouge-era atrocity crimes was implemented in Cambodia”.¹³⁹³ They requested that the Pre-Trial Chamber “redress the Closing Order’s erroneous findings on the scope of the ECCC’s exclusive jurisdiction and declare that the extent to which ordinary Cambodian courts have the legal and institutional capacity to adjudicate Khmer Rouge-era crimes is an issue entrusted to those courts’ own determination”.¹³⁹⁴

Oral arguments were heard on 11 and 12 December 2017.¹³⁹⁵

5.3.3.5.5. Considerations on appeal against the Closing Order

The Pre-Trial Chamber unanimously found the International Co-Prosecutor’s appeal admissible,¹³⁹⁶ then discussed certain preliminary issues, declaring that: (1) the delay in issuing the reasoned Closing Order after the conclusion of the investigation against Im Chaem was unwarranted;¹³⁹⁷

¹³⁹² Case 004/01, International Co-Prosecutor’s Appeal of Closing Order (Reasons), 9 August 2017, D308/3/1/1, para. 2.

¹³⁹³ Case 004/01, Civil Party Co-Lawyers’ Submission on the Position of the ECCC Within the Cambodian Legal System, 8 September 2017, D308/3/1/9. See also Case 004/01, Im Chaem’s Response to the CPLCS’ Submission on the Position of the ECCC Within the Cambodian Legal System (D308/3/1/9), 10 November 2017, D308/3/1/18.

¹³⁹⁴ Case 004/01, Civil Party Co-Lawyers’ Submission on the Position of the ECCC Within the Cambodian Legal System, 8 September 2017, D308/3/1/9, paras 16-17, 31-32.

¹³⁹⁵ Case 004/01, T. 11 December 2017, D308/3/1/19/1.1; Case 004/01, T. 11 December 2017, D308/3/1/19/1.2; Case 004/01, T. 12 December 2017, D308/3/1/19/2.1.

¹³⁹⁶ Case 004/01, Considerations on the International Co-Prosecutor’s Appeal of Closing Orders (Reasons), 28 June 2018, D308/3/1/20, paras 23-27 (“PTC Considerations”).

¹³⁹⁷ Case 004/01, PTC Considerations, 28 June 2018, D308/3/1/20, paras 28-31.

(2) the Co-Investigating Judges erred in issuing a “Two-Fold Closing Order”, where the disposition was issued first and the reasons followed;¹³⁹⁸ (3) the Co-Investigating Judges are seized of facts and not persons and only facts can be severed, so the severance of Im Chaem from Case 004 and creation of Case 004/01 implicitly severed all criminal allegations against her in Case 004;¹³⁹⁹ (4) the Co-Investigating Judges erred in assessing the reliability and probative value of evidence;¹⁴⁰⁰ and (5) the Co-Investigating Judges erred in interpreting the ECCC Law as stripping ordinary Cambodian courts of their jurisdiction over Khmer Rouge-era crimes.¹⁴⁰¹ However, the Pre-Trial Chamber judges were unable to attain the supermajority vote required to enter a decision on the appeal, resulting in the dismissal of the charges.¹⁴⁰² The Pre-Trial Chamber then set out the opinions of its various members.

National Pre-Trial Chamber Judges Prak Kimsan, Ney Thol, and Huot Vuthy noted that the ECCC’s jurisdiction was limited to those who were senior leaders or most responsible for the crimes and stated that they did not find Im Chaem to fall within the personal jurisdiction of the ECCC, and would uphold the Co-Investigating Judges’ decision to dismiss the charges against her.¹⁴⁰³

With regard to the first and second grounds of appeal by the International Co-Prosecutor, the International Pre-Trial Chamber Judges Baik Kang Jin and Olivier Beauvallet provided their view that the International Co-Prosecutor’s argument that the Co-Investigating Judges failed to make a proper legal determination regarding the crimes committed in several crime sites should be upheld, and that the Co-Investigating Judges failed to consider the gravity of these crimes and to assess Im Chaem’s liability for them.¹⁴⁰⁴

They further considered that the Co-Investigating Judges erred in law by failing to investigate and rule upon allegations of which they were seized, which included crime sites that were neither charged against Im Chaem nor

¹³⁹⁸ Case 004/01, PTC Considerations, 28 June 2018, [D308/3/1/20](#), paras 32-35.

¹³⁹⁹ Case 004/01, PTC Considerations, 28 June 2018, [D308/3/1/20](#), paras 36-40.

¹⁴⁰⁰ Case 004/01, PTC Considerations, 28 June 2018, [D308/3/1/20](#), paras 41-63.

¹⁴⁰¹ Case 004/01, PTC Considerations, 28 June 2018, [D308/3/1/20](#), paras 64-80.

¹⁴⁰² Case 004/01, PTC Considerations, 28 June 2018, [D308/3/1/20](#), disposition.

¹⁴⁰³ Case 004/01, PTC Considerations, 28 June 2018, [D308/3/1/20](#), paras 90, 92.

¹⁴⁰⁴ Case 004/01, PTC Considerations, 28 June 2018, [D308/3/1/20](#), paras 142, 160, 172, 179, 194, 201, 211.

raised by the International Co-Prosecutor in his appeal.¹⁴⁰⁵ They considered that the Co-Investigating Judges erred by seeking to establish an accurate and precise number of victims for each uncharged crime site.¹⁴⁰⁶ In light of these errors, the International Pre-Trial Chamber Judges examined whether the allegations of crimes committed at these sites were properly addressed to the requisite standard for the assessment of evidence.¹⁴⁰⁷ Resultantly, they opined that allegations at Trapeang Thma Dam Worksite, Wat Preah Net Preah and related sites, Phum Chakrey Security Centre and Prey Taruth Execution Site, and Wat Chamkar Khnol Security Centre and Execution Site should have been included in the charges and properly considered in the assessment of the ECCC's personal jurisdiction over Im Chaem.¹⁴⁰⁸

With regard to the third ground of appeal, the International Pre-Trial Chamber Judges concurred with the International Co-Prosecutor's arguments that, had the Co-Investigating Judges not imposed the incorrect legal elements of *ex ante* intent, the only reasonable conclusion would have been that there were reasonable grounds to believe that Im Chaem possessed the requisite *mens rea* for extermination.¹⁴⁰⁹

Concerning the fourth ground of appeal, the International Pre-Trial Chamber Judges considered that the Co-Investigating Judges wrongly applied the definition of the modern crime of enforced disappearance, instead of the elements of other inhumane acts as a crime against humanity and that, had the correct legal elements of other inhumane acts been applied, no reasonable trier of fact could have found that there was insufficient evidence of other inhumane acts by enforced disappearances at Spean Sreng Canal Worksite and Phnom Trayoung Security Centre, or of Im Chaem's responsibility therefor.¹⁴¹⁰

Finally, regarding the fifth and sixth ground of appeal, the International Pre-Trial Chamber Judges opined that the Co-Investigating Judges erred in finding that there is insufficient evidence that Im Chaem held the positions of Koh Andet District Secretary and Sector 13 Committee member, which

¹⁴⁰⁵ Case 004/01, PTC Considerations, 28 June 2018, [D308/3/1/20](#), paras 212-213.

¹⁴⁰⁶ Case 004/01, PTC Considerations, 28 June 2018, [D308/3/1/20](#), para. 214.

¹⁴⁰⁷ Case 004/01, PTC Considerations, 28 June 2018, [D308/3/1/20](#), para. 215.

¹⁴⁰⁸ Case 004/01, PTC Considerations, 28 June 2018, [D308/3/1/20](#), paras 216-248.

¹⁴⁰⁹ Case 004/01, PTC Considerations, 28 June 2018, [D308/3/1/20](#), para. 263.

¹⁴¹⁰ Case 004/01, PTC Considerations, 28 June 2018, [D308/3/1/20](#), paras 270-282.

had implications regarding her responsibility for the crime sites in the Southwest Zone.¹⁴¹¹

The International Pre-Trial Chamber Judges ultimately concluded that, in their view, by applying the correct definition of crimes and the requisite standard of evidence, properly assessing the gravity of the alleged or charged crimes, and properly assessing Im Chaem's role and responsibility, it was possible to determine that Im Chaem fell within the ECCC's personal jurisdiction.¹⁴¹²

5.3.3.5.6. Dismissal of charges

As the Co-Investigating Judges had jointly dismissed the case against Im Chaem and the Pre-Trial Chamber judges were unable to attain the supermajority vote required to enter a decision on the International Co-Prosecutor's appeal, the Pre-Trial Chamber unanimously declared that the action of the Co-Investigating Judges stood, namely that the case was dismissed.¹⁴¹³ This completed proceedings in Case 004/01 against Im Chaem.

5.3.3.6. Severance of Ao An and creation of Case 004/02

On 16 December 2016, the Co-Investigating Judges notified the parties that they considered the judicial investigation against Ao An to be concluded.¹⁴¹⁴ On the same day, they severed Ao An from the ongoing Case 004 investigation and ordered the creation of a new Case 004/02 for Ao An.¹⁴¹⁵ The International Co-Investigating Judge further decided to reduce the scope of the investigation by excluding facts concerning the arrests and executions of Cham in the East Zone.¹⁴¹⁶

5.3.3.6.1. Final Submissions

Following the disposal of additional investigative requests,¹⁴¹⁷ the Co-Investigating Judges issued a second notice of conclusion of judicial

¹⁴¹¹ Case 004/01, PTC Considerations, 28 June 2018, [D308/3/1/20](#), paras 283, 292-320.

¹⁴¹² Case 004/01, PTC Considerations, 28 June 2018, [D308/3/1/20](#), paras 321-339.

¹⁴¹³ Case 004/01, PTC Considerations, 28 June 2018, [D308/3/1/20](#), disposition.

¹⁴¹⁴ Case 004, Notice of Conclusion of Judicial Investigation Against Ao An, 16 December 2016, [D334](#).

¹⁴¹⁵ Case 004, Order of Severance of Ao An from Case 004, 16 December 2016, [D334/1](#).

¹⁴¹⁶ Case 004/02, Decision to Reduce the Scope of Judicial Investigation Pursuant to Internal Rule 66 *bis*, 16 December 2016, [D337](#).

¹⁴¹⁷ With regard to investigative actions requested by the Defence see Case 004/02: Consolidated Decision on Ao An's Amended First, Eight, and Eleventh Requests for Investigative Action, 27 October 2016, [D326](#); Decision on AO An's Amended Second Request for Investigative Action, 7 September 2016, [D188/1/1](#); Decision of Ao An's

investigation against Ao An.¹⁴¹⁸ On 19 May 2017, the Co-Investigating Judges forwarded the case file to the Co-Prosecutors, inviting them to file a Final Submission.¹⁴¹⁹ The National Co-Prosecutor filed a Final Submission requesting that all allegations against Ao An be dismissed,¹⁴²⁰ while the International Co-Prosecutor filed a separate Final Submission requesting that Ao An be indicted and sent to trial.¹⁴²¹

5.3.3.6.2. Closing Orders

On 18 September 2017, the Co-Investigating Judges informed the parties that they considered separate and opposing Closing Orders to be generally permitted under the applicable law,¹⁴²² and they registered a disagreement regarding the issuance of opposing Closing Orders on 12 July 2018, but did not bring this disagreement before the Pre-Trial Chamber.¹⁴²³

The National Co-Investigating Judge issued a Closing Order dismissing the case.¹⁴²⁴ The NCIJ's Closing Order found that Ao An's role as Sector 14 Secretary of the Central Zone was for only a short period, that he was not officially appointed, and that he acted upon orders and instructions of Ke Pauk, who had power and influence and was the only person at the zone level who survived the Central Zone purges.¹⁴²⁵ The NCIJ considered that Ao An's participation in the commission of crimes was "nonautonomous", "inactive", and "indirect", and that he did not participate in making CPK policies.¹⁴²⁶ Accordingly, the National Co-Investigating Judge considered

Amended Third Request for Investigative Action, 20 September 2016, [D189/2](#); Decision on Ao An's Amended Fourth Request for Investigative Action, 17 October 2016, [D244/1](#); Decision on Ao An's Fifth Request for Investigative Action, 10 November 2015, [D260/1](#); Decision on Ao An's Sixth Request for Investigative Action, 12 October 2016, [D276/1](#); Decision on Ao An's Seventh Request for Investigative Action, 8 December 2016, [D277/1](#); Decision on Ao An's Ninth Request for Investigative Action, 18 November 2016, [D300/2](#); Decision on Ao An's Tenth Request for Investigative Action, 16 December 2016, [D311/1](#); Decision on Ao An's Twelfth Request for Investigative Action, 8 December 2016, [D320/1](#); Decision on Ao An's Thirteen Request for Investigative Action, 16 March 2017, [D345/1](#). With regard to investigative actions requested by the International Co-Prosecutor, see Case 004/02, Decision on International Co-Prosecutor's Request for Investigative Action to Replace Maps and Case 002 Materials onto Case File 004/02, 8 February 2017, [D342/1](#); Decision on ICP's Request for Investigative Action Regarding Case 004 Crime Sites and Responsibility of Ao An, 7 December 2016, [D41/2](#); Consolidated Decision on the Requests for Investigative Action Concerning the Crime of Forced Impregnation, 13 June 2016, [D301/5](#); Decision on International Co-Prosecutor's Request for Investigative Action to Place Sexual or Gender-Based Violence and Forced Marriage Documents on Case File 004, 29 August 2016, [D310/1](#); Decision on International Co-Prosecutor's Request for Investigative Action Regarding Three witnesses, 12 December 2016, [D314/1](#).

¹⁴¹⁸ Case 004/02, Second Notice of Conclusion of Judicial Investigation Against Ao An, 29 March 2017, [D334/2](#).

¹⁴¹⁹ Case 004/02, Closing Order (Indictment), 16 August 2018, [D360](#), para. 10.

¹⁴²⁰ Case 004/02, Final Submission Concerning Ao An Pursuant to Internal Rule 66, 18 August 2017, [D351/4](#).

¹⁴²¹ Case 004/02, International Co-Prosecutor's Rule 66 Final Submission, 21 August 2017, [D351/5](#).

¹⁴²² Case 004/02, Decision on Ao An's Urgent Request for Disclosure of Documents Relating to Disagreements, 18 September 2017, [D355/1](#), paras 13-16.

¹⁴²³ Case 004/02, Considerations on Appeals Against Closing Orders, 19 December 2019, [D359/24](#) & [D360/33](#), paras 10, 99.

¹⁴²⁴ Case 004/02, Dismissal Order, 16 August 2018, [D359](#).

¹⁴²⁵ Case 004/02, Dismissal Order, 16 August 2018, [D359](#), paras 552-553.

¹⁴²⁶ Case 004/02, Dismissal Order, 16 August 2018, [D359](#), para. 553.

that the ECCC had no personal jurisdiction over Ao An and dismissed the charges.¹⁴²⁷

The International Co-Investigating Judge issued a Closing Order indicting Ao An and committing him for trial.¹⁴²⁸ He committed Ao An for trial for: (1) the crime of genocide against the Cham of Kampong Cham Province; (2) crimes against humanity committed at (i) Anlong Chrey Dam Forced Labour Site, (ii) Kok Pring Execution Site, (iii) Met Sop Security Centre, (iv) Tuol Beng and Wat Angkuonh Dei Security Centres, (v) Wat Au Trakuon Security Centre, (vi) Wat Batheay Security Centre, (vii) Wat Phnom Pros Execution Site, (viii) Wat Ta Meak Security Centre, and (ix) forced marriage in Kampong Siem and Prey Chhor Districts, Sector 41; and (x) violations of the 1956 Penal Code in relation to premeditated homicide.¹⁴²⁹

5.3.3.6.3. Civil Party applications

1,920 individuals applied to become Civil Parties in Case 004/02.¹⁴³⁰ On the same day they issued separate Closing Orders, the Co-Investigating Judges each issued separate decisions on the admissibility of the Civil Party applicants. The National Co-Investigating Judge issued an order dismissing the applications, since he considered the case to be dismissed, while the International Co-Investigating Judge considered each application and issued a decision admitting 434 applicants and rejecting the remainder.¹⁴³¹ The Civil Parties rejected by the International Co-Investigating Judge appealed his rejection of their applications,¹⁴³² but the Pre-Trial Chamber judges were unable to attain the supermajority vote required to enter a decision on the appeal,¹⁴³³ leaving the Civil Party applicants without a definitive answer about their status. The National Pre-Trial Chamber judges stated that they would have decided to reject all the Civil Party applications in Case 004/02, since they considered that the decision to dismiss the case should be upheld, while the International Pre-Trial Chamber Judges stated

¹⁴²⁷ Case 004/02, Dismissal Order, 16 August 2018, [D359](#), paras 554-555.

¹⁴²⁸ Case 004/02, Closing Order (Indictment), 16 August 2018, [D360](#).

¹⁴²⁹ Case 004/02, Closing Order (Indictment), 16 August 2018, [D360](#), chapter 14.

¹⁴³⁰ Case 004/02, Considerations on Appeal Against Order on the Admissibility of Civil Party Applicants, 30 June 2020, [D362/6](#), para. 3.

¹⁴³¹ Case 004/02, Order Rejecting Civil Party Applications, 16 August 2018, [D361](#); Case 004/02, International Co-Investigating Judge's Order on Admissibility of Civil Party Applicants, [D362](#), 16 August 2018.

¹⁴³² Case 004/01, Appeal Against Order on the Admissibility of Civil Party Applicants, 29 November 2018, [D362/5](#).

¹⁴³³ Case 004/02, Considerations on Appeal Against Order on the Admissibility of Civil Party Applicants, 30 June 2020, [D362/6](#).

that they would have overturned the International Co-Investigating Judge's order in part, to admit eight of the rejected applicants.¹⁴³⁴

5.3.3.6.4. Appeals against the Closing Orders

The National Co-Prosecutor appealed the Indictment, requesting the Pre-Trial Chamber to dismiss the case against Ao An for lack of personal jurisdiction.¹⁴³⁵ The National Co-Prosecutor argued that since Ao An had no autonomy or *de facto* authority, the ECCC did not have personal jurisdiction over him.¹⁴³⁶

Ao An also appealed the Indictment, raising 18 grounds of appeal, the first of which was that the issuance of two separate and opposing Closing Orders was incompatible with ECCC Law and violated his fundamental fair trial rights and the principle of legal certainty. He requested the Pre-Trial Chamber to overturn the Indictment and dismiss the case.¹⁴³⁷

The International Co-Prosecutor appealed the Dismissal Order.¹⁴³⁸ He argued that factual and legal errors invalidated the Dismissal Order including:

- (1) failing to make any findings as to whether crimes within the jurisdiction of the ECCC were committed and as to whether Ao An bears any responsibility for such crimes (an error of law); (2) giving improper weight in its analysis of personal jurisdiction to sometimes erroneous or incomplete findings regarding the extent to which Ao An was following superior orders and or acting under coercion or duress (an error of fact and law); (3) erroneously interpreting the ECCC Law

¹⁴³⁴ Case 004/02, Considerations on Appeal Against Order on the Admissibility of Civil Party Applicants, 30 June 2020, D362/6, paras 43, 117.

¹⁴³⁵ Case 004/02, National Co-Prosecutor's Appeal Against the International Co-Investigating Judge's Closing Order (Indictment) in Case 004/02, 14 December 2018, D360/8/1, para. 98.

¹⁴³⁶ Case 004/02, National Co-Prosecutor's Appeal Against the International Co-Investigating Judge's Closing Order (Indictment) in Case 004/02, 14 December 2018, D360/8/1, paras 83-97.

¹⁴³⁷ Case 004/02, Ao An's Appeal Against the International Co-Investigating Judge's Closing Order (Indictment), 19 December 2018, D360/5/1, paras 1-6. See also Case 004/02, Ao An's Response to the International Co-Prosecutor's Appeal of the Order Dismissing the Case Against Ao An (D359), 20 February 2019, D359/3/4; Case 004/02, Reply to the International Co-Prosecutor's Response to Ao An's Appeal of the Case 004/02 Indictment, 1 April 2019, D360/11.

¹⁴³⁸ Case 004/02, International Co-Prosecutor's Appeal of the Order Dismissing the Case Against Ao An (D359), 20 December 2018, D359/3/1. See also Case 004/02, International Co-Prosecutor's Response to Ao An's Appeal of the Case 004/02 Indictment, 22 February 2019, D360/9; International Co-Prosecutor's Response to the National Co-Prosecutor's Appeal of the Case 004/02 Indictment, 27 February 2019, D360/10; Case 004/02, International Co-Prosecutor's Reply to Ao An's Response to the Appeal of the Order Dismissing the Case Against Ao An (D359), 3 April 2019, D359/3/5.

by holding that the category of “those who were most responsible” for DK crimes can refer only to Kaing Guek Eav (“Duch”) (an error of law); (4) erroneously assessing the reliability of evidence on the Case File (errors of fact); (5) a number of unreasonable factual findings having critical impact on the determination of personal jurisdiction; and (6) failing to adequately consider the impact of Ao An’s willing and very significant participation in the crime of genocide as factor that should be considered in assessing whether Ao An falls into the jurisdictional category of those “most responsible” for DK crimes.¹⁴³⁹

Oral arguments were heard on 19 to 21 June 2019.¹⁴⁴⁰ The Pre-Trial Chamber issued a public report on the case and appeals.¹⁴⁴¹

5.3.3.6.5. Considerations on appeals against the Closing Orders

The Pre-Trial Chamber decided to consider the National Co-Prosecutor’s appeal, the International Co-Prosecutor’s appeal, and Ao An’s appeal together.¹⁴⁴²

As a preliminary matter, it discussed its authority over the investigative stage of the proceedings, which it considered was misunderstood by the International Co-Investigating Judge, and stated that the Chamber functioned as a second-instance investigative body and had final authority over the investigation stage. It thus discussed its power of review as a second-instance investigative body and the extent of its power of review in the present case, as well as the position of the ECCC in the Cambodian legal system.¹⁴⁴³ It noted that there was excessive delay in issuing the Closing Orders,¹⁴⁴⁴ and took issue with the “evidentiary considerations” in both Closing Orders, recalling that it had already addressed this issue in Case 004/01 and that the applicable law and jurisprudence do not envisage the evidentiary considerations that the Co-Investigating Judges used

¹⁴³⁹ Case 004/02, International Co-Prosecutor’s Appeal of the Order Dismissing the Case Against Ao An (D359), 20 December 2018, D359/3/1, para. 2.

¹⁴⁴⁰ Case 004/02, T. 19 June 2019, D359/8.1 & D360/17.1; Case 004/02, T. 20 June 2019, D359/9.1 & D360/18.1; Case 004/02, T. 21 June 2019, D359/10.1 & D360/19.1.

¹⁴⁴¹ Case 004/02, Report of the Case and Appeals, 19 June 2019, D359/7 & D360/16.

¹⁴⁴² Case 004/02, Considerations on Appeals Against Closing Orders, 19 December 2019, D359/24 & D360/33, paras 24-27 (“PTC Considerations”).

¹⁴⁴³ Case 004/02, PTC Considerations, 19 December 2019, D359/24 & D360/33, paras 34-59.

¹⁴⁴⁴ Case 004/02, PTC Considerations, 19 December 2019, D359/24 & D360/33, paras 60-72.

at that stage of proceedings.¹⁴⁴⁵ The Pre-Trial Chamber then discussed the simultaneous issuance of two conflicting Closing Orders, which it considered violated the ECCC legal framework and “undermin[ed] the very foundations of [the Co-Investigating Judges’] judicial office”.¹⁴⁴⁶ The Pre-Trial Chamber criticised the Co-Investigating Judges for leaving their disagreement concerning personal jurisdiction unresolved rather than submitting their disagreement to the Pre-Trial Chamber to resolve through the procedure provided by the ECCC legal framework.¹⁴⁴⁷

The Pre-Trial Chamber then found the National and International Co-Prosecutors’ appeals admissible, as well as parts of Ao An’s appeal.¹⁴⁴⁸ However, the Pre-Trial Chamber judges were unable to agree on the merits of these appeals and could not attain the supermajority vote required to enter decision and set out their opinions.¹⁴⁴⁹

The National Pre-Trial Chamber Judges set out their opinion by first discussing the history of Case 004, noting that the Case 003 and 004 preliminary investigations were carried out “secretively and unilaterally” by the International Co-Prosecutor and that controversies in Ao An’s case continued through the issuance of the conflicting Closing Orders.¹⁴⁵⁰ They then discussed the establishment of the ECCC and its purpose, and the meaning of “senior leaders” and “those most responsible” and determined that seven members of the CPK Standing Committee were “senior leaders” and that Duch fell within the category of “most responsible”.¹⁴⁵¹ They considered bringing cases against other individuals to be a violation of the UN-RGC Agreement and considered that the preliminary investigation by the International Co-Prosecutor was illegal so the Indictment based on the outcome of this illegal preliminary investigation was invalid.¹⁴⁵² They considered that the Dismissal Order should be upheld.¹⁴⁵³

The International Pre-Trial Chamber Judges considered the validity of each Closing Order, and opined that only the Indictment was valid because

¹⁴⁴⁵ Case 004/02, PTC Considerations, 19 December 2019, D359/24 & D360/33, paras 73-87.

¹⁴⁴⁶ Case 004/02, PTC Considerations, 19 December 2019, D359/24 & D360/33, paras 88-124.

¹⁴⁴⁷ Case 004/02, PTC Considerations, 19 December 2019, D359/24 & D360/33, para. 99.

¹⁴⁴⁸ Case 004/02, PTC Considerations, 19 December 2019, D359/24 & D360/33, paras 125-168.

¹⁴⁴⁹ Case 004/02, PTC Considerations, 19 December 2019, D359/24 & D360/33, para. 169.

¹⁴⁵⁰ Case 004/02, PTC Considerations, 19 December 2019, D359/24 & D360/33, paras 173-182.

¹⁴⁵¹ Case 004/02, PTC Considerations, 19 December 2019, D359/24 & D360/33, paras 183-251.

¹⁴⁵² Case 004/02, PTC Considerations, 19 December 2019, D359/24 & D360/33, paras 250-251.

¹⁴⁵³ Case 004/02, PTC Considerations, 19 December 2019, D359/24 & D360/33, paras 281-282.

one Co-Investigating Judge may validly issue an Indictment alone under the applicable law, but the simultaneous issuance of a Dismissal Order without referral to the Pre-Trial Chamber was *ultra vires* and thus void.¹⁴⁵⁴ The International Pre-Trial Chamber Judges considered that the International Co-Investigating Judge did not commit errors or abuses fundamentally determinative of the exercise of his discretion in finding that Ao An was amongst the most responsible for the crimes committed during the period from 17 April 1975 to 6 January 1979, and accordingly stated that they would have upheld the Indictment and found that Ao An is subject to the ECCC's personal jurisdiction.¹⁴⁵⁵ The International Pre-Trial Chamber Judges stated that they would have also amended Count 1 of the Indictment to provide that Ao An was indicted and committed to trial for the crime of genocide against the Cham of Kampong Cham province in the Central Zone.¹⁴⁵⁶

5.3.3.6.6. Termination of proceedings

Case 004/02 was chronologically the first case in which parties addressed the consequences of the Pre-Trial Chamber's considerations following the issuance of separate and opposing closing orders.¹⁴⁵⁷ The International Co-Prosecutor prepared for trial by filing a request before the Trial Chamber for an extension of time to submit a witness and expert list and for a trial management meeting.¹⁴⁵⁸ Ao An then requested the Trial Chamber to confirm whether it was seized of Case 004/02 or to provide guidance to enable him to file preliminary objections.¹⁴⁵⁹

As none of the filings transmitted to the Trial Chamber had been notified to the parties, the International Co-Prosecutor hand-delivered an interoffice memorandum to the Office of Administration on the progress of Case 004/02, expressing concern and requesting the Office of Administration to implement administrative steps to progress the case and/or to try to

¹⁴⁵⁴ Case 004/02, PTC Considerations, 19 December 2019, D359/24 & D360/33, paras 317-329.

¹⁴⁵⁵ Case 004/02, PTC Considerations, 19 December 2019, D359/24 & D360/33, para. 631.

¹⁴⁵⁶ Case 004/02, PTC Considerations, 19 December 2019, D359/24 & D360/33, para. 632.

¹⁴⁵⁷ The procedural history is also detailed by the Supreme Court Chamber in its decision terminating the proceedings. See Case 004/02, Decision on International Co-Prosecutor's Immediate Appeal of the Trial Chamber's Effective Termination of Case 004/02, 10 August 2020, E004/2/1/1/2 ("Case 004/02, SCC Termination Decision").

¹⁴⁵⁸ Case 004/02, International Co-Prosecutor's Request for Extension of the Rule 80 Deadline and Trial Management Meeting, 26 December 2019, D363/1.1.1. The witness list was filed a few weeks later. See Case 004/02, International Co-Prosecutor's Rule 80 Witness and Expert List Submission with Confidential Annex A, 13 January 2020, D363/1.1.4.

¹⁴⁵⁹ Case 004/02, Request for Confirmation that the Trial Chamber has Not been Lawfully Seized of Case 004/02, 30 December 2019, D363/1.1.2.

resolve the delay.¹⁴⁶⁰ The Office of Administration responded that “it can only implement judicial acts following an instruction or direction of the chambers as communicated by their greffiers” and as such it had “duly completed all its tasks related to this context”.¹⁴⁶¹

On 21 January 2020, the Trial Chamber greffier acknowledged receipt of all documents sent by the parties thus far but noted that neither the Pre-Trial Chamber’s Considerations nor the case file and Indictment had been notified or forwarded to the Trial Chamber.¹⁴⁶² A week later, the Records and Archives Unit received two sets of conflicting instructions from two Pre-Trial Chamber greffiers: one to notify the Pre-Trial Chamber’s Considerations to the Trial Chamber, and the other to archive the case file.¹⁴⁶³

The President of the Pre-Trial Chamber and International Judges sent separate memoranda to the Court Management Section with conflicting instructions whether to notify documents to the Trial Chamber.¹⁴⁶⁴ The Office of Administration sent a memorandum to the President of the Pre-Trial Chamber stating that it was “neither mandated to interpret any judicial decision nor resolve any conflicting instructions made by any of the greffiers” and requested an “actionable instruction”.¹⁴⁶⁵

The International Co-Prosecutor filed a request to the Pre-Trial Chamber calling on all necessary administrative actions to be taken for the immediate transmission of the Indictment and case file to the Trial Chamber,¹⁴⁶⁶ and sent a similar memorandum to the Office of Administration,¹⁴⁶⁷ to which the Office of Administration replied that it would only implement judicial acts following an instruction from the relevant chamber.¹⁴⁶⁸

¹⁴⁶⁰ Case 004/02, Progress of Case 004/02, Ao An, 15 January 2020, [E004/2/1.2.14](#).

¹⁴⁶¹ Case 004/02, Interoffice Memorandum, 23 January 2020, [E004/2/1.2.15](#).

¹⁴⁶² Case 004/02, Email from Trial Chamber Greffier, 21 January 2020, [D359/33.1.1](#) & [D360/42.1.1](#) (attachment 2).

¹⁴⁶³ Case 004/02, Email from Case File Officer and Filing Instructions, 28 January 2020, [D359/33.1.1](#) & [D360/42.1.1](#) (attachments 3-4).

¹⁴⁶⁴ Case 004/02, Interoffice Memorandum from the President of the Pre-Trial Chamber, 29 January 2020, [D359/34](#) & [D360/43](#); Case 004/02, Interoffice Memorandum from the International Judges of the Pre-Trial Chamber, 29 January 2020, [D359/33.1.5](#) & [D360/42.1.5](#).

¹⁴⁶⁵ Case 004/02, Interoffice Memorandum from the Acting Director and Deputy Director of Administration, 31 January 2020, [D363.1.2](#).

¹⁴⁶⁶ Case 004/02, International Co-Prosecutor’s Request for All Required Administrative Actions to be Taken to Forward Case File 004/02 (Ao An) to the Trial Chamber, 4 February 2020, [D359/25](#) & [D360/34](#).

¹⁴⁶⁷ Case 004/02, Interoffice Memorandum from the International Co-Prosecutor, 5 February 2020, [E004/2/1.2.16](#).

¹⁴⁶⁸ Case 004/02, Interoffice Memorandum from the Acting Director and Deputy Director of Administration, 10 February 2020, [E004/2/1.2.17](#).

On 12 March 2020, the International Pre-Trial Chamber Judges sent an interoffice memorandum to all the parties to Case 004/02, and copied the National Pre-Trial Chamber Judges and the Trial Chamber greffier, detailing the judicial and administrative stalemate between the Pre-Trial Chamber and the Office of Administration, noting that two sets of opposing instructions had been sent to the Records and Archives Unit by the Pre-Trial Chamber, and stated that they had done all they could and that their efforts were at an end.¹⁴⁶⁹ The Pre-Trial Chamber President then issued an interoffice memorandum to all the parties stating that: (1) the Chamber had “already fulfilled its duties” and was not required to take any further administrative action; (2) only the portion of the Considerations unanimously agreed upon had “applicable effect” while the opinions of the National and International Judges were “personal opinions” with no “applicable effect”; and (3) the Pre-Trial Chamber would take no further administrative action to notify the Trial Chamber or to forward the case file.¹⁴⁷⁰

The Trial Chamber then issued a statement to the parties noting *inter alia* that it had no access to the case file and could not have access to it unless and until there was proper notification and transfer of the case file, and that issuance of a formal decision by the Trial Chamber was not possible. The Trial Chamber’s International Judges explained their belief that “an argument could be made that under the unique circumstances of the case the Trial Chamber has *inherent authority* to address some of the preliminary issues raised by the parties”, and the National Judges stated that all documents and requests filed to the Trial Chamber would be returned, declaring that “there will not be a trial of AO An now or in the future”.¹⁴⁷¹

On 4 May 2020, the International Co-Prosecutor filed an appeal to the Supreme Court Chamber against the Trial Chamber’s “effective termination” of Case 004/02.¹⁴⁷²

¹⁴⁶⁹ Case 004/02, Interoffice Memorandum from the International Judges of the Pre-Trial Chamber, 12 March 2020, D359/36 & D360/45.

¹⁴⁷⁰ Case 004/02, President’s Memorandum, 16 March 2020, D359/37 & D360/46.

¹⁴⁷¹ *Statement of the Judges of the Trial Chamber of the ECCC Regarding Case 004/02 Involving Ao An*, 3 April 2020.

¹⁴⁷² Case 004/02, International Co-Prosecutor’s Immediate Appeal of the Trial Chamber’s Effective Termination of Case 004/02, 4 May 2020, D363/1.1.11.

The Supreme Court Chamber admitted the appeal for the purpose of providing legal certainty, clarity, finality, and to uphold the integrity of the ECCC,¹⁴⁷³ and terminated the case against Ao An for lack of a valid indictment, stating that the Pre-Trial Chamber should have treated both Closing Orders as void and not have engaged in any discussions on their respective merits.¹⁴⁷⁴ The Supreme Court Chamber considered that the Trial Chamber was never seized of Case 004/02 and as such did not err in failing to progress the trial against Ao An.¹⁴⁷⁵ Consequently, the Supreme Court Chamber found that the Trial Chamber “had no power to act or to decide [the] issues brought to its attention”.¹⁴⁷⁶

On 14 August 2020, the Co-Investigating Judges issued an order to formally seal and archive case file 004/02.¹⁴⁷⁷ This completed proceedings in Case 004/02 against Ao An.

5.3.3.7. Case 004 – the proceedings against Yim Tith

5.3.3.7.1. Conclusion of the investigation

On 13 June 2017, the Co-Investigating Judges notified the parties of the conclusion of the judicial investigation and the International Co-Investigating Judge reduced the scope of the investigation by excluding certain alleged facts.¹⁴⁷⁸ Following additional investigative action, the Co-Investigating Judges issued a second notice of conclusion of judicial investigation against Yim Tith on 5 September 2017.¹⁴⁷⁹

5.3.3.7.2. Final Submissions

The Co-Investigating Judges forwarded the case file to the Co-Prosecutors, inviting them to file a Final Submission.¹⁴⁸⁰ The National Co-Prosecutor filed a Final Submission requesting dismissal of all allegations against

¹⁴⁷³ Case 004/02, Decision on International Co-Prosecutor’s Immediate Appeal of the Trial Chamber’s Effective Termination of Case 004/02, 10 August 2020, E004/2/1/1/2, para. 65 (“Case 004/02, SCC Termination Decision”).

¹⁴⁷⁴ Case 004/02, SCC Termination Decision, 10 August 2020, E004/2/1/1/2, paras 53, 70, 71(vi).

¹⁴⁷⁵ Case 004/02, SCC Termination Decision, 10 August 2020, E004/2/1/1/2, para. 70.

¹⁴⁷⁶ Case 004/02, SCC Termination Decision, 10 August 2020, E004/2/1/1/2, para. 70.

¹⁴⁷⁷ Case 004/02, Order Sealing and Archiving Case File 004/2, 14 August 2020, D363/3.

¹⁴⁷⁸ Case 004, Notice of Conclusion of Judicial Investigation against Yim Tith, 13 June 2017, D358; Case 004, Decision to Reduce the Scope of the Judicial Investigation pursuant to Internal Rule 66 *bis*, 13 June 2017, D359.

¹⁴⁷⁹ Case 004, Second Notice of Conclusion of Judicial Investigation against Yim Tith, 5 September 2017, D368.

¹⁴⁸⁰ Case 004, Forwarding Order Pursuant to Internal Rule 66(4), 1 March 2018, D378.

Yim Tith,¹⁴⁸¹ while the International Co-Prosecutor filed a separate Final Submission requesting Yim Tith to be indicted and committed for trial.¹⁴⁸²

5.3.3.7.3. Closing Orders

The Co-Investigating Judges registered a disagreement regarding the issuance of separate and opposing Closing Orders.¹⁴⁸³ This disagreement was not brought before the Pre-Trial Chamber.¹⁴⁸⁴ Shortly thereafter, the Co-Investigating Judges issued two separate and conflicting Closing Orders.¹⁴⁸⁵ The National Co-Investigating Judge's Closing Order dismissed the case against Yim Tith, on the ground that he was not subject to the ECCC's personal jurisdiction as a "senior leader" or among those "most responsible",¹⁴⁸⁶ while the International Co-Investigating Judge issued a Closing Order indicting Yim Tith and sending him for trial on counts of genocide, crimes against humanity, war crimes, and violations of the 1956 Penal Code.¹⁴⁸⁷ The International Co-Investigating Judge also terminated the judicial investigation into the facts previously excluded from investigation and dismissed certain charges.¹⁴⁸⁸ The Co-Investigating Judges jointly issued an order terminating the remainder of the investigation in Case 004.¹⁴⁸⁹

5.3.3.7.4. Civil Party applications

Throughout the Case 004 investigation, 2,014 people applied to become Civil Parties in Case 004.¹⁴⁹⁰ On the same day they issued separate Closing Orders, the Co-Investigating Judges each issued separate decisions on the admissibility of the Civil Party applicants. The National Co-Investigating Judge issued an order dismissing the applications, since he considered the case to be dismissed, while the International Co-Investigating Judge considered each application and issued a decision admitting some while rejecting others.¹⁴⁹¹ The Civil Parties rejected by the International

¹⁴⁸¹ Case 004, Final Submission Concerning Yim Tith Pursuant to Internal Rule 66, 31 May 2018, D378/1, paras 34, 36.

¹⁴⁸² Case 004, International Co-Prosecutor's Rule 66 Final Submission Against Yim Tith, 4 June 2018, D378/2.

¹⁴⁸³ See Case 004, Closing Order (Indictment), 28 June 2019, D382, para. 21; Case 004, Dismissal Order, 17 September 2019, D381, para. 13.

¹⁴⁸⁴ Case 004, Considerations on Appeals Against Closing Orders, 17 September 2021, D381/45 & D382/43, para. 14.

¹⁴⁸⁵ Case 004, Dismissal Order, 17 September 2019, D381; Case 004, Closing Order (Indictment), 28 June 2019, D382.

¹⁴⁸⁶ Case 004, Order Dismissing the Case Against Yim Tith, 28 June 2019, D381.

¹⁴⁸⁷ Case 004, Closing Order (Indictment), 28 June 2019, D382, chapter 12.

¹⁴⁸⁸ Case 004, Closing Order (Indictment), 28 June 2019, D382, chapters 10-11.

¹⁴⁸⁹ Case 004, Order Terminating the Remainder of the Investigation in Case 004, 28 June 2019, D385.

¹⁴⁹⁰ Case 004, Order on Admissibility of Civil Party Applications, 28 June 2019, D384, para. 2. At least four Civil Parties later withdrew their applications (see paras 5, 8).

¹⁴⁹¹ Case 004, Order Rejecting Civil Party Applications, 28 June 2019, D383; Case 004, Order on Admissibility of Civil Party Applications, 28 June 2019, D384.

Co-Investigating Judge appealed his rejection of their applications,¹⁴⁹² but the Pre-Trial Chamber judges were unable to attain the supermajority vote required to enter a decision on the appeal,¹⁴⁹³ leaving the Civil Party applicants without a definitive answer as to their status. The National Pre-Trial Chamber Judges stated that they would have decided to reject all the Civil Party applications in Case 004, since they considered that the decision to dismiss the case should be upheld, while the International Pre-Trial Chamber Judges stated that they would have overturned the International Co-Investigating Judge's order in part and admitted 14 of the rejected applicants.¹⁴⁹⁴

5.3.3.7.5. Appeals against the Closing Orders

The National Co-Prosecutor appealed the Indictment, requesting the Pre-Trial Chamber to dismiss the case against Yim Tith for lack of personal jurisdiction.¹⁴⁹⁵ Yim Tith appealed the issuance of two Closing Orders, asserting that the Co-Investigating Judges erred in law by issuing two separate and conflicting Closing Orders and urging the Pre-Trial Chamber to dismiss both.¹⁴⁹⁶ He also separately appealed the Indictment, alleging that the International Co-Investigating Judge erred in finding that Yim Tith was among those “most responsible” for DK-era crimes and requesting the Pre-Trial Chamber to dismiss the Indictment and the case against him.¹⁴⁹⁷ The International Co-Prosecutor appealed the Dismissal Order, arguing that it contained numerous legal and factual errors resulting in the manifestly erroneous finding that Yim Tith is not subject to the ECCC's personal jurisdiction.¹⁴⁹⁸ The Civil Party Co-Lawyers also

¹⁴⁹² Case 004, Appeal Against Order on the Admissibility of Civil Party Applicants, 13 September 2019, [D384/5](#).

¹⁴⁹³ Case 004, Considerations on Appeal Against Order on the Admissibility of Civil Party Applicants, 29 September 2021, [D384/7](#).

¹⁴⁹⁴ Case 004, Considerations on Appeal Against Order on the Admissibility of Civil Party Applicants, 29 September 2021, [D384/7](#), paras 42-44, 136.

¹⁴⁹⁵ Case 004, National Co-Prosecutor's Appeal Against the International Co-Investigating Judge's Closing Order (Indictment) in Case 004, 13 September 2019, [D382/4/1](#).

¹⁴⁹⁶ Case 004, Yim Tith's Appeal of the Issuance of Two Closing Orders in Case 004, 2 December 2019, [D381/18](#) & [D382/21](#), para. 20. See also Case 004, Yim Tith's Response to the International Co-Prosecutor's Appeal of the National Co-Investigating Judge's Closing Order, 20 February 2020, [D381/26](#); Case 004, Yim Tith's Reply to the International Co-Prosecutor's Response to Yim Tith's Appeal of the International Co-Investigating Judge's Closing Order in Case 004, 13 March 2020, [D382/29](#); Case 004, Yim Tith's Reply to the International Co-Prosecutor's Response to Yim Tith's Appeal of the Issuance of Two Closing Orders in Case 004, 16 March 2020, [D381/27](#) & [D382/30](#).

¹⁴⁹⁷ Case 004, Yim Tith's Appeal of the International Co-Investigating Judge's Closing Order in Case 004, 2 December 2019, [D382/22](#).

¹⁴⁹⁸ Case 004, International Co-Prosecutor's Appeal of the Order Dismissing the Case Against Yim Tith (D381), 2 December 2019, [D381/19](#). See also Case 004, International Co-Prosecutor's Response to the National Co-Prosecutor's Appeal of the Case 004 Indictment (D382), 30 September 2019, [D382/16](#); Case 004, International Co-Prosecutor's Response to Yim Tith's Appeal of the Case 004 Indictment, 14 February 2020, [D382/27](#); Case 004, International Co-Prosecutor's Response to Yim Tith's Appeal Against the Issuance of Two Closing Orders in Case 004, 17 February 2020, [D382/28](#); Case 004, International Co-Prosecutor's Reply to Yim Tith's Response to Her Appeal of the Order Dismissing the Case Against Yim Tith (D381), 25 March 2020, [D381/28](#).

appealed the Dismissal Order, submitting that the National Co-Investigating Judge erred in law and fact in concluding that Yim Tith did not fall within the ECCC’s personal jurisdiction, and submitting in the alternative that if the Pre-Trial Chamber judges were unable to reach a supermajority decision the ECCC legal framework requires that the Indictment be advanced to the Trial Chamber.¹⁴⁹⁹

The Pre-Trial Chamber decided to determine the appeals based on written submissions and without holding oral arguments.¹⁵⁰⁰

5.3.3.7.6. Considerations on appeals against the Closing Orders

The Pre-Trial Chamber considered the five appeals together.¹⁵⁰¹ It found the appeals to be admissible, except for certain portions of Yim Tith’s appeal against the Indictment.¹⁵⁰²

The Pre-Trial Chamber next considered whether the simultaneous issuance of two conflicting Closing Orders was permitted under the ECCC’s legal framework.¹⁵⁰³ It noted that the Co-Investigating Judges had filed confidential disagreements in Case 004, including regarding the issuance of separate and opposing Closing Orders, but that none of these disagreements was brought before it.¹⁵⁰⁴ The Pre-Trial Chamber found that the Co-Investigating Judges “committed a gross error of law” by finding that the ECCC legal framework permits the issuance of separate and opposing Closing Orders.¹⁵⁰⁵ It referred to its Case 004/02 and Case 003 jurisprudence explaining that the Co-Investigating Judges should have made use of the dispute resolution mechanism provided by the ECCC Law and that by failing to do so and instead issuing two conflicting Closing Orders, they “committed errors that undermine the foundations of the hybrid system and proper functioning of the ECCC”.¹⁵⁰⁶ Because the Pre-Trial Chamber judges could not attain the supermajority vote required to enter a decision on the merits (apart from the unanimous

¹⁴⁹⁹ Case 004, Civil Party Co-Lawyers Appeal Against the National Co-Investigating Judge’s Closing Order in Case 004, 1 December 2019, D381/20.

¹⁵⁰⁰ Case 004, Decision on Oral Hearing in Case 004, 18 March 2021, D381/41 & D382/40.

¹⁵⁰¹ Case 004, Considerations on Appeals Against Closing Orders, 17 September 2021, D381/45 & D382/43, paras 30-33 (“PTC Considerations”).

¹⁵⁰² Case 004, PTC Considerations, 17 September 2021, D381/45 & D382/43, paras 37-83.

¹⁵⁰³ Case 004, PTC Considerations, 17 September 2021, D381/45 & D382/43, paras 84-115.

¹⁵⁰⁴ Case 004, PTC Considerations, 17 September 2021, D381/45 & D382/43, para. 90.

¹⁵⁰⁵ Case 004, PTC Considerations, 17 September 2021, D381/45 & D382/43, para. 94.

¹⁵⁰⁶ Case 004, PTC Considerations, 17 September 2021, D381/45 & D382/43, paras 95-115.

findings on admissibility and the legality of issuing separate and opposing Closing Orders), they set out their opinions.¹⁵⁰⁷

The National Pre-Trial Chamber Judges opined that the purpose of the ECCC was to bring to trial senior leaders and those most responsible.¹⁵⁰⁸ They recalled the debate before the National Assembly on the Draft ECCC law, concerning the number of persons falling within the jurisdiction of the ECCC, and observed that the clear purpose of the UN-RGC Agreement was to bring to trial four to five persons, all of whom were within the scope of Case 001 and Case 002.¹⁵⁰⁹ The Judges recalled that the five persons involved in those cases were recognised as the senior leaders and those most responsible within the jurisdiction of the ECCC, which is consistent with the discussion before the National Assembly; thus no other persons remained to be prosecuted and tried before the ECCC.¹⁵¹⁰ They concluded that the National Co-Investigating Judge's decision that the ECCC has no personal jurisdiction over Yim Tith and that the case against him should be dismissed "is just".¹⁵¹¹

The International Pre-Trial Chamber Judges opined that despite the illegal issuance of two conflicting Closing Orders, the Indictment stood whereas the Dismissal Order was invalid, in accordance with the "default position".¹⁵¹² The International Pre-Trial Chamber Judges viewed the issuance of an Indictment as procedurally in conformity with the applicable law, while the issuance of a Dismissal Order was without legal basis.¹⁵¹³ Accordingly, the International Pre-Trial Chamber Judges opined that Yim Tith's appeal concerning the issuance of two Closing Orders and the relief requested therein should be dismissed.¹⁵¹⁴ The International Pre-Trial Chamber Judges further dismissed other grounds of appeal lodged by Yim Tith, the National Co-Prosecutor and by the International Co-Prosecutor.¹⁵¹⁵

The International Pre-Trial Chamber Judges considered that because, in their view, the Indictment was valid, while the Dismissal Order was null

¹⁵⁰⁷ Case 004, PTC Considerations, 17 September 2021, D381/45 & D382/43, para. 116.

¹⁵⁰⁸ Case 004, PTC Considerations, 17 September 2021, D381/45 & D382/43, paras 118-122.

¹⁵⁰⁹ Case 004, PTC Considerations, 17 September 2021, D381/45 & D382/43, para. 123.

¹⁵¹⁰ Case 004, PTC Considerations, 17 September 2021, D381/45 & D382/43, paras 128-129.

¹⁵¹¹ Case 004, PTC Considerations, 17 September 2021, D381/45 & D382/43, para. 131.

¹⁵¹² Case 004, PTC Considerations, 17 September 2021, D381/45 & D382/43, para. 167.

¹⁵¹³ Case 004, PTC Considerations, 17 September 2021, D381/45 & D382/43, paras 168-175.

¹⁵¹⁴ Case 004, PTC Considerations, 17 September 2021, D381/45 & D382/43, para. 177.

¹⁵¹⁵ Case 004, PTC Considerations, 17 September 2021, D381/45 & D382/43, paras 178-478, 490-497, 510, 515.

and void, and because the Pre-Trial Chamber judges could not attain the supermajority vote required to reverse the Indictment, the default decision must be that the Trial Chamber is seized with the case.¹⁵¹⁶ They finally drew interpretations on the consequences of the ECCC and the Cambodian authorities' failure to effectively prosecute the last ECCC cases.¹⁵¹⁷ The International Pre-Trial Chamber Judges considered that the Indictment should be confirmed and the Trial Chamber should be seized of the case.¹⁵¹⁸

5.3.3.7.7. Termination of proceedings

The International Co-Prosecutor appealed the Pre-Trial Chamber's failure to send Case 004 to trial to the Supreme Court Chamber, asserting that the failure by the Pre-Trial Chamber, the Trial Chamber, and the Co-Investigating Judges to exercise their jurisdiction over the case perpetuated the procedural impasse and risked irreparable harm to the administration of justice in Case 004. The International Co-Prosecutor submitted that the Supreme Court Chamber should order the case to proceed to trial because: (1) the opposing Closing Orders were not issued illegally; (2) the opposing Closing Orders were not null and void even if their simultaneous issuance was illegal; (3) the Indictment was not overturned by a supermajority; and (4) Case 004 is not illegal.¹⁵¹⁹

The Supreme Court Chamber held that the "appeal" was inadmissible as an appeal, but in the interest of justice it would exercise its discretion and offer legal clarity and certainty on a single issue, the status of Case 004, in accordance with its precedent in Cases 004/02 and 003, and as a chamber of last instance.¹⁵²⁰ It noted that it had already addressed the impact of the issuance of two conflicting Closing Orders in Case 004/02 and the answer to proceeding to trial in the absence of a valid Indictment is "an unequivocal no".¹⁵²¹ It stated that the Pre-Trial Chamber's Considerations in Case 004 were complete and the International Co-Prosecutor had failed to articulate reasons that would allow the Supreme Court Chamber

¹⁵¹⁶ Case 004, PTC Considerations, 17 September 2021, D381/45 & D382/43, paras 521-523.

¹⁵¹⁷ Case 004, PTC Considerations, 17 September 2021, D381/45 & D382/43, para. 524.

¹⁵¹⁸ Case 004, PTC Considerations, 17 September 2021, D381/45 & D382/43, indictment.

¹⁵¹⁹ Case 004, International Co-Prosecutor's Appeal of the Pre-Trial Chamber's Failure to Send Case 004 to Trial as Required by the ECCC Legal Framework, 20 October 2021, 2.

¹⁵²⁰ Case 004, Decision on International Co-Prosecutor's Appeal of the Pre-Trial Chamber's Failure to Send Case 004 to Trial as Required by the ECCC Legal Framework, 28 December 2021, 2/1/1/1, paras 19-24 ("SCC Termination Decision").

¹⁵²¹ Case 004, SCC Termination Decision, 28 December 2021, 2/1/1/1, para. 27.

to change its previous position in Cases 004/02 and 003 under equivalent circumstances.¹⁵²² It finally stated that Case 004 could not continue to languish and the request to proceed to trial was denied.¹⁵²³

While concurring with the majority of the Supreme Court Chamber on the outcome of the decision, Judge Maureen Harding Clark issued a dissenting opinion, explaining that she disagreed with her colleagues as to the legal reasons for terminating Case 004. She considered the Pre-Trial Chamber's considerations to have no validity and stated that they should be quashed for their irrationality. She considered that that the proceedings should be terminated due to the irreconcilable differences between the national and international components of the pre-trial processes.¹⁵²⁴

On 29 December 2021, the Co-Investigating Judges issued an order to formally seal and archive case file 004.¹⁵²⁵ This completed proceedings in Case 004 against Yim Tith.

¹⁵²² Case 004, SCC Termination Decision, 28 December 2021, [2/1/1/1](#), para. 29.

¹⁵²³ Case 004, SCC Termination Decision, 28 December 2021, [2/1/1/1](#), para. 31.

¹⁵²⁴ Case 004, SCC Termination Decision, 28 December 2021, [2/1/1/1](#), Dissenting Opinion of Judge Maureen Harding Clark.

¹⁵²⁵ Case 004, Order Sealing and Archiving Case File 004, 29 December 2021, [D388](#).



REPARATIONS

6. REPARATIONS

Civil Parties who are recognised before the ECCC participate in criminal proceedings by supporting the prosecution and by pursuing a parallel civil action for collective and moral reparations against an Accused for harm that is directly attributable to the crimes for which the Accused is convicted.¹⁵²⁶ The term “collective” is interpreted as confirming the ECCC’s inability to provide individual financial or monetary awards to victims of crimes under its jurisdiction, while “moral” refers to the redress of moral damages rather than material ones.¹⁵²⁷

Twenty-six reparations initiatives were endorsed by the Trial Chamber in Cases 001, 002/01 and 002/02 and these are discussed below. For more information on other requests which were not endorsed by the Trial Chamber, refer to the chapters of the trial judgments entitled “Civil Party Reparations”.

6.1. Case 001

In Case 001, the Trial Chamber was seized with several categories of requests from Civil Parties but considered itself “constrained in its task by the requests before it and type[s] of reparations permitted under [the] Internal Rules”.¹⁵²⁸ It endorsed two requests.¹⁵²⁹

¹⁵²⁶ Internal Rules, rules 23(1), 23 *quinquies*.

¹⁵²⁷ Case 002/01, Judgment, 7 August 2014, E313, para. 115; Case 002/02, Judgment, 16 November 2018, E465, paras 4408-4409. See also Case 001, Appeal Judgment, 3 February 2012, F28, para. 658.

¹⁵²⁸ Case 001, Judgment, 26 July 2010, E188, para. 662.

¹⁵²⁹ Case 001, Judgment, 26 July 2010, E188, section 4.4.3.

6.1.1. Publication of statements of apology by Kaing Guek Eav (alias Duch)

This reparation is a publication containing the expressions of apology and remorse that Duch made throughout proceedings in Case 001, from his opening statement on 31 March 2009 to his final remarks at the appeal hearing on 30 March 2011. After the Supreme Court Chamber's Appeal Judgment,¹⁵³⁰ the ECCC compiled Duch's statements acknowledging his responsibility for the crimes at S-21 Security Centre. The compilation comprises 21 pages including photos and was disseminated from 3 April 2012.

This reparation was the result of a joint submission by the Civil Parties. The Civil Parties deemed Duch's written apologies significant for them to find closure and to continue the path of reconciliation. By acknowledging the pain and suffering of victims in writing, the publication contributes to entrenching the record of what happened, restoring the dignity of victim-survivors, and contributing to their healing.

Implementing partners	ECCC, VSS
Donors	GIZ

6.1.2. Publication of Civil Party names

On their request, the names of all Civil Parties recognised in Case 001 were officially listed in the Judgment and publicly disseminated in print and online. Official recognition of Civil Parties and their suffering holds considerable symbolic significance. The complete list of Civil Parties recognised in Case 001 can be found in the Trial Judgment and Appeal Judgment.¹⁵³¹

Implementing partners	ECCC, VSS
Donors	GIZ

¹⁵³⁰ See Case 001, Compilation of Statements of Apology made by Kaing Guek Eav alias Duch during the Proceedings, 3 February 2012, F28.1.

¹⁵³¹ Case 001, Judgment, 26 July 2010, E188, Annex III; Case 001, Civil Parties Admitted in Trial or Appeal Judgment, 3 February 2012, F28.2.

6.2. Case 002/01

Following amendment to the Internal Rules, particularly the introduction of Rule 23 *quinquies*, the Trial Chamber recognised its ability to endorse projects sought on behalf of the consolidated group of Civil Parties and which contribute, through their implementation, to rehabilitation, reintegration, and restoration of dignity.¹⁵³² In addition, the projects must have been designed or identified in cooperation with the Victims Support Section and secured sufficient external funding.¹⁵³³ The Trial Chamber endorsed 11 reparations projects.¹⁵³⁴

6.2.1. National Remembrance Day

National Remembrance Day, commemorated on 20 May, was established through a Royal Government Sub-Decree in 2018. Civil Parties and victims proposed such a day to memorialise their suffering, restore their honour and dignity, redress their mental and social suffering, and commemorate the deceased. Importantly, the day served as a reminder of the country’s brutal past and why it should never be repeated.

The day was initially promulgated as national holiday in 2018. Though the official status of the National Remembrance Day was subsequently downgraded, the day continues to be marked in several spheres. The public and collective remembrance of events creates a space for all Cambodians to memorialise, reconcile, and learn about their shared history. The day also offers an occasion for various ceremonies to pay tribute to those who lost their lives under the Khmer Rouge.

Implementing partners	Royal Government of Cambodia
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6.2.2. Construction of a memorial in Phnom Penh – “For Those Who Are No Longer Here”

This artistic reparation pays tribute to those who suffered forcible eviction from Phnom Penh in 1975. It involved the construction of a sculptural memorial entitled “For Those Who Are No Longer Here” by French-

¹⁵³² Case 002/01, Judgment, 7 August 2014, E313, para. 1116.

¹⁵³³ Internal Rules, rules 23 *quinquies* (3).

¹⁵³⁴ Case 002/01, Judgment, 7 August 2014, E313, sections 19.3, 19.5.

Cambodian artist Séra Ing. The sculpture was initially erected adjacent to the French Embassy in Phnom Penh, one of the many locations that people passed on foot when they were forcibly evicted from the capital by the Khmer Rouge. In early January 2018, the sculpture was relocated to its permanent home at Tuol Sleng Museum, being the site of the former S-21 Security Centre.

Implementing partners	Séra Ing, Embassy of France, ANVAYA Association, OUBA SAS/ACYC SARL Architectes
Donors	Republic of France, Association ANVAYA/OUBA SAS, ACYC SARL Architectes, French MP members of the “Groupe d’amitié francocambodgien”
Project duration	12 months
Location(s)	Phnom Penh

6.2.3. Testimonial therapy

Through this reparation Civil Parties received professional care and treatment for their lasting pain and suffering. Civil Parties were invited to talk about their traumatic experiences or read their testimonies. Assisted by mental health professionals, Civil Parties were encouraged to document their memories in writing. These testimonies were then read aloud and handed over to the Civil Parties during a public ceremony held in accordance with their respective religious or spiritual beliefs and cultural practices.

Implementing partners	Transcultural Psychosocial Organization (TPO)
Donors	German Federal Ministry for Economic Cooperation and Development; Stiftung Kriegstrauma-Therapie; Commonwealth of Australia
Project duration	16 months
Location(s)	Phnom Penh

6.2.4. Self-help groups

This reparation supported the formation of self-help groups which provided psychological treatment to victim-survivors of the Khmer Rouge regime. Participants were introduced to a structured way in which they could share emotions and support each other, while in turn benefitting from the experiences of other group members. The project offered space to reflect and enabled participants to regain their self-esteem and ability to make decisions which could improve their lives. By participating in the groups, participants were provided with ways to address their loneliness and isolation through shared experiences and connections with other group members.

Implementing partners	Transcultural Psychosocial Organization (TPO)
Donors	German Federal Ministry for Economic Cooperation and Development; Stiftung Kriegstrauma-Therapie; Commonwealth of Australia
Project duration	16 months
Location(s)	Phnom Penh

6.2.5. Permanent exhibition on forced transfers



This kind of exhibition is very important for Cambodian people, particularly the young generation. Though this exhibition is small, it informs the audience about one aspect of Khmer Rouge history. It would be beneficial if such an exhibition could be expanded to every district throughout the country so that local communities would have a chance to learn about Khmer Rouge history.

Case 002 Civil Party from Savy Rieng Province



This reparation consists of two elements: an exhibition, and related educational events. It preserves the memory of victims and their experiences under the Khmer Rouge regime, promotes reconciliation among Cambodians through meaningful interaction and education, and serves as a platform for Civil Parties and other victims to share and expand their historical knowledge. The reparation additionally promotes public education on the crimes of Democratic Kampuchea and seeks to entrench a social record of what happened. Eight exhibitions involved 13 Civil Parties who participated in launch events across eight provincial museums.

Implementing partners	Documentation Center of Cambodia (DC-Cam)
Donors	German Federal Ministry for Economic Cooperation and Development
Project duration	15 months
Location(s)	Battambang, Takeo, Svay Rieng, Banteay Meanchey, Sihanoukville, Kampong Thom, Siem Reap, Kratie

6.2.6. Mobile exhibition on Khmer Rouge history and the ECCC

This reparation is an interactive exhibition combining films and other audiovisual materials curated to inform Cambodians about Khmer Rouge history, the ECCC’s process, and experiences of Civil Parties, with an emphasis on forced transfer. Entitled “*Mobile Exhibition on Forced Transfers*”, visitors are encouraged to reflect and expand their knowledge on the underlying topics and how they are relevant to their lives or continue to affect them today.

The mobile exhibition fosters public acknowledgement of victims’ suffering under the Khmer Rouge regime, particularly through harm caused by forcible displacements of populations across the country. The exhibition also informs the public about historical events related to the population displacements and encourages participatory engagement among Cambodians to reflect on the past.

Implementing partners	Kdei Karuna Organization (KdK) & Youth for Peace (YfP)
Donors	German Federal Ministry for Economic Cooperation and Development; German Institute for Foreign Relations (ifa); Narrowcasters Pty. Ltd
Project duration	12 months
Location(s)	Kampot, Siem Reap, Kampong Speu, Kratie, Kampong Thom, Ratanakiri, Tbong Khmum, Prey Veng, Steung Treng

6.2.7. School curriculum chapter on forced population movements and executions at Tuol Po Chrey

This reparation enhances learning about mass population displacements around Cambodia under the Khmer Rouge. The Trial Chamber reviewed evidence of forced populations movement and the executions of Khmer Republic officials at the site of Tuol Po Chrey across 222 days of hearings. Civil Parties requested an additional chapter on forced transfer and the Tuol Po Chrey Execution Site to be officially included in the Teacher’s Guidebook on the Teaching of a History of Democratic Kampuchea. The textbook containing the chapter is a core historical resource for students in grades nine through twelve and is endorsed by the Ministry of Education, Youth and Sport.

In addition to being educational, the chapter serves as official recognition of the Civil Parties’ harm and suffering. The content of each lesson is based on the testimonies of Civil Parties or witnesses given during the hearings in Case 002/01.

Implementing partners	Documentation Center of Cambodia (DC-Cam)
Donors	German Federal Ministry for Economic Cooperation and Development; GIZ – Civil Peace Service
Project duration	9 months
Location(s)	Nationwide

6.2.8. Construction of a Community Peace Learning Centre in Samroang Khnong

This reparation involved the construction of a Community Peace Learning Centre (CPLC) in Samroang Khnong, Battambang province; one of the sites where many people were imprisoned and killed. The CPLC creates a safe space for the community to engage in intergenerational dialogue, truth telling, commemoration, and documentation of memory sites and individual stories. The project also aims to empower the community and local authorities to sustain the CPLC through capacity building in participatory planning and project implementation.

This reparation serves younger and older generations alike. Younger visitors use the space for activities such as public forums, intergenerational dialogue, theatre, concerts, community workshops, exhibitions, film screenings, and vocational training. Older generations use the CPLC as a social hub to share stories and seek healing and reconciliation within the community.

Implementing partners	Youth for Peace (YFP)
Donors	Swiss Agency for Development and Cooperation
Project duration	2 years
Location(s)	Battambang

6.2.9. Civil Party booklet related to facts adjudicated in Case 002/01

This reparation transformed Civil Parties' testimonies into written and illustrative narratives which are more easily accessible to the public. Production of the illustrative book empowered Civil Parties by providing an outlet to share their experiences under Khmer Rouge regime and to have their voices heard and documented. The book, which has been published and disseminated, consists of 29 Civil Party stories.

As the Trial Chamber recognised, this reparation is a form of documentation, education, acknowledgment, remembrance, and awareness raising for the benefit of Civil Parties and the public.

Implementing partners	Cambodian Human Rights Action Committee (CHRAC)
Donors	German Federal Ministry for Economic Cooperation and Development; GIZ – Civil Peace Service
Project duration	10 months
Location(s)	Nationwide

6.2.10. Publication and distribution of the Judgment in full and summary form

The publication and distribution of the Case 002/01 judgment serves as recognition of the Civil Parties’ participation in the proceedings. The full and summary publications provide important information about the ECCC’s findings which are disseminated widely within the public sphere. Government officials, educators, civil society organisations and others who are interested can utilise the judgment or its summary in their respective initiatives and educational initiatives. Printed versions were distributed to Civil Parties, the public, law practitioners and others. The ECCC continues to make this and other judgments and important legal materials available from its Resource Centre in Phnom Penh and online.

Implementing partners	ECCC – PAS, VSS, CPLCLs
Donors	ECCC
Project duration	Ongoing
Location(s)	Local (Phnom Penh), nationwide (dissemination), global (online)

6.2.11. Publication of Civil Party names

The publication of the Civil Parties’ names on the ECCC’s website was proposed as a reparation to honour their participation in the trial proceeding, and their efforts in finding justice – not only for themselves but also for their family members who died under the Khmer Rouge. The names are published in Khmer and Latin transliteration. The names of successors to the Civil Parties’ legal actions are also included. 3,867 names and other basic information identifying the Civil Parties were published in the Trial Chamber’s Judgment in Case 002/01 and on the ECCC website.

Implementing partners	ECCC – PAS, VSS, CPLCLs
Donors	ECCC
Project duration	Ongoing
Location(s)	Local (Phnom Penh), nationwide (dissemination), global (online)

6.3. Case 002/02

In Case 002/02, the Trial Chamber largely followed its previous approach to assessing reparations and endorsed 13 projects.¹⁵³⁵

6.3.1. Khmer Rouge history app

The Khmer Rouge History App is an educational resource providing an educational account of the Khmer Rouge regime using interactive audiovisual features, such as films, photos and music alongside survivors' testimonies, articles, and findings from the ECCC. Designed to aid the teaching and learning of history, the app also provides information about justice, human rights, and peace. The App serves as a catalyst for the meaningful exchange of information between Khmer Rouge survivors, especially Civil Parties, and young people.

Implementing partners	Bophana Audiovisual Center
Donors	European Union; Rei Foundation Limited
Project duration	24 months
Location(s)	Nationwide

6.3.2. Training and workshops for teachers and university lecturers

This reparation consists of three major components: commune teacher training, university lecturer training, and mobile education or classroom forums for students. All components were designed to enhance the pedagogic capacities of Cambodian teachers to teach the history of Democratic Kampuchea using different approaches, including the use of

¹⁵³⁵ Case 002/02, Judgment, 16 November 2018, E465, section 21.3, 21.5.

Civil Party testimonies, and to prevent the re-occurrence of atrocities. The components were endorsed by the Ministry of Education, Youth, and Sport.

“ I have gained a lot of knowledge and learned about survivors’ experiences during the KR period from this forum. The presentation on the KR History was very important because it enables us to understand what took place during the regime and helped remind us not to repeat the same mistake.

Grade 10 student, Chamroeun Vichea High School ”

Implementing partners	Documentation Center of Cambodia (DC-Cam)
Donors	UNOPS
Project duration	36 months
Location(s)	Kampong Cham, Tboung Khmum, Kratie, Stung Treng, Ratanakiri, Mondulakiri, Prey Veng

6.3.3. The “Turtle Project”

The Courageous Turtle is an original theatre piece by Cambodian playwright and short film director Sokyou Chea. The play was developed collaboratively with young Cambodian actors from Royal University of Fine Arts. It includes multimedia as well as cultural and educational activities presented at workshops with high school and university students. It was accompanied by film screenings, photo exhibitions and intergenerational dialogue with Civil Parties. As a reparation, the play promotes peace, memorialisation, and reconciliation through community theatre and intergenerational dialogue.



Seeing the Turtle Project today gave me the idea to tell the story of my parents who were victims during the Khmer Rouge regime. I teach a mix of traditional art subjects like singing, choral, Apsara dancing, that I practiced when I was younger; and now I think I should integrate art, my parents' stories and lessons from history books in my class, to make it more interactive and participative.

Art teacher, Praek Leap High School



Implementing partners	Cambodian-German Cultural Association, Khmer Art Action, Youth for Peace
Donors	Institut für Auslandsbeziehungen (ifa) of the German Federal Foreign Office through the "Zivik" fund; European Union through UNOPS
Project duration	15 months
Location(s)	Nationwide

6.3.4. Community media project: Cham people and the Khmer Rouge

This reparation brought together young filmmakers, photographers, and researchers from Cham communities to develop histories of Cham Civil Parties into video documentary format. The documentary features several Civil Parties whose children were also engaged in the development and production of the project. The project produced two video documentaries, recorded several testimonials, and trained Cham media students in the process. In addition, organisers held photo exhibitions alongside screenings throughout the country which together initiated intergenerational and inter-religious dialogue.

The reparation benefited Cham Civil Parties, their families, and young generations by educating the public about the experiences and mistreatment of the Cham community by the Khmer Rouge.

Implementing partners	Cambodian-German Cultural Association
Donors	Embassy of Switzerland in Bangkok; Heinrich Böll Foundation
Project duration	12 months
Location(s)	Phnom Penh, Kampong Cham, Tboung Khmum, Kampong Chhnang

6.3.5. Phka Sla Kroam Angkar

This original dance performance comprises efforts to fight gender-based violence through the arts and advocates for gender equality transformation for Civil Party victims of forced marriage. This initiative highlights unique aspects such as male suffering, forced pregnancy, and small acts of resistance by Civil Parties under the Khmer Rouge. Designed by a collaboration of four NGOs, this reparation encourages intergenerational dialogue, learning through a related documentary and performances, exhibitions, forum theatre, workshops, and screenings. As a reparation it acknowledged Civil Party experiences through the arts, culture, dialogue, widespread participation, and dissemination.

Implementing partners	Kdei Karuna (KdK), Khmer Art Academy, Bophana Audiovisual Resource Center, Transcultural Psychosocial Organization (TPO)
Donors	Swiss Development Cooperation; Germany Ministry of Economic Cooperation and Development through GIZ; USAID
Project duration	3 years
Location(s)	Phnom Penh, Battambang, Kampot

6.3.6. Voices from ethnic minorities

This reparation was designed to raise public awareness about the mistreatment of ethnic minorities, especially Cham and Vietnamese, by the Khmer Rouge regime. Through the collection and dissemination of oral histories, and accompanied by trial footage and related materials, the inclusive discussion develops a more diverse understanding of the lives of minority peoples. It engages students and NGO workers in conversations about stereotypes and discrimination through active questioning of historical narratives, and provides a platform for victim-survivors of genocide, ethnic violence, and discrimination to share their stories.

Implementing partners	Kdei Karuna (KdK)
Donors	GIZ – Civil Peace Service; Embassy of Switzerland in Bangkok
Project duration	12 months
Location(s)	Tboung Khmum, Kampong Chhnang, Kandal, Svey Rieng

6.3.7. Unheard stories of Case 002/02 Civil Parties

Among the 3,867 Civil Parties admitted in Case 002, only 94 were called to testify in court. This reparation was designed to tell the stories of Civil Parties who suffered crimes which were reviewed in Case 002/02, but did not have the chance to testify in person. The book records, recognises and memorialises these histories, providing a meaningful and accessible resource for future generations.

Each chapter starts with an illustrated page featuring artworks by Cambodian artists. The book includes Civil Party biographies arranged by different crimes. The book was distributed to all participants, other Civil Parties, school and university libraries, national and international libraries, and research and documentation centres for educational purposes.

Implementing partners	Cambodian Human Rights Action Committee (CHRAC)
Donors	Heinrich Böll Foundation
Project duration	12 months
Location(s)	National and international

6.3.8. Song-writing contest: “A Time to Remember”

Civil Parties proposed a song-writing contest, “*A Time to Remember*”, as a way of engaging youth to channel their artistic creativity and acknowledge and memorialise survivors’ experiences under the Khmer Rouge. Young musicians spread messages of understanding, sympathy, hope, and their shared responsibility towards Cambodia’s older generation through song. The contest also offered young artists an opportunity to reflect on their tragic past and express their thoughts and feeling through the power of art.

Implementing partners	Youth Resource Development Program (YRDP)
Donors	GIZ – Civil Peace Service
Project duration	10 months
Location(s)	Phnom Penh

6.3.9. Memory sketches of Kraing Ta Chan

This reparation combines history and art and was implemented by a group of university students researching and documenting the Kraing Ta Chan Security Centre site in consultation with Civil Parties. Memories of survivors of the former security centre were captured through community-level intergenerational dialogue. The project produced a history book and exhibition booklets as informational materials for visitors to the site. A 271-metre walking trail was also created to guide visitors through the site along with trained community tour guides.

This reparation serves to prevent the recurrence of mass atrocities through research, documentation, and community education.

Implementing partners	Youth for Peace (YfP), Peace Institute of Cambodia (PIC)
Donors	International Coalition of Sites of Conscience
Project duration	6 months
Location(s)	Takeo

6.3.10. Public access to judicial records and Civil Party materials

The Legal Documentation Centre (LDC) was established under the Office of the Council Ministers in 2015 to house public documents, both hard and soft copies, relevant to the trial proceedings of the ECCC, for education and research purposes. The Trial Chamber acknowledged that making Civil Parties' accounts more accessible could officially recognise the harm inflicted on them by the Khmer Rouge, commemorate their experiences, and ensure that their suffering would not be forgotten.

Though a joint venture between the ECCC and LDC, the ECCC Resource Centre provides ongoing access to the ECCC's public materials in central Phnom Penh.

Implementing partners	Legal Documentation Centre related to the ECCC, ECCC
Donors	Royal Government of Cambodia
Project duration	Ongoing
Location(s)	Phnom Penh

6.3.11. Healing and reconciliation for victim-survivors

This reparation helped victim-survivors of torture, sexual violence, forced marriage, and starvation, among other crimes, to heal through psychosocial services. Working at the community level, facilitators provided psycho-education sessions, individual and group therapy, community-based dialogue, national forums, and capacity building. The project applied a holistic and coordinated approach to address mental health requirements following sustained violence. Civil Parties who participated were between 50-70 years of age and living in rural communities.



After participating in Testimonial Therapy with TPO, I observed that I felt relieved by 70%. Whenever I was reminded of the past and sad stories, I coped with my feeling by doing meditation and breathing exercises. Thus, my over-thinking, anger, headaches, and tense chest have been reduced. These exercises also helped me to let it go because these difficulties have already passed. Also, when my neighbours read my testimony, I feel that they understand my difficulties and share their pains with me.

Participant



Implementing partners	Transcultural Psychosocial Organization (TPO)
Donors	USAID
Project duration	3 years
Location(s)	Kratie, Svay Rieng, Tbong Khmom, Kampong Chhnang, Siem Reap, Pursat, Kandal, Kampong Thom, Kampong Cham, Battambang, Kampot, Takeo, Prey Veng, Mondulhiri, Kep

6.3.12. Legal and civic education for minority Civil Parties

This reparation was developed to redress the mistreatment of the Vietnamese minority group under the Khmer Rouge. It consisted of a legal and civic education pilot project, a community consultation event, the production of outreach materials in language accessible to Civil Parties, and three community-based outreach and education workshops organised at Civil Parties' residences.

The objective of this project was to offer education and empowerment through synergies with civil society programs that were engaging in targeted community outreach. The project familiarised Civil Parties with the protections available under Cambodia’s legal and administrative framework to enable them to officially recognise their own and their children’s legal identity under law.

Implementing partners	Minority Rights Organization (MIRO)
Donors	German Ministry for Economic Cooperation and Development through GIZ – Civil Peace Service
Project duration	12 months
Location(s)	Kampong Chhnang

6.3.13. Mental health support and counselling

This reparation provided mental health support and counselling to older survivors of the Khmer Rouge. It assisted Civil Parties to cope with trauma, depression, and anxiety, and promoted reconciliation and healing among generations. The project actively addressed the livelihood, social inclusion, psychological and physical needs of Civil Parties and the broader ‘unrepresented’ victim-survivors.



I’m very happy to join the Older People’s Association and get to chat with other older people. We talk and we share a lot about the stories that we have experienced in the past.

Civil Party from Banteay Meanchey



Implementing partners	HelpAge Cambodia
Donors	European Union through UNOPS; Swiss Agency for Development and Cooperation
Project duration	25 months
Location(s)	Battambang, Banteay Meanchey, Siem Reap



RESIDUAL FUNCTIONS

7. RESIDUAL FUNCTIONS

7.1. Consultation process

As the ECCC progressed in its work, and foreseeing the end of its caseload, it became necessary to considering what was to happen to the ECCC once it completed its judicial mandate under Article 1 of the UN-RGC Agreement. In September 2018, the ECCC’s Steering Committee wrote to the UNSG requesting that the ECCC and the Royal Government of Cambodia (“RGC”) consult and begin developing a framework for the completion of the work of the ECCC and for identifying related residual functions that would need to be performed following the completion of the mandate. The Steering Committee also requested that a report be submitted by the end of June 2019.¹⁵³⁶

From 14 to 19 November 2018, UN Legal Counsel and Undersecretary-General for the Office of Legal Affairs visited Cambodia for the delivery of the Trial Judgment in Case 002/02. During that visit, he met with ECCC stakeholders including the Deputy Prime Minister, UNAKRT Coordinator and Acting DOA, to discuss the development of the framework and the ECCC’s residual mandate. He also met with the Co-Prosecutors and judges of the ECCC to brief them on the purpose of the mission and hear their views on the judicial work of the ECCC and its possible residual functions. In their meetings, they designated focal points for continued discussions on the residual functions and agreed that such discussions would “follow at the working level”.¹⁵³⁷

Representatives from the Office of Legal Affairs subsequently visited Phnom Penh from 4-8 February 2019 and met with RGC representatives,

¹⁵³⁶ UNSG Report, Extraordinary Chambers in the Courts of Cambodia – Residual Functions, *A/75/809*, 19 March 2021 (“UNSG Report”).

¹⁵³⁷ UNSG Report, para. 27.

the UNAKRT coordinator, and members of the various offices of the ECCC, to continue to develop the framework for the completion of the ECCC mandate and identify its residual functions. Following the February 2019 meetings, the OLA produced a report on the initial outcomes of the consultations and submitted it to the UNAKRT Steering Committee on 28 June 2019,¹⁵³⁸ while the consultations continued.¹⁵³⁹

During the consultations between the UN and the RGC, both parties supported a residual entity that would retain both national and international components. It became clear that the residual functions should be incorporated into the current framework and structure, rather than attempting to establish a new residual entity.¹⁵⁴⁰ This was the basis upon which the consultations proceeded, culminating in a draft Addendum to the UN-RGC Agreement, which was annexed to the UNSG's report dated 19 March 2021 on the finalisation of consultations.¹⁵⁴¹ The Addendum was subsequently approved by the UNGA,¹⁵⁴² promulgated by His Majesty King Norodom Sihamoni, and ratified by the RGC,¹⁵⁴³ entering into force on 22 December 2021.

7.2. Addendum to the ECCC Agreement

The Addendum provides that the ECCC carry out its residual functions for an initial period of three years following the completion of the proceedings.¹⁵⁴⁴ During this initial period, the UN and the RGC shall review the ECCC's progress and determine if it should continue to perform the functions, or a part thereof, and for how long. The residual functions to be carried out include:¹⁵⁴⁵

¹⁵³⁸ UNSG Report, paras 28-29.

¹⁵³⁹ See UNGA, Resolution adopted by the General Assembly on 27 December 2019, Special Subjects Relating to the Proposed Programme Budget for 2020, 14 January 2020, *A/RES/74/263*; UNGA, Resolution adopted by the General Assembly on 31 December 2020, Extraordinary Chambers in the Courts of Cambodia – Residual Functions, 4 January 2021, *A/RES/75/257*.

¹⁵⁴⁰ UNSG Report, para. 32.

¹⁵⁴¹ UN-RGC Agreement, para. 31, Annex.

¹⁵⁴² UNGA, Resolution adopted by the General Assembly on 7 July 2021, Extraordinary Chambers in the Courts of Cambodia – Residual Functions, 12 July 2021, UN Doc. No. *A/RES/75/257 B*, Annex.

¹⁵⁴³ *Addendum to the UN-RGC Agreement Enters into Force*, 12 January 2022.

¹⁵⁴⁴ *Addendum to the UN-RGC Agreement*, article 1.

¹⁵⁴⁵ *Addendum to the UN-RGC Agreement*, article 2(1)-(2).

- Reviewing applications and conducting proceedings for the revision of final Judgments¹⁵⁴⁶
- Providing protection to victims and witnesses
- Sanctioning or referring to the appropriate authorities any interference with the administration of justice or provision of false testimony
- Supervising the enforcement of sentences and monitoring the treatment of convicted persons
- Maintaining, preserving, and managing the ECCC archives
- Responding to requests for access to documents
- Disseminating information to the public and monitoring enforcement of reparations to Civil Parties.

With regard to its archives, the UN and RGC “agree that it is vital to ensure that the archives of the Extraordinary Chambers are preserved in accordance with international standards and that they are as broadly accessible as possible”.¹⁵⁴⁷ To preserve and promote its legacy the ECCC is required to provide the public access to electronic and printed copies of its public archives.¹⁵⁴⁸ Both the RGC and the UN will retain a set of the ECCC’s public archives during the phase of residual functions, to be expanded to classified documents and materials at the completion of the residual functions.¹⁵⁴⁹

The Addendum provides that during the phase of residual functions, the ECCC’s judges are remunerated on a *pro rata* basis only for the work performed, and they shall only work remotely except when required to be present at the ECCC at the request of the president of a chamber.¹⁵⁵⁰ Likewise, the Co-Prosecutors, defence Co-Lawyers, and Civil Party Co-Lawyers shall only be remunerated on a *pro rata* basis and work remotely except when their functions require their attendance at the ECCC. Any judicial

¹⁵⁴⁶ An application for revision of a final judgment may only be filed during the lifetime of the convicted person, by the convicted person or by the co-prosecutors. See Addendum to the UN-RGC Agreement, article 2(3).

¹⁵⁴⁷ Addendum to the UN-RGC Agreement, article 3.

¹⁵⁴⁸ Addendum to the UN-RGC Agreement, article 3(2).

¹⁵⁴⁹ Addendum to the UN-RGC Agreement, article 3(3).

¹⁵⁵⁰ Addendum to the UN-RGC Agreement, article 1.

plenary sessions shall also be conducted remotely and amendments to the Internal Rules shall be decided remotely by written procedure.¹⁵⁵¹

The ECCC commenced residual functions on 1 January 2023, following the completion of appeal proceedings and issuance of an appeals judgment in Case 002/02.

¹⁵⁵¹ Addendum to the UN-RGC Agreement, article 2(5).



ANNEXES

8. ANNEXES

Annex 1: Further reading

The publications listed below are intended to serve as a guide to further reading and information. As such, their inclusion does not constitute the ECCC's implicit or explicit endorsement of their contents. To the extent that these publications or portions thereof have been referenced by the ECCC's judicial offices and chambers in their decisions, readers should be guided by the probity, reliability, and weight assessments therein.

Chapter 1

History of the Khmer Rouge and Democratic Kampuchea

A. ECCC documents

- Case 001 Judgment, E188 (sections 2.1, 2.3, 3.2)
- Case 002, Closing Order, D427 (part 1)
- Case 002/01, Judgment, E313 (section 3)
- Case 002/02, Judgment, E465 (sections 3-6)
- Case 003, Dismissal Order, D266 (chapter 3)
- Case 003, Closing Order (Indictment), D267 (section 5.1)
- Case 004, Dismissal Order, D381 (chapter 3)
- Case 004, Closing Order (Indictment), D382 (section 5)
- Case 004/02, Dismissal Order, D359 (section 2)
- Case 004/02, Closing Order (Indictment), D360 (section 6)

B. Other publications

- Elizabeth Becker, *When the War Was Over* (Public Affairs, 1986)
- François Bizot, *The Gate* (Vintage, 2011)
- Nayan Chanda, *Brother Enemy: The War after the War* (MacMillan, 1986)
- David Chandler, *A History of Cambodia* (Routledge, 4th ed, 2007)
- David Chandler, *Brother Number One: A Political Biography of Pol Pot* (Westview Press, 2000)
- David Chandler, *The Tragedy of Cambodian History: Politics, War, and Revolution Since 1945* (Silkworm Books, 1991)
- David Chandler, *Voices from S-21* (University of California Press, 1999)
- David Chandler et al. (eds), *Pol Pot Plans the Future: Confidential Leadership Documents from Democratic Kampuchea, 1976-1977* (New Haven, Connecticut, Yale University Southeast Asia Studies 1988)
- Howard J. De Nike et al. (eds), *Genocide in Cambodia: Documents from the Trial of Pol Pot and Ieng Sary* (University of Pennsylvania Press, 2000)
- Nic Dunlop, *The Lost Executioner* (Walker & Co, 2006)
- Craig Etcheson, *The Rise and Fall of Democratic Kampuchea* (Routledge, 1984)
- Alexander Hinton, *Why Did They Kill? Cambodia in the Shadow of Genocide* (University of California Press, 2005)
- Henry Kamm, *Cambodia: Report from a Stricken Land* (Arcade Publishing, 1998)
- Khieu Samphan, *Cambodia's Recent History and the Reasons Behind the Decisions I Made* (Ponleu Khmer Printing & Publishing House, 2004)
- Ben Kiernan, *How Pol Pot Came to Power: Colonialism, Nationalism, and Communism in Cambodia, 1930-1975* (Yale University Press, 1984)
- Ben Kiernan, *The Pol Pot Regime: Race, Power, and Genocide in Cambodia under the Khmer Rouge, 1975-1979* (3rd ed., 2008)

- Ben Kiernan and Chanthou Boua (eds.), *Peasants and Politics in Kampuchea 1942-1981* (1982)
- Henri Locard, *Pol Pot's Little Red Book: The Sayings of Angkar* (Silkworm Books, 2005)
- Andrew Mertha, *Brothers in Arms: Chinese Aid to the Khmer Rouge, 1975-1979* (Cornell University Press, 2014)
- Stephen J. Morris, *Why Vietnam Invaded Cambodia: Political Culture and the Causes of War* (Stanford University Press, 1999)
- Ysa Osman, *The Cham Rebellion: Survivors' Stories from the Villages* (DC-Cam, 2006)
- Ysa Osman, *Oukoubah – Justice for the Cham Muslims under the Democratic Kampuchea Regime* (Documentation Center of Cambodia, 2002)
- Norodom Sihanouk, *Shadow Over Angkor, Vol. One: Memoirs of His Majesty King Norodom Sihanouk of Cambodia* (3DGraphics Publishing, 2005)
- François Ponchaud, *Cambodia: Year Zero* (Henry Holt & Co., 1978)
- William Shawcross, *Sideshow: Kissinger, Nixon, and the Destruction of Cambodia* (Cooper Square Press, 2002)
- Philip Short, *Pol Pot: Anatomy of a Nightmare* (Henry Holt and Co. 2005)
- Michael Vickery, *Cambodia, 1975-1982* (South End Press, 1983)
- Michael Vickery, *Kampuchea, Politics, Economy and Society* (L. Rienner Publishers, 1986)

Chapter 2

Negotiations, establishment, and operations of the ECCC

A. RGC documents

- Royal Amnesty and Pardon, Preah Reach Kret No. [NS/RKT/0996/72](#), 14 September 1996
- Royal Government of Cambodia, Office of the Military Prosecutor, Order to Forward Case for Investigation (1st Indictment of Ung Choeun, known as Ta Mok), 9 March 1999, Military Court Doc. No. [019/99](#)

- Royal Government of Cambodia, Office of the Military Prosecutor, Second Order to Forward Case for Investigation (1st Indictment of Kaing Guek Iev, known as Duch), Military Court Doc. No. 029/99, 10 May 1999
- National Assembly and Senate's act of approval of the ECCC Law, 2 and 15 January 2001, [NS/RKM/0801/12](#)
- Royal Decree Appointing Judicial Officers, Preah Reach Kret No. [NS/RKT/0506/214](#), 7 May 2006
- Military Court documents relevant to Kaing Guek Eav alias Duch, various dates, [C5/5](#)

B. UN documents

- UN Economic and Social Council, Situation of Human Rights in Cambodia: Report of the Special Representative of the Secretary-General for Human Rights in Cambodia, Mr. Thomas Hammarberg, Submitted in Accordance with Commission Resolution 1996/54, 31 January 1997, UN Doc. No. [E/CN.4/1997/85](#)
- Commission on Human Rights, Report on the Fifty-Third Session (10 March-18 April 1997), Supplement No. 3, UN Doc. No. [E/1997/23 E/CN.4/1997/150](#)
- UNGA/UNSC, Letter dated 21 June 1997 from the First and Second Prime Ministers of Cambodia addressed to the Secretary-General, 21 June 1997, [A/51/930-S/1997/488](#)
- UNGA, Resolution: Situation of human rights in Cambodia, 12 December 1997, UN Doc. No. [A/RES/52/135](#)
- UNGA, Letter dated 31 July 1998 from the Secretary-General addressed to the President of the General Assembly, 7 August 1998, UN Doc. No. [A/52/1007](#)
- UNGA/UNSC, Letter Dated 3 March 1999 from the Prime Minister of Cambodia Addressed to the Secretary-General, 3 March 1999, UN Doc. No. [A/53/851-S/1999/230](#), Annex
- UNGA/UNSC, Report of the Group of Experts for Cambodia Established Pursuant to General Assembly Resolution 52/135 in Identical Letters Dated 15 March 1999 from the Secretary-General to the President of the General Assembly and the President of the Security Council, 16 March 1999, UN Doc. No. [A/53/850-S/1999/231](#)

- UN Archives, Letter from Kofi Annan to Hun Sen, 8 February 2000, 8 February 2000, Item [S-1096-0225-05-00024](#)
- UN Archives, Exchange of Letters between the United Nations and Royal Government of Cambodia, 20-21 March 2000”, 20-21 March 2000, Item [S-1096-0225-05-00021](#)
- UN daily press briefing, 8 February 2002
- UN Archives, Non-Paper: Khmer Rouge Trials, 6 January 2003, Item [S-1094-0010-03-00021](#)
- UNGA, Resolution Adopted by the General Assembly, 57/228 Khmer Rouge Trials, 27 February 2003, UN Doc. No. [A/RES/57/228](#)
- UN press release, Draft Text on Khmer Rouge Trials Introduced in Third Committee, 1 May 2003
- UN press release, Third Committee Approves Draft Resolution on Khmer Rouge Trials, 2 May 2003
- UN, General Assembly Approves Draft Agreement Between UN, Cambodia on Khmer Rouge Trials, 13 May 2003, UN Doc. No. [GA/10135](#)
- UN daily press briefing, 10 December 2004

Annex 2: Legal and operational framework

A. Key documents

- Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea, as amended (27 October 2004) – [ECCC Law](#)
- Agreement between the United Nations and the Royal Government of Cambodia concerning the prosecution under Cambodian law of crimes committed during the period of Democratic Kampuchea (6 June 2003) – [UN-RGC Agreement](#)
- Addendum to the Agreement between the Royal Government of Cambodia and the United Nations Concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea on the Transitional Arrangements and the Completion of Work of the Extraordinary Chambers (12 January 2022) – [Addendum to UN-RGC Agreement](#)
- Supplementary Agreement Between the Royal Government of Cambodia, Ancillary to the Agreement Between the United Nations and the Royal Government of Cambodia Concerning the Prosecution Under Cambodian Law of Crimes Committed During the Period of Democratic Kampuchea, Regarding Utilities, Facilities and Services (1 February 2004) – [Supplementary Agreement on Utilities, Facilities and Services](#), as amended (6 December 2011)
- Supplementary Agreement Between the Royal Government of Cambodia, Ancillary to the Agreement Between the United Nations and the Royal Government of Cambodia Concerning the Prosecution Under Cambodian Law of Crimes Committed During the Period of Democratic Kampuchea, Regarding Safety and Security Arrangements (1 February 2004) – [Supplementary Agreement on Safety and Security](#)
- [Internal Rules](#), last amended as Rev. 10, 27 October 2022

B. Reports of the UN Secretary-General

- Report of the Secretary-General on Khmer Rouge Trials, 31 March 2003, [A/57/769](#)
- Report of the Secretary-General on Khmer Rouge Trials, 3 December 2003, [A/58/617](#)

- Report of the Secretary-General on Khmer Rouge Trials, 12 October 2004, [A/59/432](#)
- Report of the Secretary-General on Khmer Rouge Trials – Addendum, 29 November 2004, [A/59/432/Add.1](#)
- Report of the Secretary-General on Khmer Rouge Trials, 25 November 2005, [A/60/565](#)
- Report of the Secretary-General - Khmer Rouge Trials, 27 August 2007, [A/62/304](#)
- Report of the Secretary-General - Khmer Rouge Trials, 19 September 2012, [A/67/380](#)
- Report of the Secretary-General: Request for a subvention to the Extraordinary Chambers in the Courts of Cambodia, 16 October 2013, [A/68/532](#)
- Report of the Secretary-General: Request for a subvention to the Extraordinary Chambers in the Courts of Cambodia, 20 October 2014, [A/69/536](#)
- Report of the Secretary-General: Request for a subvention to the Extraordinary Chambers in the Courts of Cambodia, 30 September 2015, [A/70/403](#)
- Report of the Secretary-General: Request for a subvention to the Extraordinary Chambers in the Courts of Cambodia, 16 August 2016, [A/71/338](#)
- Report of the Secretary-General: Request for a subvention to the Extraordinary Chambers in the Courts of Cambodia, 16 August 2017, [A/72/341](#)
- Report of the Secretary-General: Request for a subvention to the Extraordinary Chambers in the Courts of Cambodia, 20 August 2018, [A/73/331](#)
- Report of the Secretary-General: Request for a subvention to the Extraordinary Chambers in the Courts of Cambodia, 20 September 2019, [A/74/359](#)
- Report of the Secretary-General: Request for a subvention to the Extraordinary Chambers in the Courts of Cambodia, 18 September 2020, [A/75/242](#)
- Report of the Secretary-General: Request for a subvention to the Extraordinary Chambers in the Courts of Cambodia, 20 September 2021, [A/76/331](#)

- Report of the Secretary-General: Request for a subvention to the Extraordinary Chambers in the Courts of Cambodia, 7 October 2022, [A/77/513](#)
- Report on the use of the commitment authority and request for a subvention to the Extraordinary Chambers in the Courts of Cambodia, 6 October 2023, [A/78/515](#)

C. UN Documents relating to residual functions

- Extraordinary Chambers in the Courts of Cambodia – residual functions, 14 December 2020, [A/75/L.51](#)
- Extraordinary Chambers in the Courts of Cambodia – residual functions, 31 December 2020, [A/75/L.51/Add.1](#)
- Resolution adopted by the General Assembly on 31 December 2020 - Extraordinary Chambers in the Courts of Cambodia – residual functions, 4 January 2021, [A/RES/75/257](#)
- Report of the Secretary-General: Extraordinary Chambers in the Courts of Cambodia – residual functions, 19 March 2021, [A/75/809](#)
- Extraordinary Chambers in the Courts of Cambodia – residual functions, 7 July 2021, [A/RES/75/257 B](#)

Annex 3: List of principals

A. Chambers

Supreme Court Chamber

KONG Srim (President)	Cambodia	2006 -
MONG Monichariya	Cambodia	2006 -
SOM Sereyvuth	Cambodia	2006 -
YA Narin	Cambodia	2006 -
Chandra Nihal JAYASINGHE	Sri Lanka	2006 -
Florence Ndepele Mwachande MUMBA	Zambia	2012 -
Katrien Gabriël WITTEMAN	Netherlands	2024 -
Motoo NOGUCHI	Japan	2006 - 2012
Agnieszka KLONOWIECKA-MILART	Poland	2006 - 2018
Maureen HARDING CLARK	Ireland	2019 - 2022

Trial Chamber

NIL Nonn (President)	Cambodia	2006 -
YOU Ottara	Cambodia	2006 -
YA Sokhan	Cambodia	2006 -
Claudia FENZ	Austria	2014 -
Martin KAROPKIN	USA	2019 -
Silvia CARTWRIGHT	New Zealand	2006 - 2014
Jean-Marc LAVERGNE	France	2006 - 2019

Pre-Trial Chamber

PRAK Kimsan (President)	Cambodia	2006 -
HUOT Vuthy	Cambodia	2006 -
NEY Thol	Cambodia	2006 -
BAIK Kang-Jin	Korea	2015 -
Olivier BEAUVALLET	France	2015 -
Katina LAHUIS	Netherlands	2006 - 2012
Rowan DOWNING	Australia	2006 - 2015
Catherine MARCHI-UHEL	France	2010 - 2011
CHUNG Chang-Ho	Korea	2012 - 2015

Reserve Judges

Pre-Trial Chamber

- PEN Pichsaly (Cambodia): 2006-present
- Katinka LAHUIS (Netherlands): 2010-2012
- Stephen BWANA (Tanzania): 2012-present

Trial Chamber

- YOU Ottara (Cambodia): 2006
- THOU Mony (Cambodia): 2006-present
- Claudia FENZ (Austria): 2006-2014
- Martin KAROPKIN (USA): 2014-2019

Supreme Court Chamber

- MONG Monichariya (Cambodia): 2006
- SIN Rith (Cambodia): 2006-present
- Martin KAROPKIN (USA): 2006-2008
- Catherine MARCHI-UHEL (France): 2008-2010
- Florence MUMBA (Zambia): 2010-2012
- Philip RAPOZA (USA): 2012-2024
- Motoo NOGUCHI (Japan): 2024-present

B. Office of the Co-Investigating Judges

Co-Investigating Judges

YOU Bunleng	Cambodia	2006 -
Michael BOHLANDER	Germany	2015 -
Marcel LEMONDE	France	2006 - 2010
Siegfried BLUNK	Germany	2010 - 2011
Laurent KASPER-ANSERMET (Reserve)	Switzerland	2011 - 2012
Mark HARMON	USA	2012 - 2015

Reserve Co-Investigating Judges

- THONG OI (Cambodia): 2006-present
- Siegfried BLUNK (Germany): 2008-2010
- Laurent KASPER-ANSERMET (Switzerland): 2010-2011
- Olivier BEAUVALLET (France): 2012-2015
- Maureen HARDING CLARK (Ireland): 2015-2019

C. Office of the Co-Prosecutors

Co-Prosecutors

CHEA Leang	Cambodia	2006 -
Dale LYSAK	Canada	2023 -
Robert PETIT	Canada	2006 - 2009
Andrew CAYLEY	UK	2009 - 2013
Nicholas KOUMJIAN	USA	2013 - 2019
Brenda HOLLIS	USA	2019 - 2022

Reserve Co-Prosecutors

- CHUON Sun Leng (Cambodia): 2006-2020
- Paul COFFEY (USA): 2006-2009
- Nicholas KOUMJIAN (USA): 2009-2015
- Brenda J. HOLLIS (USA): 2015-2019
- Fergal GAYNOR (Ireland): 2019-present

D. Office of Administration

Director and Deputy Director of Administration

SEAN Visoth (Director)	Cambodia	2006 -
KRANH Tony (Acting Director)	Cambodia	2009 -
Knut ROSANDHAUG (Deputy Director)	Norway	2008 -
Michelle LEE (Deputy Director)	China	2006 - 2008

Annex 4: Key case documents

	Case 001	Case 002	
Introductory Submission		D3	
Supplementary Submissions	-	D3/V, D83, D98/I, D146/3, D146/4, D196	
IR 66 Notice	D89	D317	
Closing Order	D99	D427	
Decision on Closing Order appeals	D99/3/42	<ul style="list-style-type: none"> • leng Thirith and Nuon Chea: D427/2/12, D427/3/12, D427/2/15, D427/3/15 • leng Sary: D427/1/30, D427/1/26 • Khieu Samphan: D427/4/14, D427/4/15 	
Initial hearings	E1/3.1, E1/4.1	Case 002/01	Case 002/02
		E1/4.1 through E1/7.1	E1/240.1
Substantive hearings	E1/5.1 through E1/77.1	E1/13.1 through E1/227.1	E1/247.1 through E1/519.1
Closing statements	E1/78.1 through E1/82.1	E1/228.1 through E1/237.1	E1/520.1 through E1/528.1
Trial judgment	E188	E313	E465
Appeal hearings	F1/2.1, F1/3.1, F1/4.1	F1/5.1, F1/6.1, F1/7.1	F1/9.1, F1/10.1, F1/11.1, F1/12.1
Appeal judgment	F28	F36	F76

	Case 003	Case 004	Case 004/01	Case 004/02
Introductory Submission	D1	D1		
Supplementary Submissions	D120	D27, D65, D191, D237/1, D254/1, D272/1		
IR 66 Notice	D13, D225	D358, D368	D285	D334, D334/2
Closing Orders	D266, D267	D381, D382	D308, D308/3	D359, D360
Orders on Civil Party applications	D268, D269	D383, D384	-	D361, D362
Closing Order appeal hearings	D266/16.1 & D267/21.1 D266/17.1 & D267/22.1 D266/18.1 & D267/23.1 ¹⁵⁵²	- ¹⁵⁵³	D308/3/1/19/1.1 D308/3/1/19/2.1	D359/8.1 & D360/17.1 D359/9.1 & D360/18.1 D359/10.1 & D360/19.1
Report on case and appeals	D266/15 & D267/20	-	-	D359/7 & D360/16
Considerations on closing order appeals	D266/27 & D267/35	D381/45 & D382/43	D308/3/1/20	D359/24 & D360/33
Considerations on appeals against Civil Party admissibility	D269/4	D384/7	-	D362/6
SCC termination decision	3/1/1/1	2/1/1/1	-	E004/2/1/1/2
Order to seal and archive the case	D275	D388	-	D363/3

¹⁵⁵² The public redacted transcripts are filed as D266/18.2 & D267/23.2.

¹⁵⁵³ The Pre-Trial Chamber decided to determine the appeals without holding an oral hearing. See D381/41 & D382/40.

Annex 5: Decisions grouped by theme

A. Decisions on disqualification

Pre-Trial Chamber

- Public Decision on the Co-Lawyers' Urgent Application for Disqualification of Judge Ney Thol, 4 February 2008, [C11/29](#)
- Decision on Khieu Samphan's Application to Disqualify Co-Investigating Judge Marcel Lemonde, 14 December 2009, [Doc. 7](#)
- Decision on Nuon Chea's Application for Disqualification of Judge Marcel Lemonde, 23 March 2010, [Doc. 4](#)
- Decision on Ieng Sary's Rule 35 Application for Judge Marcel Lemonde's Disqualification, 29 March 2010, [Doc. 5](#)
- Decision on Ieng Sary's and on Ieng Thirith Applications under Rule 34 to Disqualify Judge Marcel Lemonde, 15 June 2010, [Doc. 8](#)
- Decision on Application for Disqualification of Judge You Bunleng, 10 September 2010, [Doc. 8](#)

Trial Chamber

- Decision on Ieng Thirith, Nuon Chea and Ieng Sary's Applications for Disqualification of Judges Nil Nonn, Silvia Cartwright, Ya Sokhan, Jean-Marc Lavergne and Thou Mony, 23 March 2011, [E55/4](#)
- Decision on Ieng Thirith and Ieng Sary's Applications for Disqualification of Judge You Ottara from the Special Bench and Requests for a Public Hearing, 9 May 2011, [E63/5](#)
- Decision on Motions for Disqualification of Judge Silvia Cartwright, 2 December 2011, [E137/5](#)
- Decision on application for disqualification of Judge Silvia Cartwright, 9 March 2012, [E171/2](#)
- Decision on Ieng Sary's Application for Disqualification of Judge Cartwright, 4 June 2012, [E191/2](#)
- Decision on Interlocutory Request Related to Applications for Disqualifications, 14 November 2014, [E314/11](#)
- Decision on Applications for the Disqualification of Trial Chamber Judges, 14 November 2014, [E314/12](#)

- Reasons for Decision on Application for Disqualification, 30 January 2015, [E314/12/1](#)

Supreme Court Chamber

- Decision on Ieng Thirith's Application to Disqualify Judge Som Sereyvuth, 3 June 2011, [Doc. 1/4](#)
- Decision on Ieng Sary's appeal against the Trial Chamber's decision on motions for disqualification of Judge Silvia Cartwright, 17 April 2012, [E137/5/1/3](#)
- Decision on Khieu Samphan's Application for Disqualification of Six Appeal Judges Who Adjudicated in Case 002/01, 14 July 2020, [Doc. 11](#)

B. Decisions on resourcing

- ICIJ Decision on Ao An's Request to Order DSS to provide Additional Resources, 18 March 2016, [D304/1](#)
- ICIJ Further Decision on Ao An's Request to Order DSS to Provide Additional Resources, 26 April 2016, [D304/4](#)
- ICIJ Decision on Resources to be Provided to the Ao An Defence, 9 May 2016, [D304/7](#)
- ICIJ Decision on Yim Tith's Urgent Request Concerning Defence's Resources, 7 June 2016, [D312/1](#)
- ICIJ Second decision on Yim Tith's urgent request concerning defence's resources, 14 June 2016, [D312/4](#)
- ICIJ Decision on Ao An's urgent request for continued provision of necessary resources, 16 August 2016, [D304/11](#)
- ICIJ Decision on the Urgent Request on Remote Working, 23 August 2016, [D321/1](#)
- ICIJ Further decision on the urgent request on remote working, 29 August 2016, [D321/4](#)
- ICIJ Decision on the Joint Defence Request for Reclassification of Rulings and Filings Concerning Resources, 31 August 2016, [D304/12](#)
- OCIJ Combined decision on the impact of the budgetary situation on Case 003, 004 and 004/02 and related submissions by the Defence for Yim Tith, 11 August 2017, [D349/6](#)

- SCC Response to request to reinstate Nuon Chea Defence Team, 2 September 2019, [F46/5](#)
- PTC Decision on Ao An's Urgent Request for Continuation of Ao An's Defence Team Budget, 2 September 2019, [D360/26](#)
- PTC Decision on Yim Tith's Urgent Request for Dismissal of the Defence Support Section's Action Plan Decision, 18 March 2021, [D381/42](#) & [D382/41](#)
- SCC Decision on Civil Party Lead Co-Lawyers' Urgent Request for Orders to Protect Civil Party Rights to Effective Representation and a Fair Trial, 4 November 2021, [F70/1/1](#)

Annex 6: Financial information

A. Financial contributions 2006-2022

Donors	National component	%	International component	%	Total	%
Japan	16,086,025	16%	72,181,721	31%	88,267,746	27%
Cambodia ^{1/}	45,506,357	46%	-	0%	45,516,068	14%
Australia ^{2/}	3,733,172	4%	31,801,921	14%	35,535,093	11%
USA ^{3/}	-	0%	32,220,793	14%	32,220,793	10%
European Union	15,635,045	16%	17,207,307	7%	32,842,352	10%
Germany ^{4/}	3,982,337	4%	14,271,641	6%	18,253,978	5%
Sweden	-	0%	14,990,797	6%	14,990,797	5%
United Kingdom	1,547,982	2%	11,982,377	5%	13,530,359	4%
France	233,281	0%	10,336,343	4%	10,569,624	3%
Norway	1,006,880	1%	9,244,325	4%	10,251,205	3%
Republic of Korea	-	0%	6,529,000	3%	6,529,000	2%
UN Trust Fund (30 countries)	5,371,417	5%	-	0%	5,371,417	2%
Finland	6,800	0%	3,583,253	2%	3,590,053	1%
Canada ^{5/}	-	0%	2,487,538	1%	2,487,538	1%
Denmark	-	0%	2,048,991	1%	2,048,991	1%
Netherlands	9,388	0%	1,800,909	1%	1,810,297	1%
India	1,100,000	1%	-	0%	1,100,000	0%
Spain	-	0%	1,078,729	0%	1,078,729	0%
New Zealand	160,260	0%	867,814	0%	1,028,074	0%
Austria	-	0%	682,939	0%	682,939	0%
Ireland	4,100	0%	319,161	0%	323,261	0%
Belgium	-	0%	189,804	0%	189,804	0%
Luxembourg	20,000	0%	139,010	0%	159,010	0%
Microsoft	-	0%	100,000	0%	100,000	0%
Open Society Institute	-	0%	61,174	0%	61,174	0%
Malaysia	50,000	0%	-	0%	50,000	0%
Qatar	20,000	0%	20,000	0%	40,000	0%

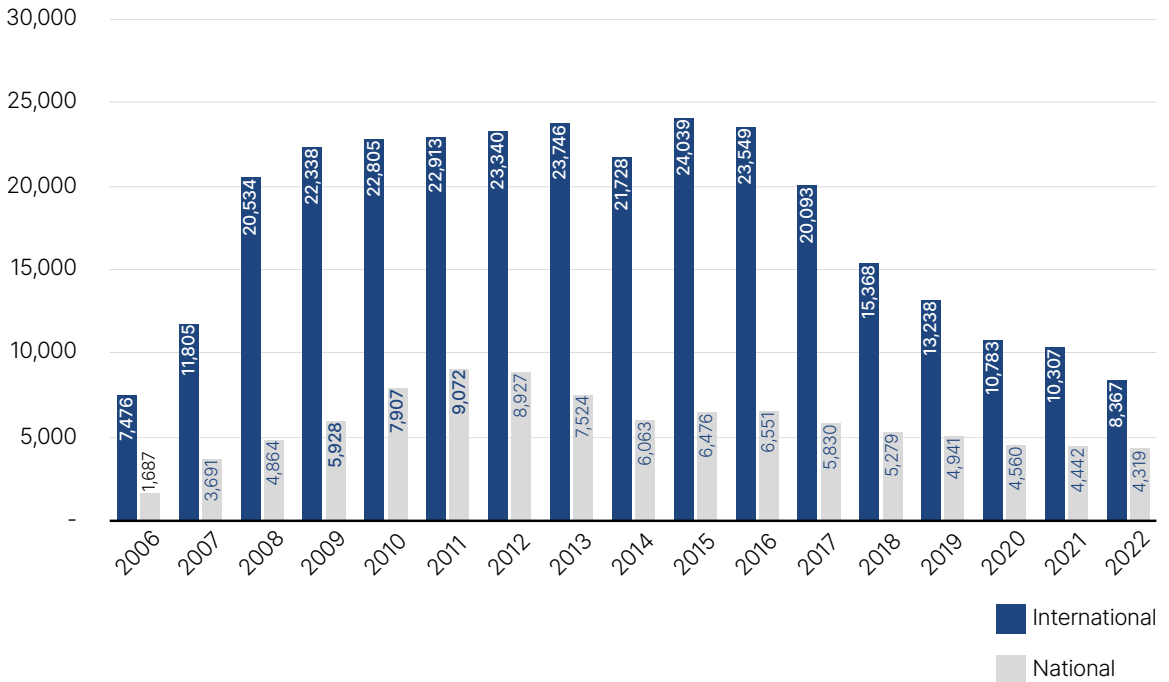
Czech Republic	-	0%	48,726	0%	48,726	0%
Liechtenstein	-	0%	33,108	0%	33,108	0%
Switzerland	51,725	0%	7,364	0%	59,089	0%
Thailand	24,331	0%	-	0%	24,331	0%
Chile	15,000	0%	5,000	0%	20,000	0%
Iraq	-	0%	2,000	0%	2,000	0%
Armenia	-	0%	1,000	0%	1,000	0%
Namibia	-	0%	500	0%	500	0%
Information Today Inc	-	0%	500	0%	500	0%
UN to ECCC grant ^{6/}	3,255,000	3%	-	0%	3,255,000	1%
UN to ECCC loan ^{6/}	780,000	1%	-	0%	780,000	0%
Individuals	1,100	0%	2,000	0%	3,100	0%
Adjustment ^{7/}	-	-	(19,389)	-	(19,389)	-
Interest earned	-	-	5,456,562	-	5,456,562	-
TOTAL ^{8/}	98,600,200	100%	239,682,916	100%	338,292,827	100%

- 1/ In-kind contributions from the Royal Government of Cambodia stand at \$21.5 million
- 2/ Includes \$84,953 received in 2003 and 2004 towards the project CMB03X01 - Operational Assistance to the Khmer Rouge Trials
- 3/ Excludes \$1,164,620 received but transferred to OLA Trust Fund
- 4/ German contributions in the amount of \$476,502 is hard earmarked for VSS expenditure which is reported separately and is not reflected in this table
- 5/ Canadian Government provided in-kind contribution of \$1,372,200 by way of three investigators to the Office of the International Co-Investigating Judges in the period 2015-2017
- 6/ Grant and loan to the national side are also included in the total contributions of the international component, as they were intended for the international component initially. In accordance with the respective donors, the amount of \$4.1 million was transferred to the national component during 2013 and 2014 (grant of \$3.3 million in 2013 and loan of \$0.8 million in 2014) and is therefore reflected in the total contributions of the national component as well. Consequentially, in this presentation, the grand total amount includes the amount of \$4.1 million twice
- 7/ Gain/loss on foreign currency exchanges
- 8/ This table does not reflect the regular budget subvention received by the international component. The subvention resources utilised to accommodate the expenditures higher than the voluntary contributions since 2015

B. Expenditure

Expenditure 2006-2022

Thousands of United States dollars



C. UN General Assembly resolutions on requests for a subvention

- Resolution adopted by the General Assembly on 9 April 2014, [A/RES/68/247B](#)
- Resolution adopted by the General Assembly on 2 April 2015, [A/RES/69/274](#)
- Resolution adopted by the General Assembly on 23 December 2015, [A/RES/70/248](#)
- Resolution adopted by the General Assembly on 23 December 2016, [A/RES/71/272](#)
- Resolution adopted by the General Assembly on 24 December 2017, [A/RES/72/262](#)
- Resolution adopted by the General Assembly on 22 December 2018, [A/RES/73/279](#)

- Resolution adopted by the General Assembly on 27 December 2019, [A/RES/74/263](#)
- Resolution adopted by the General Assembly on 31 December 2020, [A/RES/75/253](#)
- Resolution adopted by the General Assembly on 24 December 2021, [A/RES/76/246](#)
- Resolution adopted by the General Assembly on 30 December 2022, [A/RES/77/263](#)

Annex 7: Outreach statistics

	Public Hearings People (days)	Study Tours People (tours)	Visits People (groups)	VIP Visits People (delegations)	Screenings People (screenings)	Lectures People (occasions)	TOTAL People
2009	33,010 (87)	3,018 (10)	-	-	-	4,000 (1)	40,028
2010	3,326 (5)	29,291 (80)	1,780 (69)	151 (23)	31,118 (71)	16,100 (5)	81,766
2011	19,207 (25)	25,400 (74)	447 (38)	119 (32)	23,991 (56)	31,620 (13)	100,784
2012	60,492 (133)	10,147 (31)	949 (46)	90 (18)	10,696 (23)	14,100 (20)	96,474
2013	36,871 (84)	11,040 (39)	594 (52)	95 (24)	2,583 (9)	8,000 (7)	59,183
2014	3,407 (6)	28,141 (92)	792 (54)	20 (10)	-	15,910 (15)	48,270
2015	38,924 (125)	8,375 (33)	330 (22)	36 (8)	-	1,600 (3)	49,265
2016	40,556 (149)	5,070 (20)	762 (24)	74 (25)	-	4,900 (7)	51,362
2017	6,148 (16)	25,836 (96)	419 (44)	39 (12)	2,600 (6)	2,000 (1)	37,042
2018	802 (1)	28,938 (100)	756 (42)	33 (8)	500 (2)	3,089 (4)	34,118
2019	1,228 (3)	26,663 (89)	389 (24)	27 (8)	-	-	28,307
2020	-	7,447 (38)	185 (14)	15 (7)	-	-	7,647
2021	123 (4)	-	61 (2)	7 (3)	-	-	191
2022	574 (1)	4,802 (22)	391 (10)	72 (4)	-	-	5,839
TOTAL	244,668 (639)	214,168 (722)	7,855 (446)	778 (182)	71,488 (167)	101,319 (76)	640,276



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