

BEFORE THE TRIAL CHAMBER**EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA****FILING DETAILS**

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**NUON CHEA'S NOTICE OF APPEAL
 AGAINST THE TRIAL JUDGEMENT IN CASE 002/02**

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INTRODUCTION

1. Pursuant to Article 36 *new* of the ECCC Establishment Law and Internal Rule 105(3), the Co-Lawyers for Nuon Chea (the “Defence”) submit Nuon Chea’s notice of appeal against the Case 002/02 trial judgement (the “Notice”).
2. Although the Case 002/02 trial judgement (the “Judgement”) is dated and was pronounced at a hearing on 16 November 2018,¹ the Trial Chamber (the “Chamber”) only released an unofficial summary on that day. It took over four more months for the Judgement to be notified to the parties officially and in fully reasoned form, on 28 March 2019.² As it was notified after filing hours, the Supreme Court Chamber ruled that the Judgement was deemed as having been notified on 29 March 2019.³
3. Parties must ordinarily file notices of appeal against trial judgements “within 30 (thirty) days of the date of pronouncement of the judgment or its notification, as appropriate,”⁴ and spanning no more than 30 pages in English or French.⁵ However, on 26 April 2019, the Supreme Court Chamber partially granted the requests from both Case 002/02 defence teams to extend the time and page limits for their respective notices.⁶ It set 1 July 2019 as the filing deadline for the notices in English or French, together with a Khmer translation, and a page limit of 60 pages in English or French.⁷
4. Despite the Supreme Court Chamber’s evident view that it is competent to determine this Notice’s page and time limits and that this Notice is subject to the rules that govern filings before that chamber,⁸ this Notice is nevertheless formally addressed to the Trial Chamber. This is pursuant to Internal Rule 106(2), which requires notices of appeal to be filed “with the Greffier of the Trial Chamber”, and to the Trial Chamber’s specific instructions to the Defence on this matter.

¹ **E1/529.1**, Pronouncement of Judgment in Case 002/02, T. 16 Nov 2018.

² **E465**, ‘Case 002/02 Judgement’, 16 Nov 2018 [*sic* – 29 Mar 2019].

³ **F43**, ‘Decision on NUON Chea and KHIEU Samphân’s Requests for Extensions of Time and Page Limits on Notices of Appeal’, 26 Apr 2019 (“Decision on Extensions for Case 002/02 Notices of Appeal”), para. 12.

⁴ ECCC Internal Rules (Rev. 9), Rule 107(4).

⁵ Practice Direction on the Filing of Documents (Rev. 8), Art. 5.2.

⁶ **F40/1.1**, ‘Nuon Chea’s Urgent First Request for an Extension of Time and Page Limits for Filing His Notice of Appeal against the Trial Judgement in Case 002/02’, 3 Apr 2019 (requesting a 180-day time limit for drafting and translation and 100-page limit in English) and **F39/1.1**, ‘Demande de la Défense de KHIEU Samphân aux fins d’extension du délai et du nombre de pages de sa déclaration d’appel’, 3 Apr 2019 (requesting a 210-day time limit for drafting and further 30-day time limit for translation, and 100-page limit in French).

⁷ **F43**, Decision on Extensions for Case 002/02 Notices of Appeal, p. 6.

⁸ *See* **F43**, Decision on Extensions for Case 002/02 Notices of Appeal, generally, and p. 4, in which the Supreme Court Chamber discusses the rules applicable to “document[s] filed to the Supreme Court Chamber”.

5. Internal Rules 106(3) and (4) require that lawyers representing an accused on appeal have written authorisation to do so and attach such authorisation to the notice. However, in light of concerns including Nuon Chea's advanced age, the length of time that might elapse before the filing of this Notice, and the interests of justice,⁹ on 9 April 2019, the Defence already filed Nuon Chea's letter of intention to appeal and authorisation of the Defence, dated 6 April 2019, to the Chamber.¹⁰ Nevertheless, pursuant to Internal Rule 106(4), that letter – which continues to reflect Nuon Chea's intentions – is reattached to this Notice.

PRELIMINARY ISSUES IN CONNECTION WITH THIS NOTICE

6. This Notice identifies alleged errors of law, errors of fact, abuses of discretion, and mixed errors in the Judgement. Likewise, as Internal Rule 104(4) limits parties' rights to appeal against the Chamber's decisions during trial, this Notice also identifies errors in some of those decisions. Appeals against such decisions filed with notices of appeal must show "lasting *gravamen* on the part of the appellant" and "relate to one or more of [the] permissible grounds of the appeal from the [Judgement]."¹¹ Therefore, and in accordance with Internal Rule 105(2), which sets out the grounds of appeal, all errors of law in this Notice are alleged to invalidate the Judgement or relevant decision; all errors of fact, to occasion a miscarriage of justice; and all abuses of discretion, to prejudice Nuon Chea.
7. Pursuant to Internal Rule 105(4), this Notice identifies pinpoint citations for each alleged error, in the form of Judgement paragraphs or document numbers for Chamber decisions. However, certain errors are so pervasive and the Judgement so extensive and complex that despite its best endeavours, the Defence's identification of pinpoint citations for such errors in the Judgement at this stage may not be comprehensive. Accordingly, it may include additional pinpoint references in its appeal brief.
8. In this Notice, the Defence uses the following abbreviations or acronyms: "CIA" (the US's Central Intelligence Agency); "CPK" (Communist Party of Kampuchea); "DC-Cam" (the Documentation Centre of Cambodia); "DK" (Democratic Kampuchea); "ICCPR" (International Covenant on Civil and Political Rights); "JCE" (Joint Criminal Enterprise); and "KGB" (the Soviet Union's Committee for State Security).

⁹ E465/1, 'Nuon Chea's Letter Authorising His Lawyers to File an Appeal against the Case 002/02 Trial Judgement', 9 Apr 2019, paras 12-21.

¹⁰ E465/1.1.1, 'Letter from Nuon Chea to Trial Chamber President', 6 Apr 2019.

¹¹ F9, 'Decision on Motions for Extension of Time and Page Limits on Appeal Briefs and Responses', 31 Oct 2014, para. 16.

TIER 1. ERRORS INVALIDATING THE ENTIRE JUDGEMENT

The following grounds of appeal are alleged errors that invalidate the entire Judgement:

Ground 1. The Chamber erred in law and in fact in failing to inform Nuon Chea promptly and in detail of the nature and cause of the charges against him, flagrantly violating his right to a fair trial. Emblematic examples include expanding the scope of Case 002/02 and recharacterising charges of extermination as murder with *dolus eventualis* without adequate notice. *See* paras 60, 157, 171-76, 178, 188, 190, 808, 815-16, 1139-46, 1384-89, 1434, 1436-37, 1144-45, 1162, 1672, 1804, 2485, 2560-69, 2641-43, 2812-17, 3116, 3184, 4180-86.

Ground 2. The Chamber erred in law in rendering a Judgement that is fundamentally defective as to form, since the Judgement is dated and was ostensibly signed on 16 November 2018 but was only officially notified on 29 March 2019. *See* cover page, pp. 2232-33.

Ground 3. The Chamber erred in law in finding that the ECCC's "supermajority" requirement for judicial decisions prevented key Defence witnesses and leading Cambodian government and military figures Heng Samrin, Ouk Bunchhoeun, and Pol Saroeun from being summoned, despite the unanimous view of the Chamber's international judges that the witnesses' evidence would have been *prima facie* relevant to key contested issues, and would not have been repetitious. *See* para. 124; E459.

Ground 4. The Chamber erred in law and in fact in making numerous findings that are blatantly erroneous and/or demonstrative of its prejudgement, bias, and/or lack of independence from the Cambodian government. These findings cumulatively amount to a flagrant violation of Nuon Chea's right to a fair trial including, *inter alia*, his right to a presumption of innocence and his right to be tried by a competent, independent, and impartial tribunal. *See* paras 49-50, 62, 64-65, 885, 901, 996, 114-115, 124, 247-48, 321, 1009, 1015, 1017, 1020, 1023-25, 1057, 1087-89, 1093, 1145, 1148-49, 1154, 1195-99, 1214, 1276, 1281, 1301, 1326, 1331, 1341, 1359, 1439-41, 1444, 1464, 1506, 1510, 1516, 1526-27, 1540, 1546, 1550-60, 1565-66, 1570-71, 1574, 1579, 1584, 1588-89, 1619-22, 1632, 1647, 1651-53, 1661, 1718-19, 1731, 1767, 1822, 1928, 1969-71, 2005, 2037, 2065, 2081, 2118, 2163, 2361-62, 2368, 2392, 2466, 2469, 2519, 2652-67, 2677-82, 2702, 2717-29, 2752, 2761, 2764, 2766, 2768, 2770-72, 2775-76, 2863, 2904, 2906, 2917, 2934, 2958, 3039, 3078, 3089, 3092, 3112, 3174, 3191, 3221, 3225, 3247, 3256, 3273, 3416-17,

3459, 3541, 3548, 3559-60, 3571, 3578-80, 3590, 3609-10, 3612-13, 3616, 3618-19, 3623, 3625, 3637-38, 3669, 3675, 3743-63, 3818, 3829-30, 3847-55, 3857-59, 3919-20, 3922-23, 3926-27, 3930, 3955-65, 3973-87, 3993, 3995, 3997, 4003-05, 4053, 4060, 4066, 4068, 4104, 4109, 4123-28, 4149, 4153, 4160-61, 4164-65, 4256; E336/3, E439/5, E459.

Ground 5. The Chamber erred in law in declining to summon key Defence witnesses and leading Cambodian government and military figures Heng Samrin, Ouk Bunchhoeun, and Pol Saroeun to testify but nevertheless relying on evidence from some of these witnesses in making adverse findings, or making adverse findings that would have been materially altered by the witnesses' testimony. These findings cumulatively amount to a flagrant violation of Nuon Chea's right to a fair trial. *See* paras 124, 292, 1969, 2039-50; E459.

Ground 6. The Chamber erred in law in denying Nuon Chea an opportunity to prepare and present a meaningful defence, flagrantly violating his right to a fair trial. *See* paras 138, 1850, 1871, 1876, 1885-87, 1934, 1940, 1942, 1952-53, 1960, 1967, 1969-71, 2005, 2011, 2015, 2039-50, 2479, 2621-22; E366/3, E443/10.

Ground 7. The Chamber erred in law and in fact in failing to adequately address Nuon Chea's submissions on numerous issues of law and fact central to his defence. These findings cumulatively amount to a flagrant violation of Nuon Chea's right to a fair trial. *See* paras 196-215, 278-79, 288, 319-20, 342, 362, 398, 424-54, 459, 476, 483, 528, 545-48, 551-53, 556, 559-61, 905, 996, 1017, 1020, 1023-25, 1056-60, 1063-64, 1145, 1148-49, 1154-55, 1195-99, 1424, 1437, 1460, 1497, 1506, 1524, 1558, 1593, 1595, 1597, 1605, 1607-09, 1621, 1623, 1654, 1659, 1679, 1734, 1783-85, 1850, 1871, 1876, 1885-87, 1934, 1940, 1942, 1952-53, 1960, 1967, 1969-71, 2005, 2011, 2015, 2039-50, 2065, 2118, 2183, 2677-82, 2709, 2717-29, 2750, 2752, 2770, 2772, 2898-900, 2976-79, 2987-89, 3174, 3185, 3189-91, 3230-50, 3259, 3285, 3291-99, 3328-29, 3347, 3578-80, 3590-91, 3598, 3610, 3613, 3618-19, 3623, 3625, 3644, 3659-61, 3669-70, 3674-76, 3678, 3688-90, 3740, 3747, 3818, 3829-30, 3847-55, 3913, 3924, 3926-27, 3929, 3938-39, 3971, 4014, 4025-49, 4069, 4080-83, 4085, 4088, 4094, 4097-98, 4100, 4109-10, 4136, 4160-61, 4166-72, 4180-86, 4187, 4189, 4190-94, 4196-97; E439/5, E443/10, E459.

Ground 8. The Chamber erred in law and in fact, and abused its discretion, in its overall admission and assessment of evidence in Case 002/02. These findings cumulatively amount to a flagrant violation of Nuon Chea's right to a fair trial including, *inter alia*, his

right to a presumption of innocence. *See* paras 35, 38-40, 46, 49-53, 61-62, 64-67, 69-77, 81, 105-06, 123, 125, 127, 129-130, 133-138, 188, 190, 229, 243, 250, 252, 255, 258, 264, 267-68, 277, 282, 285, 289-90, 292-94, 297, 342, 351-54, 360, 362-65, 367-68, 373, 376, 388-89, 398, 419, 427, 437, 451, 459, 476, 483, 486, 493, 496, 501, 508-09, 515, 518, 528, 545-48, 551-53, 555-56, 558-61, 566, 569, 778, 804, 813, 815-17, 836, 839-40, 872, 877-78, 885, 901, 903, 905, 911, 914, 916-17, 920, 922-26, 929, 933, 935, 944, 960-62, 964-65, 978-79, 996, 998-99, 1002-03, 1007, 1009, 1013-14, 1016, 1019-20, 1023-25, 1030, 1034-37, 1039, 1042, 1047, 1050-51, 1055-60, 1063-64, 1066, 1068, 1072-73, 1078-82, 1087-89, 1093-94, 1098-100, 1107-08, 1111-12, 1119-25, 1136, 1139-46, 1151, 1153, 1156-59, 1161, 1166, 1173-79, 1181, 1183-92, 1195, 1201-04, 1210-14, 1230-31, 1249-50, 1252-53, 1261, 1272, 1274, 1277-78, 1285, 1287-88, 1290-96, 1301, 1308-09, 1326, 1328, 1348, 1354, 1356, 1363-66, 1368-69, 1373-75, 1378-80, 1386, 1388-90, 1392, 1394-402, 1407-11, 1423-29, 1432-33, 1439-41, 1443-44, 1447, 1450-51, 1453-54, 1464, 1466-68, 1470, 1474, 1481-82, 1486-98, 1500-21, 1526, 1532, 1537, 1542-43, 1555-56, 1559, 1561-62, 1564-66, 1568-72, 1574, 1576-80, 1584, 1586-89, 1592, 1594-95, 1599-602, 1604, 1607, 1609-10, 1614-21, 1623-27, 1629, 1631-32, 1634, 1642-44, 1646-48, 1650-53, 1656, 1659-63, 1666-73, 1675-84, 1686-92, 1694-707, 1709-12, 1714, 1719, 1724, 1731-35, 1738, 1742, 1744, 1749, 1754-58, 1760-61, 1768-74, 1776, 1783-85, 1800-06, 1808-17, 1819-28, 1830-37, 1839-2072, 2080-85, 2088, 2105, 2109, 2112, 2114-2119, 2122-23, 2132, 2141, 2149, 2160, 2163, 2183, 2185-86, 2188, 2191, 2215, 2236, 2238, 2240, 2245, 2254, 2258, 2268, 2272, 2277, 2289, 2296-97, 2299-300, 2311, 2318, 2329-30, 2332-33, 2335, 2337, 2342-44, 2350, 2358, 2360, 2362, 2364-66, 2368-69, 2392, 2395, 2397, 2425-30, 2436-38, 2443, 2445-46, 2449-50, 2452, 2454, 2464, 2466-67, 2476, 2479, 2492-93, 2496-97, 2527, 2531, 2533-34, 2536-38, 2540, 2542, 2549-56, 2558, 2561-69, 2571, 2575, 2577, 2581, 2586-97, 2600-01, 2607-10, 2618, 2621-22, 2624, 2629-30, 2641-42, 2644, 2653-74, 2677-83, 2693, 2695-99, 2700-01, 2705-07, 2709, 2712, 2714-29, 2731-32, 2734-38, 2742-50, 2752, 2755, 2759, 2761-72, 2778, 2781, 2785, 2789, 2792, 2794-98, 2800-07, 2809, 2815-20, 2822-23, 2825-27, 2829-32, 2837-43, 2849-51, 2853-58, 2873-75, 2895-96, 2899, 2905-06, 2911, 2915-19, 2926-27, 2929-30, 2934, 2951-57, 2960-68, 2970-74, 2976-77, 2982-83, 2995-96, 3004-10, 3030, 3035, 3058, 3060, 3065-66, 3095-102, 3104-06, 3110, 3115-17, 3120-31, 3137-51, 3154, 3182-84, 3185-86, 3189, 3191-92, 3194-96, 3199, 3201-02, 3204, 3208, 3211-15, 3217-21, 3223-28, 3230, 3232-36, 3238-39, 3241-42, 3245-59, 3261-65, 3267-68, 3275, 3277-81, 3285-86, 3290-97, 3299-300, 3302-3304, 3306-08, 3310-13, 3320, 3322-23, 3326,

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Ground 9. The Chamber erred in law and abused its discretion by making a series of procedural decisions throughout the Case 002/02 trial that cumulatively – including, where applicable, in combination with procedural decisions from the Case 002/01 trial or the Case 002 pre-trial stage – amount to a flagrant violation of Nuon Chea’s right to a fair trial. *See* paras 93-96, 110-90; E336/3, E346/2/2, E346/3, E347/4, E350/8, E367, E370/4, E380/2, E388, E395/1, E396/4, E399/5, E405/2, E408/4, E408/5, E409/3, E415, E416/4, E418/3, E443/10, E444/1, E449/3/6, E457/6, E459.

Ground 10. The Chamber erred in law and abused its discretion in finding that an extensive process of transcript revisions, which took place alongside trial hearings and drafting of trial briefs and was aimed at correcting substantive errors in the transcription of a majority of trial hearings owing to errors in the initial floor interpretation and relay-interpretation of testimony, did not violate Nuon Chea’s right to confront evidence against him and prepare his defence. This flagrantly violated Nuon Chea’s right to a fair trial. *See* paras 84-92.

Ground 11. The Chamber erred in law in drawing adverse inferences from Nuon Chea exercising his right to remain silent, including that Nuon Chea was a principal author of the Revolutionary Flag, and that Nuon Chea replaced Son Sen as Duch’s direct superior at the S-21 Security Centre. *See* paras 47, 476, 518.

TIER 2. ERRORS INVALIDATING SERIES OF CONVICTIONS

I. THE RIGHT TO A FAIR TRIAL

The following grounds of appeal are alleged errors that invalidate entire series of convictions in the Judgement due to violations of Nuon Chea's right to a fair trial, although the Defence specifically notes that: (a) it will be addressing additional errors in the admission and assessment of evidence in the course of its analysis of the Chamber's findings on the Case 002/02 crime base; and (b) due to the exceptionally-pervasive nature of the errors identified in this section, it has been unable to be comprehensive in its citations in this section and has only been able to include emblematic examples at this stage:

A. THE RIGHT TO BE TRIED BY A COMPETENT, INDEPENDENT, AND IMPARTIAL TRIBUNAL

Ground 12. The Chamber erred in law and in fact in failing to address evidence or Defence submissions on certain controversial matters when reaching its findings. Emblematic examples of this include:

- (a) food shortages being beyond the CPK's control and a collectivist response to such challenges being both valid and legal;
- (b) the influence of Vietnam's involvement in Cambodian politics and ultimate invasion of the country on the events that transpired throughout the DK period;
- (c) the alleged restrictions on Cham culture in fact being general social policies applicable to the entire population and not imposed on religious or ethnic grounds on the Cham exclusively;
- (d) the exclusion of the Kroch Chhmar Security Centre from the scope of the trial *vis-à-vis* the treatment of the Cham, and of witnesses who were best placed to discuss allegations of crimes against the Cham, *e.g.*, Prime Minister Hun Sen;
- (e) the impact of collective memory and the creation of common narratives on everyone with contemporaneous knowledge of events in DK; and
- (f) the possible motivations of victims participating in the trial, particularly those who are parties to the case, and the impact of this on their credibility.

See paras 885, 996, 1020, 1023-25, 1145, 1148-49, 1154, 1195-99, 1928, 1969-71, 2005, 2065, 2677-82, 2717-29, 2752, 2766, 2768, 2770, 3174, 3256, 4068; E336/3, E439/5.

Ground 13. The Chamber erred in law and in fact in systematically dismissing exculpatory evidence for Nuon Chea as:

- (a) attempts by former CPK cadres to minimise responsibility. *See* paras 49-50, 62, 65, 901, 1214, 1359, 1439-41, 1444, 1464, 1510, 1516, 1526, 1540, 1546, 1550-51, 1565-66, 1570-71, 1574, 1579, 1584, 1588-89, 1619-20, 1632, 1647, 1651, 2037, 2081, 2368, 2392, 2466, 2519, 2652-67, 2702, 2764, 2770-72, 2775-76, 2863, 2904, 2906, 2917, 2934, 2958, 3039, 3078, 3089, 3092, 3112, 3191, 3221, 3225, 3273, 3459, 3579, 3609, 3613, 3618-19, 3623, 3625, 3675.
- (b) irrelevant due to inconsistency with other evidence. *See* paras 49, 62, 64-65, 1015, 1057, 1087-89, 1093, 1276, 1281, 1301, 1326, 1331, 1359, 1464, 1516, 1527, 1540, 1550-51, 1566, 1584, 1619, 1620-22, 1632, 1651-53, 1718-19, 1731, 1767, 2037, 2118, 2368, 2466, 2652-67,

2702, 2761, 2764, 2770-72, 3078, 3089, 3191, 3579, 3609, 3612-13, 3616, 3619, 3623, 3625, 3637-38.

(c) arising from exceptional circumstances. *See* paras 49, 62, 64-65, 1015, 1281, 1301, 1527, 2361-62, 2770, 3247, 3578, 3580, 3625, 3637-38.

Ground 14. The Chamber erred in law and in fact by taking charged or Communist language or practices out of context. *See* paras 64-65, 247-48, 321, 1009, 1017, 1023-25, 1341, 1506, 1552-60, 1661, 1822, 2163, 2469, 3416-17, 3541, 3548, 3559-60, 3590, 3571, 3610, 3669, 3743-63, 3818, 3829-30, 3847-55, 3857-59, 3919-20, 3922-23, 3926-27, 3930, 3955-65, 3973-87, 3993, 3995, 3997, 4003-05, 4053, 4060, 4066, 4068, 4104, 4109, 4123-28, 4149, 4153, 4160-61, 4164-65, 4256.

B. THE ADMISSION AND ASSESSMENT OF EVIDENCE

Ground 15. The Chamber erred in law and in fact, and abused its discretion, in declining to summon individuals requested by the Defence to appear as witnesses, and in further declining to reconsider those decisions. *See* paras 123, 125, 127, 129-30, 133-38; E335/3, E346/3, E347/4, E370/4, E396/4, E399/5, E409/3, E416/4, E434/2, E443, E443/7, E443/10, E459.

Ground 16. The Chamber erred in law by imposing the Co-Prosecutors' burden of proof on the Defence despite specifically finding that the Co-Prosecutors alone bear this burden and that the Defence does not. *See* paras 38, 804, 877-78, 885, 1173, 1181, 1230, 1261, 1356, 1386, 1392, 1408, 1423, 1432-33, 1669, 1675-76, 1700-02, 1709, 1783, 1847-2072, 2080-85, 2088, 2105, 2109, 2114-19, 2160, 2185-86, 2188, 2191, 2215, 2296, 2360, 2537-38, 2575, 3120, 3189, 3192, 3211, 3220, 3357, 3529, 3687, 3871, 3929, 3931-33, 3941, 4014, 4025, 4068; E395/1.

Ground 17. The Chamber erred in law and in fact in its application of the requisite standard of proof, either by accepting the Co-Prosecutors' allegations that were not proven beyond reasonable doubt or by requesting the Defence to raise more than reasonable doubt in order to substantiate its case. *See* paras 38-40, 64-65, 294, 342, 351-54, 362-65, 398, 459, 476, 483, 486, 493, 518, 528, 545-48, 551-53, 556, 558-61, 813, 816, 877-78, 885, 905, 961-62, 964-65, 996, 1007, 1009, 1016, 1020, 1023-25, 1042, 1056-60, 1063-64, 1087-89, 1093-94, 1098-100, 1107-08, 1111-12, 1121-22, 1125, 1139-46, 1156-59, 1173-79, 1183-92, 1201-04, 1210-14, 1231, 1249-50, 1252-53, 1272, 1277, 1285, 1287, 1291-94, 1348, 1363-66, 1368-69, 1373-75, 1378-80, 1388-90, 1394-402, 1407, 1409-11, 1424-29, 1439-41, 1443-44, 1450, 1453-54, 1464, 1466, 1468, 1470, 1474, 1481-82, 1486-97, 1504-05,

1507, 1509-10, 1516, 1526, 1532, 1542-51, 1561, 1565-66, 1572, 1574, 1576-80, 1584, 1586-89, 1594-95, 1607, 1609-10, 1616-20, 1623-24, 1626-27, 1629, 1631-32, 1634, 1642-44, 1646-48, 1650-53, 1656, 1659, 1660-63, 1666-73, 1675-84, 1686-92, 1694-707, 1709-12, 1714, 1719, 1731-35, 1738, 1742, 1744, 1749, 1754-58, 1760, 1768-69, 1770-73, 1776, 1783-85, 1800-06, 1808-17, 1819-28, 1830-37, 1839-46, 1851, 1871, 1886-87, 1896-97, 1905-06, 1909-13, 1915-16, 1919, 1928, 1938, 1946-53, 1960, 1967, 1972, 1984-93, 2010, 2013-15, 2039-50, 2054, 2063, 2080-85, 2088, 2112, 2114-19, 2149, 2160, 2183, 2186, 2188, 2191, 2215, 2236, 2258, 2269, 2272, 2296, 2311, 2318, 2329-30, 2332-33, 2350, 2358, 2360, 2362, 2425-30, 2446, 2449, 2454, 2466-67, 2476, 2479, 2492, 2497, 2527, 2531, 2540, 2542, 2554-2556, 2561-69, 2571, 2577, 2581, 2586-97, 2600-01, 2607-10, 2618, 2621-22, 2624, 2629-30, 2668-74, 2677-82, 2709, 2734-38, 2744-50, 2752, 2761, 2764, 2770-71, 2781, 2785, 2794, 2806-07, 2815-20, 2822-23, 2825-27, 2829-32, 2837-43, 2849-51, 2853-58, 2873-75, 2899, 2905-06, 2916-18, 2926, 2929-30, 2934, 2951-57, 2960-68, 2970-74, 2976, 2982-83, 2995-96, 3004-10, 3060, 3065, 3101-02, 3105-06, 3110, 3121-31, 3137-51, 3202, 3211-12, 3214, 3221, 3223-25, 3227-28, 3230, 3235, 3242, 3245, 3247-48, 3250, 3253, 3256, 3258-59, 3262, 3268, 3275, 3280-81, 3285, 3290-91, 3299, 3302-04, 3306-08, 3310-13, 3320, 3322-23, 3326, 3329, 3343-48, 3377, 3387-88, 3403, 3433-36, 3453-55, 3459-61, 3482, 3529, 3534, 3539-63, 3569-71, 3578-80, 3590, 3598, 3608, 3610-13, 3618-19, 3623, 3625, 3659-61, 3669-70, 3673, 3675, 3687-94, 3696-700, 3735, 3739-40, 3746-47, 3751-52, 3754, 3762-65, 3767, 3769, 3772, 3774-75, 3777-79, 3781, 3783-91, 3793, 3797-800, 3803-04, 3806, 3812, 3814, 3817-18, 3821, 3823-25, 3828-30, 3832, 3838, 3847-55, 3852, 3858-60, 3871, 3886, 3888, 3891, 3910-11, 3913, 3924, 3926-27, 3929-30, 3933, 3938-39, 3941-43, 3953-54, 3971, 3974-75, 3978-79, 3981-82, 3986, 3990, 3993-94, 4014-17, 4020-21, 4025-49, 4063, 4069, 4080-83, 4085, 4088, 4094, 4097-98, 4100, 4103-05, 4109-10, 4112-15, 4131, 4134, 4136, 4138, 4154, 4160-61, 4164-65, 4168-72, 4180-87, 4189-94, 4196-97; E380/2, E395/1, E396/4.

Ground 18. The Chamber erred in law and in fact in applying double standards to its treatment of evidence, unduly favouring the Co-Prosecutors over the Defence. *See* paras 35, 39-40, 61, 188, 190, 292, 778, 815-16, 877-78, 885, 905, 1007, 1009, 1016, 1023-25, 1047, 1057, 1087-89, 1093-94, 1098-100, 1107-08, 1184-85, 1470, 1850, 1871, 1876, 1885-87, 1896-97, 1905-06, 1910, 1912, 1915-16, 1919, 1928, 1931, 1934, 1938, 1940, 1942, 1946-53, 1960, 1967, 1969-72, 1984-93, 2005, 2010-11, 2013, 2015, 2039-50,

2054, 2063, 2080-85, 2114-19, 2149, 2160, 2163, 2186, 2188, 2191, 2215, 2258, 2311, 2318, 2329-30, 2332-33, 2358, 2466, 2476, 2479, 2497, 2527, 2540, 2554-56, 2564-65, 2569, 2621-22, 2641-42, 2653-74, 2677-82, 2734, 2736, 2738, 2742, 2744-47, 2759, 3182-84, 3529-34, 3539-63, 3565, 3571, 3578, 3580, 3590, 3669, 3746-47, 3751-52, 3754, 3762-65, 3767, 3769, 3772, 3774-75, 3777-79, 3781, 3783-91, 3793, 3797-800, 3803-04, 3806, 3812, 3814, 3817-18, 3821, 3823-25, 3828-30, 3832, 3838, 3847-55, 3858-60, 3886, 3891, 3910-11, 3913, 3924, 3926, 3929, 3954, 3971, 3990, 3993-94, 4014-17, 4020, 4025-49, 4063, 4189; E302/5, E319/52/4, E336/3, E346/2/2, E347/4, E366/3, E395/1, E405/2, E416/4, E443/10.

Ground 19. The Chamber erred in law and in fact in its assessment as to the inherent value of the unsworn evidence of civil parties, and the degree to which it relied on such evidence to reach findings. *See paras* 67, 243, 264, 268, 277, 285, 368, 373, 388-89, 451, 496, 555, 916-17, 998-99, 1002-03, 1009, 1014, 1016, 1020, 1023, 1034-37, 1039, 1057, 1072-73, 1078-79, 1107, 1119-20, 1142, 1144-45, 1151, 1153, 1161, 1166, 1176-77, 1195, 1201-02, 1274, 1278, 1288, 1290-91, 1293, 1295-96, 1301, 1308-09, 1326, 1328, 1354, 1424, 1447, 1451, 1467, 1481-82, 1493-94, 1500-21, 1537, 1543, 1555-56, 1559, 1562, 1564, 1569-71, 1576-77, 1579, 1586-87, 1592, 1599-602, 1614-16, 1621, 1624-27, 1631, 1643, 1646-48, 1652, 1662, 1724, 1761, 1784, 2084, 2236, 2238, 2245, 2254, 2277, 2299-300, 2342, 2344, 2364-66, 2368-69, 2395, 2450, 2452, 2558, 2677-82, 2693, 2698-99, 2709, 2712, 2716, 2731-32, 2734-38, 2742, 2744-48, 2761-69, 2792, 2801-02, 2822-23, 2896, 2911, 2915-16, 2919, 2927, 3035, 3066, 3095-102, 3104-06, 3110, 3115-17, 3154, 3191, 3201, 3208, 3213, 3217, 3219, 3230, 3232, 3234-35, 3238-39, 3242, 3246-47, 3249-59, 3261-65, 3267, 3277-79, 3292-95, 3299-300, 3303, 3383, 3414-15, 3419-22, 3424-25, 3430, 3432-34, 3438, 3452, 3466-71, 3483-88, 3494, 3496, 3500, 3514, 3536, 3538, 3556-57, 3563, 3569-70, 3577, 3587, 3589-90, 3595-96, 3598, 3606-07, 3611-13, 3615-16, 3619, 3621, 3658, 3641-44, 3649-51, 3652-53, 3655, 3657-58, 3677-78, 3739, 3903, 3908, 3942-43, 3954, 3961, 4038, 4046; E336/3.

Ground 20. The Chamber erred in law in relying on certain expert evidence when the individuals identified as experts:

- (a) were not appropriately qualified. *See paras* 49-50, 66, 103, 105, 817, 2493, 2644, 3192, 3196, 3215, 3217-19, 3226, 3247, 3253, 3879, 3953; E215, E367, E388, E415.
- (b) were not in fact summoned as experts. *See paras* 50, 252, 285, 360, 297, 1884, 1984, 3217-19, 3226; E408/4, E408/5, E444/1, E459.

Ground 21. The Chamber erred in law and in fact in relying on certain expert evidence when:

- (a) the bases for the experts' conclusions were unspecified or untested. *See* paras 49-50, 66, 106, 267, 2536, 2778, 3194-96, 3219, 3247, 3252-53, 3300, 3364, 3953, 4045.
- (b) the experts were testifying about a matter outside of their area of expertise. *See* paras 49-50, 66, 229, 252, 255, 258, 297, 817, 1108, 2533-34, 2644, 3194, 3204, 3208, 3217-19, 3230, 3226, 3300, 3533, 3631, 3636, 3775, 4045; E388, E404/8.

Ground 22. The Chamber erred in law and in fact in its assessment of the reliability and credibility of certain witnesses and civil parties. *See* paras 49-53, 61, 342, 362, 398, 459, 558, 1007, 1020, 1424, 2080-85, 2183, 2668-74, 2677-82, 2734, 2736, 2738, 2742, 2744-47, 2759, 2771, 2766, 2768, 2822-23, 3185, 3191-92, 3927, 3938-39, 3986, 4080, 4103, 4134, 4136; E336/3.

Ground 23. The Chamber erred in law and in fact in relying on speculative or opinion evidence of fact witnesses to reach findings. *See* paras 49, 61, 292, 294, 342, 362, 398, 459, 905, 1023-25, 1047, 1057, 1089, 1093-94, 1098-100, 1424, 1733, 1769, 1772-73, 1931, 1938, 1967, 1969-72, 2054, 2183, 2668-74, 2738, 2744-49, 2770, 2926, 2977, 3219, 3239, 3286, 3294, 3296-97, 3539, 3557-58, 3688-90, 3746, 3751, 3891, 3927, 3930, 3938-39, 3954, 3986, 4015-17, 4020, 4045, 4069, 4080, 4134, 4136.

Ground 24. The Chamber erred in law and in fact in its treatment of discrepancies between individuals' written statements and in-court testimony or unsworn evidence. *See* paras 51-53, 62, 901, 1212, 1960, 1992, 2084, 2445, 2668-74, 2677-82, 2734, 2736, 2738, 2752, 2759, 3186, 3196, 3649.

Ground 25. The Chamber erred in law and in fact, and abused its discretion, in unduly relying on untested written evidence to reach findings, including, *inter alia*, written records of interview, Case 001 transcripts of individuals who did not appear in Case 002, DC-Cam interviews, and civil party applications. *See* paras 51, 69-73, 243, 250, 264, 267-68, 277, 282, 285, 289-90, 292-93, 360, 367-68, 373, 376, 388-89, 427, 437, 451, 483, 508-09, 515, 566, 1020, 1161, 1271, 1293, 1447, 1467, 1481-82, 1493-94, 1498, 1500, 1559, 1568-69, 1576, 1579, 1586-87, 1600, 1604, 1624, 1631, 1731, 1761, 1784, 1969-71, 2084, 2088, 2132, 2141, 2236, 2238, 2240, 2277, 2300, 2335, 2337, 2343, 2364, 2366, 2369, 2392, 2438, 2450, 2464, 2466, 2496, 2558, 2679, 2693, 2712, 2732, 2738, 2746, 2748, 2752, 2755, 2763, 2772, 2778, 2792, 2802, 2895, 2899, 2911, 2915-16, 2919, 3030, 3035, 3095-102, 3105, 3110, 3115-17, 3154, 3199, 3201, 3213, 3215, 3219, 3230, 3241, 3246-47, 3249, 3251-53, 3255, 3261-63, 3292, 3295, 3299-300, 3302-04, 3424, 3430,

3432, 3434, 3438, 3471, 3536, 3563, 3570, 3643, 3681, 3746, 3751, 3879, 3891, 3954, 4038; E336/3.

Ground 26. The Chamber erred in law and abused its discretion in finding that a rebuttable presumption of *prima facie* authenticity and reliability attaches to certain documents, and the degree to which it relied on such evidence to reach findings. This is most notable in the Chamber’s treatment of the collection of documents known as the “Tram Kak District Records”, the vast majority of which are held at DC-Cam and are copies or copies of copies. *See* paras 46, 419, 501, 836, 839-40, 872, 877-78, 885, 903, 911, 914, 920, 922-26, 929, 933, 935, 944, 960, 978-79, 1007, 1013-14, 1019, 1024-25, 1030, 1050-51, 1055-57, 1059, 1063-64, 1066, 1068, 1080-82, 1107, 1122-24, 1136, 1467, 2115-16, 2119, 2122-23, 2289, 2296-97, 2299, 2369, 2397, 2436-37, 2443, 2549-51, 2644, 2683, 2695-97, 2700-01, 2705-07, 2714-15, 2717-29, 2737, 2743, 2748-49, 2768, 2770, 2789, 2794-98, 2800, 2803-06, 2809, 3058, 3421, 3434, 4048; E346/3.

Ground 27. The Chamber erred in law in imposing restrictions on the use of “torture-tainted evidence”, and in its assessment as to whether the presumption that evidence was “torture-tainted” had been rebutted in certain instances. *See* paras 74-77, 81, 569, 1847-49, 2268, 2289, 3783; E350/8, E399/5.

II. HISTORICAL BACKGROUND AND THE CPK’S COMMUNICATION AND ADMINISTRATIVE STRUCTURES

The following grounds of appeal are alleged errors that invalidate the Chamber’s findings in relation to the historical background of events that took place in DK and to the CPK’s communication and administrative structures and, in turn, convictions that rely on those impugned findings:

Ground 28. The Chamber erred in law and in fact in failing to adequately consider or address the Defence’s submissions regarding the existential threat to Cambodian sovereignty posed by Vietnam since at least the establishment of the Indochinese Communist Party and throughout the DK period. *See* paras 196-215.

Ground 29. The Chamber erred in law and in fact in finding that the CPK used secrecy to shroud its operations and decision-making process. *See* paras 342, 362, 398, 459, 1424, 2183, 3927, 3938-39, 3986, 4080, 4134, 4136.

Ground 30. The Chamber erred in law and in fact in its vague use of language, such as its nebulous use of terms like “Office 870”, to broadly deduce Nuon Chea’s knowledge of important events or facts. *See* paras 362-65, 1468.

Ground 31. The Chamber erred in law and in fact in finding that, outside the “Party Centre”, there was minimal lateral communication between levels in the CPK administrative structure, *e.g.*, between zones. *See* para. 483.

Ground 32. The Chamber erred in law and in fact in finding that the “Party Centre” had direct control over various military divisions. *See* paras 424-54.

Ground 33. The Chamber erred in law and in fact in finding that Nuon Chea saw most of the telegrams sent to Pol Pot during the DK period. *See* para. 486.

Ground 34. The Chamber erred in law and in fact, and abused its discretion, in its assessment of evidence in relation to the historical background of events that took place in DK, or the CPK’s communication or administrative structures, as follows:

- (a) in finding that excerpts of CPK Standing Committee minutes obtained by Christopher Goscha can be used to corroborate minutes obtained from other sources. *See* paras 351-54.
- (b) in finding that, notwithstanding its characterisation of the CIA’s Foreign Broadcast Information Service reports as indirect evidence, these reports could be relied on if sufficiently corroborated by other sources. *See* paras 469-70.
- (c) in finding limited contemporaneous documents to be sufficient to establish that the “Party Centre” issued general directives to the “lower echelons” by telegraph that dealt with “all aspects of the country”. *See* para. 493.

III. NUON CHEA’S ROLES AND FUNCTIONS

The following grounds of appeal are alleged errors that invalidate the Chamber’s findings as to Nuon Chea’s roles and functions (except at the S-21 Security Centre, which is dealt with separately) and, in turn, convictions that rely on those impugned findings:

Ground 35. The Chamber erred in law and in fact in finding that Nuon Chea was one of the principal authors of the Revolutionary Flag magazine during the DK period. *See* paras 476, 528, 545, 4080.

Ground 36. The Chamber erred in law and in fact in finding that Nuon Chea was at least informally responsible for the discipline of cadres and other internal security matters. *See* paras 546-47, 4189.

Ground 37. The Chamber erred in law and in fact in finding that Nuon Chea not only oversaw all CPK activities extending beyond the roles and responsibilities formally

entrusted to him during the DK period but together with Pol Pot, exercised ultimate decision-making power in the CPK. *See* paras 548, 551-53, 559-61, 4082.

Ground 38. The Chamber erred in law and in fact in finding that Nuon Chea was involved in military matters other than those relating to the conflict with Vietnam, and that he received detailed information about, and had considerable influence over, DK military policy and its implementation. *See* paras 359, 552-59, 4083.

Ground 39. The Chamber erred in law and in fact in finding that Nuon Chea attended a meeting in 1978 with other CPK leaders during which members of the East Zone were declared as internal enemies to be purged and at which Nuon Chea allegedly spoke of the arrest of several East Zone members. *See* para. 558.

IV. CHAPEAU ELEMENTS AND GENERAL REQUIREMENTS FOR CRIMES

The following grounds of appeal are alleged errors that invalidate the Chamber's findings in relation to chapeau elements and general requirements for some of the overarching crimes and, in turn, all convictions in the Judgement for each of those crimes:

Ground 40. The Chamber erred in law and in fact in its factual overview of the events within the temporal scope of Case 002/02 by mischaracterising the nature of CPK policies through the following findings:

- (a) that the population was forcibly transferred or relocated depending on seasonal labour requirements and to advance class struggle. *See* para. 278.
- (b) that cooperatives and worksites were operational throughout the country in order to control the population and wage class struggle. *See* para. 279.
- (c) that the CPK's collectivist approach aimed at waging class struggle also encompassed family matters such as marriage. *See* para. 279.
- (d) that the CPK adopted a policy to regulate family-building and marriage in an attempt to control the people and increase DK's population. *See* para. 279.

Ground 41. The Chamber erred in law and in fact in its analysis of the armed conflict between DK and Vietnam by downplaying the nature of hostilities and, in particular, Vietnam's aggression. *See* para. 288.

Ground 42. The Chamber erred in law and in fact in making the following findings in relation to the factual context of Case 002/02:

- (a) that the CPK dismantled the judiciary. *See* paras 276, 417-18, 3944, 4008.
- (b) that there were at least 200 security centres and execution sites operating across DK during the relevant period. *See* paras 294, 3930, 3954.

Ground 43. The Chamber erred in law and in fact in finding that, for the purposes of satisfying the chapeau elements for crimes against humanity, the implementation of CPK policies constituted a single widespread and systematic attack against the entire civilian population of Cambodia on discriminatory grounds. *See* paras 311, 313, 317, 319-20.

Ground 44. The Chamber erred in law in its interpretation of “civilian population” as a chapeau element for crimes against humanity, as follows:

- (a) in circumventing the “civilian” requirement by treating the alleged events of the case as one single attack against the entire population of Cambodia, therefore downplaying the relevance of the fact that large numbers of the alleged victims were members of the DK’s armed forces. *See* paras 311-12.
- (b) in finding that Vietnamese soldiers not taking a direct part in hostilities enjoyed the same protections as civilians. *See* para. 318.

Ground 45. The Chamber erred in law in its application of the protections granted to individuals engaged in espionage pursuant to Geneva Convention III and Additional Protocol I. *See* paras 333-34.

V. APPLICABLE LAW

A. APPLICABLE LAW FOR CRIMES

The following grounds of appeal are alleged errors that invalidate the Chamber’s findings in relation to the applicable law for some of the overarching crimes and, in turn, all convictions in the Judgement for each of those crimes:

Ground 46. The Chamber erred in law in its interpretation of Article 8(3) of the ICCPR in relation to forced labour. *See* para. 669.

Ground 47. The Chamber erred in law and in fact in finding that, in relation to the crime against humanity of deportation, the existence of an agreement between authorities representing parties to an armed conflict to exchange groups of persons displaced from each side does not affect the lawfulness of the displacement. *See* para. 685.

Ground 48. The Chamber erred in law in making the following findings in relation to the crime against humanity of imprisonment:

- (a) that the deprivation of an individual’s liberty is, without exception, unjustifiably arbitrary if imposed without due process of law. *See* paras 692-93, 698.
- (b) that the procedural safeguards set out under Article 43 of Geneva Convention IV are instructive to the assessment of the lawfulness of deprivation of liberty. *See* para. 694.
- (c) its interpretation of the proper conditions for a State’s lawful derogation from their obligations under the ICCPR pursuant to Article 4(1) of the ICCPR. *See* para. 696.

Ground 49. The Chamber erred in law in finding that some acts, *per se*, may amount to torture, including beatings. *See* para. 704.

Ground 50. The Chamber erred in law in finding that the specific conduct underlying the crime against humanity of other inhumane acts does not need to be expressly criminalised under international law. *See* para. 725.

Ground 51. The Chamber erred in law in its definition of rape. *See* para. 731.

Ground 52. The Chamber erred in law in relying on the *amicus curiae* brief on forced marriage, and the jurisprudence of the International Criminal Court and the Special Court for Sierra Leone, in assessing the legal status and elements of forced marriage between 1975 and 1979. *See* paras 744-47.

B. APPLICABLE LAW FOR INDIVIDUAL CRIMINAL RESPONSIBILITY

The following grounds of appeal are alleged errors that invalidate the Chamber's findings in relation to the applicable law for individual criminal responsibility (*i.e.*, modes of liability) and, in turn, all convictions in the Judgement under the convicted modes of liability of aiding and abetting and superior responsibility that rely on the impugned findings:

Ground 53. The Chamber erred in law in failing to consider that, in relation to the direct mode of liability of aiding and abetting, an alleged aider and abettor must have knowledge of the perpetrator's specific intent. *See* para. 3722.

Ground 54. The Chamber erred in law in making the following findings in relation to the alternative and indirect mode of liability of superior responsibility:

- (a) that superior responsibility may ensue on the basis of both direct and indirect relationships of subordination. *See* para. 3725.
- (b) what constitutes necessary and reasonable measures to prevent or punish criminal conduct for the purposes of superior responsibility. *See* para. 3726.

VI. JOINT CRIMINAL ENTERPRISE

A. COMMON PURPOSE (INCLUDING CPK POLICIES)

The following grounds of appeal are alleged errors that invalidate the Chamber's findings in relation to the common purpose and, in turn, all convictions in the Judgement based on JCE liability:

Ground 55. The Chamber erred in law and in fact in finding that part of the common purpose of the JCE that included senior CPK leaders such as Nuon Chea was to "radically

transform the population into an atheistic and homogenous Khmer society”. *See* paras 3743, 3918.

Ground 56. The Chamber erred in law and in fact in finding that the shared intent between Nuon Chea and other alleged JCE members included a policy to establish and operate cooperatives and worksites that encompassed the following conduct:

- (a) deliberately imposing harsh living and working conditions in order to exercise control over the population. *See* para. 3926.
- (b) deliberately maintaining harsh living and working conditions and not responding to such conditions adequately, despite knowledge of the effect of these conditions. *See* para. 3913.
- (c) ordering increases to work hours while broadcasting radio messages about reductions in work hours. *See* paras 3910-11.
- (d) systematically singling out New People, former Khmer Republic officials, traitors, counter-revolutionaries, and other detractors of the revolution who were perceived as being unable to fulfil revolutionary goals, for adverse treatment on political grounds. *See* para. 3924.

Ground 57. The Chamber erred in law and in fact in finding that the shared intent between Nuon Chea and other JCE members included a policy to re-educate “bad elements” and kill “enemies” that encompassed the following conduct:

- (a) identifying an “enemy” based on identity rather than activity. *See* paras 3751-52, 3754, 3762-65, 3767, 3769, 3772, 3774-75, 3777-79, 3781, 3783-91, 3793, 3797-800, 3803-04, 3806, 3812, 3814, 3817-18, 3821, 3823-25, 3828, 3830, 3832, 3838.
- (b) targeting “real and perceived enemies” of the CPK, which included CIA, KGB and Vietnamese agents, former Khmer Republic officials, counter-revolutionaries, detractors and traitors of the revolution, feudalists, ethnic Vietnamese, and others for adverse treatment on political grounds. *See* para. 3982.
- (c) “smashing” or “sweeping (cleanly) away”, which meant “to kill” unless the context indicates otherwise. *See* paras 3858-59.
- (d) targeting the Vietnamese for adverse treatment throughout the DK period. *See* para. 3971.
- (e) using children and family members in a vital role to combat enemy activity. *See* para. 3860.

Ground 58. The Chamber erred in law and in fact in finding that “real or perceived enemies” of the CPK were a discernible political group, and that CIA, KGB and Vietnamese agents, former Khmer Republic officials, counter-revolutionaries, detractors and traitors of the revolution, feudalists, ethnic Vietnamese, Cham, and others could each be considered a discernible political group. *See* paras 1174, 1407, 1409, 1687, 1821, 2600, 2837-38, 2982-83, 2995, 3138-39, 3323, 3329, 3982.

Ground 59. The Chamber erred in law and in fact in finding that the shared intent between Nuon Chea and other JCE members included a policy to target specific groups that encompassed the following conduct:

- (a) targeting the Cham on the basis of their group identity as part of the CPK’s overarching goal to create an atheistic and homogeneous Khmer society. *See* paras 3990, 3993-94.

- (b) targeting the Vietnamese for adverse treatment throughout the DK period. *See* para. 3999.
- (c) abolishing the practice of Buddhism throughout DK. *See* paras 4015-17, 4020.
- (d) targeting former Khmer Republic officials for adverse treatment throughout the DK period. *See* paras 4026-49.

Ground 60. The Chamber erred in law and in fact in finding that the shared intent between Nuon Chea and other JCE members included a policy to regulate marriage and family-building through coercive means, and that the Vietnamese were the primary “enemy” against which this policy was designed to defend. *See* paras 3539-63, 4063.

Ground 61. The Chamber erred in law and in fact in finding that Nuon Chea was part of a JCE that shared a common purpose with a plurality of CPK leaders that included, up until the date of their respective arrests or suicide, Sao Phim, Ruos Nhim, Vorn Vet, and Chou Chet. *See* para. 4069.

Ground 62. The Chamber erred in law and in fact in finding that Sao Phim was not a Standing Committee member while reaching the opposite conclusion elsewhere in the Judgement. *See* para. 3740.

Ground 63. The Chamber erred in law and in fact in its treatment of the Defence case regarding the proper content of the common purpose, which was not of a criminal character, including as follows:

- (a) applying the same “holistic appraisal” standard to its assessment of the Defence and Co-Prosecutors’ cases in relation to the content of the common purpose. *See* paras 3871, 3933, 4014, 4025.
- (b) failing to adequately consider Defence submissions in relation to the establishment and operation of cooperatives and worksites, and the treatment of Buddhists and former Khmer Republic officials. *See* paras 3929, 4014, 4025.
- (c) failing to accord adequate weight to relevant evidence that could have established the proper content of the common purpose. *See* paras 3727-4074.

Ground 64. The Chamber erred in law and in fact in erroneously relying on certain evidence throughout its analysis of the content of the common purpose, including as follows:

- (a) misinterpreting or taking CPK statements, including charged or Communist language, out of proper context. *See* paras 3747, 3818, 3829-30, 3847-55.
- (b) finding that, although it could not be established beyond reasonable doubt that Nuon Chea participated in the Standing Committee's visit to Battambang and Pursat provinces (Northwest Zone) in late August 1975, Nuon Chea was aware of the report arising from that visit and participated in the development of plans and policies reflected therein. *See* para. 3888.
- (c) requiring the Defence to raise more than reasonable doubt in order to overturn the Co-Prosecutors’ case. *See* para. 3941.
- (d) applying double standards to its assessment of evidence relied on by the Defence. *See* paras 3886, 4030-31, 4035, 4037, 4040.
- (e) relying on documents whose authors were unknown, or provenance was unverified, as containing credible and authoritative descriptions of CPK policy. *See* paras 3746, 3751, 3891.

- (f) relying on evidence from events of which it is unsure even took place. *See* para. 3735.
- (g) unduly relying on the unsworn evidence of civil parties. *See* paras 3739, 3942-43, 4038.
- (h) unduly relying on the evidence of Philip Short and Henri Locard. *See* paras 3953, 4045.
- (i) unduly relying on DC-Cam's study regarding DK security centres. *See* para. 3951.

Ground 65. The Chamber erred in law and in fact finding that the commission of the charged crimes was encompassed by the common purpose, and that the common purpose was accordingly criminal in character. *See* paras 3919-28, 3973-87, 3991-98, 4001-12, 4018-22, 4050-61, 4064-67, 4068.

Ground 66. The Chamber erred in law and in fact in failing to sufficiently link the purported commission of grave breaches of the Geneva Conventions to the common purpose. *See* paras 4006-11.

Ground 67. The Chamber erred in law and in fact in finding that, to establish liability under JCE I, it is sufficient to merely show that the charged crimes could have furthered an alleged CPK policy and were therefore encompassed by the common purpose. *See* paras 3865, 3920, 3922-23, 3925-27, 3976, 3978-81, 3983, 3985-86, 3993-97, 4003-05, 4007-11, 4021, 4053, 4056, 4060, 4066.

B. NUON CHEA'S "CROCODILE" DEFENCE

The following grounds of appeal are alleged errors that invalidate the Chamber's findings in relation to Nuon Chea's "Crocodile" defence, its related findings as to the common purpose of alleged CPK policies and, in turn, all convictions in the Judgement based on JCE liability:

Ground 68. The Chamber erred in law and in fact, and abused its discretion, in refusing to summon key Defence witnesses Heng Samrin, Ouk Bunchhoeun, and Pol Saroeun but nevertheless making findings in relation to Nuon Chea's "Crocodile" defence that either unduly relied on the witnesses' evidence or would have been materially altered by the witnesses' testimony. Emblematic examples include:

- (a) finding that there was no reliable evidence of Sao Phim's plans to stage a *coup d'état* against Pol Pot until Sao Phim suspected Pol Pot's attempts to remove him from power in 1978. *See* paras 2039-50.
- (b) finding that in fact it was Pol Pot who was considered to be a traitor. *See* para. 292.
- (c) finding that there was no support on the Case File for the submission that Vietnamese agents were active in the Northwest Zone, or that they supported a continuing Indochinese Worker's Party in Cambodia. *See* para. 1969.

Ground 69. The Chamber erred in law and in fact, and abused its discretion, in refusing to summon the following witnesses sought by the Defence and dismissing aspects of Nuon Chea's "Crocodile" defence that these witnesses could have substantiated:

- (a) three witnesses interviewed by filmmakers Robert Lemkin and Thet Sambath, namely Chan Savuth (W3), W1, and W4. *See* para. 1850.
- (b) former Division 310 members Vung Vei, Thach Siek, and Khoem Samhuon. *See* paras 1905-06; E443.

Ground 70. The Chamber erred in law and fact, and abused its discretion, in refusing to admit certain documentary evidence or conduct investigations to obtain evidence requested by the Defence but nevertheless making findings in relation to Nuon Chea's "Crocodile" defence that would have been materially altered by this evidence, including, *inter alia*:

- (a) transcripts of three witnesses interviewed by filmmakers Robert Lemkin and Thet Sambath who could have offered key evidence in relation to various attempted *coups d'état*, namely Chan Savuth (W3), W1, and W4. *See* paras 1850, 1871, 1934, 1940, 1942, 1952-53, 1960, 1967, 1969-71, 2005, 2011, 2015; E416/4.
- (b) documentary evidence of the involvement of Autonomous Sector 106 and its Secretary Pa Phal *alias* Soth in the planning and preparation of an attempted *coup d'état*, and in the explosions in Siem Reap in February 1976. *See* paras 1876, 1885.

Ground 71. The Chamber erred in law and in fact in imposing the Prosecution's burden of proof on the Defence and requiring the Defence to raise more than reasonable doubt when dismissing key contentions of Nuon Chea's "Crocodile" defence, including in making the following findings:

- (a) that Sao Phim had not sought to assassinate Pol Pot in Phnom Penh in 1975. *See* para. 1871.
- (b) that the assertion that Pa Phal *alias* Soth had been planning a rebellion in Autonomous Sector 106 was speculation, and that the Siem Reap explosions were not part of a plan to rebel against Pol Pot. *See* paras 1886-87.
- (c) that the gunfire and explosions at the Fine Arts School and Royal Palace were not part of an attempted *coup d'état*. *See* paras 1896-97.
- (d) that Division 310's storage of weapons does not lead to the conclusion that there was a plot to overthrow Pol Pot. *See* paras 1915-16.
- (e) that the stockpiling of weapons, food and other supplies in the Northwest Zone was done without any intent to foment rebellion, was itself unremarkable, or the evidence was not credible to establish that it even happened. *See* paras 1946-53.
- (f) that Vietnam did not require assistance from Sao Phim to enter into Cambodian territory. *See* para. 2010.

Ground 72. The Chamber erred in law in applying double standards to determine that the evidence underpinning the accepted Defence submission that Sbauv Him *alias* Oeun was planning to lead Division 310 in a *coup* was unreliable due to a lack of clarity, equivocal descriptions, a common narrative, or being based on hearsay and impossible to test. *See* para. 1928.

Ground 73. The Chamber erred in law and in fact in its assessment of the reliability and credibility of the following witnesses substantiating Nuon Chea's "Crocodile" defence:

- (a) Sem Hœurn. *See* para. 1912.
- (b) Sem Om. *See* paras 108-09, 1916.
- (c) Suoy Sao. *See* paras 108-09, 1919.
- (d) Lat Suoy. *See* para. 1960.

Ground 74. The Chamber erred in law and in fact in finding that Sbauv Him *alias* Oeun was motivated to overthrow the CPK leadership because he disagreed with its policies. *See* para. 1931.

Ground 75. The Chamber erred in law and in fact in finding that Sao Phim's constant communication with Standing Committee members made it difficult for Sao Phim to move against them. *See* para. 2005.

Ground 76. The Chamber erred in law and in fact in finding that Ruos Nhim continued to fully implement the policies of the "Party Centre" throughout his tenure as Secretary of the Northwest Zone. *See* paras 1938, 1967, 1972

Ground 77. The Chamber erred in law and in fact in finding that Sao Phim's participation in East Zone purges in 1976, including of Suas Neou *alias* Chhouk, meant that he was a trusted member of the Standing Committee at this time. *See* paras 2013-15.

Ground 78. The Chamber erred in law and in fact in finding that there was no credible evidence that Sao Phim had contact with Vietnam as part of an attempt to overthrow Pol Pot. *See* paras 1984-93, 2063.

Ground 79. The Chamber erred in law and in fact in finding that Sao Phim's family members, including his wife Yeay Kirou, were killed by forces loyal to Pol Pot. *See* para. 2054.

Ground 80. The Chamber erred in law and in fact in its assessment of the relevance of the Defence's submissions regarding the existential threat to Cambodian sovereignty posed by Vietnam. *See* para. 2065.

VII. NUON CHEA'S INDIVIDUAL CRIMINAL RESPONSIBILITY

The following grounds of appeal are alleged errors that invalidate the Chamber's findings in relation to Nuon Chea's individual criminal responsibility and in turn, all convictions in the Judgement based on either JCE, aiding and abetting, or superior responsibility liability:

Ground 81. The Chamber erred in law and in fact in making the following findings in relation to Nuon Chea's awareness of the substantial likelihood of the commission of crimes:

- (a) that Nuon Chea, through his purported role in propaganda-related matters, must have known that the CPK's promotion of vigilance and anger against "enemies" would inevitably lead to violence. *See* para. 4080.
- (b) that the majority of people belonging to the CPK ruling class had little formal education, were strictly disciplined, indoctrinated, and taught to deceive people and to behave in accordance with the principle of secrecy, and that Nuon Chea could not ignore that giving power to such people would lead to the unquestioning implementation of the Party line without the exercise of proper judgement. *See* para. 4080.
- (c) that the only reasonable expectation from the creation of a nationwide system of cooperatives, worksites, regulated marriages, and security centres under the umbrella of the CPK's propaganda of vigilance and anger against "enemies" was that it would lead to mistreatment and death, and that such a system would involve the commission of a large number of crimes against humanity, war crimes, and genocide. *See* para. 4081.

Ground 82. The Chamber erred in law and in fact in making the following findings in relation to Nuon Chea's contemporaneous knowledge of the commission of crimes by virtue of his senior position within the CPK:

- (a) that Nuon Chea had oversight of all CPK activities extending beyond the roles and responsibilities formally entrusted to him. *See* para. 4082.
- (b) that Nuon Chea, as the CPK's Deputy Secretary and as a full-rights member of both the Central and Standing Committee, was privy to information that would have put him on notice that the charged crimes were being committed at the time of their occurrence. *See* para. 4082.

Ground 83. The Chamber erred in law and in fact in making the following findings in relation to Nuon Chea's contemporaneous knowledge of the commission of crimes due to his knowledge of the policies by which the alleged common purpose was implemented:

- (a) that Nuon Chea had knowledge of the crimes being committed in the course of establishing and operating cooperatives and worksites. *See* paras 4085, 4088.
- (b) that Nuon Chea had knowledge of the crimes being committed in the course of establishing and operating security centres and execution sites. *See* para. 4094.
- (c) that Nuon Chea had knowledge of the crimes being committed against the Cham during the DK period. *See* paras 4097-98, 4100.
- (d) that Nuon Chea had knowledge of the crimes being committed against the Vietnamese during the DK period. *See* para. 4103.
- (e) that Nuon Chea had knowledge of the crimes being committed against Buddhists during the DK period. *See* paras 4104-05.
- (f) that Nuon Chea had knowledge of the crimes being committed against former Khmer Republic officials during the DK period. *See* para. 4109.
- (g) that Nuon Chea had knowledge of the crimes being committed pursuant to the CPK's policy to regulate marriage and family-building. *See* para. 4110.

Ground 84. The Chamber erred in law and in fact in finding that Nuon Chea had knowledge of the crimes within the scope of Case 002/02 after their commission. *See* paras 4112-15.

Ground 85. The Chamber erred in law and in fact in making the following findings in relation to Nuon Chea's personal implementation and dissemination of the alleged common purpose:

- (a) that Nuon Chea spoke of eliminating the Vietnamese during study sessions with CPK cadres in Phnom Penh. *See* para. 4131.
- (b) that Nuon Chea, by virtue of his position on the Standing Committee, ordered the arrest, torture, and execution of hundreds of soldiers from Centre Division 170 brought to the S-21 Security Centre in 1976. *See* para. 4138.

Ground 86. The Chamber erred in law and in fact in finding that Nuon Chea intended the commission of crimes at cooperatives and worksites. *See* para. 4147.

Ground 87. The Chamber erred in law and in fact in finding that Nuon Chea intended the adverse treatment of CPK "enemies" through crimes committed in connection with the "purges" and at security centres and execution sites. *See* paras 4148-52.

Ground 88. The Chamber erred in law and in fact in finding that Nuon Chea intended the commission of crimes as part of the CPK's policy to target the Cham for adverse treatment. *See* para. 4154.

Ground 89. The Chamber erred in law and in fact in finding that Nuon Chea intended the commission of crimes as part of the CPK's policy to target the Vietnamese for adverse treatment, including by finding:

- (a) that Nuon Chea played a key role in advocating hatred of the Vietnamese. *See* para. 4158.
- (b) that Nuon Chea's words and actions during the DK period demonstrated his contempt for the Vietnamese, and his direct intent to kill, on a large scale, the Vietnamese in Cambodia from April 1977 to 6 January 1979. *See* paras 4160-61.

Ground 90. The Chamber erred in law and in fact in finding that that Nuon Chea intended the commission of crimes as part of the CPK's policy to target the Buddhists for adverse treatment. *See* paras 4164-65.

Ground 91. The Chamber erred in law and in fact in finding that Nuon Chea intended the commission of crimes as part of the CPK's policy to target former Khmer Republic officials. *See* paras 4166-69.

Ground 92. The Chamber erred in law and in fact in finding that Nuon Chea intended the commission of crimes as part of the CPK's nationwide policy regulating marriage, and that he shared the intent of other JCE members to commit, through a JCE, the crime against humanity of other inhumane acts through both conduct characterised as forced marriage and rape in the context of forced marriage. *See* paras 4170-72.

Ground 93. The Chamber erred in law and in fact in making the following findings in relation to Nuon Chea's individual criminal responsibility under the direct mode of liability of aiding and abetting:

- (a) that Nuon Chea is responsible for aiding and abetting the crime against humanity of murder with *dolus eventualis* at the S-21 Security Centre, Kraing Ta Chan Security Centre, Phnom Kraol Security Centre, Tram Kak Cooperatives, 1st January Dam Worksite, Trapeang Thma Dam Worksite, and Kampong Chhnang Airfield Construction Site. *See* paras 4180-86.
- (b) that Nuon Chea's conduct had a substantial effect on the commission of the crime against humanity of murder with *dolus eventualis*, as it encouraged lower-level CPK officials to act zealously in implementing CPK policies. *See* paras 4181-84.
- (c) that Nuon Chea was at all times aware of the elements of the crime against humanity of murder with *dolus eventualis*, and that he facilitated its commission. *See* para. 4183.

Ground 94. The Chamber erred in law and in fact in making the following findings in relation to Nuon Chea's individual criminal responsibility under the indirect and alternative mode of liability of superior responsibility:

- (a) that Nuon Chea is responsible as a superior for all charged crimes against humanity, grave breaches of the Geneva Conventions, and genocide. *See* para. 4197.
- (b) that a superior-subordinate relationship existed between Nuon Chea and the zone secretaries and between Nuon Chea and the military commanders, and that through the strict chain of command on both the administrative and military sides of the DK government, Nuon Chea had an indirect relationship of subordination with all persons who committed the crimes within the scope of Case 002/02. *See* para. 4187.
- (c) that Nuon Chea, by virtue of the CPK Statute and his assigned responsibilities, possessed both *de facto* and *de jure* authority to discipline insubordinate members of the CPK and the military. *See* para. 4189.
- (d) that Nuon Chea knew that his subordinates were about to or had committed crimes, or that Nuon Chea had reason to know this as he possessed information sufficiently alarming to justify further inquiry. *See* paras 4190-94.
- (e) that Nuon Chea had the material ability to prevent or punish crimes allegedly committed pursuant to CPK policy, and that he not only failed to do so, but partly caused their commission by ordering them. *See* paras 4196-97.

TIER 3. GROUNDS INVALIDATING INDIVIDUAL CONVICTIONS

VIII. TRAM KAK COOPERATIVES

The following grounds of appeal are alleged errors that invalidate all convictions in relation to the Tram Kak Cooperatives, except for those relating to the treatment of former Khmer Republic officials and Vietnamese, which are addressed separately:

Ground 95. The Chamber erred in law and in fact in finding that a holistic reading of the Closing Order was sufficient to provide notice of the charges against Nuon Chea in relation to the Tram Kak Cooperatives. *See* paras 808, 1162.

Ground 96. The Chamber erred in law and in fact in its assessment of the Defence case on the Tram Kak Cooperatives, including:

- (a) in failing to address the Defence's submissions regarding the circumstances under which the Tram Kak Cooperatives were established. *See* para. 1155.
- (b) in failing to address the Defence's arguments concerning the Chamber's bias against socialism. *See* paras 1148-49.

Ground 97. The Chamber erred in law and in fact, and abused its discretion, in making the following findings in relation to the authenticity and reliability of the collection of documents known as the "Tram Kak District Records":

- (a) that the provenance of the Tram Kak District Records with DC-Cam reference numbers D00167 to D00298 had been adequately explained, primarily through the account of Ben Kiernan, who refused to testify before the ECCC. *See* para. 836; E346/3.
- (b) that the authenticity of the Tram Kak District Records may be assessed in a holistic manner. *See* para. 839.
- (c) that the Tram Kak District Records are authentic, even in the absence of a clear chain of custody, or in instances where there are strong indicia of tampering with a document. *See* paras 840, 872, 877-78, 885.

Ground 98. The Chamber erred in law and in fact in finding that the evidence established *Ta Mok's* ongoing involvement with events in the Tram Kak district for much of the period covered in the Closing Order. *See* para. 905.

Ground 99. The Chamber erred in law and in fact in finding that evacuees to the Tram Kak district were screened at the Champa Pagoda and that some individuals were killed or disappeared following this process. *See* paras 961-62, 965.

Ground 100. The Chamber erred in law and in fact in making the following findings in relation to the "categorisation" of people at the Tram Kak Cooperatives:

- (a) that the CPK categorised persons at the Tram Kak Cooperatives and that this provided a basis upon which to report and assess a person's conduct and attitude. *See* para. 996.
- (b) that the CPK's policy of categorising persons, if ever implemented at the Tram Kak Cooperatives, was not abolished by at least mid-1978. *See* para. 1007.
- (c) that the CPK set different food rations for different categories of persons based on their class background, and that Depositee Persons were given less food. *See* paras 1009, 1016.
- (d) that the working conditions imposed on persons varied according to their category. *See* para. 1017.
- (e) that the absence of 17 April People working at the Tram Kak District Hospital confirmed the general approach to, and consequence of, the categorisation of the population in the Tram Kak district. *See* para. 1042.

Ground 101. The Chamber erred in law and in fact in finding that New People constituted a political group for the purposes of the crime against humanity of persecution on political grounds at the Tram Kak Cooperatives. *See* paras 813, 1174, 1176-79.

Ground 102. The Chamber erred in law and fact in finding that the crime against humanity of persecution on political grounds has been established at the Tram Kak Cooperatives in relation to New People. *See* paras 1173-79.

Ground 103. The Chamber erred in law and in fact in making the following findings in relation to the general living and working conditions at the Tram Kak Cooperatives:

- (a) that the working conditions at the Tram Kak Cooperatives, which purportedly resulted in numerous deaths, were well-known. *See* para. 1020.
- (b) that the maintenance of difficult living and working conditions in the Tram Kak district demonstrated that the CPK authorities had willingly imposed such conditions on its inhabitants with the knowledge that it would likely lead to deaths or in the acceptance of the possibility of this consequence. *See* para. 1145.
- (c) that the CPK withheld food as a means of controlling the population. *See* para. 1023.
- (d) that the abolition of private belongings was a means of controlling the population. *See* paras 1024-25.
- (e) that the slightest threat to the CPK's collective system was considered traitorous. *See* para. 1025.
- (f) that it could rely on Riel Son's evidence concerning the alleged causes of death of persons at the Tram Kak District Hospital. *See* para. 1047.

Ground 104. The Chamber erred in law and in fact in recharacterising the facts underlying the crime against humanity of extermination to the crime against humanity of murder with *dolus eventualis* at the Tram Kak Cooperatives. *See* paras 1139-46.

Ground 105. The Chamber erred in law and in fact in finding that the conditions at the Tram Kak Cooperatives amounted to the exercise of all powers attaching to the right of ownership over the inhabitants. *See* para. 1154.

Ground 106. The Chamber erred in law and fact in finding that the crime against humanity of enslavement has been established at the Tram Kak Cooperatives. *See* paras 1154-55.

Ground 107. The Chamber erred in law and in fact in finding that the crime against humanity of other inhumane acts through attacks against human dignity has been established at the Tram Kak Cooperatives. *See* paras 1195-99.

Ground 108. The Chamber erred in law and in fact in making the following findings in relation to conduct that constituted a punishable offence at the Tram Kak Cooperatives:

- (a) that the most serious offences included innocuous conduct and/or speech perceived as attacking the revolution and the collective system. *See* paras 1056-60.
- (b) that food theft was considered a serious offence, especially if perpetrated by New People. *See* para. 1057.

Ground 109. The Chamber erred in law and in fact in making the following findings in relation to arrests at the Tram Kak Cooperatives:

- (a) that New People who opposed the CPK were arrested. *See* para. 1064.
- (b) that Ek Hoeun's evidence concerning an atmosphere of fear at the Tram Kak Cooperatives was reliable. *See* para. 1204.

Ground 110. The Chamber erred in law and in fact in finding that the crime against humanity of other inhumane acts through conduct characterised as enforced disappearances has been established at the Tram Kak Cooperatives. *See* paras 1201-04.

IX. TRAPEANG THMA DAM WORKSITE

The following grounds of appeal are alleged errors that invalidate all convictions in relation to the Trapeang Thma Dam Worksite:

Ground 111. The Chamber erred in law and in fact in requiring the Defence to raise more than reasonable doubt, and in applying double standards to its assessment of evidence, in relation to the reasons underlying *Ta Val's* arrest. *See* para. 1231.

Ground 112. The Chamber erred in law and in fact in applying double standards to its assessment of the reliability and credibility of the witnesses giving evidence in relation to the Trapeang Thma Dam Worksite. *See* paras 1210-14, 1363-66.

Ground 113. The Chamber erred in law and in fact in substantiating its findings on the Trapeang Thma Dam Worksite with evidence elicited in relation to another crime site. *See* paras 1277, 1285.

Ground 114. The Chamber erred in law and in fact in making the following findings in relation to the CPK authorities' knowledge of the conditions at the Trapeang Thma Dam Worksite:

- (a) that there was systematic communication between the local levels and senior CPK leaders on living and working conditions. *See* paras 1249-50.
- (b) that senior CPK leaders had knowledge of the conditions at the Trapeang Thma Dam Worksite and did nothing to address the situation. *See* paras 1252-53, 1287.
- (c) that the “Party Centre” had knowledge that its instructions on working hours were not implemented locally. *See* para. 1277.
- (d) that the CPK authorities deliberately subjected workers at the Trapeang Thma Dam Worksite to conditions that caused severe mental or physical suffering or injury despite being aware of their impact. *See* para. 1418.

Ground 115. The Chamber erred in law and in fact in making the following findings in relation to the working conditions at the Trapeang Thma Dam Worksite:

- (a) that individuals who did not meet their work quotas were punished with increasing severity and ultimately disappeared. *See* paras 1291-94.
- (b) that there were work-related accidents. *See* para. 1272.

Ground 116. The Chamber erred in law and in fact in its assessment of evidence in relation to alleged killings at the Trapeang Thma Dam Worksite, as follows:

- (a) in minimising and applying double standards to the assessment potentially exculpatory evidence. *See* para. 1373.
- (b) in relying on circumstantial evidence when finding that workers were killed after having allegedly lied about having night-blindness. *See* paras 1369, 1379.

Ground 117. The Chamber erred in law and in fact in finding that the crime against humanity of murder has been established at the Trapeang Thma Dam Worksite. *See* paras 1378-80.

Ground 118. The Chamber erred in law and fact in finding that people frequently collapsed and died while working at the Trapeang Thma Dam Worksite. *See* para. 1375.

Ground 119. The Chamber erred in law and in fact in recharacterising the facts underlying the crime against humanity of extermination to the crime against humanity of murder with *dolus eventualis* at the Trapeang Thma Dam Worksite. *See* paras 1384-89.

Ground 120. The Chamber erred in law and in fact in finding that the crime against humanity of enslavement has been established at the Trapeang Thma Dam Worksite. *See* paras 1394-402.

Ground 121. The Chamber erred in law and in fact its assessment of alleged discriminatory treatment of workers at the Trapeang Thma Dam Worksite, including as follows:

- (a) in failing to identify a political group subject to discriminatory treatment. *See* paras 1409-11.
- (b) in finding that New People were subject to discriminatory treatment. *See* para. 1348.

Ground 122. The Chamber erred in law and in fact in finding that the crime against humanity of persecution on political grounds has been established at the Trapeang Thma Dam Worksite. *See* paras 1409-13.

Ground 123. The Chamber erred in law and in fact in finding that the crime against humanity of other inhumane acts through attacks against human dignity has been established at the Trapeang Thma Dam Worksite. *See* paras 1415-21.

Ground 124. The Chamber erred in law and in fact in making the following findings in relation to the alleged disappearances of workers from the Trapeang Thma Dam Worksite:

- (a) that workers who did not meet their work quota were taken away and disappeared. *See* paras 1291-94.
- (b) that workers who disappeared were ultimately deprived of their liberty by the CPK authorities. *See* para. 1425.

Ground 125. The Chamber erred in law and in fact in finding that the crime against humanity of other inhumane acts through conduct characterised as enforced disappearances has been established at the Trapeang Thma Dam Worksite. *See* paras 1424-29.

X. 1ST JANUARY DAM WORKSITE

The following grounds of appeal are alleged errors that invalidate all convictions in relation to the 1st January Dam Worksite, except for those relating to the treatment of former Khmer Republic officials, which are addressed separately:

Ground 126. The Chamber erred in law and in fact in making the following findings on the scope of the Closing Order in relation to the 1st January Dam Worksite:

- (a) that the 6th January Dam and the canal network of the 1st and 6th January Dams formed part of Case 002/02. *See* para. 1434.
- (b) that Baray Choan Dek Pagoda formed part of Case 002/02. *See* para. 1434.

Ground 127. The Chamber erred in law by relying on events outside the scope of the Closing Order to make findings on the treatment of the following groups at the 1st January Dam Worksite:

- (a) New People. *See* paras 1641-53.
- (b) Cham. *See* paras 1655-57.

Ground 128. The Chamber erred in law and in fact in applying double standards to its assessment of the reliability and credibility of former CPK cadres, including Sou Soeur,

Ban Seak, Ieng Chham, Ke Piek Vannak, Or Ho, Pech Sokha, Yean Lon, and Saut Toeung. *See* paras 1439-41, 1444, 1464, 1510, 1516, 1526, 1540, 1546, 1550-51, 1565-66, 1570-71, 1574, 1579, 1584, 1588-89, 1619-20, 1632, 1647, 1651.

Ground 129. The Chamber erred in law in its treatment of “Ke Pauk’s Autobiography”, as follows:

- (a) in relying on “Ke Pauk’s Autobiography” despite concerns over its provenance and authenticity. *See* para. 1443.
- (b) in relying on “Ke Pauk’s Autobiography” for purposes other than those declared by the Chamber. *See* paras 1443, 1482, 1586, 1631.
- (c) in considering events relating to internal CPK “purges” as relevant to the administration and operation of the 1st January Dam Worksite. *See* paras 1461-70.

Ground 130. The Chamber erred in law and in fact in making the following findings in relation to the administrative hierarchy at the 1st January Dam Worksite:

- (a) that the Central (old North) Zone could not do anything without approval from the “upper echelon”. *See* paras 1468, 1474.
- (b) that despite clear evidence of insubordination, the “Party Centre” had control over the Central (old North) Zone and the 1st January Dam Worksite. *See* para. 1470.

Ground 131. The Chamber erred in law and in fact in its assessment of Nuon Chea’s role in the “purges” of the Central (old North) Zone and in the construction of the 1st January Dam, including as follows:

- (a) in finding that Nuon Chea, in conjunction with others, ordered the “purges” of the Central (old North) Zone leadership. *See* para. 1466.
- (b) in finding that Nuon Chea organised various workforces to send to the 1st January Dam Worksite. *See* paras 1479-80.
- (c) in failing to address the Defence’s submissions that the overall supervision for the construction of the 1st January Dam was under the authority of the Ministry of Public Works, of which Nuon Chea was not in charge. *See* paras 1459-60.

Ground 132. The Chamber erred in law and in fact in making the following findings in relation to the CPK authorities’ knowledge of the conditions at the 1st January Dam Worksite:

- (a) that Ke Pauk was involved with the day-to-day operation and administration of the 1st January Dam Worksite, and that he had knowledge of the living and working conditions on the ground. *See* paras 1481-82, 1586, 1631-32.
- (b) that the “Party Centre”, including Nuon Chea, had knowledge of the living and working conditions at the 1st January Dam Worksite. *See* paras 1486-97, 1633-40.

Ground 133. The Chamber erred in law and in fact in making the following findings in relation to the alleged forced labour at the 1st January Dam Worksite:

- (a) that threats and punishment were used by unit chiefs in order to urge workers to meet quotas. *See* paras 1532-41, 1616-20, 1623.
- (b) that soldiers and militiamen were present to monitor the workers in order to make them work as much as possible. *See* paras 1542-51.
- (c) that criticism and self-criticism meetings were used to warn workers of the consequences for failing to perform the required work, and that workers would routinely disappear after such meetings. *See* paras 1552-60, 1562, 1711.
- (d) that workers did not benefit from their labour, despite the increase in rice production which the 1st January Dam generated. *See* paras 1448, 1450, 1454, 1594-95, 1678, 1681.
- (e) that the work at the 1st January Dam Worksite constituted forced labour, despite the country being in a state of emergency. *See* paras 1677-78.

Ground 134. The Chamber erred in law and in fact in finding that the restrictions on workers' movements at the 1st January Dam Worksite were unnecessary, excessive, and unlawful. *See* paras 1621-23, 1679.

Ground 135. The Chamber erred in law and in fact in finding that all aspects of workers' lives at the 1st January Dam Worksite were tightly controlled by the CPK, including shelter, food, and medical care. *See* para. 1680.

Ground 136. The Chamber erred in law and in fact in finding that the actions of unit supervisors and of district, sector and zone leadership; the degree of control; and the prolonged duration of this treatment, showed an intent to treat the workers at the 1st January Dam Worksite as commodities. *See* para. 1683.

Ground 137. The Chamber erred in law and in fact in finding that the crime against humanity of enslavement has been established at the 1st January Dam Worksite. *See* paras 1675-84.

Ground 138. The Chamber erred in law and in fact in making the following findings in relation to the alleged food situation at the 1st January Dam Worksite:

- (a) that a significant amount of rice was exported despite local food shortages. *See* paras 1450, 1454, 1594-95, 1678, 1681.
- (b) that workers were forbidden from seeking supplemental food sources. *See* paras 1589, 1595, 1703.
- (c) that there were food shortages that led to malnutrition, emaciation, and starvation. *See* paras 1586-88, 1703.

Ground 139. The Chamber erred in law and in fact in making the following findings in relation to the medical care available to workers at the 1st January Dam Worksite:

- (a) that sick workers were forced to continue working. *See* paras 1606, 1610.
- (b) that proper medical care was not provided. *See* paras 1607-10.
- (c) that medics were inexperienced and lacked training. *See* paras 1607, 1609-10.

Ground 140. The Chamber erred in law and in fact in making the following findings in relation to the working hours at the 1st January Dam Worksite:

- (a) that the CPK's policy limiting working hours had exceptions for "special cases", such as "hot battlefields" like the 1st January Dam Worksite, where the policy was routinely and knowingly disregarded. *See* paras 1505, 1507, 1509, 1705.
- (b) that workers at the 1st January Dam Worksite were regularly required to work at night. *See* paras 1510-19.

Ground 141. The Chamber erred in law and in fact in finding that there was no uniform or generalised practice of rotating workers at the 1st January Dam Worksite, and that even when applied, such measures did not measurably decrease the difficulty of working conditions for a large proportion of workers. *See* paras 1522-26.

Ground 142. The Chamber erred in law and in fact in finding that the conditions at the 1st January Dam Worksite constituted a serious attack on the workers' dignity which was of similar gravity to other crimes against humanity. *See* para. 1703.

Ground 143. The Chamber erred in law and in fact in finding that CPK leadership intentionally imposed poor living and working conditions on workers at the 1st January Dam Worksite. *See* para. 1706.

Ground 144. The Chamber erred in law and in fact in finding that the crime against humanity of other inhumane acts through attacks against human dignity has been established at the 1st January Dam Worksite. *See* paras 1698-707.

Ground 145. The Chamber erred in law and in fact in making the following findings in relation to the alleged treatment of New People at the 1st January Dam Worksite:

- (a) that New People as a group were classified as "enemies" of the CPK, and that based on this status, they were targeted for surveillance, arrest, or execution. *See* paras 1642-44, 1646-48, 1687.
- (b) that New People suffered discriminatory treatment. *See* paras 1650-53, 1688-89.

Ground 146. The Chamber erred in law and in fact in finding that the crime against humanity of persecution on political grounds has been established at the 1st January Dam Worksite. *See* paras 1686-92.

Ground 147. The Chamber erred in law and in fact in making the following findings in relation to the alleged treatment of the Cham at the 1st January Dam Worksite:

- (a) that the Cham suffered discriminatory treatment. *See* paras 1656, 1659.
- (b) that the Cham were forced to eat pork. *See* paras 1656, 1659.

Ground 148. The Chamber erred in law and in fact in finding that the alleged restrictions on Cham workers at the 1st January Dam Worksite were imposed deliberately and perpetrated with the intent to discriminate against them because of their religious and cultural practices. *See* para. 1695.

Ground 149. The Chamber erred in law and in fact in finding that the crime against humanity of persecution on religious grounds has been established at the 1st January Dam Worksite in relation to the Cham. *See* paras 1694-97.

Ground 150. The Chamber erred in law in recharacterising the facts underlying the crime against humanity of extermination to the crime against humanity of murder with *dolus eventualis* at the 1st January Dam Worksite. *See* para. 1672.

Ground 151. The Chamber erred in law and in fact in making the following findings in relation to deaths at the Baray Choan Dek Pagoda:

- (a) that workers were sent to the Baray Choan Dek Pagoda from the 1st January Dam Worksite. *See* paras 1572, 1574, 1580.
- (b) that workers from the 1st January Dam Worksite were killed at the Baray Choan Dek Pagoda. *See* paras 1576-80.

Ground 152. The Chamber erred in law and in fact in finding that a large number of workers died from the living and working conditions at the 1st January Dam Worksite. *See* paras 1624, 1626-27, 1629, 1670.

Ground 153. The Chamber erred in law and in fact in finding that CPK leadership was prepared to accept the risk that workers would die from the living and working conditions at the 1st January Dam Worksite. *See* paras 1671-72.

Ground 154. The Chamber erred in law and in fact in finding that the crime against humanity of murder has been established at the 1st January Dam Worksite. *See* paras 1666-73.

Ground 155. The Chamber erred in law and in fact in making the following findings in relation to the alleged disappearances of workers from the 1st January Dam Worksite:

- (a) that CPK authorities provided false information or intentionally concealed information on the whereabouts of arrested individuals. *See* paras 1561, 1565-66, 1710-11.
- (b) that some workers who disappeared were undoubtedly killed. *See* para. 1565.

Ground 156. The Chamber erred in law and in fact in finding that the crime against humanity of other inhumane acts through conduct characterised as enforced disappearances has been established at the 1st January Dam Worksite. *See* paras 1709-12.

XI. KAMPONG CHHNANG AIRFIELD CONSTRUCTION SITE

The following grounds of appeal are alleged errors that invalidate all convictions in relation to the Kampong Chhnang Airfield Construction Site:

Ground 157. The Chamber erred in law in making the following findings in relation to the reliability and credibility of the following individuals:

- (a) Sem Hoern. *See* paras 1732-33, 1738, 1756-58, 1768-69, 1773, 1776.
- (b) Chum Samoeurn. *See* paras 1719, 1731.

Ground 158. The Chamber erred in law and in fact in making the following findings in relation to the assignment to work at the Kampong Chhnang Airfield Construction Site:

- (a) that the soldiers sent to work at the site had effectively been demoted and were considered simple labourers. *See* para. 1733.
- (b) that soldiers were sent to perform manual labour at the site in order to be “refashioned” or “tempered” because they had been identified as “enemies” due to their real or perceived political beliefs or opposition to the CPK. *See* paras 1731-35, 1821.

Ground 159. The Chamber erred in law and in fact in finding that the conditions imposed on the soldiers at the Kampong Chhnang Airfield Construction Site constituted harsher treatment than that imposed on the rest of the population. *See* para. 1822.

Ground 160. The Chamber erred in law and in fact in making the following findings in relation to the division of labour on allegedly discriminatory grounds at the Kampong Chhnang Airfield Construction Site:

- (a) that soldiers who were considered “bad elements” or “enemies” were subjected to harsher treatment than loyal soldiers and cadres. *See* paras 1731, 1735, 1741-43, 1822-23.
- (b) that the Defence misrepresented the evidence when submitting that there was no discriminatory assignment of work and that Division 310 soldiers were treated much like the “trusted” Division 502 soldiers. *See* paras 1741, 1743.

Ground 161. The Chamber erred in law by relying on events outside the scope of the Closing Order to make findings in relation to the alleged intent of CPK leadership to discriminate against East Zone soldiers at the Kampong Chhnang Airfield Construction Site. *See* paras 1714, 1783-85, 1824.

Ground 162. The Chamber erred in law and in fact in finding that the crime against humanity of persecution on political grounds has been established at the Kampong Chhnang Airfield Construction Site. *See* paras 1819-28.

Ground 163. The Chamber erred in law in recharacterising the facts underlying the crime against humanity of extermination to the crime against humanity of murder with *dolus eventualis* at the Kampong Chhnang Airfield Construction Site. *See* para. 1804.

Ground 164. The Chamber erred in law and in fact in making the following findings in relation to deaths allegedly resulting from the working conditions at the Kampong Chhnang Airfield Construction Site:

- (a) that many soldiers died from the task of breaking rocks due to flying rock fragments and insufficient safety precautions. *See* paras 1755, 1800.
- (b) that, in addition to casualties from rock breaking accidents, many soldiers were injured or died as a result of other accidents. *See* paras 1757, 1800.
- (c) that some soldiers died from overwork and starvation. *See* paras 1758, 1760, 1800.

Ground 165. The Chamber erred in law and in fact in making the following findings in relation to the CPK authorities' state of mind towards the alleged deaths at the Kampong Chhnang Airfield Construction Site:

- (a) that the dangerous nature of breaking rocks and lack of protective gear meant that the lives of those involved in such activities were considered expendable. *See* paras 1742, 1756, 1801.
- (b) with regard to alleged overwork and starvation, that the CPK authorities provided the soldiers with the minimum food necessary to survive, and that they were prepared to accept the risk that soldiers would die during the construction of the site. *See* para. 1802.
- (c) that the maintenance of difficult living and working conditions at the site, including after their negative impact on the soldiers had become apparent, demonstrated that the CPK authorities had willingly imposed these conditions on the soldiers with the knowledge that this would likely lead to deaths or in the acceptance of the possibility of this consequence. *See* para. 1805.

Ground 166. The Chamber erred in law and in fact in finding that the crime against humanity of murder has been established at the Kampong Chhnang Airfield Construction Site. *See* paras 1800-06.

Ground 167. The Chamber erred in law in making the following findings in relation to the alleged forced labour at the Kampong Chhnang Airfield Construction Site:

- (a) that the Defence's submissions regarding the allegedly-forced nature of labour at the site were irrelevant. *See* para. 1812.
- (b) that labour was forced despite being "service of a military character". *See* paras 1744, 1808-12.

Ground 168. The Chamber erred in law and in fact in making the following findings in relation to the alleged restrictions on movement at the Kampong Chhnang Airfield Construction Site:

- (a) that the soldiers were under constant surveillance by guards or unit chiefs. *See* para. 1768.
- (b) that there were various restrictions on the movement of soldiers. *See* paras 1769, 1814.
- (c) that the restrictions on the movement of soldiers were unnecessary, excessive, and unlawful. *See* para. 1814.

Ground 169. The Chamber erred in law and in fact in finding that the imposition of the conditions at the Kampong Chhnang Airfield Construction Site amounted to the exercise of all powers attaching to the right of ownership over the soldiers. *See* para. 1815.

Ground 170. The Chamber erred in law and in fact in finding that CPK leadership intentionally exercised all powers attaching to the right of ownership over the soldiers at the Kampong Chhnang Airfield Construction Site. *See* para. 1816.

Ground 171. The Chamber erred in law and in fact in finding that the crime against humanity of enslavement has been established at the Kampong Chhnang Airfield Construction Site. *See* paras 1808-17.

Ground 172. The Chamber erred in law and in fact in making the following findings in relation to the living conditions at Kampong Chhnang Airfield Construction Site:

- (a) that the living conditions were extremely poor and inadequate to sustain the soldiers for the assignments they had to undertake. *See* paras 1749, 1754.
- (b) that despite the prevailing material shortages in the country at the time, the conditions at the site constituted a serious attack on the dignity of the soldiers, which was of similar gravity to other crimes against humanity. *See* paras 1830-32, 1835.

Ground 173. The Chamber erred in law and in fact in finding that it was within the power of the CPK authorities to mitigate or avoid the effects of the lack of resources on the soldiers at the Kampong Chhnang Airfield Construction Site, and that their failure to do so meant that they had intentionally imposed harsh conditions on the soldiers. *See* paras 1832, 1836.

Ground 174. The Chamber erred in law and in fact in finding that the crime against humanity of other inhumane acts through attacks against human dignity has been established at the Kampong Chhnang Airfield Construction Site. *See* paras 1830-37.

Ground 175. The Chamber erred in law and in fact in making the following findings in relation to the alleged disappearances of soldiers from the Kampong Chhnang Airfield Construction Site:

- (a) that numerous soldiers disappeared from the site. *See* para. 1772.
- (b) that a number of soldiers who disappeared from the site had been deprived of their liberty by the CPK authorities. *See* paras 1841-43.

Ground 176. The Chamber erred in law and in fact in finding that the CPK authorities intentionally concealed information regarding the arrests of soldiers at the Kampong Chhnang Airfield Construction Site. *See* para. 1839.

Ground 177. The Chamber erred in law and in fact in finding that the crime against humanity of other inhumane acts through conduct characterised as enforced disappearances has been established at the Kampong Chhnang Airfield Construction Site. *See* paras 1839-46.

XII. S-21 SECURITY CENTRE

The following grounds of appeal are alleged errors that invalidate all convictions or recharacterise the material facts underlying convictions in relation to the S-21 Security Centre, except for those relating to the treatment of former Khmer Republic officials, which are addressed separately:

Ground 178. The Chamber erred in law and in fact, and abused its discretion, in its assessment of the reliability and credibility of the following witnesses and civil parties giving evidence in relation to the S-21 Security Centre:

- (a) witness Kaing Guek Eav *alias* Duch. *See* paras 2080-82.
- (b) Civil Party Chum Mey. *See* paras 2083-85.

Ground 179. The Chamber erred in law and in fact, and abused its discretion, in unduly relying on transcripts of witnesses from Case 001 who did not testify in Case 002 in order to make findings in connection with the S-21 Security Centre. *See* paras 2088, 2236, 2238, 2335, 2343, 2364, 2366, 2438, 2464, 2466, 2496.

Ground 180. The Chamber erred in law and in fact, and abused its discretion, in finding the OCP and OCIJ S-21 Prisoner Lists to be reliable. *See* para. 2112.

Ground 181. The Chamber erred in law and in fact, and abused its discretion, in making the following findings in relation to contemporaneous documents relied upon in connection with the S-21 Security Centre:

- (a) in applying double standards to its admission of various contemporaneous S-21 detainee entry, interrogation and execution lists, and determining them to be reliable despite their deficiencies *vis-à-vis* authenticity. *See* paras 2114-19.

- (b) in refusing to rely on lists from the S-21 Security Centre that purportedly contain information on released, transferred, or sick detainees. *See* para. 2118.
- (c) in assigning *prima facie* reliability to documents purportedly from the S-21 Security Centre where those documents bore sufficient similarity to authenticated documents. *See* para. 2119.
- (d) in finding the “S-21 Orange Logbook” submitted by filmmaker Walter Heynowski to be reliable and subsequently relying upon it. *See* paras 136, 2123.

Ground 182. The Chamber erred in law and in fact in making the following findings in relation to Duch’s role at the S-21 Security Centre:

- (a) that Duch had full authority over all S-21 Security Centre staff. *See* para. 2149.
- (b) that Duch was heavily involved in overseeing the entire S-21 Security Centre operation, and that he had a central role in making decisions concerning the interrogation or execution of prisoners. *See* para. 2160.

Ground 183. The Chamber erred in law and in fact in finding that the S-21 Security Centre was an independent regiment that was linked directly to, and received instructions regarding security exclusively from, the Standing Committee and top CPK leaders. *See* paras 2186, 2188, 2191.

Ground 184. The Chamber erred in law and in fact in making the following findings in relation to Nuon Chea’s role at the S-21 Security Centre:

- (a) that Nuon Chea ever acted as Duch’s direct supervisor at any time. *See* paras 340, 362, 369, 560, 2193.
- (b) that Nuon Chea was aware of all individuals arrested, detained and interrogated at the S-21 Security Centre, including low-level cadres, and that at no time did he order the release of individuals considered not guilty. *See* para. 2215.
- (c) that on one occasion Nuon Chea ordered Duch to send 200-300 prisoners brought from the East Zone to Choeng Ek for immediate execution without interrogation. *See* paras 2311, 2527.
- (d) that Nuon Chea ordered Duch to “remove prisoners to the maximum”; ordered the execution of all “western” prisoners, the Ministry of Commerce official Chau Seng, and all prisoners at the facility just prior to the arrival of the Vietnamese in January 1979; and ordered the arrest and execution of the wives of Vorn Vet and Cheng An. *See* paras 2318, 2332, 2497, 2527, 2554-56.

Ground 185. The Chamber erred in law and in fact in making the following findings in relation to the treatment of “enemies” at the S-21 Security Centre:

- (a) that CPK slogans and publications, including the term “absolute” and “enemies”, indicated that all individuals arrested were “enemies” and that S-21 functioned to ensure that prisoners acknowledged their “mistakes” and guilt. *See* paras 2163, 2402.
- (b) that pursuant to CPK policy, all individuals arrested and brought to the S-21 Security Centre were labelled as “enemies” and had to be “smashed”. *See* paras 2236, 2350.

Ground 186. The Chamber erred in fact in finding that 582 East Zone prisoners were “smashed” at Choeng Ek on 27 May 1978 despite Suos Thy’s testimony that this would have been impossible. *See* para. 2527.

Ground 187. The Chamber erred in law and in fact in its assessment of alleged blood drawing and medical experimentation at the S-21 Security Centre, as follows:

- (a) in finding that the practice of blood drawing was directed towards prisoners; that blood drawing was conducted forcibly; and that those subjected to blood drawing often died. *See* paras 2446, 2449.
- (b) in failing to connect the alleged blood drawings of and medical experimentation on individuals at the S-21 Security Centre to the common purpose of the JCE. *See* paras 2564-65, 2569.

Ground 188. The Chamber erred in law and in fact in making the following findings in relation to the arrest and execution of family members and children at the S-21 Security Centre:

- (a) that individuals connected to someone who was arrested and detained at the S-21 Security Centre, including family members, had to be arrested and were duly executed. *See* paras 2329-30, 2333.
- (b) that children were detained at and killed in the vicinity of the S-21 Security Centre. *See* para. 2512.

Ground 189. The Chamber erred in law and in fact in its assessment of prisoners released from the S-21 Security Centre, as follows:

- (a) in interpreting that the term “release”, as used in a document labelled “Brief Biography of Released People” sent from S-21 to Battalion 96 (E3/965), meant that identified individuals were in fact to be arrested and sent to the S-21 Security Centre. *See* para. 2349.
- (b) in requiring the Defence to raise more than reasonable doubt and in applying double standards in its assessment of evidence in relation to the release of prisoners. *See* paras 2345-62.

Ground 190. The Chamber erred in law and in fact in finding that the names of individuals subtracted from S-21 prisoner lists meant that they were executed. *See* para. 2296.

Ground 191. The Chamber erred in fact in finding that the number of bones found and studied at Choeung Ek did not represent the totality of victims at the site. *See* para. 2540.

Ground 192. The Chamber erred in law and in fact in finding that at least 11,742 individuals were executed in the vicinity of the S-21 detention centre and the Choeung Ek execution site. *See* paras 2531, 2542.

Ground 193. The Chamber erred in law and in fact in finding that the crimes against humanity of murder and extermination have been established at the S-21 Security Centre in relation to the execution of at least 11,742 individuals.

Ground 194. The Chamber erred in law and in fact in its assessment of the deaths of Vietnamese prisoners at the S-21 Security Centre, as follows:

- (a) in applying double standards to its assessment of Mam Nai's testimony, who stated that he was not aware of a policy to kill Vietnamese people at the facility. *See* para. 2466.
- (b) in relying on Prak Khorn's testimony to find that a Vietnamese child died by being dropped from a multi-storey building. *See* paras 2479, 2621-22; E409/3.
- (c) in relying on Him Huy's testimony regarding a film that purportedly depicted the arrival of Vietnamese soldiers at the S-21 Security Centre, and showed their disembowelled bodies following their execution. *See* para. 2476.

Ground 195. The Chamber erred in law and in fact in finding that wilful killing as a grave breach of the Geneva Conventions has been established in relation to the Vietnamese people detained at the S-21 Security Centre. *See* paras 2621-22.

Ground 196. The Chamber erred in law and in fact in finding that the crime against humanity of enslavement has been established at the S-21 Security Centre. *See* paras 2571-73.

Ground 197. The Chamber erred in fact in finding that at least 10,887 prisoners were arrested and detained at the S-21 Security Centre during its operation. *See* para. 2577.

Ground 198. The Chamber erred in law in finding that the crime against humanity of imprisonment has been established at the S-21 Security Centre. *See* paras 2575-84.

Ground 199. The Chamber erred in law and in fact in finding that wilfully depriving a prisoner of war or a civilian the rights of a fair trial as a grave breach of the Geneva Conventions has been established in relation to the Vietnamese people detained at the S-21 Security Centre. *See* paras 2629-30.

Ground 200. The Chamber erred in law and in fact in finding that unlawful confinement of civilians as a grave breach of the Geneva Conventions has been established in relation to the Vietnamese people detained at the S-21 Security Centre. *See* para. 2635.

Ground 201. The Chamber erred in fact in finding that the use of the term "torture" on S-21 statements and interrogation notes necessarily meant that the conduct in question rose to the requisite level of suffering needed to qualify as a criminal act within the ECCC's jurisdiction. *See* paras 2269, 2272.

Ground 202. The Chamber erred in law and in fact in making the following findings in relation to the alleged use of torture at the S-21 Security Centre:

- (a) that the only reasonable inference that could be drawn from Pou Phally's notebook (E3/8368) is that it corroborates the use of torture to obtain specific information and demonstrates that interrogations were conducted in accordance with a policy from a higher level to extract information and identify "enemies". *See* paras 2425-30.

- (b) that instructions prohibiting the use of threats or beatings contradicted a general policy that all detainees were not deserving of mercy, and that such instructions were not followed. *See* para. 2368.
- (c) that detainees were tortured in furtherance of the common purpose of a JCE that included Nuon Chea. *See* paras 2597, 3981.

Ground 203. The Chamber erred in law and in fact in finding that the crime against humanity of torture has been established at the S-21 Security Centre. *See* paras 2586-97.

Ground 204. The Chamber erred in law and fact in finding that torture as a grave breach of the Geneva Conventions has been established in relation to the Vietnamese people detained at the S-21 Security Centre. *See* para. 2624.

Ground 205. The Chamber erred in law and in fact in finding that the crime against humanity of persecution on political grounds has been established at the S-21 Security Centre against any discernible political group. *See* paras 2599-604.

Ground 206. The Chamber erred in law and in fact in finding that Vietnamese people were arrested, detained, interrogated and executed at the S-21 Security Centre on racial grounds. *See* paras 2607-10.

Ground 207. The Chamber erred in law and in fact in its assessment of the detention conditions at the S-21 Security Centre:

- (a) in finding that whether the conditions of detention were imposed sadistically or as a means of punishment has no bearing on the elements of the crimes charged. *See* para. 2371.
- (b) in its assessment of Duch's testimony as to the conditions at the Special Prison. *See* para. 2618.

Ground 208. The Chamber erred in law and in fact in finding that the crime against humanity of murder with *dolus eventualis* has been established at the S-21 Security Centre. *See* paras 2564-65.

Ground 209. The Chamber erred in law and in fact in finding that the crime against humanity of other inhumane acts through attacks against human dignity has been established at the S-21 Security Centre and Special Prison. *See* paras 2612-17.

Ground 210. The Chamber erred in law and in fact in finding that inhumane treatment as a grave breach of the Geneva Conventions has been established in relation to the Vietnamese people detained at the S-21 Security Centre. *See* para. 2626.

Ground 211. The Chamber erred in law and in fact in finding that wilfully causing great suffering or serious injury to body or health as a grave breach of the Geneva Conventions

has been established in relation to the Vietnamese people detained at the S-21 Security Centre. *See* paras 2627-28.

XIII. KRAING TA CHAN SECURITY CENTRE

The following grounds of appeal are alleged errors that invalidate all convictions in relation to the Kraing Ta Chan Security Centre, except for those relating to the treatment of former Khmer Republic officials and the Vietnamese, and the Chamber's reliance on the "Tram Kak District Records", which are primarily addressed separately:

Ground 212. The Chamber erred in law and in fact, and abused its discretion, in its assessment of the reliability and credibility of witnesses and civil parties giving evidence in relation to the Kraing Ta Chan Security Centre, as follows:

- (a) in applying double standards to its assessment of the testimony of former guards Saut Saing, Van Soeun, and Srei Than. *See* paras 2653-67.
- (b) in finding Meas Sokha's testimony to be reliable and credible. *See* paras 2668-74.
- (c) in finding Sory Sen's unsworn evidence to be reliable and credible. *See* paras 2677-82.

Ground 213. The Chamber erred in law and in fact in finding that the Southwest Zone had oversight and control of the Kraing Ta Chan Security Centre, and that information was relayed to the zone through Sector 13. *See* para. 2709.

Ground 214. The Chamber erred in law and in fact in making the following findings in relation to arrests at the Kraing Ta Chan Security Centre:

- (a) that it could rely on the Tram Kak District Records to determine the types of offences for which persons were arrested. *See* paras 2717-29, 2770.
- (b) that family links were a basis for arrest and execution. *See* para. 2801.
- (c) that former detainee Vong Sarun's education level, appearance, and the well-being of her husband, meant that she could not have been imprisoned for her suspected participation in unlawful activities. *See* para. 2750.

Ground 215. The Chamber erred in law and in fact in finding that the crime against humanity of imprisonment has been established at the Kraing Ta Chan Security Centre. *See* paras 2825-27.

Ground 216. The Chamber erred in law and in fact in making the following findings in relation to alleged sexual violence at the Kraing Ta Chan Security Centre:

- (a) that sexual crimes were committed. *See* paras 2734-38.
- (b) that movie star Kim Nova was raped and killed along with her husband Nop Nem and their child. *See* para. 2738.
- (c) that two women from a mobile unit were raped by guards identified as Srei Than and Saing. *See* paras 2761, 2764.

Ground 217. The Chamber erred in law and in fact in finding that the crime against humanity of murder with *dolus eventualis* has been established at the Kraing Ta Chan Security Centre. *See* paras 2815-17.

Ground 218. The Chamber erred in law and in fact in finding that the crime against humanity of enslavement has been established at the Kraing Ta Chan Security Centre. *See* paras 2822-23.

Ground 219. The Chamber erred in law and in fact in finding that the crime against humanity of other inhumane acts through attacks against human dignity has been established at the Kraing Ta Chan Security Centre. *See* paras 2849-51.

Ground 220. The Chamber erred in law and in fact in making the following findings in relation to interrogations at the Kraing Ta Chan Security Centre:

- (a) that some prisoners were executed immediately after their arrival and without being interrogated, including one group of more than 100 people. *See* paras 2742, 2759.
- (b) that it was possible to see into the interrogation room of the facility from the outside. *See* para. 2692.
- (c) that violence and threats of violence were used to extract confessions from prisoners, including through the use of whips, clubs, pliers, and plastic bags. *See* paras 2744-47.
- (d) that some prisoners were abused to the point where they died. *See* paras 2744-49.

Ground 221. The Chamber erred in law and in fact in finding that the crime against humanity of torture has been established at the Kraing Ta Chan Security Centre. *See* paras 2829-32.

Ground 222. The Chamber erred in law and in fact in finding that the crime against humanity of persecution on political grounds has been established at the Kraing Ta Chan Security Centre in relation to “real or perceived enemies” of the CPK, including New People. *See* para. 2843.

Ground 223. The Chamber erred in law and in fact in making the following findings in relation to executions at the Kraing Ta Chan Security Centre:

- (a) that there were regular executions. *See* para. 2771.
- (b) that the release of prisoners was wholly exceptional and that execution was the rule. *See* para. 2770.
- (c) that staff at the facility were able to identify prisoners as New People, and that this was a decisive factor in determining their fate. *See* para. 2794.
- (d) that a baby was killed by being smashed against a tree. *See* para. 2752.
- (e) that two children were killed by guards identified as Sieng and Saing. *See* paras 2766, 2768.
- (f) that loud music was played over speakers to disguise the noise of executions. *See* para. 2772.
- (g) that human organs were consumed by guards. *See* para. 2776.

Ground 224. The Chamber erred in law and in fact in making the following findings in relation to overall deaths at the Kraing Ta Chan Security Centre:

- (a) that most of the remains examined by Voeun Vuthy from the site of the Kraing Ta Chan Security Centre post-date 17 April 1975. *See* paras 2781, 2785.
- (b) that significantly more than 1,000 people were killed or died at the facility between 1975 and 1979. *See* para. 2807.

Ground 225. The Chamber erred in law and in fact in finding that the crimes against humanity of murder and extermination have been established at the Kraing Ta Chan Security Centre. *See* paras 2812-14, 2819-20.

Ground 226. The Chamber erred in law and in fact in finding that the crime against humanity of other inhumane acts through conduct characterised as enforced disappearances has been established at the Kraing Ta Chan Security Centre. *See* paras 2853-58.

XIV. AU KANSENG SECURITY CENTRE

The following grounds of appeal are alleged errors that invalidate all convictions in relation to the Au Kanseng Security Centre, except for the treatment of the Vietnamese, which is addressed separately:

Ground 227. The Chamber erred in law and in fact in finding that Son Sen was kept apprised of the situation at the Au Kanseng Security Centre, for which he had overall authority, and that Son Sen regularly relayed information to “Angkar” before furnishing instructions to “lower echelons”, including to the Au Kanseng Security Centre. *See* paras 2873-75.

Ground 228. The Chamber erred in law and in fact in finding that the purpose of the Au Kanseng Security Centre was to elicit confessions and weed out “enemies”, and that despite being arrested under the pretext of ordinary crimes or misdemeanours, individuals held at the facility were detained because they were perceived as CPK “enemies”. *See* paras 2887, 2898-900, 2978.

Ground 229. The Chamber erred in law and in fact in finding that individuals were detained at the Au Kanseng Security Centre on the basis of their perceived membership in a discernible political group. *See* paras 2983-90, 2895, 2899, 2905-06.

Ground 230. The Chamber erred in law and in fact in finding that the crime against humanity of persecution on political grounds has been established at the Au Kanseng Security Centre. *See* paras 2981-93.

Ground 231. The Chamber erred in law in failing to address the Defence's submissions regarding the legitimate factual basis for arrest and detention of individuals at the Au Kanseng Security Centre. *See* para. 2976.

Ground 232. The Chamber erred in law and in fact in finding that there were violations of certain procedural rights of individuals detained at the Au Kanseng Security Centre, and that such violations rendered their imprisonment illegal. *See* paras 2893, 2895, 2897, 2899, 2976-79.

Ground 233. The Chamber erred in law and in fact in finding that the detention of civilians at the Au Kanseng Security Centre lacked legal basis. *See* paras 2899, 2978.

Ground 234. The Chamber erred in law and in fact in finding that the crime against humanity of imprisonment has been established at the Au Kanseng Security Centre. *See* paras 2976-79.

Ground 235. The Chamber erred in law in finding that the labour performed by detainees at the Au Kanseng Security Centre was not lawfully imposed. *See* para. 2970.

Ground 236. The Chamber erred in law and in fact in finding that the authorities at the Au Kanseng Security Centre intentionally imposed a work regime on the detainees that reduced them to mere commodities, and which permitted their manipulation and exploitation for the CPK's benefit. *See* paras 2910-11, 2915, 2919, 2971-74.

Ground 237. The Chamber erred in law and in fact in finding that the crime against humanity of enslavement has been established at the Au Kanseng Security Centre. *See* paras 2970-74.

Ground 238. The Chamber erred in law and in fact in finding that the detention conditions at the Au Kanseng Security Centre rose to the gravity of other crimes against humanity. *See* paras 3004-07, 3009.

Ground 239. The Chamber erred in law and in fact in finding that the authorities at the Au Kanseng Security Centre intentionally inflicted physical and mental suffering on the detainees. *See* para. 3008.

Ground 240. The Chamber erred in law and in fact in finding that the crime against humanity of other inhumane acts through attacks against human dignity has been established at the Au Kanseng Security Centre. *See* paras 3004-10.

Ground 241. The Chamber erred in law and in fact in making the following findings in relation to the alleged execution of Jarai persons at the Au Kanseng Security Centre:

- (a) that a group of approximately 100 Jarai were brought to the facility and executed *en masse*. *See* paras 2951-56, 2960, 2968.
- (b) that the 100 Jarai allegedly executed at the facility were part of a group of 209 Jarai reportedly captured by Division 801 forces on 15 June 1977. *See* paras 2935-45, 2960.
- (c) that the order to execute the group of 100 Jarai was channelled through Son Sen and Sao Saroeun, with the involvement of the CPK Standing Committee, to Au Kanseng Security Centre personnel. *See* paras 2957, 2960.

Ground 242. The Chamber erred in law and in fact in making the following findings in relation to other alleged deaths at the Au Kanseng Security Centre:

- (a) that three detainees were killed in two separate melees with guards. *See* paras 2926, 2963.
- (b) that one military prisoner and one female detainee were executed. *See* paras 2929, 2932, 2964.
- (c) that detention conditions led to the death of detainees. *See* paras 2916-18, 2934, 2965.

Ground 243. The Chamber erred in law and in fact in finding that the crimes against humanity of murder and extermination have been established at the Au Kanseng Security Centre. *See* paras 2961-68.

XV. PHNOM KRAOL SECURITY CENTRE

The following grounds of appeal are alleged errors that invalidate all convictions in relation to the Phnom Kraol Security Centre:

Ground 244. The Chamber erred in fact by relying on events outside the scope of the Closing Order to make findings in relation to the Phnom Kraol Security Centre. *See* paras 3051-65, 3080, 3137-51.

Ground 245. The Chamber erred in fact by considering evidence in relation to the Phnom Kraol Security Centre to make findings on events outside of the scope of the Closing Order. *See* para. 3060.

Ground 246. The Chamber erred in law and in fact in its overall assessment of evidence in relation to the Phnom Kraol Security Centre:

- (a) in finding that civil party statements have the same value as witness testimony. *See* para. 3066.
- (b) in making findings solely based on unsworn evidence. *See* para. 3101.
- (c) in making findings solely based on out-of-court statements. *See* paras 3105-06, 3110.

Ground 247. The Chamber erred in law and in fact in making the following findings in relation to the communication and reporting structure at the Phnom Kraol Security Centre:

- (a) that Sector 105 Secretary Laing reported directly to the “Party Centre”, and that he received instructions from Pol Pot and Nuon Chea. *See* para. 3036.
- (b) that orders to arrest, detain and execute Sector 105 personnel were furnished under the authority and oversight of the CPK Standing Committee. *See* para. 3080.

Ground 248. The Chamber erred in fact in its assessment of evidence in relation to the detention and working conditions at the Phnom Kraol Security Centre. *See* paras 3102, 3105-06.

Ground 249. The Chamber erred in law and in fact in finding that the crime against humanity of murder has been established at the Phnom Kraol Security Centre. *See* paras 3115, 4174.

Ground 250. The Chamber erred in law and in fact in finding that the crime against humanity of murder with *dolus eventualis* has been established at the Phnom Kraol Security Centre. *See* paras 3116, 4186.

Ground 251. The Chamber erred in law in convicting Nuon Chea for the crime against humanity of extermination at the Phnom Kraol Security Centre after having found that this crime had not been established at the Phnom Kraol Security Centre. *See* paras 3118, 4174.

Ground 252. The Chamber erred in law and in fact in finding that the crime against humanity of enslavement has been established at the Phnom Kraol Security Centre. *See* paras 3121-26.

Ground 253. The Chamber erred in law and in fact in finding that the crime against humanity of imprisonment has been established at the Phnom Kraol Security Centre. *See* paras 3128-31.

Ground 254. The Chamber erred in law and in fact, and abused its discretion, in finding that the crime against humanity of persecution on political grounds has been established at the Phnom Kraol Security Centre. *See* paras 3137-51.

Ground 255. The Chamber erred in law and in fact in finding that the crime against humanity of other inhumane acts through attacks against human dignity has been established at the Phnom Kraol Security Centre. *See* paras 3153-59.

Ground 256. The Chamber erred in law and in fact in finding that the crime against humanity of other inhumane acts through conduct characterised as enforced disappearances has been established at the Phnom Kraol Security Centre. *See* paras 3161-66.

XVI. TREATMENT OF BUDDHISTS

The following grounds of appeal are alleged errors that invalidate all convictions in relation to the treatment of Buddhists:

Ground 257. The Chamber erred in law and in fact in its assessment of the existence of a CPK policy to target Buddhists:

- (a) in finding that there was a clear order conveyed after a CPK meeting in Phnom Penh in May 1975 to eliminate Buddhism from Cambodian society through a deliberate, organised, and widespread effort. *See* paras 1087-89.
- (b) in finding that the CPK was intent on eliminating Buddhism from Cambodian society and that the defrocking of monks was a deliberate means of achieving this aim. *See* paras 1093, 4015-16, 4021.
- (c) in relying on a statement made by the late King Father Norodom Sihanouk that purportedly confirmed that the defrocking of monks was deliberate, organised and widespread. *See* paras 1089, 4015.

Ground 258. The Chamber erred in law and in fact in finding that the practice of Buddhism was banned in the Tram Kak district. *See* paras 1107-08.

Ground 259. The Chamber erred in law and in fact in making the following findings in relation to the treatment of Buddhists in the Tram Kak district:

- (a) that the establishment of a provincial committee at the Angk Roka Pagoda was an attempt to placate monks purportedly being defrocked. *See* para. 1094.
- (b) that monks were collected at the Angk Roka Pagoda and ordered to disrobe. *See* paras 1094, 1098-100.

Ground 260. The Chamber erred in law and in fact in making the following findings in relation to the alleged persecution of Buddhists:

- (a) that there was an organised, sustained attack against religion during the DK period. *See* para. 1184.
- (b) that Buddhist monks were forced to renounce their faith. *See* para. 1185.

Ground 261. The Chamber erred in law and fact in finding that the crime against humanity of persecution on religious grounds has been established at the Tram Kak Cooperatives. *See* paras 1183-87.

XVII. TREATMENT OF THE CHAM

The following grounds of appeal are alleged errors that invalidate all convictions in relation to the treatment of the Cham, except at the 1st January Dam Worksite, which is dealt with separately:

Ground 262. The Chamber erred in law in failing to address the Defence's submissions regarding the exclusion of the Kroch Chhmar Security Centre from the scope of Case 002/02, which led to the absence of key evidence, including testimony of Prime Minister Hun Sen and others who were involved in the suppression of the 1975 rebellions and the investigations into rebel movements involving both Cham and Khmer individuals. *See* para. 3174; E439/5.

Ground 263. The Chamber erred in law and in fact by exceeding the scope of Case 002/02 and finding that Cham individuals detained at the Kroch Chhmar Security Centre following the 1975 rebellions were killed. *See* para. 3258.

Ground 264. The Chamber erred in law and in fact in its assessment of the reliability and credibility of witnesses and civil parties giving evidence in relation to the treatment of the Cham, as follows:

- (a) in its assessment of Soh Kamrei's credibility and in drawing no negative inference from his reluctance to testify and his refusal to take an oath on the Koran. *See* para. 3185.
- (b) in its assessment of the reliability of Prak Yut's sixth written record of interview. *See* para. 3191.
- (c) in its assessment of civil party Him Man's credibility and in extensively relying on his evidence. *See* paras 3217, 3218, 3230, 3239, 3242, 3251, 3267, 3293-95.
- (d) in hearing Ysa Osman as an expert witness. *See* para. 3192.
- (e) in finding that Ysa Osman's summaries of evidence he collected were generally reliable. *See* para. 3196.

Ground 265. The Chamber erred in law and in fact in finding that Central (old) North Zone Secretary Ke Pauk regularly forwarded sector reports to the "Party Centre", and that the district reported directly to Ke Pauk. *See* para. 3202.

Ground 266. The Chamber erred in law and in fact in finding that the CPK did not implement freedom of religion, and that it considered Islam to be a reactionary religion and prohibited its practice. *See* para. 3215.

Ground 267. The Chamber erred in law and in fact when concluding that the CPK advocated "ethnic purity", *i.e.*, the preservation of a "pure Khmer race", at the expense of ethnic and racial minorities such as the Cham, including as follows:

- (a) inferring that the reference to "Khmer race" in CPK publications indicated the exclusion of ethnic and racial minorities. *See* para. 3216.
- (b) relying on opinion evidence of fact witnesses or civil parties and untested evidence which asserted that the CPK targeted the Cham to assimilate them into a single Khmer identity. *See* paras 3217-19.
- (c) relying on unsubstantiated opinions of "experts", some of whom did not testify or did not testify as experts. *See* para. 3219.

Ground 268. The Chamber erred in law and in fact in inferring that reports of unlawful activities involving Cham individuals meant that Cham people were under high scrutiny. *See paras 3214, 3230.*

Ground 269. The Chamber erred in law and in fact in its assessment of exculpatory evidence that indicated there was no state policy to target the Cham, including as follows:

- (a) rejecting Prak Yut's and You Vann's consistent evidence that Cham individuals were targeted because of their suspected illegal activities, and not on the basis of their identity. *See para. 3221.*
- (b) rejecting Ban Seak's evidence and misrepresenting Van Mat's evidence that consistently showed that Ke Pauk's instructions were to "purge" the rebels, regardless of their ethnicity. *See paras 3223-24, 3273.*
- (c) in rejecting Duch's, Tep Poch's and Pech Chim's consistent evidence that there was no plan to "purge" the Cham. *See paras 3223, 3225.*

Ground 270. The Chamber erred in law and in fact in finding that, in an attempt to establish an atheistic and homogeneous society, the CPK targeted the Cham as an ethnic and religious group, and that implementation of this policy included restrictions on Cham culture, suppressions of Cham rebellions, forced transfer of Cham populations, and killing of Cham individuals. *See paras 3227-28.*

Ground 271. The Chamber erred in law and in fact in finding that local CPK leadership in Koh Phal announced five specific restrictions on Cham culture in September 1975. *See para. 3253.*

Ground 272. The Chamber erred in law and in fact in failing to address the Defence's submissions and relevant evidence that the alleged restrictions on Cham culture were general social policies applied equally to the entire Cambodian population and that they were not imposed on religious or ethnic grounds. *See paras 3238, 3245, 3250, 3329.*

Ground 273. The Chamber erred in law and in fact in finding that instances of Cham individuals not being forced to consume pork owed to the benevolence of the local CPK cadres. *See para. 3247.*

Ground 274. The Chamber erred in law and in fact in finding that the CPK imposed nationwide restrictions on Cham culture. *See paras 3246-50.*

Ground 275. The Chamber erred in law and in fact in finding that the crime against humanity of persecution on religious grounds has been established in relation to the Cham nationwide throughout the DK period. *See paras 3327-32.*

Ground 276. The Chamber erred in law and in fact in finding that the 1975 Koh Phal and Svay Khleang rebellions were a reaction to restrictions imposed on Cham culture by the CPK. *See* paras 3256, 3259.

Ground 277. The Chamber erred in law and in fact in finding that the Cham were a discernible political group, and that the CPK transferred the East Zone Cham population to other locations as a result of the 1975 Koh Phal and Svay Khleang rebellions. *See* paras 3212, 3259, 3262, 3268, 3322, 3323.

Ground 278. The Chamber erred in law and in fact in finding that the relocation of part of the East Zone Cham population was unlawful. *See* paras 3336-37.

Ground 279. The Chamber erred in law and in fact in finding that the crime against humanity of persecution on political grounds has been established in relation to the relocation of the Cham population from the East Zone to the Central (old North) Zone following the 1975 Koh Phal and Svay Khleang rebellions. *See* paras 3320-26.

Ground 280. The Chamber erred in law in finding that the crime against humanity of other inhumane acts through conduct characterised as forced transfer has been established in relation to the transfer of the Cham population during Movement of Population Phase Two. *See* paras 3335-40.

Ground 281. The Chamber erred in law and in fact in its assessment of the reliability and credibility of Say Doeun, Him Man, Sen Srun, Samreth Muy, Muy Vanny and Seng Khuy in relation to the alleged arrests and killings of Cham individuals at the Wat Au Trakuon Security Centre. *See* paras 3291-99.

Ground 282. The Chamber erred in law and in fact in finding that orders to “purge” the Cham in the Central (old North) Zone came from the “upper echelon”, and were implemented through the district secretaries. *See* para. 3290.

Ground 283. The Chamber erred in law and in fact in finding that a large number of Cham individuals from villages in the Kang Meas district were systematically arrested and brought to the Wat Au Trakuon Security Centre in 1977 and executed *en masse*. *See* paras 3302, 3304.

Ground 284. The Chamber erred in law and in fact in its assessment of the reliability and credibility of the evidence of It Sen, No Sates and Math Sor in relation to the alleged events at the Trea Village Security Centre in 1978. *See* para. 3280.

- Ground 285.** The Chamber erred in law and in fact in finding that orders to “purge” the Cham in the East Zone came from the “upper echelon”, including from Ke Pauk. *See* para. 3275.
- Ground 286.** The Chamber erred in law and in fact in finding that, in 1978, a number of individuals were taken to the Trea Village Security Centre and those identified as Cham were executed. *See* para. 3281.
- Ground 287.** The Chamber erred in law and in fact in finding that the crimes against humanity of murder and extermination have been established in relation to the killings at the Wat Au Trakuon Security Centre in 1977 and the Trea Village Security Centre in 1978. *See* paras 3306-08, 3310-13.
- Ground 288.** The Chamber erred in law in finding that beatings *per se* amount to acts of torture causing severe pain or suffering. *See* para. 3318.
- Ground 289.** The Chamber erred in law and in fact in finding that It Sen and his fellow Cham detainees were repeatedly beaten at the Trea Village Security Centre. *See* paras 3276, 3317-18.
- Ground 290.** The Chamber erred in law in finding that the crime against humanity of torture has been established in relation to the beatings and interrogations of Cham men at the Trea Village Security Centre on the day of It Sen's arrest in 1978. *See* paras 3317-19.
- Ground 291.** The Chamber erred in law and in fact in finding that the absence of due process rendered the imprisonment of Cham individuals at the Trea Village Security Centre illegal. *See* para. 3315.
- Ground 292.** The Chamber erred in law and in fact in finding that the crime against humanity of imprisonment has been established at the Trea Village Security Centre in relation to Cham civilian prisoners. *See* paras 3314-16.
- Ground 293.** The Chamber erred in law and in fact in finding that the physical perpetrators of crimes at the Wat Au Trakuon Security Centre and the Trea Village Security Centre possessed genocidal intent towards the Cham who were killed there. *See* paras 3345-47.
- Ground 294.** The Chamber erred in law and in fact in finding that the crime of genocide by killing has been established in relation to the Cham. *See* paras 3343-48.

XVIII. TREATMENT OF THE VIETNAMESE

The following grounds of appeal are alleged errors that invalidate all convictions in relation to treatment of the Vietnamese, except at the S-21 Security Centre:

Ground 295. The Chamber erred in law and in fact in making the following findings outside the scope of the Closing Order:

- (a) that Vietnamese boats entering DK territorial waters were systematically seized or otherwise targeted during the DK period, and that a number of Vietnamese fishermen and refugees were killed as a result. *See* paras 3459-61; E380/2.
- (b) that Vietnamese and Khmer Krom people were grouped together at the Kraing Ta Chan Security Centre. *See* paras 816, 2806.

Ground 296. The Chamber erred in fact in finding that the term “Yuon” was used in a derogatory fashion and encompassed civilians, combatants, or both depending on the context. *See* para. 3381.

Ground 297. The Chamber erred in fact in relying on Ek Hoeun’s evidence in relation to the treatment of Vietnamese people at the Tram Kak Cooperatives. *See* paras 1111-12, 1121-22.

Ground 298. The Chamber erred in law and in fact in making the following findings in relation to an alleged CPK policy targeting the Vietnamese for adverse treatment:

- (a) that North Vietnam’s assent to the Paris Peace Accords explained, in part, the CPK’s identification of ethnic Vietnamese people living in Cambodia as a group deserving distinct attention. *See* para. 3382.
- (b) that Pol Pot’s “One against 30” policy was directed against the Vietnamese population as a whole. *See* para. 3402.
- (c) that broadcasts made on 24 February 1978 and 10 April 1978 by an unidentified Phnom Penh broadcaster, calling for extermination of the enemy, were issued by the “Party Centre” and targeted both Vietnamese soldiers and civilians. *See* para. 3398.
- (d) that a speech made by Khieu Samphân on 15 April 1978 targeted all Vietnamese people indiscriminately. *See* para. 3399.

Ground 299. The Chamber erred in fact in finding that the first anniversary speech in 1976 reflected the CPK’s antipathy towards foreigners and, in particular, the Vietnamese. *See* paras 3387-88.

Ground 300. The Chamber erred in law and in fact in finding that the documents cited by the Defence calling for friendship with Vietnam do not raise reasonable doubt with respect to the targeting of Vietnamese people throughout the DK period. *See* para. 3404.

- Ground 301.** The Chamber erred in law and in fact in finding that the CPK considered the Vietnamese ethnicity to be matrilineal and targeted mixed families accordingly. *See* para. 3428.
- Ground 302.** The Chamber erred in law and in fact in finding that Vietnamese persons in the Tram Kak district were targeted on the basis of their ethnicity, and that CPK leadership issued instructions to kill Vietnamese people at various times. *See* para. 1125.
- Ground 303.** The Chamber erred in law and in fact in finding that the crime against humanity of murder has been established at the Au Kanseng Security Centre in relation to the execution of six Vietnamese people. *See* paras 2926, 2959.
- Ground 304.** The Chamber erred in law and in fact in finding that the crime against humanity of murder has been established in relation to the killing of Vietnamese civilians in Svay Rieng in 1978; in DK waters after April or May 1977 and on 19 March 1978; in Kampong Chhnang province in 1977; at Wat Khsach in late 1978; and in Kratie in September 1978. *See* paras 3453-55, 3459-61, 3482, 3488, 3491-97.
- Ground 305.** The Chamber erred in law and in fact in finding that the crime against humanity of extermination has been established in relation to the killing of Vietnamese civilians in Svay Rieng in 1978; in DK waters after April or May 1977 and on 19 March 1978; in Kampong Chhnang province in 1977; at Wat Khsach in late 1978; and in Kratie in September 1978. *See* paras 3499-501.
- Ground 306.** The Chamber erred in law and in fact in finding that large numbers of Vietnamese people were gathered up in the Tram Kak district and were expelled or disappeared. *See* para. 1125.
- Ground 307.** The Chamber erred in fact in finding that the manner in which Vietnamese people in the Tram Kak district were gathered up indicated that they were lawfully present in the area. *See* para. 1157.
- Ground 308.** The Chamber erred in law and in fact in finding that the crime against humanity of deportation has been established at the Tram Kak Cooperatives. *See* paras 1156-59.
- Ground 309.** The Chamber erred in law and in fact in finding that a significant number of Vietnamese people in Prey Veng province were forcibly transferred from Cambodia to Vietnam. *See* paras 3433-36.

Ground 310. The Chamber erred in law and in fact in finding that the crime against humanity of deportation has been established in relation to the Vietnamese people expelled from Prey Veng province in 1975 and 1976. *See* paras 3503-07.

Ground 311. The Chamber erred in law and in fact in finding that the crime against humanity of persecution on racial grounds has been established at the Tram Kak Cooperatives in relation to the Vietnamese. *See* paras 1188-92.

Ground 312. The Chamber erred in law and in fact in finding that the crime against humanity of persecution on racial grounds has been established at the Au Kanseng Security Centre in relation to the execution of six Vietnamese people. *See* paras 2996-99.

Ground 313. The Chamber erred in law and in fact in finding that the crime against humanity of persecution on racial grounds has been established in relation to the Vietnamese in Prey Veng and Svay Rieng. *See* paras 3509-13.

Ground 314. The Chamber erred in law and in fact, and abused its discretion, in finding that the crime of genocide by killing members of the Vietnamese group has been established. *See* paras 3515-19.

XIX. TREATMENT OF FORMER KHMER REPUBLIC OFFICIALS

The following grounds of appeal are alleged errors that invalidate all convictions in relation to the treatment of former Khmer Republic officials:

Ground 315. The Chamber erred in law and in fact in finding that Nuon Chea's right to be informed promptly and in detail of the nature and cause of the charges against him had not been violated in relation to charges concerning the alleged CPK policy of targeting former Khmer Republic officials. *See* paras 171-76, 1436-37, 2485, 2643.

Ground 316. The Chamber erred in fact in applying double standards to its assessment of evidence relied on by the Defence in relation to the CPK alleged policy of targeting former Khmer Republic officials. *See* paras 4030-31, 4035, 4037, 4040.

Ground 317. The Chamber erred in law and in fact in unduly relying on the evidence of Philip Short even though his conclusions on the alleged treatment of former Khmer Republic officials are based on unspecified and untested sources. *See* para. 4045.

Ground 318. The Chamber erred in law in failing to adequately consider the Defence's submissions in relation to the alleged CPK policy of targeting former Khmer Republic officials. *See* paras 1063, 4025.

Ground 319. The Chamber erred in law and in fact in finding that there was a nationwide policy targeting former Khmer Republic officials in the immediate aftermath of the liberation of Phnom Penh and throughout 1975. *See* paras 4041, 4047.

Ground 320. The Chamber erred in law and in fact in finding that a CPK policy not to harm former Khmer Republic officials changed in 1976. *See* para. 1063.

Ground 321. The Chamber erred in law and in fact in finding that there was a CPK policy broadly targeting former Khmer Republic officials for adverse treatment throughout the DK period. *See* para. 4049.

Ground 322. The Chamber erred in law and in fact in making the following findings in relation to the alleged discriminatory treatment of former Khmer Republic officials:

- (a) that, after 17 April 1975, some former Khmer Republic officials and family members of the former regime were interned at security centres or forced to perform manual labour. *See* para. 4047.
- (b) that there was a practice of identifying Khmer Republic officials of high rank through the compilation of lists at the district and sector levels for the purposes of arresting them. *See* paras 1690-92.

Ground 323. The Chamber erred in fact in finding that there was a plan to kill former Khmer Republic officials and soldiers in the Tram Kak district. *See* paras 964-65.

Ground 324. The Chamber erred in law and in fact in finding that former Khmer Republic officials were arrested, killed, or disappeared at the Tram Kak Cooperatives. *See* paras 1070-83, 1200-04.

Ground 325. The Chamber erred in law and in fact in finding that the crime against humanity of persecution on political grounds has been established at the Tram Kak Cooperatives in relation to former Khmer Republic officials. *See* paras 1173-75, 1177-79.

Ground 326. The Chamber erred in law and in fact in finding that the crime against humanity of other inhumane acts through conduct characterised as enforced disappearances has been established at the Tram Kak Cooperatives in relation to former Khmer Republic officials. *See* paras 1201-04.

Ground 327. The Chamber erred in law and in fact in relying on events outside the scope of the Closing Order to make findings on the treatment of former Khmer Republic officials at the 1st January Dam Worksite. *See* paras 1660-62.

Ground 328. The Chamber erred in law and in fact in finding that some people at the 1st January Dam Worksite were targeted for arrest and disappeared due to their association with former Khmer Republic officials. *See* para. 1663.

Ground 329. The Chamber erred in law and in fact in finding that the crime against humanity of persecution on political grounds has been established at the 1st January Dam Worksite in relation to former Khmer Republic officials. *See* paras 1690-92.

Ground 330. The Chamber erred in law and in fact in finding that former Khmer Republic officials, and their relatives, were targeted for arrest and executed at the S-21 Security Centre. *See* para. 2492.

Ground 331. The Chamber erred in law and in fact in fact in finding that the crime against humanity of persecution on political grounds has been established at the S-21 Security Centre in relation to former Khmer Republic officials. *See* paras 2599-604.

Ground 332. The Chamber erred in law and in fact in finding that the crime against humanity of murder has been established at the Kraing Ta Chan Security Centre in relation to former Khmer Republic officials. *See* para. 2813.

Ground 333. The Chamber erred in law and in fact in finding that the crime against humanity of persecution on political grounds has been established at the Kraing Ta Chan Security Centre in relation to former Khmer Republic officials. *See* paras 2838-43.

XX. REGULATION OF MARRIAGE

The following grounds of appeal are alleged errors that invalidate all convictions in relation to the regulation of marriage:

Ground 334. The Chamber erred in law and in fact in finding that convicting Nuon Chea for the crime against humanity of other inhumane acts through conduct characterised as forced marriage did not violate the principle of legality, and that such conduct is of similar gravity to other crimes against humanity. *See* paras 741, 743-49, 3688, 3691-92.

Ground 335. The Chamber erred in law and abused its discretion in applying double standards to its assessment of expert evidence on the regulation of marriage. *See* paras 3529-34.

Ground 336. The Chamber erred in law and in fact in assessing evidence of rape outside the context of forced marriage for the purposes of understanding the general context in which marriages were brought about, including alleged CPK policy on rape in general. *See* para. 3535.

Ground 337. The Chamber erred in law and in fact in making the following findings on the reliability and credibility of exculpatory evidence, primarily from CPK cadres, in relation to the regulation of marriage:

- (a) that Prak Yut's testimony on the administrative level at which marriage was approved was not credible. *See* paras 3609, 3191.
- (b) that the consent of individuals to enter into arranged marriages may not have been genuine, and that the cadres who gave such evidence exhibited a tendency to minimise their own responsibility. *See* paras 3623, 3625, 3675.
- (c) despite Seng Ol's statement that marriages in her unit were not forced and that marriage only occurred when individuals consented, that consent to marry was given out of fear. *See* para. 3673.

Ground 338. The Chamber erred in law and in fact, and abused its discretion, in its assessment of the reliability and credibility of civil parties Om Yoeurn, Mom Vun, and Preap Sokhoeurn. *See* para. 3649.

Ground 339. The Chamber erred in law and in fact in making the following findings in relation to the existence of a CPK policy to regulate marriage:

- (a) that the CPK saw family and marriage as crucial to building a new society that would accord with the ideological standards of its socialist revolution and, accordingly, saw family and marriage from a collectivist perspective, implying a radical departure from Khmer traditions. *See* para. 3539.
- (b) that the CPK considered children to be the best source for the revolution, and that "Angkar" was placed above parents or even intended to replace them. *See* para. 3539.
- (c) that only "Angkar" could make an assessment on matters of family-building. *See* para. 3541.
- (d) that the agreement of parties to marry was less important than adherence to "Angkar's" directives. *See* para. 3548.
- (e) that an objective of the CPK's policy on marriage was to increase the population and, in part, increase the number of available soldiers. *See* paras 3557-58.

Ground 340. The Chamber erred in law and in fact in making the following findings in relation to the regulation of non-marital relationships:

- (a) that an objective of the CPK's policy on marriage was to control sentimental or sexual interactions between men and women outside of marriage. *See* para. 3559.

- (b) that the CPK's prohibition on behaviour violating women, as set out in Precept 6, related to consensual relationships outside of marriage rather than to non-consensual acts perpetrated against women generally. *See* para. 3560.
- (c) that relationships and, in some instances, general interactions between men and women outside of marriage were considered moral offences. *See* para. 3563.

Ground 341. The Chamber erred in law and in fact in its assessment of the Defence's arguments likening arranged marriage prior to the DK to the regulation of marriage during the DK. *See* paras 3688-90.

Ground 342. The Chamber erred in law and in fact in making the following findings in relation to the oversight and reporting structure *vis-à-vis* the regulation of marriage:

- (a) that instructions relating to marriage were communicated from the "upper echelon". *See* paras 3565-66.
- (b) that Khieu Samphân personally gave instructions regarding marriage and family-building. *See* paras 3569, 3571.
- (c) that all DK government ministries had to arrange marriages. *See* para. 3570.

Ground 343. The Chamber erred in law and in fact in making the following findings in relation to the matching of couples for marriage:

- (a) that people with similar backgrounds were matched for marriage, and only in rare instances were people with different backgrounds allowed to marry. *See* paras 3578, 3580.
- (b) that Cham people were matched with other Cham people for marriage, and that mixed marriages were not permitted. *See* para. 3579.
- (c) that the age of women who were married during the DK period ranged from 16 to 60 years old. *See* para. 3583.
- (d) that women who married disabled soldiers were expected to do so for the benefit of the revolution. *See* para. 3590.

Ground 344. The Chamber erred in law and in fact in making the following findings in relation to consent to marriage:

- (a) that due to an environment of fear, people had no choice but to marry in accordance with CPK directives. *See* paras 3674, 3676, 3678.
- (b) that people could not refuse to marry without suffering consequences. *See* para. 3625.
- (c) that some male CPK cadres were allowed to choose their wives, but the spouses were forced to marry without being asked. *See* para. 3591.
- (d) that lower-level CPK cadres matched people for marriage and then proposed such lists to higher-level cadres for approval. *See* para. 3598.
- (e) that while some evidence suggested that approval of marriages was made at a lower level, authorisation generally came from "higher levels". *See* para. 3608.
- (f) that during the DK period, "Angkar" supplanted the role of parents, and that parents were not involved in arranging marriages for their children. *See* para. 3613.
- (g) to the exclusion of all evidence to the contrary, that the CPK required its members, cadres, combatants and the general population to unconditionally follow whatever "Angkar" ordered, including in relation to marriage. *See* paras 3618-19, 3623, 3625.

Ground 345. The Chamber erred in law and in fact in finding that people who were matched for marriage were usually not consulted and received little to no notice that they were to be married. *See* para. 3616.

Ground 346. The Chamber erred in law and in fact in finding that weddings held during the DK period were not conducted in accordance with Cambodian traditions. *See* para. 3638.

Ground 347. The Chamber erred in law and in fact in making the following findings in relation to the consummation of marriages in the DK:

- (a) that after wedding ceremonies, couples were commonly monitored to ensure that they had consummated their marriages, and that some women were forced to consummate their marriage. *See* paras 3644, 3659-61.
- (b) that rape was used to punish people who refused to consummate their marriages. *See* para. 3658.

Ground 348. The Chamber erred in law and in fact in finding that the CPK did not permit couples married by “Angkar” to get divorced. *See* para. 3669.

Ground 349. The Chamber erred in law and in fact in finding that, in areas of the nation other than the charged crime sites, people had no choice but to marry in accordance with CPK directives. *See* para. 3670.

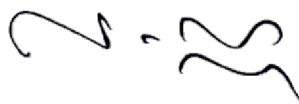
Ground 350. The Chamber erred in law and in fact in finding that the crime against humanity of other inhumane acts has been established nationwide through conduct characterised as forced marriage. *See* paras 3687-94.

Ground 351. The Chamber erred in law and in fact in finding that the crime against humanity of other inhumane acts has been established nationwide through conduct characterised as rape in the context of forced marriage. *See* paras 3696-700.

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