

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

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**IM CHAEM'S RESPONSE TO THE INTERNATIONAL CO-PROSECUTOR'S RULE 66
FINAL SUBMISSION AGAINST HER**

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I. INTRODUCTION

1. Ms. IM Chaem, through her Co-Lawyers (“the Defence”), hereby files this Response¹ to the *International Co-Prosecutor’s Rule 66 Final Submission Against IM Chaem*.²
2. On 18 December 2015, the parties were informed that the main legal issue in Ms. IM Chaem’s case is personal jurisdiction.³ In particular, the Co-Investigating Judges indicated they were inclined “to dismiss the charges against [Ms. IM] Chaem due to a lack of personal jurisdiction.”⁴
3. In the Final Submission, the International Co-Prosecutor submits that Ms. IM Chaem is “among those who were most responsible” for crimes allegedly committed during the Democratic Kampuchea regime.⁵ The International Co-Prosecutor rests his claim on the totality of the evidence in Case File 004/1 and contends that Ms. IM Chaem i) was an official of the Communist Party of Kampuchea “of significant rank at the District and Sector level”⁶ in both the Southwest and Northwest Zone and ii) played a “key role in the commission of crimes which affected tens of thousands of individuals, and caused many thousands of deaths.”⁷ On this basis, the International Co-Prosecutor requests the Co-

¹ This Response is filed in English first, with the Khmer translation to follow at the first opportunity, as authorised by the Co-Investigating Judges. *See*, Decision on IM Chaem’s Request to File her Response to the International Co-Prosecutor’s Final Submissions in English First, 10 November 2016, **D304/5/1**. The Defence has endeavoured to liaise with the Interpretation and Translation Unit to ensure prioritisation of the translation of this Response to the maximum extent possible. *See*, Email from RY Noyel (Case Manager for the IM Chaem Defence team) to KORM Chanmony (Head of the Interpretation and Translation Unit) entitled “Translation of IM Chaem’s Response to the ICP’s Final Submission”, 25 November 2016 [attached as **Authority 1**].

² International Co-Prosecutor’s Rule 66 Final Submission Against IM Chaem, 27 October 2016, **D304/2** (“Final Submission”).

³ Notice of Intent to Dismiss the Charges Against IM Chaem and to Sever the Proceedings Against Her, 18 December 2015, **D286**, para. 5. On 1 November 2016, the Co-Investigating Judges reiterated that the main legal issue in Case 004/1 is whether the ECCC has personal jurisdiction over Ms. IM Chaem. *See*, Notice to Defence on Deadline to Respond to the Co-Prosecutors’ Rule 66(5) Final Submissions, 1 November 2016, **D304/4**, para. 6.

⁴ Notice of Intent to Dismiss the Charges Against IM Chaem and to Sever the Proceedings Against Her, 18 December 2015, **D286**, para. 7.

⁵ *See*, Final Submission, paras. 530-38.

⁶ Final Submission, para. 530.

⁷ Final Submission, para. 530.

Investigating Judges to indict Ms. IM Chaem for crimes against humanity and grave breaches of the Geneva Conventions.⁸

4. In this Response, the Defence submits that the International Co-Prosecutor erred in law and in fact in concluding that Ms. IM Chaem falls into the “most responsible” category. First, the International Co-Prosecutor erred in law in resting his claim on all the evidence contained in Case File 004/1 without due regard to the Notification of Charges and the final determination of the charges.⁹ Second, the International Co-Prosecutor’s assessment of the evidence is premised on an erroneous approach to the facts that no reasonable trier of fact could adopt. The International Co-Prosecutor pursues a case without the requisite caution to be expected from a minister of justice¹⁰ and without due regard for the objectivity required to contribute to the ascertainment of the truth.¹¹
5. In light of the standard of proof,¹² an assessment of the two cumulative criteria required to assess personal jurisdiction, in light of the evidence relevant to the Notification of Charges (the crimes allegedly committed at Phnom Trayoung Security Centre (“PTSC”) and Spean Sreng Worksite (“SSWS”)),¹³ shows that Ms. IM Chaem cannot be considered to be “most responsible”.¹⁴ In sum, the evidence shows that Ms. IM Chaem was the *de jure* and *de facto* District Secretary of Preah Net Preah. She did not possess any other *de jure* or *de facto* authority in the Northwest Zone.¹⁵ In her capacity as District Secretary, and throughout the Democratic Kampuchea regime, Ms. IM Chaem’s role was limited to agricultural work and food production,¹⁶ including canal and dam construction¹⁷ within the

⁸ See, Final Submission, para. 539.

⁹ See, Response, paras. 54-60. See also, Response, paras. 20-29.

¹⁰ See, Response, paras. 30-36.

¹¹ Cf, *Case of KAING Guek Eav alias Duch*, 001/18-07-2007-ECCC/TC, Decision on Civil Party Co-Lawyers’ Joint Request for a Ruling on the Standing of Civil Party Lawyers to make Submissions on Sentencing and Directions Concerning the Questioning of the Accused, Experts and Witnesses Testifying on Character, 9 October 2009, **E72/3** (“Case 001 Decision on the Standing of Civil Party Lawyers to Make Submissions, **E72/3**”), paras. 20-21, 24, 34.

¹² See, Response, paras. 37-41, 61-62.

¹³ See, generally, Response, paras. 54-60, 144-226. Cf, Response, paras. 20-29; Notification of Charges against IM Chaem, 3 March 2015, **D239.1** (“Notification of Charges, **D239.1**”), paras. 2-9.

¹⁴ See, Response, paras. 144-226, 230-38.

¹⁵ See, Response, paras. 97-121.

¹⁶ See, Response, paras. 122-29, 173-74.

¹⁷ See, Response, paras. 122-29, 214-16.

authority vested in her by the sector-level.¹⁸ Additionally, the evidence does not support an inference that the crimes allegedly committed at PTSC and SSWS under the direct authority of the sector level¹⁹ were particularly grave.²⁰ In any event, Ms. IM Chaem's responsibilities in the two crime sites were remote from any crimes committed or controlled by those at the sector level.²¹

6. Accordingly, on the basis of the arguments set out in this Response, the Defence respectfully requests that the Co-Investigating Judges exercise of their discretion, find that the ECCC does not have personal jurisdiction over Ms. IM Chaem, and dismiss all allegations against her.

II. RELEVANT BACKGROUND

7. On 7 September 2009, the acting International Co-Prosecutor filed the Third Introductory Submission, opening a judicial investigation against Ms. IM Chaem.²²
8. On 3 March 2015, former International Co-Investigating Judge Harmon charged Ms. IM Chaem for crimes allegedly committed between approximately April 1977 and 6 January 1979, in her capacity as Secretary of Preah Net Preah District, at two crime sites, PTSC and SSWS.²³ Ms. IM Chaem was charged with crimes against humanity and violations of the 1956 Penal Code only.²⁴ The Defence was granted access to the case file against Ms. IM Chaem on the same date.²⁵
9. On 21 September 2015, the International Co-Prosecutor, the National Co-Prosecutor, and the Defence submitted observations on whether Ms. IM Chaem should be considered a senior leader or among those who were most responsible for the crimes committed during

¹⁸ See, Response, paras. 99-110, 113, 122-42.

¹⁹ See, Response, paras. 148-54, 193-207.

²⁰ See, Response, paras. 155-86, 208-26.

²¹ See, *generally*, Response, paras. 148-86, 193-226.

²² Co-Prosecutors' Third Introductory Submission, 7 September 2009, **D1** ("Third Introductory Submission, **D1**").

²³ Decision to Charge IM Chaem *in Absentia*, 3 March 2015, **D239**; Notification of Charges, **D239.1**, paras. 2-9.

²⁴ Notification of Charges, **D239.1**, paras. 4-9.

²⁵ Decision to Charge IM Chaem *in Absentia*, 3 March 2015, **D239**, para. 77.

the Democratic Kampuchea regime.²⁶ The International Co-Prosecutor argued that Ms. IM Chaem should be considered among those who were most responsible on the basis that “as a CPK official of significant rank, [she] played a key role in the commission of crimes which affected the lives of tens of thousands of individuals, and which caused many thousands of deaths.”²⁷ The National Co-Prosecutor and the Defence submitted that the ECCC did not have personal jurisdiction over Ms. IM Chaem. In particular, the Defence submitted that “there is little or no evidence of the crimes with which [she] is charged having been committed—let alone of their gravity—and even less evidence of her having been implicated in them.”²⁸

10. On 18 December 2015, the Co-Investigating Judges concluded the investigation against Ms. IM Chaem²⁹ and notified the parties of their intent to dismiss the charges against her as well as to sever her from Case 004 proceedings.³⁰ In particular, the Co-Investigating Judges expressed their inclination “to dismiss the charges against [Ms. IM] Chaem due to a lack of personal jurisdiction.”³¹
11. On 5 February 2016, the Co-Investigating Judges severed Ms. IM Chaem from Case 004.³² At the expiration of the 15-day limit to file investigative actions requests, the judicial investigation in Ms. IM Chaem’s case was effectively concluded.
12. On 27 July 2016, the Co-Investigating Judges forwarded Case File 004/1 to the Co-Prosecutors for their final submission³³ and, on 27 October 2016, the National Co-

²⁶ IM Chaem’s Observations on Whether She Should be Considered a “Senior Leader” or Among “Those Who Were Most Responsible”, 21 September 2015, **D251/4** (“Defence Personal Jurisdiction Submission, **D251/4**”); Submission on Whether IM Chaem Should be Considered a “Senior Leader” or Among “Those Who Were Most Responsible” for the Crimes Committed in Democratic Kampuchea, 21 September 2015, **D251/5** (“International Co-Prosecutor’s Personal Jurisdiction Submission, **D251/5**”); National Co-Prosecutor’s Observations Relating to CIJ’s Exercise of Discretion over the Case of IM Chaem regarding D251, 21 September 2015, **D251/6**.

²⁷ International Co-Prosecutor’s Personal Jurisdiction Submission, **D251/5**, para. 45.

²⁸ Defence Personal Jurisdiction Submission, **D251/4**, para. 2.

²⁹ Notice of Conclusion of Judicial Investigation against IM Chaem, 18 December 2015, **D285**.

³⁰ Notice of Intent to Dismiss the Charges against IM Chaem and to Sever the Proceedings against Her, 18 December 2015, **D286**.

³¹ Notice of Intent to Dismiss the Charges against IM Chaem and to Sever the Proceedings against Her, 18 December 2015, **D286**, para. 7.

³² Order for Severance of IM Chaem from Case 004, 5 February 2016, **D286/7**.

³³ Forwarding Order pursuant to Internal Rule 66(4), 27 July 2016, **D304**.

Prosecutor and the International Co-Prosecutor filed two separate final submissions.³⁴ The National Co-Prosecutor requested that all allegations against Ms. IM Chaem be dismissed.³⁵ The International Co-Prosecutor requested her indictment, arrest, and detention.³⁶

13. On 31 October 2016, the Defence filed a letter requesting the Co-Investigating Judges to deny any request made by the International Co-Prosecutor to publish a redacted version of the Final Submission prior to the issuance of the Closing Order.³⁷ This request was made due to the extent of the erroneous and unsubstantiated allegations in the Final Submission that may mislead the public and endanger Ms. IM Chaem's personal security if published in redacted or edited form. On 8 November 2016, the International Co-Prosecutor responded requesting that the Defence's Request be dismissed.³⁸
14. On 1 November 2016, the Co-Investigating Judges informed the Defence that the deadline for their Response was set to 28 November 2016.³⁹ On 7 November 2016, the Defence requested permission to file their Response to the International Co-Prosecutor's Final Submission in English first with the Khmer translation to follow.⁴⁰ On 10 November 2016, the Co-Investigating Judges granted the Defence's Request.⁴¹

III. SUMMARY OF ARGUMENTS

15. Before responding to the International Co-Prosecutor's arguments in regard to the main issue in Ms. IM Chaem's case—whether the ECCC has personal jurisdiction—the Defence will first address a number of Preliminary Observations concerning the Final Submission

³⁴ Final Submission concerning IM Chaem pursuant to Internal Rule 66, 27 October 2016, **D304/1**; Final Submission.

³⁵ Final Submission concerning IM Chaem pursuant to Internal Rule 66, 27 October 2016, **D304/1**, para. 38.

³⁶ Final Submission, paras. 539-41.

³⁷ IM Chaem's Letter to the Co-Investigating Judges on the Filing of a Public Redacted Version of the Co-Prosecutors' Final Submissions, 31 October 2016, **D304/3**.

³⁸ International Co-Prosecutor's Response to IM Chaem's Letter to the Co-Investigating Judges on the Filing of a Public Redacted Version of the Co-Prosecutor's Final Submission, 8 November 2016, **D304/3/1**.

³⁹ Notice to Defence on Deadline to Respond to the Co-Prosecutors' Rule 66(5) Submissions, 1 November 2016, **D304/4**, para. 8.

⁴⁰ IM Chaem's Letter Requesting to File the Response to the International Co-Prosecutor's Final Submission in English First with Khmer translation to follow, 7 November 2016, **D304/5**.

⁴¹ Decision on IM Chaem's Request to File her Response to the International Co-Prosecutor's Final Submissions in English First, 10 November 2016, **D304/5/1**, para. 5.

and the International Co-Prosecutor's factual and legal approach to the assessment of personal jurisdiction and a potential indictment. These Preliminary Observations are summarised below and developed at paragraphs 19 to 47. They are intended to assist the Co-Investigating Judges by outlining preliminary issues relevant to the preparation of the Closing Order. In particular, the Defence submits that the International Co-Prosecutor's Final Submission:

- (i) As a matter of law, implicitly requests a dismissal order on all charges of violations of the 1956 Penal Code by electing not to address these charges in the Final Submission;
 - (ii) As a matter of law, impermissibly seeks to expand the scope of the Closing Order by requesting an indictment on charges not contained in the Notification of Charges, in violation of due process and Ms. IM Chaem's fair trial rights;
 - (iii) As a matter of fact and / or law, consistently disregards the obligation to assist the Co-Investigating Judges in ascertaining the truth by failing to apply Judge Bohlander's cautious approach to the assessment of the evidence and otherwise presenting arguments without the required objectivity;
 - (iv) As a matter of law, seeks to lower the applicable standard of proof required to indict a Charged Person; and
 - (v) As a matter of law, misinterprets the role of victims at the ECCC by conflating the status of civil party *applicants* and civil *parties* in order to support the claim that there is a strong interest in the prosecution of Ms. IM Chaem.
16. Following the Preliminary Observations, the Defence will directly address the principal issue: namely whether Ms. IM Chaem should be considered among those "most responsible".⁴²

⁴² See, Response, paras 48-240. *Cf.* Notice of Intent to Dismiss the Charges Against IM Chaem and to Sever the Proceedings Against Her, 18 December 2015, **D286**, para. 5; Notice to Defence on Deadline to Respond to the Co-Prosecutors' Rule 66(5) Final Submissions, 1 November 2016, **D304/4**, para. 6.

17. First, the Defence will address the legal elements of the applicable test to determine personal jurisdiction. Second, the Defence will assess the relevant evidence in light of the two cumulative criteria that determine whether a Charged Person is “most responsible”. In summary, in regards to the facts, the Defence will argue that the International Co-Prosecutor erroneously assessed Ms. IM Chaem’s responsibility by:
- (i) Misapplying the applicable test relevant to the “most responsible” category, which rests on the assessment of two cumulative criteria (the gravity of the crimes charged and the alleged perpetrator’s level of responsibility) by applying it to evidence outside the limits set out by the Notification of Charges; and
 - (ii) Taking an approach to the relevant evidence in regard to the relevant facts in Ms. IM Chaem’s case that no reasonable trier of fact could adopt and which is incapable of leading to the ascertainment of the truth.
18. In sum, the Defence will submit that an assessment of the gravity of the crimes that form the basis of the charges against Ms. IM Chaem in relation to PTSC and SSWS; and her alleged responsibility in relation to these charges, establishes that she does not fall into the category of “most responsible”. In particular, the Response will show that the International Co-Prosecutor’s case rests on two principal false premises, namely that Ms. IM Chaem exercised sector-level *de jure* or *de facto* authority at PTSC and SSWS and that the crimes allegedly committed at those locations within the relevant timeframe were particularly grave.

IV. PRELIMINARY OBSERVATIONS

A. THE INTERNATIONAL CO-PROSECUTOR IMPLICITLY REQUESTED A DISMISSAL ORDER ON ALL CHARGES OF VIOLATIONS OF THE 1956 PENAL CODE

19. Despite acknowledging that Ms. IM Chaem was charged with violations of the 1956 Penal Code,⁴³ the International Co-Prosecutor has not requested indictment for the relevant

⁴³ See, Final Submission, para. 16.

domestic crimes.⁴⁴ Given that a final submission is a request to make a *specific* closing order in a particular case,⁴⁵ the International Co-Prosecutor's choice not to pursue an indictment for domestic crimes should be regarded as a request for dismissal on all charges of violations of the 1956 Penal Code. Accordingly, the Defence's Response will not address the domestic crimes.

B. THE INTERNATIONAL CO-PROSECUTOR IMPERMISSIBLY ATTEMPTED TO EXPAND THE SCOPE OF THE CLOSING ORDER

20. The International Co-Prosecutor may not seek indictment for any charge outside of the Notification of the Charges.⁴⁶ Notwithstanding, the International Co-Prosecutor requests that the Co-Investigating Judges indict Ms. IM Chaem for alleged charges outside those in the Notification of Charges and therefore in relation to facts that do not form the basis of any current charge.⁴⁷ The International Co-Prosecutor's request is wrong in law. As outlined below, the Defence submits that the International Co-Prosecutor must not be permitted to pursue a Closing Order in excess of the scope of the Notification of Charges or otherwise seek to widen the scope of the judicial investigation *a posteriori* without due process. Plainly, in order to be indicted, a Suspect must have previously been informed of the charges through the Notification of Charges.⁴⁸

⁴⁴ See, Final Submission, para. 539. See also, Final Submission paras. 294-378, 442-503 [only providing the law for and suggesting a legal characterisation of alleged crimes against humanity and grave breaches of the Geneva Conventions].

⁴⁵ See, Internal Rules of the Extraordinary Chambers in the Courts of Cambodia (Rev.9), adopted on 12 June 2007 (as revised on 16 January 2015) ("Internal Rules"), Glossary p. 83 (definition of "Final Submission") [defining a final submission as a "*written* submission by the Co-Prosecutors requesting the Co-Investigating Judges to make a *specific* Closing Order in a particular case." (emphasis added)].

⁴⁶ Cf, *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/OCIJ, Order Concerning the Co-Prosecutors' Request for Clarification of Charges, 20 November 2009, **D198/1**, para. 10.

⁴⁷ See, Final Submission, para. 539.

⁴⁸ Cf, *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/OCIJ, Order Concerning the Co-Prosecutors' Request for Clarification of Charges, 20 November 2009, **D198/1**, para. 10; Notification of Charges, **D239.1**. See, e.g., Decision to Charge IM Chaem *in Absentia*, 3 March 2015, **D239**, para. 59 ["The International CIJ has determined that there exists clear and consistent evidence that Im Chaem may be responsible for certain crimes alleged in the Introductory Submission."]; Notice of Conclusion of Judicial Investigation against IM Chaem, 18 December 2015, **D285**, para. 2 ["On 3 March 2015... former International CIJ Mark Harmon charged Im Chaem *in absentia* with violations of Articles 501 and 506 of the 1956 Penal Code (homicide) and the crimes against humanity of murder, extermination, enslavement, imprisonment, persecution on political grounds, and other inhumane acts."]; Considerations on IM Chaem's Appeal Against the International Co-Investigating

21. Contrary to the International Co-Prosecutor's implied approach, the Charged Person does not have to scour the contents of the Third Introductory Submission,⁴⁹ the two Supplementary Submissions,⁵⁰ and the Notification of Suspect's Rights,⁵¹ to ascertain *potential* charges that may be contained within the hundreds of pages. The Introductory and Supplementary Submissions are not charging documents but serve as *requests* to the Co-Investigating Judges to open or extend a judicial investigation into alleged facts.⁵² The Notification of Suspect's Rights is not a charging document either and serves to *inform* a suspect "of the crimes for which [he / she] is being investigated and the period during which they were allegedly committed."⁵³
22. The Notification of Charges is the means by which the Co-Investigating Judges notifies a Suspect of the charges against them and only after it has been established that there is "clear and consistent evidence that such person may be criminally responsible for the commission of a crime referred to in an Introductory Submission or a Supplementary Submission."⁵⁴ Consequently, the Notification of Charges substantially affects the status of the Suspect: a Suspect, once notified of the charges against him / her, becomes a party to the proceedings⁵⁵ and is entitled to participate in the judicial investigation by accessing the case file,⁵⁶ confronting witnesses,⁵⁷ requesting investigative actions,⁵⁸ or even

Judge's Decision to Charge her *in Absentia*, 1 March 2016, **D239/1/8**, para. 10 [describing the charging of Ms. IM Chaem on 3 March 2015: "The International Co-Investigating Judge detailed the charges against IM Chaem, which include alleged violations of the 1956 Penal Code and a number of crimes against humanity, in a separate annex attached to the Impugned Decision."].

⁴⁹ Third Introductory Submission, **D1**.

⁵⁰ Co-Prosecutors' Supplementary Submission regarding Sector 1 Crime Sites and Persecution of Khmer Krom, 18 July 2011, **D65** ("First Supplementary Submission, **D65**"); Co-Prosecutors' Supplementary Submission regarding Forced Marriage and Sexual or Gender-Based Violence, 24 April 2014, **D191** ("Second Supplementary Submission, **D191**").

⁵¹ Notification of Suspect Rights [Internal Rule 21(1)(D)] in Case File 004, 6 March 2012, **D111**.

⁵² Internal Rules, Glossary, pp. 84 (definition of "Introductory Submission"), 85 (definition of "Supplementary Submission").

⁵³ Notification of Suspect Rights [Internal Rule 21(1)(D)] in Case File 004, 6 March 2012, **D111**, para. 2.

⁵⁴ Internal Rules, Rule 55(4).

⁵⁵ See, Internal Rules, Glossary p. 84 (definition of "party") ["Party" refers to the Co-Prosecutors, the Charged Person/Accused and Civil Parties.].

⁵⁶ See, Decision to Charge IM Chaem *in Absentia*, 3 March 2015, **D239**, para. 77.

⁵⁷ See, Internal Rules, Rule 60(2) [providing that confrontations with witnesses may be organised in the presence of the charged person].

requesting the Co-Investigating Judges to seize the Pre-Trial Chamber with requests for annulment of investigative actions.⁵⁹ It is trite law that the Notification of Charges is *the* charging document.

23. Whilst the Co-Investigating Judges have an obligation to investigate all facts contained in the Introductory and Supplementary Submissions,⁶⁰ they are empowered to identify which facts should form the basis of any charge(s).⁶¹ In Ms. IM Chaem’s case, former International Co-Investigating Judge Harmon charged her with specific crimes allegedly committed at PTSC and SSWS *only*.⁶² Whilst Judge Harmon left the door open to additional charges,⁶³ the Co-Investigating Judges concluded the judicial investigation on 18 December 2015⁶⁴ without notifying Ms. IM Chaem of any further charges. The fact that Ms. IM Chaem was not charged with further crimes other than those in relation to PTSC and SSWS is dispositive of the issue: the Co-Investigating Judges were satisfied that there was “clear and consistent evidence” in relation to specific crimes allegedly committed at PTSC and SSWS⁶⁵ and not in relation to any other allegations proposed by the International Co-Prosecutor in the Third Introductory Submission and the two Supplementary Submissions. The International Co-Prosecutor’s current proposition—that

⁵⁸ See, Internal Rules, Rules 55(10), 66(1) [providing that before the conclusion of the judicial investigation, and shortly after, parties may request investigative actions to the Co-Investigating Judges].

⁵⁹ See, Internal Rules, Rule 76(2) [providing that during the judicial investigation, if the parties consider that any part of the proceedings is null and void, they may submit reasoned applications to the Co-Investigating Judges requesting them to seize the Pre-Trial Chamber with a view to annulment].

⁶⁰ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/OCIJ, Order Concerning the Co-Prosecutors’ Request for Clarification of Charges, 20 November 2009, **D198/1**, para. 10.

⁶¹ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/OCIJ, Order Concerning the Co-Prosecutors’ Request for Clarification of Charges, 20 November 2009, **D198/1**, para. 10.

⁶² Notification of Charges, **D239.1**, paras. 2-8.

⁶³ See, Decision to Charge IM Chaem *in Absentia*, 3 March 2015, **D239**, para. 5 [“[T]here was clear and consistent evidence to support the partial charging of [Ms.] IM Chaem”]. See also, Notification of Charges, **D239.1**, para. 19 [“[T]he Co-Investigating Judges may, before the end of the investigation, decide to charge IM Chaem with additional crimes based on allegations in the Introductory Submission, the 2011 Supplementary Submission, and the 2014 Supplementary Submission, should they become satisfied that there is clear and consistent evidence that she may be responsible for such crimes.”].

⁶⁴ See, Notice of Conclusion of Judicial Investigation against IM Chaem, 18 December 2015, **D285**.

⁶⁵ Cf, Notification of Charges, **D239.1**, paras. 2-8.

allegations lacking the requisite evidential support to charge may now be the subject of an indictment—is wrong in law and if accepted will violate the demands of due process.⁶⁶

24. Moreover, the International Co-Prosecutor cannot claim to be unaware of the importance of this procedural safeguard. In 2009, in response to the Co-Prosecutors' specific question on the scope of the Closing Order in Case 002, the Co-Investigating Judges issued a Clarification Order in which they reiterated this fundamental protection: the Judges may only indict a person for alleged crimes in relation to facts previously charged. They held:

Finally, whereas the Co-Investigating Judges may not indict a person for facts in relation to which he or she has *not first been charged*, charging does not prejudice the final decision of the Co-Investigating Judges whether to issue an indictment or dismiss the case in the Closing Order.

...
[T]he Charged Persons may be indicted for all facts imputed to them by the Co-Prosecutors, *subject to the condition that those persons have been charged beforehand by the Co-Investigating Judges in relation to such facts.*⁶⁷

25. As the International Co-Prosecutor is aware, Ms. IM Chaem may only be indicted for the crimes charged, namely those in relation to PTSC and SSWS.⁶⁸ Allowing the International Co-Prosecutor to proceed otherwise would not only undermine Ms. IM Chaem's right to know the charges against her,⁶⁹ but would render the Co-Investigating Judges' power to

⁶⁶ See, e.g., Final Submission, paras. 454 [characterising the crime against humanity of murder by citing Wat Ang Srei Mealy, Phum Chakrey, Wat Preah Net Preah, Prey Sokhon, Chamkar Ta Ling, and Prey Ta Ruth, all of which are outside of the scope of the facts in relation to which Ms. IM Chaem was charged], 482 [characterising the crime against humanity of enforced disappearances by citing Trapeang Thma Dam, Chamkar Khnol, Phum Chakrey, Wat Preah Net Preah, and Wat Ang Srei Mealy, which are outside of the scope of the facts in relation to which Ms. IM Chaem was charged].

⁶⁷ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/OCIJ, Order Concerning the Co-Prosecutors' Request for Clarification of Charges, 20 November 2009, **D198/1**, paras. 10-11 (footnotes omitted, emphasis added).

⁶⁸ Notification of Charges, **D239.1**, paras. 2-8.

⁶⁹ Internal Rules, Rule 21(1)(d); International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 ("ICCPR"), Art. 14(3)(a). See also, *Case of NUON Chea et al.*, 002/18-11-2010-ECCC/PTC (16), Decision on Request for Translation of all Documents used in Support of the Closing Order, 15 December 2010, **2**, para. 7; *Pélissier and Sassi v. France* (Application no. 25444/94), ECtHR, 25 March 1999, para. 52 ["The Court considers that in criminal matters the provision of full, detailed information concerning the charges against a defendant, and consequently the legal characterization that the court might adopt in the matter, is an essential prerequisite for ensuring that the proceedings are fair."] [attached as **Authority 2**].

charge procedurally irrelevant and illusory.⁷⁰ Consequently, all arguments made in the Final Submission should address factual and legal issues arising *within the material, temporal, and geographical parameters* of the charges that were notified in the Notification of Charges.

26. Accordingly, the International Co-Prosecutor's attempt to expand the scope of the Final Submission and expand the scope of the Closing Order should be summarily dismissed. In particular, the following requests should be denied:

- (i) The request to indict Ms. IM Chaem *in relation to all of the ten alleged facts* that were the subject of the original investigation:⁷¹ only two of these alleged facts passed the requisite evidential threshold to lead to charge, *i.e.* PTSC and SSWS. The remaining eight facts may not lead to indictment. These include the following facts, those relating to: i) Persecution of the Khmer Krom;⁷² ii) Wat Ang Srei Mealy Security Office and Prey Sokhon Execution Site;⁷³ iii) Purge of Sector 5 of the Northwest Zone (in part);⁷⁴ iv) Persecution of the Vietnamese;⁷⁵ v) Chakrey Security Office and

⁷⁰ See, Decision to Charge IM Chaem *in Absentia*, 3 March 2015, **D239**, para. 71; *Pélissier and Sassi v France* (Application no. 25444/94), ECtHR, 25 March 1999, para. 54 [“[T]he court considers that sub-paragraphs (a) and (b) of Article 6 (3) are connected and that the right to be informed of the nature and the cause of the accusation must be considered in light of the accused’s right to prepare his defence.”] [attached as **Authority 2**]. See also, ICCPR, Art. 14(3)(b).

⁷¹ See, Third Introductory Submission, **D1** [listing the purge of the Northwest Zone, Phnom Trayoung Security Centre, Phum Chakrey Security Centre, Wat Preah Net Preah and Chamkar Ta Ling, Trapeang Thma Dam, Spean Sreng and Prey Roneam Dam]; First Supplementary Submission, **D65** [listing persecutions and genocide of Khmer Krom, and Prey Sokhon Execution Site]; Second Supplementary Submission, **D191** [listing sexual violence against Khmer Krom, Vietnamese, and other targeted groups].

⁷² See, Final Submission, paras. 157-62 [describing the persecution of the Khmer Krom as one of the crimes allegedly committed], 539(1) [requesting indictment for all material facts].

⁷³ See, Final Submission, paras. 163-72 [describing crimes allegedly committed at Wat Ang Srei Mealy Security Office and Prey Sokhon Execution Site], 539(1) [requesting indictment for all material facts].

⁷⁴ See, Final Submission, paras. 173-78 [describing the purge of Sector 5 of the Northwest Zone as one of the crimes allegedly committed], 539(1) [requesting indictment for all material facts]. See also, Notification of Charges, **D239.1**, para. 7 [Ms. IM Chaem was charged with the purge of Sector 5 under crimes allegedly committed at PTSC, not as an individual charge in itself: Ms. IM Chaem was charged “with the crime against humanity of ... persecution on political grounds ... (namely persecution of Northwest Zone Communist Party of Kampuchea (“CPK”) cadres and former officials of the Khmer Republic, including both civil servants and former military personnel) ... committed at [PTSC].”].

⁷⁵ See, Final Submission, paras. 179-92 [describing the persecution of Vietnamese as one of the crimes allegedly committed], 539(1) [requesting indictment for all material facts].

related execution sites including Prey Ta Ruth;⁷⁶ vi) Wat Chamkar Khnol Security Office and related sites;⁷⁷ vii) Wat Preah Net Preah and related detention and execution sites,⁷⁸ and viii) Trapeang Thma Dam.⁷⁹

(ii) The request to indict Ms. IM Chaem *in relation to crimes not charged*: the notion of “charges” in the Notification of Charges must “be understood as also implying the envisaged legal characterisation.”⁸⁰ Though requesting a legal re-characterisation of the alleged charges is permissible,⁸¹ the International Co-Prosecutor is not permitted to request an indictment for *additional* charges that introduce materially distinct elements⁸² to those included in the Notification of Charges.⁸³ The alleged crimes of

⁷⁶ See, Final Submission, paras. 217-28 [describing crimes allegedly committed at Chakrey Security Office and related execution sites including Prey Ta Ruth], 539(1) [requesting indictment for all material facts].

⁷⁷ See, Final Submission, paras. 229-41 [describing crimes allegedly committed at Wat Chamkar Khnol Security Office and Related Sites], 539(1) [requesting indictment for all material facts].

⁷⁸ See, Final Submission, paras. 242-56 [describing crimes allegedly committed at Wat Preah Net Preah and Related Detention and Execution Sites], 539(1) [requesting indictment for all material facts].

⁷⁹ See, Final Submission, paras. 272-93 [describing crimes allegedly committed at Trapeang Thma Dam Worksite], 539(1) [requesting indictment for all material facts].

⁸⁰ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/OCIJ, Order Concerning the Co-Prosecutors’ Request for Clarification of Charges, 20 November 2009, **D198/1**, para. 10 (fn. 10).

⁸¹ The Defence notes that the Internal Rules do not explicitly give the Co-Prosecutors the authority to suggest or request a legal re-characterisation of crimes; however, such requests have previously been found admissible at the ECCC. See, e.g., *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Decision on the Applicability of Joint Criminal Enterprise, 12 September 2011, **E100/6** [finding a request for legal re-characterisation filed by the Co-Prosecutors admissible]. However, the legal re-characterisation of crimes is only permissible as long as new constitutive elements are not introduced. Cf. Internal Rules, Rule 98(2). See also, Guéry C. and Chambon P., *Droit et Pratique de l’Instruction Préparatoire* (Daloz, 2013), para. 214.81 [“Si la qualification est toujours provisoire et peut être modifiée tout au long de l’information, encore faut-il que la personne mise en examen ait pu en discuter les éléments ... Mais il ne faut pas que les éléments constitutifs de l’infraction nouvelle soient trop éloignés de la qualification initiale retenue.”] [attached as **Authority 3** with unofficial translation: “Whilst the legal characterisation remains provisional and may be altered throughout the judicial investigation, the Charged Person must have been able to discuss the elements ... But the constitutive elements of the new criminal offence may not be too remote from the one legally characterised initially.”].

⁸² See, *Prosecutor v. Zdravko Mucić et al.* (IT-96-21-A), AC, Judgement, 20 February 2001, para. 412 [“[An] element is materially distinct from another if it requires proof of a fact not required by the other.”] [attached as **Authority 4**]. See also, *Prosecutor v. Mladen Naletilić and Vinko Martinović* (IT-98-34-T), TC, Judgement, 31 March 2003, para. 718 [“In determining whether a provision contains a materially distinct element, all the elements of the offence are to be taken into account, including the *chapeau* requirements.”] [attached as **Authority 5**].

⁸³ See, Notification of Charges, **D239.1**, para. 7 [Ms. IM Chaem was charged with “crimes against humanity of murder, extermination, enslavement, imprisonment, persecution on political grounds ... and other inhumane actes (namely enforced disappearances and attacks against human dignity resulting from deprivation of adequate food) committed at [PTSC]”], 8 [Ms. IM Chaem was charged with “crimes against humanity of

forced marriage, rape, and torture involve distinct material elements from those contained in the Notification of Charges, most notably: the imposition of a forced conjugal association as an element of forced marriage;⁸⁴ the sexual penetration by the perpetrator without the consent of the victim as elements of rape;⁸⁵ and the infliction of severe pain or suffering to obtain a specific result or other purpose as elements of torture.⁸⁶ Therefore, Ms. IM Chaem may not be indicted for the following alleged crimes, including in relation to those allegedly committed at PTSC and SSWS: i) forced marriage,⁸⁷ ii) rape,⁸⁸ and iii) torture.⁸⁹

(iii) The request to indict Ms. IM Chaem for grave breaches of the Geneva Conventions: the International Co-Prosecutor's request to indict Ms. IM Chaem for grave breaches of the Geneva Conventions that were not the subject of the original investigation: i) Purge of Sector 5 of the Northwest Zone,⁹⁰ ii) Persecution of the Vietnamese,⁹¹ iii) Chakrey Security Office and related execution sites including Prey Ta Ruth,⁹² iv) Wat

murder, enslavement, imprisonment, and other inhuman acts (namely enforced disappearances and attacks against human dignity resulting from deprivation of adequate food) at [SSWS].”].

⁸⁴ *Cf.*, *Case of NUON Chea et al.*, 002/19-09-2007/ECCC/OCIJ, Closing Order, 15 September 2010, **D427** (“Case 002 Closing Order, **D427**”), para. 1443; *Prosecutor v Alex Tamba Brima et. al.*, (SCSL-04-16-A-675), AC, Appeal Judgment, 22 February 2008, para. 195 [attached as **Authority 6**].

⁸⁵ *Case of KAINING Guek Eav alias Duch*, 001/18-07-2007/ECCC/TC, Judgement, 26 July 2010, **E188** (“Case 001 Trial Judgement, **E188**”), para. 362.

⁸⁶ Case 001 Trial Judgement, **E188**, paras. 354, 356.

⁸⁷ *See*, Final Submission, paras. 476-77 [characterising the crime against humanity of forced marriage at various places including SSWS], 539(1)(g) [requesting Ms. IM Chaem's indictment for crime against humanity of forced marriage].

⁸⁸ *See*, Final Submission, paras. 478-81 [characterising for the crime against humanity of rape at various places including PTSC], 539(1)(h) [requesting Ms. IM Chaem's indictment for crime against humanity of rape].

⁸⁹ *See*, Final Submission, paras. 468-71 [characterising the crime against humanity of torture at various places including PTSC], 539(1)(e) [requesting Ms. IM Chaem's indictment for crime against humanity of torture].

⁹⁰ *See*, Final Submission, paras. 486-503 [characterising grave breaches of the Geneva Conventions for all material facts described in the Final Submission], 539(2) [requesting Ms. IM Chaem's indictment for grave breaches of the Geneva Conventions for all material facts described in the Final Submission].

⁹¹ *See*, Final Submission, paras. 486-503 [characterising grave breaches of the Geneva Conventions for all material facts described in the Final Submission], 539(2) [requesting Ms. IM Chaem's indictment for grave breaches of the Geneva Conventions for all material facts described in the Final Submission].

⁹² *See*, Final Submission, paras. 486-503 [characterising grave breaches of the Geneva Conventions for all material facts described in the Final Submission], 539(2) [requesting Ms. IM Chaem's indictment for grave breaches of the Geneva Conventions for all material facts described in the Final Submission].

Chamkar Khnol Security Office and related sites;⁹³ v) Wat Preah Net Preah and related detention and execution sites;⁹⁴ vi) Trapeang Thma Dam;⁹⁵ vii) SSWS;⁹⁶ and viii) PTSC⁹⁷ is an attempt to expand the scope of the judicial investigation *a posteriori*. Neither the Third Introductory Submission⁹⁸ nor the Second Supplementary Submission⁹⁹ seised the Co-Investigating Judges with a judicial investigation into war crimes in relation to these facts.¹⁰⁰ Whilst the First Supplementary Submission contained specific allegations of grave breaches of the Geneva Conventions,¹⁰¹ Ms. IM Chaem was not charged with any of these allegations.¹⁰² Self-evidently, grave breaches of the Geneva Conventions cannot be considered to be a legal re-characterisation of the alleged crimes against humanity charges. Accordingly, Ms. IM Chaem cannot now be indicted for grave breaches of

⁹³ See, Final Submission, paras. 486-503 [characterising grave breaches of the Geneva Conventions for all material facts described in the Final Submission], 539(2) [requesting Ms. IM Chaem's indictment for grave breaches of the Geneva Conventions for all material facts described in the Final Submission].

⁹⁴ See, Final Submission, paras. 486-503 [characterising grave breaches of the Geneva Conventions for all material facts described in the Final Submission], 539(2) [requesting Ms. IM Chaem's indictment for grave breaches of the Geneva Conventions for all material facts described in the Final Submission].

⁹⁵ See, Final Submission, paras. 486-503 [characterising grave breaches of the Geneva Conventions for all material facts described in the Final Submission], 539(2) [requesting Ms. IM Chaem's indictment for grave breaches of the Geneva Conventions for all material facts described in the Final Submission].

⁹⁶ See, Final Submission, paras. 486-503 [characterising grave breaches of the Geneva Conventions for all material facts described in the Final Submission], 539(2) [requesting Ms. IM Chaem's indictment for grave breaches of the Geneva Conventions for all material facts described in the Final Submission].

⁹⁷ See, Final Submission, paras. 486-503 [characterising grave breaches of the Geneva Conventions for all material facts described in the Final Submission], 539(2) [requesting Ms. IM Chaem's indictment for grave breaches of the Geneva Conventions for all material facts described in the Final Submission].

⁹⁸ Third Introductory Submission, **D1**.

⁹⁹ Second Supplementary Submission, **D191**.

¹⁰⁰ Third Introductory Submission, **D1**, para. 119 [opening an investigation against Ms. IM Chaem in relation to the following proposed charges: violations of the 1956 Penal Code and crimes against humanity]; Second Supplementary Submission, **D191**, para. 13 [opening an investigation against Ms. IM Chaem in relation to the following proposed charges: violations of the 1956 Penal Code and crimes against humanity].

¹⁰¹ First Supplementary Submission, **D65**, para. 22 [opening an investigation against Ms. IM Chaem in relation to the following proposed charges: crime of genocide, violations of the 1956 Penal Code, crimes against humanity, and grave breaches of the Geneva Conventions].

¹⁰² See, Notification of Charges, **D239.1**, paras. 4 [“[Ms.] IM Chaem is charged with violations of Article 501 and 506 (homicide) of the 1956 Penal Code committed at both Phnom Trayoung security centre and Spean Sreng worksite”], 6 [“[Ms.] IM Chaem is charged with crimes against humanity committed as part of a widespread or systematic attack targeting a civilian population [committed at PTSC and SSWS].”].

the Geneva Conventions: i) Persecution of the Khmer Krom;¹⁰³ and ii) Wat Ang Srei Mealy Security Office and Prey Sokhon Execution Site.¹⁰⁴

27. In sum, the International Co-Prosecutor's attempt to seek indictment for charges outside of those in the Notification of the Charges should be dismissed. Ms. IM Chaem faces 12 charges only.¹⁰⁵
28. Moreover, even if the International Co-Prosecutor was entitled to seek a Closing Order in excess of the scope of the Notification of Charges or otherwise seek to widen the scope of the judicial investigation *a posteriori*, Ms. IM Chaem would still be entitled to be promptly informed of the nature and cause of the charges. Instead, as a direct consequence of the International Co-Prosecutor's *ultra vires* approach to the Final Submission, the International Co-Prosecutor's requested remedy at paragraph 539 fails to provide the requisite particularity. Instead, the International Co-Prosecutor vaguely requests: "Considering the material facts and their legal characterisation as described in this Submission, the International Co-Prosecutor requests the Co-Investigating Judges to indict [Ms. IM Chaem] for trial for ... the following crimes: (1) CRIMES AGAINST HUMANITY ... (2) GRAVE BREACHES OF THE GENEVA CONVENTIONS OF 12 AUGUST 1949 ...".¹⁰⁶ As a direct consequence of the International Co-Prosecutor's attempt to exceed the scope of the charges contained in the Notification of the Charges, the nature and scope of the indictment now sought is vague and unspecified.

¹⁰³ See, Final Submission, paras. 486-503 [characterising grave breaches of the Geneva Conventions for all material facts described in the Final Submission], 539(2) [requesting Ms. IM Chaem's indictment for grave breaches of the Geneva Conventions for all material facts described in the Final Submission].

¹⁰⁴ See, Final Submission, paras. 486-503 [characterising grave breaches of the Geneva Conventions for all material facts described in the Final Submission], 539(2) [requesting Ms. IM Chaem's indictment for grave breaches of the Geneva Conventions for all material facts described in the Final Submission].

¹⁰⁵ See, Notification of Charges, **D239.1**, paras. 7 [Ms. IM Chaem was charged with "crimes against humanity of murder, extermination, enslavement, imprisonment, persecution on political grounds ... and other inhumane acts (namely enforced disappearances and attacks against human dignity resulting from deprivation of adequate food) committed at [PTSC]."], 8 [Ms. IM Chaem was charged with "crimes against humanity of murder, enslavement, imprisonment, and other inhuman acts (namely enforced disappearances and attacks against human dignity resulting from deprivation of adequate food) at [SSWS]."].

¹⁰⁶ Final Submission, para. 539.

29. The International Co-Prosecutor is now unable (or unwilling) to properly particularise the request for indictment.¹⁰⁷ Accordingly, it is not practicable to ascertain which charges are intended to be the subject of any indictment. A review of the Final Submission suggests that the International Co-Prosecutor appears to seek the indictment of Ms. IM Chaem for crimes encompassing between 120 and 150 charges.¹⁰⁸ This vagueness and uncertainty is fatal. At a minimum, it contravenes Ms. IM Chaem's fundamental right to be informed of the charges against her, rides roughshod over procedural safeguards and ultimately deprives the process of the certainty required to form the basis of a valid indictment or respect the principle of culpability.

C. THE INTERNATIONAL CO-PROSECUTOR FAILED TO ASSIST THE COURT IN ASCERTAINING THE TRUTH

30. One of the central features of the inquisitorial system, upon which proceedings before the ECCC are based, is the obligation to seek the truth. Truth "is what reasonable people agree upon after a complete and fair discourse".¹⁰⁹ Whilst the Co-Investigating Judges are vested with the primary responsibility to realise this goal at the pre-trial stage,¹¹⁰ all parties to the proceedings must assist the court in ascertaining the truth.¹¹¹
31. The obligation must be realised through a strict adherence to completeness, objectivity and impartiality in the evidence gathering and assessment process.¹¹² Accordingly, Judge Bohlander has determined that he will strictly apply the principle *in dubio pro reo* when

¹⁰⁷ See, Final Submission, para. 539 ["Considering the material facts and their legal characterisation as described in this Submission, the International Co-Prosecutor requests the Co-Investigating Judges to indict [Ms. IM Chaem] for trial for ... the following crimes" and requesting her indictment for 15 charges for each of the 10 alleged facts that were the subject of the original investigation].

¹⁰⁸ See, Final Submission, para. 539. See also, Response, para. 26 (fns. 72-79, 87-97, 103-04).

¹⁰⁹ Weigend T., *Should We Search for the Truth, and Who Should Do it?* (North Carolina Journal of International Law, Volume 36, Issue 2, 2011), p. 395 [attached as **Authority 7**].

¹¹⁰ Internal Rules, Rule 55(5).

¹¹¹ Case 001 Decision on the Standing of Civil Party Lawyers to Make Submissions, E72/3, paras. 20-21, 24. See also, Case 001 Decision on the Standing of Civil Party Lawyers to Make Submissions, E72/3, para. 34.

¹¹² See, Internal Rules, Rule 55(5) ["In the conduct of judicial investigations, the Co-Investigating Judges may take any investigative action conducive to ascertaining the truth. In all cases, they shall conduct their investigation impartially, whether the evidence is inculpatory or exculpatory."].

assessing the evidence,¹¹³ including favouring direct evidence when available.¹¹⁴ In addition, Judge Bohlander noted that he would take a “conservative approach” to calculating the number of victims of any alleged crimes¹¹⁵ and that, in situations where witnesses give estimates of numbers of victims by way of a range, the lower figure will be used.¹¹⁶ As an illustration of this approach in action, Judge Bohlander found a reference to an estimation of 8,000 skulls near a Case 004 crime site to be “unreliable” because there was no evidence that the witness had directly perceived any of the alleged crimes and he had not been interviewed by an OCIJ investigator.¹¹⁷

32. As observed above, all parties to the proceedings, including the Co-Prosecutors, have a duty to act to ascertain the truth.¹¹⁸ In this regard, when discussing the role of the Co-Prosecutors in Case 001, the majority of the Trial Chamber stated:

The prosecutorial authority also represents the “interests of justice” and is entrusted to bring criminal actions in the “general interests of the society”

...

As in most jurisdictions, the prosecution’s role includes the duty to assist the court in arriving at the truth and to serve the interests of justice in relation to both the community and the Accused, according to law and the dictates of fairness.¹¹⁹

33. The Defence acknowledges that the International Co-Prosecutor is not required to be strictly neutral in Ms. IM Chaem’s case—he is a party to the proceedings. He is, however,

¹¹³ *Case of AO An et al.*, 004/07-09-2009/ECCC/OCIJ, Decision on AO An’s Amended Second Request for Investigative Action, 7 September 2016, **D188/1/1**, para. 48; *Case of AO An et al.*, 004/07-09-2009/ECCC/OCIJ, Decision on AO An’s Amended Fourth Request for Investigative Action, 17 October 2016, **D244/1**, paras. 17, 26.

¹¹⁴ *Case of AO An et al.*, 004/07-09-2009/ECCC/OCIJ, Decision on AO An’s Amended Second Request for Investigative Action, 7 September 2016, **D188/1/1**, para. 48. *See also Case of AO An et al.*, 004/07-09-2009/ECCC/OCIJ, Decision on AO An’s Amended Fourth Request for Investigative Action, 17 October 2016, **D244/1**, para. 23; *Case of AO An et al.*, 004/07-09-2009/ECCC/OCIJ, Decision on AO An’s Amended Third Request for Investigative Action, 20 September 2016, **D189/2**, para. 20.

¹¹⁵ *Case of AO An et al.*, 004/07-09-2009/ECCC/OCIJ, Decision on AO An’s Amended Fourth Request for Investigative Action, 17 October 2016, **D244/1**, para. 24.

¹¹⁶ *Case of AO An et al.*, 004/07-09-2009/ECCC/OCIJ, Decision on AO An’s Amended Fourth Request for Investigative Action, 17 October 2016, **D244/1**, paras. 25-26.

¹¹⁷ *Case of AO An et al.*, 004/07-09-2009/ECCC/OCIJ, Decision on AO An’s Amended Second Request for Investigative Action, 7 September 2016, **D188/1/1**, para. 33.

¹¹⁸ Case 001 Decision on the Standing of Civil Party Lawyers to Make Submissions, **E72/3**, paras. 20-21, 24, 34.

¹¹⁹ Case 001 Decision on the Standing of Civil Party Lawyers to Make Submissions, **E72/3**, paras. 20-21 (reference omitted).

not *partisan*.¹²⁰ As was expressed at the ICTR, the Prosecution “ought to bear themselves rather in the character of ministers of justice assisting in the administration of justice.”¹²¹ This notion was expanded upon at the ICTY, where Judge Shahabuddeen explained:

The Prosecutor is a party, but it is recognised that she represents the public interest of the international community and has to act with objectivity and fairness appropriate to that circumstance. She is in a real sense a minister of justice. Her mission is not to secure a conviction at all costs; the Rules relating to disclosure of exculpatory evidence show that. This in substance applies within common law systems. It is equally visible in continental systems.¹²²

34. At the ECCC, the Co-Prosecutors’ obligation to act as ministers of justice is illustrated by, *inter alia*, their duty to disclose exculpatory evidence or material that could affect the credibility of the prosecution evidence,¹²³ the option to request that a case be dismissed,¹²⁴ and the possibility to request an acquittal at the end of the trial.¹²⁵ As stated by the majority of the Trial Chamber in Case 001, the Co-Prosecutors are required to represent the interests of justice and, in doing so, must present and plead their case in an objective manner.¹²⁶
35. The Defence submits that the International Co-Prosecutor’s approach to the evidence in the Final Submission consistently fails to meet these minimum standards. It lacks the objectivity required to contribute to the ascertainment of the truth. The consistent disregard for the reliability of evidence and the truth is evident throughout the Final Submission, which advances arguments without evidential support, consistently misconstrues evidence, stretches inferences to breaking point, and otherwise fails to apply Judge Bohlander’s cautious approach to the assessment of the evidence. It is not acceptable advocacy to: disregard audio recordings and *verbatim* transcripts in place of manifestly incomplete

¹²⁰ See, *Jean Bosco Barayagwiza v. Prosecutor* (ICTR-97-19-AR72), AC, Separate Opinion of Judge Shahabuddeen, Decision (Prosecutor’s Request for Review of Reconsideration), 31 March 2000, para. 68 [attached as **Authority 8**].

¹²¹ *Jean Bosco Barayagwiza v. Prosecutor* (ICTR-97-19-AR72), AC, Separate Opinion of Judge Shahabuddeen, Decision (Prosecutor’s Request for Review of Reconsideration), 31 March 2000, para. 68 [attached as **Authority 8**].

¹²² *Prosecutor v. Slobodan Milošević* (IT-02-54-AR73.2), AC, Partial Dissenting Opinion of Judge Shahabuddeen, Decision on Admissibility of Prosecution Investigator’s Evidence, 30 September 2002, para. 18 (footnotes omitted) [attached as **Authority 9**].

¹²³ See, Internal Rules, Rule 53(4).

¹²⁴ See, Internal Rules, Rule 66(5).

¹²⁵ See, Internal Rules, Rule 94(1)(b).

¹²⁶ See, Case 001 Decision on the Standing of Civil Party Lawyers to Make Submissions, **E72/3**, para. 20.

written records;¹²⁷ rely on forms of evidence judicially recognised as unreliable;¹²⁸ rely upon incriminatory comments whilst excising exculpatory comments in the same statement;¹²⁹ treat hearsay evidence as direct evidence,¹³⁰ disregard obvious concerns and

¹²⁷ See, e.g., Final Submission, paras. 111 (fn. 531), 113 (fn. 548), 120 (fn. 581), 126 (fn. 627), 127 (fns. 630, 631, 634), 146 (fns. 719, 726), 147 (fn. 731), 194 (fns. 961, 962, 964), 195 (fns. 970, 972), 196 (fn. 975), 198 (fn. 987), 199 (fn. 993), referring to Written Record of Interview of TUM Soeun, 29 March 2012 **D106/5**. Cf. Final Submission, paras. 146 (fn. 726), 198 (fn. 987), 199 (fns. 993, 996), 200 (fn. 997), 201 (fns. 1013, 1022), 214 (fn. 1087), referring to Transcript of Interview of TUM Soeun, 29 March 2012, **D219/422.9**; Final Submission, paras. 58 (fn. 213), 59 (fn. 222), 99 (fns. 456, 460), 114 (fn. 552), referring to Written Record of POR Bandeth, 2 September 2011, **D101/1.1**. Cf. Final Submission, paras. 84 (fn. 356), 114 (fn. 552), 121 (fn. 591), 150 (fn. 747), 174 (fn. 872), 176 (fn. 887), 212 (fn. 1072), 232 (fn. 1185), referring to Transcript of Interview of POR Bandeth, undated, **D85/4.1.5**; Final Submission, paras. 99 (fn. 458), 114 (fn. 552), 146 (fn. 719), 196 (fn. 975), referring to Written Record of Interview of YUOK Neam, 29 July 2011, **D43**. Cf. Final Submission, para. 216 (fn. 1099), referring to Written Record of Interview of YUOK Neam, 29 July 2011, **D219/422.14**. See also, IM Chaem's Motion Requesting the Co-Investigating Judges to Resume the Audio or Video Recording of All Interviews, 22 June 2015, **D252**, paras. 15-18, 21, 24, 26-30; IM Chaem's Response to the International Co-Prosecutor's Submission on Whether She Should be Considered a "Senior Leader" or Among "Those who were Most Responsible", 9 November 2015, **D251/5/3**, para. 15.

¹²⁸ See, e.g., Final Submission, paras. 193 (fn. 956), 196 (fn. 975), 197 (fn. 982), referring to D. Gillison, *Extraordinary Injustice*, The Investigative Fund, 27 February 2012, **A165.1.14**. But see, *Case of AO An et al.*, 002/19-09-2007/ECCC/TC, Decision on IENG Thirith's Appeal Against the Co-Investigating Judges' Order Rejecting the Request for Stay of Proceedings on the Basis of Abuse of Process (D264/1), 10 August 2010, **D264/2/6**, para. 38 ["The Pre-Trial Chamber has also decided upon this matter in a previous decision, where it held that statements of a person as quoted by the press do not amount to reliable evidence and dismissed a request for disqualification based on this evidence."] referring to Decision on KHIEU Samphan's Application to Disqualify Co-Investigating Judge Marcel Lemonde, 14 December 2009, 7, para. 30.

¹²⁹ See, e.g., Final Submission, para. 196 (fn. 975), referring to Written Record of Interview of THIB Samphat, 2 April 2012, **D106/8**, A35 [the first part of the witness' answer saying that he was *not clear* is not referenced, instead referring to the end of the sentence saying that he assumed that Ms. IM Chaem was TUM Soeun's superior based on a letter he received]; Written Record of HEM Soeun, 30 October 2015, **D219/567**, A131 ["Yeay Chaem was the superior"] but not referencing A129-30 [saying that the witness did not know about Ms. IM Chaem's responsibilities or about the relationship between her and TUM Soeun].

¹³⁰ See, e.g., Final Submission, para. 196 (fn. 975), referring to Written Record of Interview of IM Soeun, 23 January 2015, **D219/153**, A20 ["I had *heard* from guards and prisoners at Phnum Troyoung Mountain that Yeay Chaem was *Ta* Soeun's superior." (emphasis added)]; Written Record of Interview of LAT Suoy, 18 August 2014, **D119/144**, A69 ["I *heard* of Trayoung Mountain. Trayoung Mountain was under the control of Yeay Chaem." (emphasis added)]; Written Record of Interview of MI Tal, 2 April 2015, **D219/256**, A25 ["I knew that Yeay Chaem controlled Phnom Troyoung because some ox-cart drivers who transported supplies from the district to Phnom Troyoung Prison *told me about this story.*" (emphasis added)]; Written Record of Interview of BOU Tuok, 9 July 2015, **D219/400**, A59-62 [saying that he *does not remember* the prison chairperson and was *told* that Ms. IM Chaem had been the administrator at PTSC].

inconsistencies regarding the evidence,¹³¹ or otherwise abandon the obligation to advance arguments with caution and assist the administration of justice.

36. As will be demonstrated below,¹³² the Final Submission abandons any attempt to provide a complete and fair account of the evidence in Case File 004/1 and Ms. IM Chaem's role during the Democratic Kampuchea regime. The International Co-Prosecutor does not merely engage in forceful advocacy but violates the core obligations of a minister of justice to contribute to the fair administration of justice and not to seek an indictment at all costs.

D. THE INTERNATIONAL CO-PROSECUTOR MISINTERPRETED THE STANDARD OF PROOF REQUIRED TO SEND A CHARGED PERSON TO TRIAL

37. Pursuant to Internal Rule 67(3)(c), the Co-Investigating Judges shall issue a Dismissal Order where there is not sufficient evidence—*charges suffisantes*—against the Charged Person. Contrary to the International Co-Prosecutor's assertion,¹³³ this standard of proof has been properly and clearly defined at the ECCC.
38. In Case 002, the Co-Investigating Judges defined the threshold for indictment as being satisfied when the evidence is “sufficiently serious and corroborative to provide a certain level of probative force” that there is a “probability” of guilt (more than a mere possibility)

¹³¹ The International Co-Prosecutor relies on numerous inconsistencies raised by the Defence in IM Chaem's Motion Requesting the Co-Investigating Judges to Resume the Audio or Video Recording of All Interviews, 22 June 2015, **D252** in relation to written records of interviews and audio recordings. *See, e.g.*, Final Submission, para. 114 (fn. 552), *referring to* Written Record of Interview of IL Pheap, 30 July 2011, **D47**, EN ERN 00727243; para. 120 (fn. 581), *referring to* Written Record of Interview of TUM Soeun, 29 March 2012, **D106/5**, A29; paras. 126-27 (fns. 627, 630, 631, 634), 198 (fn. 987), *referring to* Written Record of Interview of TUM Soeun, 29 March 2012, **D106/5**, A28; para. 146 (fn. 719), *referring to* Written Record of Interview of LAY Khann, 28 March 2012, **D106/4**, A18; para. 196 (fn. 975), *referring to* Written Record of Interview of YUOK Neam, 29 July 2011, **D43**, EN ERNs 00727233-34; paras. 196 (fns. 977, 980, 981), 200 (fn. 998), *referring to* Written Record of Interview of LAY Khann, 28 March 2012, **D106/4**, A23; para. 2016 (fn. 1099), *referring to* Written Record of Interview of LAY Khann, 28 March 2012, **D106/4**, A24. *See also*, Decision on IM Chaem's Motion Requesting the Co-Investigating Judges to Resume the Audio or Video Recording of All Interviews, 18 December 2015, **D252/1**, para. 10 [“As I have answered each of the Defence's specific requests, I do not here address the merits of the alleged errors in interview practice and inconsistencies between the audio recordings and the corresponding Written Records of interviews raised by Defence. I will take the Defence's allegations into consideration when assessing the evidence.”].

¹³² *See, generally*, Response, paras 66-226.

¹³³ *See*, Final Submission, paras. 25, 27.

of the Charged Person.¹³⁴ French scholars consider that “sufficient evidence” requires the existence of a sufficiently serious case leading to a *significant presumption of guilt*, rather than a mere possibility.¹³⁵ Maintaining a high standard of proof is particularly necessary in high-profile cases that attract significant coverage from the media, the general public, as well as the international and domestic communities such as in the present case. In these cases, an indictment imposes irreversible consequences on the accused regardless of the outcome of the procedure.¹³⁶

39. The test at the ECCC is higher than the tests as set out at the other tribunals referenced by the International Co-Prosecutor,¹³⁷ namely “sufficient evidence to establish substantial

¹³⁴ Case 002 Closing Order, **D427**, para. 1323.

¹³⁵ See, Guéry C., ‘Titre 21 La fin de l’information et sa réouverture’, *Droit et Pratique de l’Instruction Préparatoire*, (Daloz, 2013), para. 213.12 [« Que faut-il entendre par charges suffisantes ? Il doit s’agir de charges suffisamment graves pour entraîner une présomption « considérable » de culpabilité, et non pas une simple possibilité. Elles doivent résulter d’éléments objectifs tirés de la procédure, de simples indices vagues et imprécis, de simples analogies ou coïncidences ne suffiraient pas. ... Les charges s’apprécient par rapport à la personne mise en examen. Leur existence signifie qu’il y a *présomption sérieuse* que ce dernier est l’auteur des faits objets de la poursuite, dont les éléments constituent une infraction à la loi pénale. La juridiction d’instruction, qui constate l’existence de charges suffisantes, doit renvoyer devant la juridiction de jugement. »] (references omitted and emphasis added) [attached as **Authority 3** with unofficial translation: “What is meant by sufficient charges? There must be charges of sufficient gravity to find a “significant” presumption of guilt, rather than a mere possibility. They must result from objective elements deriving from the proceedings, mere vague and inaccurate clues, mere analogies or coincidences do not suffice. ... The charges are assessed in regard to the Charged Person. Their existence means that there is a significant presumption that the latter is the perpetrator of the facts under investigation, which elements constitute a criminal offence. The Investigating Judge, which finds that sufficient charges exist, must send the Charged Person to trial.”]. See also, Loqué J.G., *La législation civile, commerciale, et criminelle de la France* (Edition Treuttel et Würtz, Volume 25, 1827-1832), p. 566 [« Aussitôt [que la Cour] a reconnu sa compétence, elle examine s’il existe des *présomptions suffisantes contre le prévenu*. Ces présomptions sont-elles vagues ou légères, n’existe-t-il aucun moyen d’en acquérir de plus fortes, elle doit mettre le prévenu en liberté ; une rigueur plus longue ne serait pas seulement inutile, elle serait encore injuste à l’égard de la personne poursuivie, et alarmante pour la société entière. »] (emphasis added) [attached as **Authority 10** with unofficial translation: “As soon as [the Court] recognises its jurisdiction, it examines whether significant presumptions against the Accused exist. Are these presumptions vague and unsupported, is it possible to obtain stronger presumptions, the Accused must be freed; a longer stringency would not only be useless, it would also be unfair towards the person prosecuted, and staggering for the entire society.”].

¹³⁶ See, in this regard, Helie F., *Traité de l’Instruction Criminelle* (Henri Plon, Tome 5, 1867), para. 2077 [« ce serait infliger à un individu la flétrissure d’une mise en accusation inutile, et dont l’acquiescement ne peut pas toujours effacer les traces. »] [attached as **Authority 11** with unofficial translation: “It would inflict to an individual the slur of a useless indictment, and from which an acquittal may not always erase all traces.”].

¹³⁷ The Pre-Trial Chamber of the ICC has discussed its standard of proof in terms of, *inter alia*, “real” as opposed to “imaginary”. See, *Prosecutor v. Jean-Pierre Bemba Gombo* (ICC-01/05-01/08), PTC II, Decision pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba

grounds” in the Rome Statute of the ICC,¹³⁸ “sufficient evidence to provide reasonable grounds” in the Rules of Procedure and Evidence of the MICT¹³⁹ and a “*prima facie* case” pursuant to the ICTY and ICTR Statutes.¹⁴⁰

40. Even though guidance may be garnered from the jurisprudence of other international criminal tribunals, the International Co-Prosecutor’s attempt to lower the standard of proof through reliance on different standards at the ICC, MICT, ICTY, and ICTR,¹⁴¹ is of little or no relevance to the ECCC or Ms. IM Chaem’s case.
41. The International Co-Prosecutor offers no reason, cogent or otherwise, to depart from the prevailing ECCC test or otherwise disregard the specificities of the ECCC.¹⁴² This

Gombo, 15 June 2009, para. 29 [“According to the Oxford Dictionary, the term ‘substantial’ can be understood as ‘significant’, ‘solid’, ‘material’, ‘well built’, ‘real’ and rather than ‘imaginary’.” (footnotes omitted)] [attached as **Authority 12**]. Therefore, the standard of proof to send an accused to trial provided by Article 61(5) of the Rome Statute merely requires the prospects of the prosecution’s case to have crossed the threshold from unrealistic to realistic. Unlike the standard of proof before the ECCC, it does not involve further consideration of whether the establishment of the accused’s guilt rises to the level of *probable*. Relying on the provisions from the MICT, the ICTY, and the ICTR does not assist either as these tribunals provide for an even lower standard of proof than the one set out at the ICC. The ICC Appeals Chamber has found that when comparing the Rome Statute, on the one hand to the ICTY and ICTR Statutes and Rules of Evidence and Procedure, on the other, it was important to consider that Article 61(5) of the Rome Statute imposes a higher evidentiary threshold of “substantial grounds” when compared to the lower threshold of the ICTY and ICTR’s “reasonable grounds”. *See, Prosecutor v. Callixte Mbarushimana* (ICC-01/04-01/10 OA4), AC, Judgment on the Appeal of the Prosecutor against the Decision of Pre-Trial Chamber I of 16 December 2011 entitled “Decision on the Confirmation of Charges”, 30 May 2012, para. 43 [attached as **Authority 13**].

¹³⁸ *See, Final Submission, para. 28, referring to Art. 61(5) of the Rome Statute of the International Criminal Court, adopted 17 July 1998.*

¹³⁹ *See, Final Submission, para. 29 (fn. 77), referring to Rules of Procedure and Evidence of Mechanism for International Criminal Tribunals, (Rev.2), adopted on June 8, 2012 (as revised on 26 September 2016), Rule 48 (B); Rules of Procedure and Evidence of International Criminal Tribunal for the former Yugoslavia, (Rev.50), adopted on 11 February 1994 (as revised on 8 July 2015), Rule 47(B); Rules of Procedure and Evidence of International Criminal Tribunal for Rwanda, adopted on 29 June 1995 (as revised on 13 May 2015), Rule 47(B).*

¹⁴⁰ *See, Final Submission, para. 30 (fn. 79), referring to Updated Statute of the International Criminal Tribunal of the former Yugoslavia, 25 May 1993 (as revised on 7 July 2009), Article 19(1); Statute of the International Criminal Tribunal for Rwanda, 8 November 1994 (as revised on 13 May 2015), Art. 18(1).*

¹⁴¹ *See, Final Submission, paras. 28-30.*

¹⁴² *See, Case of MEAS Muth, 003/07-09-2009/ECCC/OCIJ, Consolidated Decision on MEAS Muth’s Requests on Personal Jurisdiction, 1 February 2016, D297.1 (“Consolidated Decision on Personal Jurisdiction, D297.1”), para. 37. On the ECCC’s specificities in regard to the standard of proof: See, Case 002 Closing Order, D427, para. 1323.*

obligation is particularly onerous when urging the adoption of standards arising from international criminal tribunals grounded in common law.¹⁴³

E. THE INTERNATIONAL CO-PROSECUTOR MISINTERPRETED THE ROLE OF VICTIMS AT THE ECCC

42. The International Co-Prosecutor alleges that the 287 civil party *applications* identified in the Final Submission as being relevant to Case 004/1,¹⁴⁴ in particular compared to the 3,869 civil *parties* admitted in trial in Case 002,¹⁴⁵ demonstrate “the strong interest of the victims in the prosecution of [Ms.] IM Chaem.”¹⁴⁶ The International Co-Prosecutor’s attempt to demonstrate public interest is based on a number of problematic assumptions and logical missteps. In reality, even if *all relevant* civil party applicants were admitted at trial in Ms. IM Chaem’s case, the comparison between the figure of civil parties in Case 002 and in Case 004/1 demonstrates a relatively low interest in the prosecution of Ms. IM Chaem.
43. First, it must be observed, civil party applicants are not the same as civil parties. The number of civil party applicants should not be confused with the number of civil parties, that is applicants who passed the admissibility test outlined by the OCIJ in order for them to participate in proceedings at trial pursuant to Internal Rule 23 *bis*. Among the requirements to pass the admissibility test, a civil party applicant must demonstrate that he / she suffered physical, material, or psychological injury as a direct consequence of at least one of the crimes alleged against the Charged Person.¹⁴⁷ In Case 002, the Pre-Trial

¹⁴³ See, Final Submission, paras. 28-30.

¹⁴³ See, Final Submission, paras. 28-30.

¹⁴⁴ Final Submission, paras. 23, referring to Final Submission, Annex 7. See also, Final Submission, para. 533.

¹⁴⁵ See, *Case of NUON Chea et al.*, 002/19-09-2007/ECCC/TC, Judgement, 7 August 2014, **E313** (“Case 002/01 Trial Judgement, **E313**”), para. 1111. See also, Final Submission, para. 533 (fn. 2351), referring to Case 002 Closing Order, **D427**, paras. 322, 368, 382, 399, 488, 588.

¹⁴⁶ Final Submission, para. 533.

¹⁴⁷ See, Internal Rules, Rule 23 *bis* (1)(b).

Chamber considered that civil party applicants may be found admissible when the “facts alleged in support of the application are more likely than not to be true.”¹⁴⁸

44. The reference to alleged crimes in Internal Rule 23 *bis* means those alleged crimes as charged in the Closing Order.¹⁴⁹ Accordingly, the assessment of the admissibility test in regard to civil party applications is limited to the scope of the Closing Order, which is limited to the material, temporal, and geographical boundaries of the charges outlined in the Notification of Charges.¹⁵⁰ Should Ms. IM Chaem’s case proceed to trial, only those civil party applicants meeting all requirements of Internal Rule 23 *bis*, including by demonstrating an injury as a consequence of one of the crimes with which Ms. IM Chaem is charged, namely one of the alleged crimes committed at PTSC or SSWS from April 1977 until the end of the regime (as circumscribed by the Notification of Charges), may be admitted as civil parties.
45. An examination of the list provided in the Final Submission¹⁵¹ reveals that only 83 out of the 287 civil party applications identified describe that the harm suffered relates to a crime allegedly committed at PTSC or SSWS within the appropriate timeframe.¹⁵² In other

¹⁴⁸ *Case of NUON Chea et al.*, 002/19-09-2007/ECCC/OCIJ (PTC76, PTC112, PTC113, PTC114, PTC115, PTC142, PTC164, PTC165 and PTC172), Decision on Appeals against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, 24 June 2011, **D411/3/6**, para. 94.

¹⁴⁹ *See, Case of NUON Chea et al.*, 002/19-09-2007/ECCC/OCIJ (PTC76, PTC112, PTC113, PTC114, PTC115, PTC142, PTC164, PTC165 and PTC172), Decision on Appeals against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, 24 June 2011, **D411/3/6**, para. 82 [“The Pre-Trial Chamber shall examine crimes within the context of the Closing Order.”]. *See also, Case of NUON Chea et al.*, 002/19-09-2007/ECCC/OCIJ, Decision on Appeals Against Co-Investigating Judges Combined Order D250/3/3 Dated 13 January 2010 and Order D250/3/2 dated 13 January 2010 on Admissibility of Civil Party Applications, 27 April 2010, **D250/3/2/1/5**, para. 51.

¹⁵⁰ *Cf.* Response, paras. 20-25.

¹⁵¹ *See*, Final Submission, Annex 7.

¹⁵² Civil Party Application of ORM Chan, 26 March 2013, **D5/1331**; Civil Party Application of BUK Bauy, 24 March 2013, **D5/1500**; Civil Party Application of BUN Hoeung, 2 April 2013, **D5/1111**; Civil Party Application of BUT Samoeut, 1 October 2009, **D5/859**; Civil Party Application of CHANG Saro, 14 March 2013, **D5/908**; Civil Party Application of CHEK Phiv, 30 March 2013, **D5/931**; Civil Party Application of CHHOEUM Chhuon, 7 September 2013, **D5/1508**; Civil Party Application of CHHOU Run, 10 May 2013, **D5/1071**; Civil Party Application of CHHOY Kim, 16 March 2013, **D5/1629**; Civil Party Application of CHHUEY Kut, 10 March 2013, **D5/926**; Civil Party Application of CHHUN Chheun, 25 March 2013, **D5/1105**; Civil Party Application of [redacted], 7 May 2013, **D5/1247**; Civil Party Application of CHHUT Ngeak, 16 March 2013, **D5/1085**; Civil Party Application of CHHUT Saviet, 26 March 2013, **D5/899**; Civil Party Application of CHIN Oun, 29 June 2013, **D5/1515**; Civil Party Application of CHUM Chim, 15 March 2013, **D5/1015**; Civil Party Application of CHUON Chanroem, 5 May 2013, **D5/953**; Civil Party Application

of DAN Chhinh, 31 January 2014, **D5/1014**; Civil Party Application of DAN Tam, 10 March 2013, **D5/964**; Civil Party Application of DENG Yeut, 20 May 2013, **D5/1073**; Civil Party Application of DIB Phalla, 3 June 2013, **D5/1065**; Civil Party Application of HEUY Saroek, 25 January 2010, **D5/1200**; Civil Party Application of HOUK Sarien, 13 May 2013, **D5/974**; Civil Party Application of HUN Sienghay, 15 July 2013, **D5/1262**; Civil Party Application of IN Is, 1 June 2013, **D5/1028**; Civil Party Application of KHEAN Chantha, 3 June 2013, **D5/1076**; Civil Party Application of KHLAUT Samoeut, 11 March 2013, **D5/918**; Civil Party Application of [redacted], 7 May 2013, **D5/1246**; Civil Party Application of KOAM Bopha, 22 April 2013, **D5/1045**; Civil Party Application of KORN Cheng, 10 May 2013, **D5/973**; Civil Party Application of KORNG Aren, 21 March 2013, **D5/851**; Civil Party Application of LAT Yang, 17 July 2013, **D5/1380**; Civil Party Application of LAUT Samich, 20 August 2013, **D5/1632**; Civil Party Application of LEK Sean, 30 March 2013, **D5/982**; Civil Party Application of LIV Pao, 30 August 2013, **D5/888**; Civil Party Application of MAK Thov, 20 May 2013, **D5/1074**; Civil Party Application of MAN Ban, 13 March 2013, **D5/880**; Civil Party Application of MAT Chheuy, 20 June 2013, **D5/1251**; Civil Party Application of MEAK Kuok, 13 May 2013, **D5/1068**; Civil Party Application of MEAN Loeuy, 7 June 2009, **D5/1206**; Civil Party Application of MIS Phuot, 16 March 2013, **D5/898**; Civil Party Application of MLES Oat, 25 March 2013, **D5/1093**; Civil Party Application of NHEK Saven, 30 August 2013, **D5/900**; Civil Party Application of NHIK Bat, 1 May 2013, **D5/1108**; Civil Party Application of NOEUR Moch, 7 July 2009, **D5/1185**; Civil Party Application of NOU Kham, 16 March 2013, **D5/903**; Civil Party Application of ORM Hoeung, 13 March 2013, **D5/1090**; Civil Party Application of ORM Mok, 16 August 2009, **D5/1202**; Civil Party Application of OUK Nary, 3 June 2013, **D5/1078**; Civil Party Application of PAL Moeur, 27 December 2013, **D5/994** [In 1977, the Civil Party Applicant worked at Spean Sreng Canal for one year]; Civil Party Application of PEY Sam, 2 May 2013, **D5/1101**; Civil Party Application of PREAP Hin, 15 September 2011, **D5/872** [The Civil Party Applicant's sibling was taken to be killed at Phnum Trayoung Mountain, and the Civil Party Applicant was sent to Spean Sreng Dam]; Civil Party Application of PHLENH Mit, 18 October 2011, **D5/999**; Civil Party Application of PHON Pha, 3 May 2013, **D5/937**; Civil Party Application of PHUONG Phai, 27 December 2013, **D5/998**; Civil Party Application of PRAING Sariem, 15 September 2011, **D5/867**; Civil Party Application of PRAK Kav, 15 January 2013, **D5/1000**; Civil Party Application of RIN Kheng, 30 May 2013, **D5/988** [The Civil Party Applicant was imprisoned at Phnum Trayoung Mountain]; Civil Party Application of ROSS Thonn, 12 March 2013, **D5/928**; Civil Party Application of RUOM Sareth, 2 May 2013, **D5/938**; Civil Party Application of RUOS Bun, 14 March 2013, **D5/922**; Civil Party Application of RUOS Oeut, 30 March 2013, **D5/935**; Civil Party Application of SAING Chhuot, 10 May 2013, **D5/958**; Civil Party Application of SAM Sak, 24 October 2009, **D5/76**; Civil Party Application of SAO Hak, 6 January 2008, **D5/1044**; Civil Party Application of SAOM Tho, 21 June 2009, **D5/1199**; Civil Party Application of SOK Mouy, 10 May 2013, **D5/967**; Civil Party Application of SOM Chhoeun, 25 March 2013, **D5/930**; Civil Party Application of SOM Thoeum, 20 July 2009, **D5/1204**; Civil Party Application of SUN Sap, 10 May 2013, **D5/979**; Civil Party Application of TAING Phat, 7 May 2013, **D5/1226**; Civil Party Application of TAT Champey, 6 May 2013, **D5/1329**; Civil Party Application of THOEUK Mon, 1 May 2013, **D5/939**; Civil Party Application of THON Thy, 20 May 2013, **D5/1024**; Civil Party Application of THONG Chheat, 27 December 2013, **D5/1463**; Civil Party Application of TUN Savien, 10 May 2013, **D5/1059**; Civil Party Application of TUON Chuon, 25 May 2013, **D5/1332**; Civil Party Application of UN Chhom, 13 March 2013, **D5/1499**; Civil Party Application of VAN Sophal, 1 May 2013, **D5/1109**; Civil Party Application of VENH Suh, 21 August 2009, **D5/1193**; Civil Party Application of VINH Toeur, 7 October 2013, **D5/1370**; Civil Party Application of VUN Savaun, 15 March 2013, **D5/1017**; Civil Party Application of YOU Samean, 16 March 2013, **D5/1016**.

words, the International Co-Prosecutor's calculation inflates by more than three times the figure conceivably relevant to any calculation of "interest"¹⁵³ in Ms. IM Chaem's case if it were to proceed to trial.

46. Second, if all relevant civil party applications submitted to the Co-Investigating Judges in Case 004/1 were admitted at trial, the number of civil parties in Ms. IM Chaem's case would fall short of demonstrating strong public interest in the prosecution of Ms. IM Chaem "particularly compared to the number of civil parties for Case 002 crime sites". In particular in comparison with Case 002, if all 83 civil party applications submitted to the Co-Investigating Judges meet all requirements of Internal Rule 23 bis and were admitted at trial, the number of civil parties in Case 004/1 would represent only 2% of the 3,869 civil parties admitted in Case 002.¹⁵⁴
47. In other words, when core concepts concerning civil party applicants and civil parties are disentangled and a fair comparison between the two cases is advanced, there is a substantially much lower public interest in Case 004/1 than in Case 002.

V. RESPONSE

A. CONSIDERATIONS ON PERSONAL JURISDICTION

48. The Co-Investigating Judges have a duty to ensure that the ECCC has personal jurisdiction, *i.e.* that the Charged Person falls into one of the two categories of individuals that may be indicted. Under the ECCC legal framework, *only* "senior leaders" and "those who were most responsible" for crimes committed during the Democratic Kampuchea regime may be brought to trial.¹⁵⁵ If the Co-Investigating Judges are of the view that the Charged Person does not fall into either of the two categories, all charges must be dismissed.

¹⁵³ Final Submission, para. 533.

¹⁵⁴ Case 002/01 Trial Judgement, **E313**, para. 1111.

¹⁵⁵ Agreement between the United Nations and the Royal Government of Cambodia Concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea, 6 June 2003 ("Agreement"), Preamble, Arts. 1, 5(3), 6(3); Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea, 27 October 2004 ("Establishment Law"), Arts. 1, 2 new; Internal Rules, Preamble.

49. The International Co-Prosecutor accepts that Ms. IM Chaem does not fall into the “senior leaders” category.¹⁵⁶ However, the International Co-Prosecutor contends that the Co-Investigating Judges should indict her on the basis that she is “most responsible” for the crimes that were allegedly committed during the Democratic Kampuchea regime.¹⁵⁷ Accordingly, the Defence will only address the latter category in this Response. As discussed below, a review of the negotiating history that led to the creation of the “most responsible” category at the ECCC shows that the International Co-Prosecutor’s contention that Ms. IM Chaem is among “those who were most responsible” for crimes committed during the Democratic Kampuchea regime is premised on two serious errors of law concerning the nature and application of the threshold test.
50. First, as noted above,¹⁵⁸ the Defence submits that the International Co-Prosecutor’s approach is premised on an error of law, namely that the assessment may be conducted with regard to evidence outside the limits set by the Notification of Charges. An examination of the historical and jurisprudential development of the “most responsible” test further illustrates the International Co-Prosecutor’s error of law. Second, the International Co-Prosecutor fails to consider whether Ms. IM Chaem falls into the “most responsible” category in light of the applicable standard of proof, namely whether the evidence is “sufficiently serious and corroborative to provide a certain level of probative force” in regard to the relevant conduct and charged crimes. These errors of law will be discussed below.

1. Negotiating history leading to the definition of the category of “those who were most responsible” at the ECCC

51. A review of the history relevant to the definition of the “most responsible” category¹⁵⁹ reveals that the ECCC’s personal jurisdiction is narrow and was not intended to encompass individuals such as Ms. IM Chaem.

¹⁵⁶ See, Final Submission, paras. 529, 536. See also, Final Submission, para. 18.

¹⁵⁷ See, Final Submission, paras. 530-38.

¹⁵⁸ See, Response, paras. 17-18.

¹⁵⁹ See, *Case of AO An et al.*, 004/07-09-2009-ECCC/OCIJ, Notice of Placement on the Case File of Available Records Relating to the Establishment of the ECCC, 19 September 2016, **D324** and corresponding annexes.

52. Before the negotiations leading to the establishment of the ECCC were initiated, the Group of Experts (appointed by the United Nations to explore options for bringing Khmer Rouge perpetrators to justice¹⁶⁰) noted that the focus of prosecutions should not be limited to senior leaders but should also encompass those “most responsible”.¹⁶¹ Subsequently, this delineation was accepted and adopted by both the Royal Government of Cambodia and the United Nations.¹⁶²
53. The Group of Experts articulated those persons falling into the “most responsible” category as those at the *lower levels*, such as certain *zone leaders and officials of torture and interrogation centres like Tuol Sleng*, who were *directly implicated* in the *most serious atrocities* committed during the Democratic Kampuchea regime.¹⁶³ As previously submitted in the Defence Personal Jurisdiction Submission,¹⁶⁴ KAING Guek Eav *alias* Duch (“Duch”) was used as a “constant reference point”¹⁶⁵ in shaping the “most responsible” category at what would later become the ECCC. Negotiators sought “to make sure that individuals like Duch who might not be among the senior Khmer Rouge leaders but were responsible for the large scale commission of atrocity crimes would be eligible for investigation and prosecution at the ECCC.”¹⁶⁶

¹⁶⁰ Resolution adopted by the General Assembly on the Situation of human rights in Cambodia, UN Doc. A/RES/52/135, 12 December 1997, para. 16 [attached as **Authority 14**].

¹⁶¹ *See, Case of AO An et al.*, 004/07-09-2009-ECCC/OCIJ, Report of the Group of Experts for Cambodia established pursuant to General Assembly resolution 52/135, UN Doc. A/53/850-S/1999/231, 18 February 1999 [in annex to Identical Letters dated 15 March 1999 from the Secretary-General to the President of the General Assembly and the President of the Security Council, 16 March 1999, **D324.15**], para. 110.

¹⁶² Agreement, Preamble, Arts. 1, 5(3), 6(3); Establishment Law, Arts. 1, 2 new; Internal Rules, Preamble.

¹⁶³ *See, Case of AO An et al.*, 004/07-09-2009-ECCC/OCIJ, Report of the Group of Experts for Cambodia established pursuant to General Assembly resolution 52/135, UN Doc. A/53/850-S/1999/231, 18 February 1999 [in annex to Identical Letters dated 15 March 1999 from the Secretary-General to the President of the General Assembly and the President of the Security Council, 16 March 1999, **D324.15**], paras. 109-10.

¹⁶⁴ Defence Personal Jurisdiction Submission, **D251/4**, paras. 15-18 (incorporated by reference).

¹⁶⁵ Scheffer D., ‘The Negotiating History of the ECCC’s Personal Jurisdiction’, Cambodia Tribunal Monitor, 22 May 2011, p. 4 [attached as **Authority 15**].

¹⁶⁶ Scheffer D., ‘The Negotiating History of the ECCC’s Personal Jurisdiction’, Cambodia Tribunal Monitor, 22 May 2011, p. 4 [attached as **Authority 15**].

2. Assessment of whether a suspect falls into the “most responsible” category

54. For a case to proceed to trial, the Co-Investigating Judges must be satisfied, in the exercise of their discretion,¹⁶⁷ that upon consideration of two *cumulative* criteria (“the gravity of the crimes charged and the level of responsibility of the accused”¹⁶⁸) developed at other international courts¹⁶⁹ and adopted at the ECCC,¹⁷⁰ the suspect falls into the “most responsible” category. As is plain from a literal and purposive reading of the cumulative criteria, the International Co-Prosecutor’s attempt to modify the threshold test to encompass an assessment of, *inter alia*, the gravity of the crimes *alleged*,¹⁷¹ rather than *charged*, is an erroneous reading of the law and should be rejected.

¹⁶⁷ Consolidated Decision on Personal Jurisdiction, **D297.1**, paras. 29-30, 32. *See also*, Case of *KAING Guek Eav alias Duch*, 001/18-07-2007-ECCC/SC, Appeal Judgement, 3 February 2012, **F28**, para. 62 [“[D]etermination of whether an accused is ‘most responsible’ requires a large amount of discretion. ... By contrast, neither a suspect nor the ECCC can verify whether a suspect is ‘most responsible’ pursuant to sharp-contoured, abstract and autonomous criteria.”].

¹⁶⁸ Case 001 Trial Judgement, **E188**, para. 22 (footnotes omitted).

¹⁶⁹ *See*, *Prosecutor v. Milan Lukić and Sredoje Lukić* (IT-98-32/1-PT), Referral Bench, Decision on Referral of Case pursuant to Rule 11 *bis* with Confidential Annex A and Annex B, 5 April 2007, para. 26 [“In the exercise of this discretion, the Referral Bench is required, in particular, to consider (1) the gravity of the crimes charged, and (2) the level of responsibility of the accused.”] [attached as **Authority 16**]; *Prosecutor v. Rahim Ademi and Mirko Norac* (IT-04-78-PT), Referral Bench, Decision for Referral to the Authorities of the Republic of Croatia pursuant to Rule 11 *bis*, 14 September 2005, paras. 28 [“In respect of the gravity of crimes, the Bench will take the Indictment as its point of reference, the charges still to be proven at trial ...”], 31 [“The Referral Bench is satisfied that the gravity of the crimes charged against the two Accused and their respective levels of responsibility are not *ipso facto* incompatible with referral ...”] [attached as **Authority 17**]; *Prosecutor v. Paško Ljubičić* (IT-00-41-PT), Referral Bench, Decision to Refer the Case to Bosnia and Herzegovina pursuant to Rule 11 *Bis*, 12 April 2006, para. 18 [“In evaluating the gravity of the crimes charged and the level of responsibility of the Accused, the Referral Bench will consider only those facts alleged in the Indictment”] [attached as **Authority 18**]; *Prosecutor v. Sam Hinga Norman, Moinina Fofana, and Allieu Kondewa* (SCSL-04-14-PT), TC, Decision on the Preliminary Defence Motion on the Lack of Personal Jurisdiction file on behalf of Accused Fofana, 3 March 2004, paras. 22 (*referring to* Report of the Secretary-General on the establishment of a Special Court for Sierra Leone, S/2000/915, 4 October 2000, para. 30) [“‘Most responsible’, therefore, denotes both a leadership or authority position of the accused, and a sense of the gravity, seriousness or massive scale of the crime”], 31 [“The Designated Judge has the discretion to accept or reject an indictment, in whole or in part. It is the Chamber’s considered view that this review procedure of an indictment must take into account the personal jurisdictional requirements ...”] [attached as **Authority 19**].

¹⁷⁰ *See*, Case 001 Trial Judgement, **E188**, para. 22.

¹⁷¹ *See*, Final Submission, para. 437 [noting that the two criteria adopted are “(i) the gravity of the crimes alleged against the person, and (ii) the level of responsibility of the person alleged to have committed those crimes.”]

55. Self-evidently, the threshold test is premised upon a consideration of the charges and not merely the scope of the judicial investigation proposed in the Third Introductory Submission and the two Supplementary Submissions. As noted by the Referral Bench of the ICTY when deciding on the referral of cases to national jurisdictions based on the two cumulative criteria:

In evaluating the level of responsibility of the Accused and the gravity of the crimes charged, the Referral Bench will consider only those facts alleged in the Indictment—they being the essential case raised by the Prosecution for trial—in arriving at a determination whether referral of the case is appropriate. The Bench *will not consider facts put forth by the parties in their submissions which go beyond those alleged in the Indictment*.¹⁷²

56. This approach is wholly consistent with Judge Bohlander’s reasoning in Case 003, where he held that determinations of personal jurisdiction are made “at the conclusion of the investigation, based on the totality of the evidence on the Case File”,¹⁷³ with a decision issued in the Closing Order.¹⁷⁴ Plainly, Judge Bohlander was not suggesting that the relevant test in relation to the probative value of the evidence gathered during the judicial investigation¹⁷⁵ could be ignored. He simply made a firm decision concerning the timing of the assessment of personal jurisdiction, based on what the Co-Investigating Judges have decided the limits of the case would be through the Notification of Charges. Any other interpretation would render the Co-Investigating Judges’ power to assess personal jurisdiction illusory as the Co-Prosecutors could impose their view through the pursuit of

¹⁷² *Prosecutor v. Radovan Stanković* (IT-96-23/2-PT), Referral Bench, Decision on Referral of a Case under Rule 11 *Bis*, 17 May 2005, para. 18 (emphasis added) [attached as **Authority 20**]. *See also, Prosecutor v. Gojko Janković* (IT-96-23/2-PT), Referral Bench, Decision on Referral of Case Under Rule 11 *BIS* with Confidential Annex, 22 July 2005, para. 18 [“In evaluating the level of responsibility of the Accused and the gravity of the crimes charged, the Referral Bench will consider only those facts alleged in the Indictment—they being the essential case raised by the Prosecution for trial—in arriving at a determination whether referral of the case is appropriate.”] [attached as **Authority 21**]; *Prosecutor v. Paško Ljubičić* (IT-00-41-PT), Referral Bench, Decision to Refer the Case to Bosnia and Herzegovina pursuant to Rule 11 *Bis*, 12 April 2006, para. 18 [“In evaluating the gravity of the crimes charged and the level of responsibility of the Accused, the Referral Bench will consider only those facts alleged in the Indictment—they being the essential case raised by the Prosecution for trial—in arriving at a determination whether referral of the case is appropriate.”] [attached as **Authority 18**].

¹⁷³ Consolidated Decision on Personal Jurisdiction, **D297.1**, para. 27.

¹⁷⁴ Consolidated Decision on Personal Jurisdiction, **D297.1**, paras. 20, 38.

¹⁷⁵ *See, Internal Rules, Rule 55(4)* [providing that, in order to charge a suspect, the Co-Investigating Judges must be satisfied that there is “clear and consistent evidence indicating that such person may be criminally responsible for the commission of a crime referred to in an Introductory Submission or a Supplementary Submission”].

an expansive judicial investigation irrespective of whether it produces clear and consistent evidence sufficient to charge a suspect.

57. After more than seven years of judicial investigation in Ms. IM Chaem's case, the Co-Investigating Judges concluded the judicial investigation without adding further charges to the Notification of Charges: this means that they were only satisfied that clear and consistent evidence existed in regard to those specific charges included in the Notification of Charges; *i.e.* in relation to PTSC and SSWS. Self-evidently, this also means that they were *not* satisfied that the rest of the evidence in Case File 004/1 was sufficiently clear and consistent to form the basis of further charges; thus rendering this evidence irrelevant to assess whether Ms. IM Chaem is "most responsible".
58. In sum, the determination as to whether Ms. IM Chaem falls into the category of "those who were most responsible" should be made within the limits of the Notification of Charges. As noted above, it encompasses:
- The gravity of the alleged crimes with which Ms. IM Chaem was charged in relation to PTSC and SSWS; and
 - Ms. IM Chaem's alleged responsibility in relation to those crimes.
59. This determination is essentially based upon formal and effective hierarchical authority and personal participation in crimes of sufficient gravity.¹⁷⁶ As confirmed by the Trial Chamber and the Co-Investigating Judges, Duch was considered as belonging to the "most responsible" category¹⁷⁷ on the basis of various factors previously applied at the ICTY:

When assessing the *gravity of the crimes charged*, the Referral Bench of the International Criminal Tribunal for Yugoslavia ("ICTY") has relied on factors such as the number of victims, the geographic and temporal scope and manner in

¹⁷⁶ *Cf.* Case of KAING Guek Eav alias Duch, 001/18-07-2007/ECCC/OCIJ, Closing Order, 8 August 2008, **D99** ("Case 001 Closing Order, **D99**"), para. 129 ["The judicial investigation demonstrated that [Duch] may be considered in the category of most responsible for crimes and serious violations committed between 17 April 1975 and 6 January 1979, due both to his formal and effective hierarchical authority and his personal participation as Deputy Secretary then Secretary of S21, a security centre which was directly controlled by the Central Committee" after having summarised all facts, including Duch's responsibility over crimes committed at S-21 (*see*, paras. 20-128)].

¹⁷⁷ *See*, Case 001 Trial Judgement, **E188**, paras. 22-25.

which they were allegedly committed, as well as the number of separate incidents, whereas the *level of responsibility* of the accused has been evaluated on the basis of considerations such as the level of participation in the crimes, the hierarchical rank or position of the accused, including the number of subordinates and hierarchical echelons above him or her, and the permanence of his position.¹⁷⁸

60. Applying these criteria to the charges in Case 001, the Trial Chamber summarised the Co-Investigating Judges' considerations as follows:

The Amended Closing Order alleged, amongst other things, that as Deputy of S-21, the Accused *led* the Interrogation Unit and participated in the *planning* of S-21 operations and training of staff on interrogation techniques. As Chairman of S-21, his role consisted of *oversight of the entire S-21 operation* including the annotation of confessions and the ordering of executions. S-21 was a very important security centre of DK, considered as an organ of the Communist Party of Kampuchea ("CPK"), *reporting to the very highest levels of the CPK leadership, carrying out nation-wide operations* and receiving high level cadres and prominent detainees. More than *12,000 individuals* were detained at S-21, a number which is incomplete and must be read in light of the practice of not registering all detainees. Victims from every part of Cambodia were sent to S-21, with the result that the scope of its activities reached *across the entire country*. S-21 was operational from October 1975 to early January 1979, thus *covering a significant portion of the DK regime's existence*.¹⁷⁹

3. Standard of proof in assessing whether a charged person is among "those who were most responsible" at the ECCC

61. The prevailing law at the ECCC defining the standard of proof for a finding of personal jurisdiction has not been expressly confirmed. One decision by former Reserve International Co-Investigating Judge Kasper-Ansermet suggested that, "in order to justify the pursuit of the investigation *in personam*", the Co-Investigating Judges should assess whether they have *prima facie* personal jurisdiction over a Suspect.¹⁸⁰ However, this decision was vacated, as Judge Bohlander found that it constituted a "premature" assessment of the ECCC's personal jurisdiction over MEAS Muth who had not then been charged.¹⁸¹

¹⁷⁸ Case 001 Trial Judgement, **E188**, para. 22 (footnotes omitted, emphasis added).

¹⁷⁹ Case 001 Trial Judgement, **E188**, para. 23 (emphasis added).

¹⁸⁰ *See, Case of MEAS Muth*, 003/07-09-2009-ECCC/OCIJ, Decision on Personal Jurisdiction and Investigative Policy regarding Suspect [Redacted], 2 May 2012, **D48**, para. 13.

¹⁸¹ Consolidated Decision on Personal Jurisdiction, **D297.1**, paras. 27, 43.

62. It is submitted that Reserve International Co-Investigating Judge Kasper-Ansermet's decision was plainly wrong. Given that personal jurisdiction may only be assessed at the end of the judicial investigation¹⁸² and is an indispensable element for the issuance of an indictment, the Defence submits that the same standard of proof as the one required to send someone to trial should be applied.¹⁸³ The Defence submits that the Co-Investigating Judges must be satisfied that the relevant evidence is "sufficiently serious and corroborative to provide a certain level of probative force"¹⁸⁴ to establish that Ms. IM Chaem falls into the "most responsible" category. Demanding a consistent standard of proof across all material elements protects the Charged Person and the trial process from lengthy and costly proceedings based on an insufficiently serious and corroborative assessment of jurisdiction.
63. In conclusion, as will be discussed below,¹⁸⁵ applying the appropriate standard of proof to the relevant charges and evidence, it is plain that Ms. IM Chaem does not fall within the most responsible category. The evidence establishes that the crimes Ms. IM Chaem was charged with at PTSC and SSWS are not sufficiently grave and the evidence does not establish that she participated in them, was proximate to them, or otherwise should be held responsible for them. In sum, the evidence is insufficiently serious and corroborative and possesses little or no probative force in support of the proposition that the ECCC has

¹⁸² See, Consolidated Decision on Personal Jurisdiction, **D297.1**, paras. 20, 27, 38.

¹⁸³ See, Response, paras. 37-41. Since the standard of "sufficient and corroborative evidence" is the decisive threshold for issuing an indictment, the same standard of proof to assess "those most responsible" should be applied in this sense at least by analogy. In that regard, the same standard applies across all material elements. See, *Prosecutor v Mrkšić et al.*, (IT-95-13/1-A), AC, Judgement, 5 May 2009, paras. 220 ["This standard of proof at trial requires that a Trial Chamber may only find an accused guilty of a crime if the Prosecution has proved each element of that crime and of the mode of liability, and any fact which is indispensable for the conviction, beyond a reasonable doubt"], 325 [attached as **Authority 22**]. Further, the same standard of proof applies to personal jurisdiction and to subject-matter jurisdiction. See, *Prosecutor v. Sam Hinga Norman, Moinina Fofana, and Allieu Kondewa* (SCSL-04-14-PT), TC, Decision on the Preliminary Defence Motion on the Lack of Personal Jurisdiction filed on behalf of Accused Fofana, 3 March 2004, paras. 37 ["The third issue, ... which must be addressed, is *what test should be satisfied or standard employed* at the time of the review of an indictment in determining whether the necessary personal jurisdiction requirements are fulfilled in this case." (emphasis added)], 38 ["The Trial Chamber finds that the *standard employed to satisfy the personal jurisdiction should be no different than the standard to satisfy the subject-matter jurisdictional requirement.*" (emphasis added)] [attached as **Authority 19**].

¹⁸⁴ Case 002 Closing Order, **D427**, para. 1323.

¹⁸⁵ See, Response, paras. 66-226.

personal jurisdiction to indict Ms. IM Chaem for the crimes charged. This will be discussed below.

64. First, the Defence will discuss two general considerations that cut across a number of assertions concerning Ms. IM Chaem's authority and alleged participation in crimes. These will include the International Co-Prosecutor's allegation that Ms. IM Chaem's *de facto* authority in part rested on her special relationship to *Ta Mok* and the role of female cadres more generally, in particular the likelihood that they would occupy roles of responsibility within the security field.
65. Second, the Defence will submit that no reasonable trier of fact could adopt the approach urged upon it by the International Co-Prosecutor in relation to the remainder of the evidence against Ms. IM Chaem. The Defence will address the International Co-Prosecutor's erroneous approach to the facts in relation to the assessment of Ms. IM Chaem's *de jure* and *de facto* positions and authority during the Democratic Kampuchea regime, including her responsibilities as District Secretary of Preah Net Preah. The Defence will also address the International Co-Prosecutor's erroneous approach to the facts concerning the assessment of the events and crimes that may have occurred at PTSC and SSWS and Ms. IM Chaem's level of responsibility for them.

B. GENERAL CONSIDERATIONS CONCERNING MS. IM CHAEM

66. The International Co-Prosecutor contends that Ms. IM Chaem had substantial authority at both the district and sector levels in the Southwest and Northwest Zones, which included responsibility for various security centres and execution sites.¹⁸⁶ These allegations are conditioned upon two general propositions: that the positions of authority Ms. IM Chaem held¹⁸⁷ were assigned to her by *Ta Mok*¹⁸⁸ as she "was one of his closest cadres",¹⁸⁹ and

¹⁸⁶ See, Final Submission, paras. 101-07 (in the Southwest Zone), 114-17 (in the Northwest Zone), 2, 530-32 (in the Southwest Zone and Northwest Zone).

¹⁸⁷ See, Final Submission, paras. 52, 54, 101-07 (in the Southwest Zone), 58-59, 114-17 (in the Northwest Zone), 2, 530-32 (in the Southwest Zone and Northwest Zone).

¹⁸⁸ See, Final Submission, para. 96 ["Im Chaem's role is marked by her association with Standing Committee member *Ta Mok*. Every position Im Chaem held in the Southwest and Northwest Zones was assigned to her by *Ta Mok*."].

¹⁸⁹ Final Submission, para. 96.

that despite being a female cadre she had authority over security-related matters.¹⁹⁰ As reasoned by the International Co-Prosecutor, these general overarching circumstances allowed Ms. IM Chaem a number of roles and specific responsibilities that provided her with far reaching authority that ultimately makes her responsible for grave crimes allegedly committed in both Zones.¹⁹¹

67. However, as an objective analysis of the evidence shows, the International Co-Prosecutor's case is based on presumption and not evidence. As such, from the outset, the case against Ms. IM Chaem lacks foundation. First, Ms. IM Chaem did not have a special relationship with *Ta Mok*. Second, as a female cadre, it is highly unlikely that she could have played a significant role in matters related to security affairs.

1. Ms. IM Chaem did not possess any specific relationship to *Ta Mok*

68. The assertion that Ms. IM Chaem's "role is marked by her association with Standing Committee member *Ta Mok*"¹⁹² is unsubstantiated. The International Co-Prosecutor's attempt to demonstrate that Ms. IM Chaem was one of *Ta Mok*'s closest cadres; "the second person after *Ta Mok*"; "the right hand of *Ta Mok*", and "*Ta Mok*'s special person"¹⁹³ is transparently a device designed to conceal the lack of probative evidence establishing personal jurisdiction. The International Co-Prosecutor's assertions rest upon an elaborate juxtaposition of the accounts of three witnesses (MOUL Eng, HEM Mean, and NHEM En) and the statements of Ms. IM Chaem herself, carefully stitched together to conceal this deficiency. Despite this approach, it is plain that these accounts taken at their highest, alone or in combination, cannot support the contention that Ms. IM Chaem had a special relationship with *Ta Mok*, let alone one that impacted her *de jure* or *de facto* authority or responsibility for alleged crimes. These will be addressed in turn below.

¹⁹⁰ See, e.g., Final Submission, paras. 2, 106 (authority over Wat Ang Srei security office), 131, 140-48, 196 (authority over detainees at PTSC), 149-151, 156, 161 (authority to order killings), 166 (authority over Wat Ang Srei security office), 221 (authority over Chakrey security office and Prey Ta Ruth execution site), 233, 239 (authority over Chamkar Khmol security office), 248 (authority over Wat Preah Net Preah), 290 (authority over worksites), 440, 530-533.

¹⁹¹ See, Final Submission, paras. 108-56.

¹⁹² Final Submission, para. 96.

¹⁹³ See, Final Submission, para. 96.

69. In describing Ms. IM Chaem as *one of Ta Mok's closest cadres*, the International Co-Prosecutor relies on the statement of MOUL Eng.¹⁹⁴ The reliance on this witness to suggest that Ms. IM Chaem was *one of Ta Mok's* closest associates, whilst failing to explain her relatively low level position as the District Secretary of Preah Net Preah in the Northwest Zone,¹⁹⁵ raises serious doubts about this overarching contention. Moreover, as MOUL Eng also confirmed, even this relatively low level authority was diminished when the Southwest Zone cadres arrived in the Northwest Zone.¹⁹⁶ Why *Ta Mok* would leave his closest associate languishing in such a precarious position is not explained in the Final Submission.
70. Relying on the statements of HEM Mean, a messenger for sector-level cadre *Ta Chay*, who delivered letters from *Ta Mok* in Battambang to Ms. IM Chaem, the International Co-Prosecutor also claims that Ms. IM Chaem “was the second person after *Ta Mok*”¹⁹⁷ Despite the fact that the witness confirmed in the same interview that direct communication between Ms. IM Chaem and *Ta Mok* was “impossible”¹⁹⁸ and that letters from *Ta Mok* would first be delivered to the sector level who would then deliver the letters to Ms. IM Chaem at the district level,¹⁹⁹ the International Co-Prosecutor insists that a special relationship of intimacy and authority existed. Again, the International Co-Prosecutor fails to offer any explanation concerning why Ms. IM Chaem and *Ta Mok*, having such a relationship, would communicate only indirectly through the sector level, as was the norm for general communication between the district and zone levels throughout the Democratic Kampuchea regime.²⁰⁰

¹⁹⁴ See, Final Submission, para. 96 (fn. 432), referring to Written Record of Interview of MOUL Eng, 4-5 May 2015, **D219/294**, Q-A63 [“Q: Among the cadres *Ta Mok* had brought in from the Northeast Zone to manage the Southeast Zone who were closest to him? A63: *Yeay Chaem, Ta Chay, Ta Tith* and *Ta An* were.”].

¹⁹⁵ See, Response, paras. 99-110. See also, Response, paras. 111-42.

¹⁹⁶ Written Record of Interview of MOUL Eng, 4-5 May 2015, **D219/294**, Q-A185.

¹⁹⁷ See, Final Submission, para. 96 (fn. 433), referring to Written Record of Interview of HEM Mean, 6 May 2014, **D119/123** A20 [“I knew that *Yeay Chaem* was the second person after *Ta Mok* because later on I delivered the letters from *Ta Mok* in Battambang to *Yeay Chaem* in Preah Netr Preah. Sometimes *Ta Mok* asked his messenger to deliver his letters from Battambang to me, and I would then deliver them to *Yeay Chaem*”].

¹⁹⁸ Written Record of Interview of HEM Mean, 6 May 2014, **D119/123**, A18.

¹⁹⁹ Written Record of Interview of HEM Mean, 6 May 2014, **D119/123**, A18, A20.

²⁰⁰ See, e.g., Case 002 Trial Judgement, **E313**, para. 270 [“In practice, each level in the CPK hierarchy communicated for the most part only with the levels immediately above and below it; outside the Party Centre,

71. Instead of proffering reasoned explanations for these obvious anomalies, the International Co-Prosecutor attempts to corroborate this extravagant case by relying further on the evidence of NHEM En²⁰¹ who worked as a photographer at S-21²⁰² and only met Ms. IM Chaem once during the Democratic Kampuchea regime.²⁰³ When asked how he knew that Ms. IM Chaem was the right hand of *Ta* Mok, NHEM En stated that he assumed so on the basis that the two were both “Southwest cadres, and they had both joined the revolutionary struggle movement long ago”.²⁰⁴ Plainly, this evidence lacks probative value. The fact that the International Co-Prosecutor is constrained to rely upon it speaks volumes about the reliability of the overall claim this evidence is tailored to support.
72. Ms. IM Chaem’s DC-Cam statement addressing the extent of the relationship between *Ta* Mok and herself does not take the matter any further. Indeed, whilst the English translation of her interview notes that she said she “was not afraid of *Ta* Mok because [she] only spoke about the right thing”,²⁰⁵ the Khmer original only indicates that she “was not afraid because [she] only spoke about the right thing”,²⁰⁶ without any reference to *Ta* Mok. In any event, this statement bears very little probative value to the issue at hand: it was not taken under oath and plainly does not speak to extensive authority or power. On the contrary, Ms. IM Chaem noted that her relationship with *Ta* Mok allowed her to provide food for the people.

there was minimal lateral communication. Sectors (excluding Autonomous Sectors), Districts and sub-district entities did not generally communicate with the Party Centre directly, but rather sent and received information only upwards or downwards through the chain of command.” (footnotes omitted)].

²⁰¹ See, Final Submission, para. 96 (fns. 434-35), referring to Written Record of Interview of NHEM En, 7 May 2014, **D119/124**, Q-A22, Q-A35 .

²⁰² See, Written Record of Interview of NHEM En, 7 May 2014, **D119/124**, A2.

²⁰³ See, Written Record of Interview of NHEM En, 7 May 2014, **D119/124**, A19.

²⁰⁴ Written Record of Interview of NHEM En, 7 May 2014, **D119/124**, A38.

²⁰⁵ See, Final Submission, para. 96 (fn. 436), referring to DC-Cam Interview of IM Chaem, 20 June 2008, **D123/1/5.1b**, EN ERN 00951812 [“As for me, I dared to report to him because I knew him very well ... When he said to me one word, I would reply to him two words ... I was not afraid of *Ta* Mok because I only spoke about the right thing. When he said to me that I was not a good leader, I replied to him, ‘why you, *Ta*, let me lead the people if I could not done it well’. I could always argue with *Ta* Mok. I was not afraid of him. That was how I could solve the problem of food shortage for the people, and then people had food to eat.”]; DC-Cam Interview of IM Chaem, 4 March 2007, **D123/1/5.1a**, EN ERNs 00089777, 00089779.

²⁰⁶ DC-Cam Interview of IM Chaem, 20 June 2008, **D123/1/5.1b**, KH ERN 00929834 [“As for me, I dared to report to him because I knew him very well ... When he said to me one word, I would reply to him two words ... I was not afraid because I only spoke about the right thing. When he said to me that I was not a good leader, I replied to him, ‘why you, *Ta*, let me lead the people if I could not done it well’. I could always argue with *Ta* Mok. I was not afraid. That was how I could solve the problem of food shortage for the people, and then people had food to eat.”].

It is incapable of providing any meaningful support for the claim that the relationship was intimate, let alone that it gave rise to enhanced *de jure* or *de facto* authority or responsibility for crimes allegedly committed at PTSC and SSWS.

73. Ultimately, the International Co-Prosecutor's case concerning *Ta Mok* rests on taking assertions as truth and disregarding evidence that provides essential context. As revealed by NOP Ngim, a female cadre transferred from the Southwest Zone to the Northwest Zone where she worked as the Deputy District Secretary of Samlout District in Sector 1 from early 1978 to 1979,²⁰⁷ *Ta Mok* had a direct relationship with many in the lower echelons and little, if anything, can be inferred concerning *de facto* authority on the basis of this contact. Numerous witnesses confirm that meetings between *Ta Mok* and low-level cadres were not unusual.²⁰⁸ NOP Ngim describes living near *Ta Mok* in Battambang and coming from neighbouring towns in the Southwest,²⁰⁹ that he assigned her to work in the Southwest Zone and the Northwest Zone;²¹⁰ and that the Secretary of Samlout District

²⁰⁷ See, Written Record of Interview of NOP Ngim, 12-14 August 2014, **D118/285**, A31-59.

²⁰⁸ See, e.g., Written Record of Interview of KHOEM Boeun, 21-23 May 2014, **D118/242**, Q-A55 [KHOEM Boeun was the chief of Cheang Torng Commune Committee and later on became a member of Tram Kak District until the collapse of the regime: "Q: Did you know *Ta Mok*? A55: Yes, I did. *Ta Mok* travelled around looking after work in the cooperatives and the communes.," Q-A56 ["Q: Did you personally know him? A56: Yes, I personally knew him. Sometimes he came to see the cooperative kitchen, and he asked the people whether they ate enough or not. *Ta Mok* visited every site. I met *Ta Mok*."]; Written Record of Interview of MOUL Eng, 4-5 May 2015, **D219/294**, A55 [MOUL Eng was the District Secretary of Bavel District in Sector 3: "I was called to a meeting held at Battambang University. This meeting was chaired by *Ta Mok* and attended by *Yeay Chaem*, *Ta Bo* and possibly *Ta An*.", A56 ["At that time the meeting was organised for the district and sector levels."]; Written Record of Interview of NEANG Ouch *alias* San, 29 January 2014, **D118/172**, A33 [NEANG Ouch says he was an assistant under the Koh Andet District: "*Ta Mok* called me to meet him in Takeo provincial town and told me that many people had reported me. I asked him, "About what?" He replied, "You need not know; you already know." He added, "Now you need to help with some work. There's no need for any appointment." He had me help with work in Leay Bour, Tram Kak District, because it was near *Ta Mok*. Later the district called me to attend meetings with them.," A34 ["He did not tell me. He only told me I had "mischievous hands." Perhaps they had reported I had affairs with women.," A35-36, Q-A37 ["Q: So that meant *Ta Mok* wanted to protect you, so he moved you from Kaoh Andaet District to Leay Bour. Is that correct? A37: Yes, he wanted to protect me.," A38 ["If *Ta Mok* wanted to move me to Leay bour, so he could have just said so.," A39 ["I never had any fractures with [*Ta Mol*]. *Ta Mok* was the leader.,"]. See also, Written Record of Interview of SOK Rum, 19 March 2014, **D119/108**, A134 ["No, I was never any unit chairwoman. But because I stayed with those unit chairwomen, I had chance to ask them after they returned from their meetings with *Ta Mok*. A unit chairwoman called Pheap (female) told me about those meetings. I do not know where she lives at the present.,"].

²⁰⁹ Written Record of Interview of NOP Ngim, 12-14 August 2014, **D118/285**, A2, A29.

²¹⁰ Written Record of Interview of NOP Ngim, 12-14 August 2014, **D118/285**, A2, A41.

attended regular, large-scale meetings with him.²¹¹ According to a former commune chief, “everyone knew *Ta Mok*”.²¹²

74. As discussed above, there is little or no relevant or probative evidence that supports an inference that Ms. IM Chaem had a special relationship with *Ta Mok*. As will be discussed below, in any event, even if she had a special relationship with him, there is no evidence that this provided her with any additional authority or responsibility beyond her *de jure* appointments.²¹³

2. As a female cadre, it is highly unlikely that Ms. IM Chaem could have played a significant role in security-related matters

75. The International Co-Prosecutor contends that Ms. IM Chaem had authority at the district and sector levels and in both the Southwest and Northwest Zones,²¹⁴ and had control over various security centres and execution sites.²¹⁵ However, the Defence submits that the evidence shows that Ms. IM Chaem had limited authority, in large part, due to the prevailing gender based system where it was highly unlikely that a *female* cadre could have played any significant role in affairs related to security.
76. Despite *Angkar*'s set goal that men and women were equal in every respect,²¹⁶ traditional cultural attitudes towards women persisted: women were associated with “nurturing, domestic roles”.²¹⁷ In this regard, there is a considerable volume of evidence linking female cadres to roles as medics and nurses, demonstrating that women were expected to

²¹¹ Written Record of Interview of NOP Ngim, 7 May 2015, **D219/298**, A13-14; Written Record of Interview of NOP Ngim, 12-14 August 2014, **D118/285**, A55-56.

²¹² Written Record of Interview of NUT Nov, 11 April 2013, **D118/34**, A30.

²¹³ *See, generally*, Response, paras. 83-142.

²¹⁴ *See*, Final Submission, paras. 95-96, 101-10 (in the Southwest Zone), 97-100, 114-18 (in the Northwest Zone), 2, 530-31 (in the Southwest Zone and the Northwest Zone).

²¹⁵ *See*, Final Submission, paras. 157-72 (in the Southwest Zone), 173-293 (in the Northwest Zone), 2, 530-31 (in the Southwest Zone and the Northwest Zone).

²¹⁶ DK Government Legal Documents entitled “Constitution of Democratic Kampuchea”, 6 January 1976, **D1.3.20.2**, Art. 13 [“There must be complete equality among all Kampuchean people in an equal, just, democratic, harmonious, and happy society within the great national solidarity for defending and building the country together. Men and women are fully equal in every respect”].

²¹⁷ Jacobson T., ‘Into the Fields’, *Lost Goddesses: The Denial of Female Power in Cambodian History* (Nordic Studies of Asian Studies, 2008), p. 231 [attached as **Authority 23**].

perform roles considered appropriate for their gender.²¹⁸ In practice, men and women were strictly divided into two parallel structures where roles were clearly distinguished.²¹⁹ The Khmer Rouge failed to formulate an “effective role for women in the revolution”²²⁰ instead choosing to exploit female labour while claiming it was progress for women.²²¹ Ms. IM Chaem herself explained that women were considered to be inferior to men and that the former’s roles revolved around the household.²²² For example, while she was in the Southwest Zone, she was in charge of a female unit where she educated women on agriculture and gardening.²²³

77. Even the responsibilities delegated to senior female figures were aligned with “issues that were thought appropriate for women – such as Social Action, Education, and Culture.”²²⁴ A woman’s connection to a man of high rank, most frequently due to marriage, formed an indispensable prerequisite for any position of power or seniority within the Democratic

²¹⁸ See, e.g., Written Record of Interview of CHUM Kan, 26-27 March 2014, **D119/110**, A81; Written Record of Interview of KHAN Kim, 24 April 2013, **D118/47**, A1-2; Written Record of Interview of METH Doung, 22 January 2015, **D219/152**, A4, A22; Written Record of Interview of PHOUN Sunt, 21 January 2015, **D219/150**, A4; Written Record of Interview of BIN Sa Em, 13 October 2015, **D219/576**, A37-38; Written Record of Interview of LONG Sokhy, 22 May 2013, **D118/60**, A4; Written Record of Interview of TEP Sarun, 13 January 2015, **D219/142**, A73; Revolutionary Youth Magazine – Issue 10, October 1976, **D6.1.748**, EN ERNs 00574386, 00574388; Revolutionary Youth Magazine issues 3-4, March-April 1978, **D6.1.769**, EN ERN 00529440.

²¹⁹ See, e.g., DC-Cam Interview of IM Chaem, 6 April 2012, **D123/1/5.1c**, EN ERN 00951839 [saying that “the male unit was in charge of educating men while female unit was women.”]; Written Record of Interview of KHOEM Boeun, 21-23 May 2014, **D118/242**, A28 [witness noting that she was in charge of the “women’s side”]; *Case of NUON Chea et al.*, 002/19-09-2007/ECCC/TC, Transcript of Trial Proceedings (VONG Sarun (f)), 18 May 2015, **E1/300.1**, EN ERN 01098216 [“[M]y husband stayed at the front battlefield and I stayed at the rear battlefield to provide treatment to the wounded soldiers.”].

²²⁰ Karkaria, Z. *Failure through Neglect: The Women’s Policies of the Khmer Rouge in Comparative Perspective* (Concordia University Department of History, 2003), p. 1 [attached as **Authority 24**].

²²¹ Karkaria, Z. *Failure through Neglect: The Women’s Policies of the Khmer Rouge in Comparative Perspective* (Concordia University Department of History, 2003), pp. 32-33, 39 [attached as **Authority 24**].

²²² Interview of IM Chaem by Smiling Toad Productions, 26 April 2007, **D1.3.12.1**, EN ERN 00217516 [“[P]olitics indicate that women can do (things) as men (equal work between men and women). Hence, I worked very hard to lead our women to struggle/fight (against men), (since we) were suffered from ill-treatment (and superiority of) by men who alleged that “(women) can not even move around their kitchen”, and we were beaten, ill-treated and scolded arbitrarily.”].

²²³ Interview of IM Chaem by Smiling Toad Productions, 26 April 2007, **D1.3.12.1**, EN ERN 00217520. See also, generally, Response, paras. 84-91.

²²⁴ Jacobson T., ‘Into the Fields’, *Lost Goddesses: The Denial of Female Power in Cambodian History* (Nordic Studies of Asian Studies, 2008), p. 231 [attached as **Authority 23**].

Kampuchea regime.²²⁵ Ms. IM Chaem did not benefit from this culture. On the contrary, Ms. IM Chaem's husband, NOP Nhen, occupied a lower position than herself.²²⁶

78. The strict gender division is eloquently illustrated by the S-21 female prisoners list compiled by the Co-Prosecutors²²⁷ and the evidence relevant to security centres located in the Northwest Zone and other parts of Cambodia.²²⁸ They reveal that women were neither trusted with security-related positions²²⁹ nor in charge of security centres.²³⁰ This is in line

²²⁵ Jacobson T., 'Into the Fields', *Lost Goddesses: The Denial of Female Power in Cambodian History* (Nordic Studies of Asian Studies, 2008), pp. 218, 231-33 [mentioning Yun Yat (f) married to Son Sen, Khieu Thirith (f) married to Ieng Sary, and Khieu Ponnary (f) married to Pol Pot] [attached as **Authority 23**]. *See also, Case of NUON Chea et al.*, 002/19-09-2007/ECCC/TC, Transcript of Proceedings (EK Hoeun), 7 May 2015, **E1/298.1**, EN ERNs 01096813-14 [noting that *Yeay Khom*, chief of District 105, was married to MEAS Muth]; DC-Cam Interview of TO Sem, 18 August 2013, **D119/70/3**, EN ERN 01113667-68 [noting that *Yeay Kan*, AO An's wife, served as the deputy secretary of Cheung Prey District]; DC-Cam Interview of NOP Ngim, 22 May 2011, **D123/2/2.17a**, EN ERNs 01155559, 01155607 [stating that NOP Ngim (f), deputy secretary of Samlout District, was married to PREAP Kap the chief of Samlout District].

²²⁶ *See*, DC-Cam Interview of IM Chaem, 6 April 2012, **D123/1/5.1c**, EN ERN 00951863; Transcript of Interview of IM Chaem by Youth For Peace, undated, **D219/264.1**, EN ERNs 01117949-51, 01117957.

²²⁷ OCP List of S-21 Prisoners Identified as Women, 19 May 2009, **E68.6**.

²²⁸ Third Introductory Submission, **D1**, EN ERNs 00292449-53; 'Case 003 & 004 Crime Sites' (Extraordinary Chambers in the Courts of Cambodia, October 2013), available at <https://www.eccc.gov.kh/sites/default/files/Case%20003-004%20Crime%20Sites_ENG_OCT%202013.pdf> last accessed 18 October 2016.

²²⁹ The Defence notes that none of the 49 female prisoners listed as having been arrested in the Northwest Zone held a security-related position. Rather, they are listed as wives, former professors, former doctors, or even medics. *See*, OCP List of S-21 Prisoners Identified as Women, 19 May 2009, **E68.6**.

²³⁰ The Defence reviewed evidence relevant to 24 security centres and prisons, located both inside and outside of the Northwest Zone, and found that they were all headed by men during the Democratic Kampuchea regime. *See, e.g.*, Written Record of Interview of SOY Chhoeun, 21 September 2015, **D219/517**, A41 [saying that Wat Phnom Thipakdei Security Centre (located in Sector 1 of the Northwest Zone) was under the supervision of *Ta Chev* first before being replaced by Phoeuk]; Written Record of Interview of LIM Sat, 6 September 2013, **D134/4**, A14 [saying that Thkoul Security Centre (located in Sector 2 of the Northwest Zone) was headed by a man named Khin]; Written Record of Interview of MANN Chuon, 15 January 2015, **D219/147**, A188 [saying that the chief of Wat Kandal Security Centre (located in Sector 3 of the Northwest Zone) was *Ta Mao*]; Written Record of Investigation Action (CHHOAM Soda), 3 July 2015, **D219/399**, EN ERN 01114736, [saying that the chief of Wat Po Langka Prison (located in Sector 4 of the Northwest Zone) was named *Ta Mao*]; Written Record of Interview of SUM Sal, 31 March 2012, **D106/7**, A20 [saying that *Ta Soeun* was the "only big chief" at Phnom Trayoung Security Centre (located in Sector 5 of the Northwest Zone)]; Written Record of Investigation Action, 3 April 2014, **D119/118**, EN ERN 00982278 [referencing a witness saying that Chamkar Khnol Prison and Execution Site (located in Sector 5 of the Northwest Zone) was headed by *Ta Nhan*]; Written Record of Interview of HEANG Phoeun, 22 March 2012, **D105/9**, A33 [saying that the chairman of Prison No. 8 (located in Sector 7 of the Northwest Zone) was *Ta Mi*]. *See also*, Written Record of Interview of HUN Kimseng, 15 September 2015, **D219/522**, A45 [saying that "An (male) was the chairman" of Kraing Ta Chan Security Centre (located in Sector 13 of the Southwest Zone)]; Written Record of Interview of KHEK Nhe, 13

with the Case 002/02 trial testimony of KHOEM Boeun, a member of the Tram Kak District in the Southwest Zone, who, when asked if she was involved in security affairs in her District, answered with mock surprise, “I was a woman if you noticed”.²³¹ Female cadres such as Ms. IM Chaem and KHOEM Boeun were not placed into positions of trust in the sphere of security. They were relegated to agriculture and household work.

79. In conclusion, the fact that Ms. IM Chaem, a woman, occupied relatively low level posts in the two zones in which she worked during the Democratic Kampuchea regime stands as an eloquent rebuttal of the International Co-Prosecutor’s case concerning her alleged relationship with Ta Mok and her involvement in security affairs, which in turn speaks to her remoteness from the relevant crimes and the unreliability of the overall case against her. Having dealt with these two general considerations, the Defence will now turn to specific issues arising in the case against Ms. IM Chaem.
80. In particular: the Defence will first address the pivotal premise of the International Co-Prosecutor’s entire case; that Ms. IM Chaem held specific *de jure* and *de facto* positions of authority that gave her responsibility over all decision-making affecting the district and sector levels in the Southwest Zone and in the Northwest Zone. Second, the Defence will address the International Co-Prosecutor’s core arguments in regard to the assessment of the “most responsible” issue; the contention that due to her *de jure* and *de facto* positions in the Northwest Zone, Ms. IM Chaem played a key role in the commission of grave crimes at PTSC and SSWS.

**C. MS. IM CHAEM DID NOT HOLD SIGNIFICANT POSITIONS DURING THE
DEMOCRATIC KAMPUCHEA REGIME**

81. The International Co-Prosecutor’s entire Final Submission rests upon a false premise: that Ms. IM Chaem held specific *de jure* and *de facto* positions of authority²³² which allowed her to be “involved in all decision making affecting the District and Sector” in the

March 2012, **D107/11**, EN ERN 00804701 [saying that Phal, brother in law of Yun, was responsible for Chamkar Svay Chanty Security Centre (located in Sector 42 of the Central Zone)].

²³¹ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript of Trial Proceedings (KHOEM Boeun), 4 May 2015, **E1/296.1**, EN ERN 01095594.

²³² *See*, Final Submission, paras. 101-07 (in the Southwest Zone), 114-18 (in the Northwest Zone), 2, 530-31 (in the Southwest Zone and the Northwest Zone).

Southwest Zone²³³ and in the Northwest Zone.²³⁴ As reasoned by the International Co-Prosecutor, on the basis of these supervisory roles, Ms. IM Chaem is alleged to be most responsible for grave crimes allegedly committed in both Zones.²³⁵

82. As will be discussed below, an objective analysis of the evidence shows that these assertions are without foundation. First, it shows that Ms. IM Chaem did not hold significant positions in the Southwest Zone; and in particular, she was not a *de jure* or *de facto* member of the Sector 13 Committee. Instead, Ms. IM Chaem had a role in the women's unit of Sector 13 and her responsibility was limited to ensuring the welfare of the women. Second, it shows that Ms. IM Chaem did not hold significant positions in the Northwest Zone; and in particular she was not a *de jure* or *de facto* Member or Deputy Secretary of the Sector 5 Committee. Third, it shows that Ms. IM Chaem's responsibilities in the Northwest Zone were strictly limited to her *de jure* and *de facto* role as a District Secretary, which included improving the living conditions in the District.

1. Ms. IM Chaem did not hold significant positions in the Southwest Zone

83. In the Final Submission, the International Co-Prosecutor submits that Ms. IM Chaem held simultaneous positions as “Koh Andet District Secretary, the supervisor of the women in Sector 13 and Sector 13 Committee Member”²³⁶ and accordingly played an active role in sector-level meetings where “[s]ector leaders including [Ms.] Im Chaem would talk ... about issues such as identifying internal ‘enemies’.”²³⁷ On this basis, the International Co-Prosecutor concludes that Ms. IM Chaem was “involved in all decision making affecting the District and Sector” in the Southwest Zone,²³⁸ that establishes her responsibility for crimes in the Southwest²³⁹ (all of which fall outside of the Notification of Charges²⁴⁰). A

²³³ Final Submission, para. 107.

²³⁴ Final Submission, para. 117.

²³⁵ See, Final Submission, paras. 101-56.

²³⁶ Final Submission, para. 107.

²³⁷ Final Submission, para. 65 (fn. 264).

²³⁸ Final Submission, para. 107.

²³⁹ See, Final Submission, paras. 452-58 [characterising the crime against humanity of murder with reference to Wat Ang Srei Mealy, Prey Sokhon, Koh Andet District, Sector 13, and Khmer Krom], 459-61 [characterising the crime against humanity of extermination with reference to Sector 13, Wat Ang Srei Mealy, Prey Sokhon,

reasonable assessment of the evidence shows that Ms. IM Chaem was not appointed as a Member of the Sector 13 Committee and at no time possessed any relevant or similar *de facto* powers or authority.

i. Ms. IM Chaem was not a de jure Member of the Sector 13 Committee in the Southwest Zone

84. The International Co-Prosecutor cites 24 authorities²⁴¹ to contend that Ms. IM Chaem “was appointed Member of the Sector 13 Committee”. However, volume should not be confused with credibility or reliability. As will be outlined below, the 24 offer scant support for the International Co-Prosecutor’s attempt to establish Ms. IM Chaem’s decision-making authority through equating her role in the women’s unit of Sector 13 to membership of the Sector 13 Committee. The International Co-Prosecutor’s reliance on these authorities lacks the required commitment to objectivity and the ascertainment of the truth. The authorities cited are incapable of supporting any reasoned inference that Ms. IM Chaem was appointed a Member of the Sector 13 Committee, or alternatively that her role in the women’s unit of Sector 13 meant membership in the Sector 13 Committee.
85. The approach to MOUL Eng provides a useful snapshot of the International Co-Prosecutor’s strategy and approach to the ascertainment of the truth. MOUL Eng was

and Khmer Krom], 464-67 [characterising the crime against humanity of imprisonment with reference to Wat Ang Srei Mealy and Khmer Krom], 468-71 [characterising the crime against humanity of torture with reference to Wat Ang Srei Mealy], 472-75 [characterising the crime against humanity of persecution with reference to Wat Ang Srei Mealy, Koh Andet District, Sector 13, and Khmer Krom], 476-77 [characterising the crime against humanity of other inhumane acts – forced marriage with reference to Sector 13], 478-81 [characterising the crime against humanity of other inhumane acts – rape with reference to Wat Ang Srei Mealy], 482-83 [characterising the crime against humanity of other inhumane acts – enforced disappearances with reference to Wat Ang Srei Mealy and Sector 13], 484-85 [characterising the crime against humanity of other inhumane acts – confinement in inhumane conditions with reference to Wat Ang Srei Mealy], 493-94 [characterising the crime of wilful killing as a grave breach of the Geneva Conventions with reference to Wat Ang Srei Mealy and Khmer Krom], 495-96 [characterising the crime of inhumane treatment as a grave breach of the Geneva Conventions with reference to Wat Ang Srei Mealy and Khmer Krom], 497 [characterising the crime of wilfully causing great suffering or serious injury to body or health as a grave breach of the Geneva Conventions with reference to Wat Ang Srei Mealy and Khmer Krom], 498-00 [characterising the crime of wilful deprivation of a fair and regular trial as a grave breach of the Geneva Conventions with reference to Wat Ang Srei Mealy, Sector 13 and Khmer Krom], 501-03 [characterising the crime of unlawful confinement of a civilian as a grave breach of the Geneva Conventions with reference to Sector 13 and Khmer Krom].

²⁴⁰ Cf, Notification of Charges, **D239.1**.

²⁴¹ See, Final Submission, paras. 52 (fn. 180), 107 (fn. 509).

relied upon, like the other witnesses discussed below, in support of the claim that Ms. IM Chaem became a Member of the Sector 13 Committee.²⁴² MOUL Eng indicated that he initially assumed that Ms. IM Chaem “could have been” the successor of *Ta Saom* (the former Secretary of the Committee) in the Committee of Sector 13.²⁴³ This speculative conclusion was based, not on direct observation, but on “common knowledge”.²⁴⁴ As became clear, MOUL Eng’s “belief” was solely grounded on a Khmer Rouge radio broadcast²⁴⁵ in which it was announced that Ms. IM Chaem along with 29 other individuals were “representatives of the Southwest Zone peasants”.²⁴⁶ MOUL Eng eventually explained that Ms. IM Chaem was, in fact, the Chairperson of the Women Leaders Committee of Sector 13.²⁴⁷

86. Similarly, with regard to the 23 other authorities, the International Co-Prosecutor relies upon:

- Five civil party applications;²⁴⁸ the applicants of which were never interviewed by the OCIJ. In response to the question, “Who do you believe is responsible for these crime(s) and why do you believe this?” each of the five provided a one-line statement alleging that Ms. IM Chaem had a position in the Sector 13 Committee²⁴⁹ or suggested that she was the “highest chairwoman”.²⁵⁰ Consistent with the

²⁴² See, Final Submission, para. 52 (fn. 180), referring to Written Record of Interview of MOUL Eng, 4-5 May 2015, **D219/294**, A26-29, A31, A127-30, A133, A135-37, A140-47, A187-88.

²⁴³ Written Record of Interview of MOUL Eng, 4-5 May 2015, **D219/294**, A28.

²⁴⁴ Written Record of Interview of MOUL Eng, 4-5 May 2015, **D219/294**, A140.

²⁴⁵ Written Record of Interview of MOUL Eng, 4-5 May 2015, **D219/294**, A31. See also, Written Record of Interview of MOUL Eng, 4-5 May 2015, **D219/294**, A130.

²⁴⁶ Phnom Penh Radio, 2300 GMT 21 March 1976 SWB 23 March 1976 FE/5166/B/2, 23 March 1976, **D1.3.23.1**, EN ERN 00087743; Written Record of Interview of MOUL Eng, 4-5 May 2015, **D219/294**, A138-39.

²⁴⁷ Written Record of Interview of MOUL Eng, 4-5 May 2015, **D219/294**, A141-42.

²⁴⁸ See, Final Submission, para. 107 (fn. 509), referring to Civil Party Application of YAY Kim Leang, 15 September 2014, **D5/1528**, EN ERN 01133186; Civil Party Application of THORNG Phoun, 8 April 2013, **D5/1304**, EN ERN 01144492; Civil Party Application of TEM Chron, 1 October 2012, **D5/1133**, EN ERN 01144435; Civil Party Application of PHLEU Ly, 13 August 2013, **D5/1615**, EN ERN 01168228; Civil Party Application of KONG Samy, 8 November 2013, **D5/1303**, EN ERN 01191036.

²⁴⁹ See, Civil Party Application of THORNG Phoun, 8 April 2013, **D5/1304**, EN ERN 01144492; Civil Party Application of TEM Chron, 1 October 2012, **D5/1133**, EN ERN 01144435; Civil Party Application of PHLEU Ly, 13 August 2013, **D5/1615**, EN ERN 01168228; Civil Party Application of KONG Samy, 8 November 2013, **D5/1303**, EN ERN 01191036.

²⁵⁰ Civil Party Application of YAY Kim Leang, 15 September 2014, **D5/1528**, EN ERN 01133186.

decision by the Co-Investigating Judges not to interview them,²⁵¹ these one-liners have no probative value. They cannot corroborate each other. They have not been shown to be based on eyewitness observations or otherwise reliable.

- Three witnesses who clearly lack knowledge of Ms. IM Chaem’s position in the Southwest Zone:²⁵² on two occasions, CHHOENG Choeun stated that he “did not know” Ms. IM Chaem’s position clearly.²⁵³ Similarly, SOK Rum specifically stated that she was too young at the time to remember the names of those in the Sector 13 Committee.²⁵⁴ As confirmed by CHEAM Chreav, despite suggesting that “everyone knew” that Ms. IM Chaem sat in the Takeo Provincial Committee,²⁵⁵ he did not actually know her role.²⁵⁶
- Ten authorities: consisting of the accounts of six witnesses that fail to confirm that Ms. IM Chaem was a Member of the Sector 13 Committee and instead confirm that she was a representative of women in the Sector.²⁵⁷ KHOEM Boeun,²⁵⁸ TOEB

²⁵¹ See, *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/OCIJ (PTC24), Decision on the Appeal from the Order on the Request to Seek Exculpatory Evidence in the Shared Materials Drive, 18 November 2009, **D164/4/13**, para. 36 [The judicial investigation is concluded by the Co-Investigating Judges when they “have accomplished all the acts they deem necessary to ascertaining the truth in relation to the facts set out in the Introductory and Supplementary Submissions”]. See also, Internal Rules, Rule 55(5)(a).

²⁵² See, Final Submission, para. 52 (fn. 180), referring to Written Record of Interview of CHHOENG Choeun, 4 September 2014, **D119/156**, A15-17; Written Record of Interview of SOK Rum, 19-20 March 2014, **D119/108**, A45-47; Written Record of Interview of CHEAM Chreav, 26 February 2013, **D119/13**, A6-7.

²⁵³ Written Record of Interview of CHHOENG Choeun, 4 September 2014, **D119/156**, A15 [“I heard of Yeay Chaem. I did not know clearly what position Yeay Chaem had”], Q-A16 [“Q: ... Did you mean Yeay Chaem had a position at Sector level or she was appointed District Committee of different districts one after another? A: I did not know Yeay Chaem’s position clearly.”].

²⁵⁴ Written Record of Interview of SOK Rum, 19-20 March 2014, **D119/108**, Q-A12 [“Q: ... What did you know about Sector 13? A12: I do not remember it well. I do not remember the names of those who were Sector 13 Committee because I was too young during that time.”].

²⁵⁵ Written Record of Interview of CHEAM Chreav, 26 February 2013, **D119/13**, A6 [“The reason why I learned that Yeay Chaem sat in the Takeo Provincial Committee was that everyone knew she was in the Provincial Committee because she always had me call people in the villages and commune to a meeting at a mobile worksite”].

²⁵⁶ Written Record of Interview of CHEAM Chreav, 26 February 2013, **D119/13**, Q-A10 [“Q: What role did Ta Nhen’s wife [Ms. IM Chaem] have? A10: I do not know about the role of Ta Nhen’s wife.”].

²⁵⁷ See, Final Submission, para. 52 (fn. 180), referring to Written Record of Interview of KHOEM Boeun, 21-23 May 2014, **D118/242**, A74-77; Written Record of Interview of Interview of TOEB Phy, 14 September 2015, **D219/521**, A63; Written Record of Interview of PECH Chim, 19 June 2014, **D118/259**, A40-41, A45; Written Record of Interview of PECH Chim, 26 June 2013, **D118/79**, A6; Written Record of Interview of BUN Thoeun, 10 July 2014, **D118/274**, A28-32, A55, A72; Written Record of Interview of MOENG Vet, 10 February 2014,

Phy,²⁵⁹ PECH Chim,²⁶⁰ BUN Thoeun,²⁶¹ MOENG Vet,²⁶² and SAO Van,²⁶³ consistently refer to Ms. IM Chaem as supervising women in Sector 13.²⁶⁴

87. It is worthwhile examining some of these ten authorities in more detail. Despite relying upon them, they not only fail to provide any support for the International Co-Prosecutor's case, in many instances, they establish the falsity of the case. PECH Chim, one of the witnesses relied upon,²⁶⁵ expressly stated that Ms. IM Chaem was “not a Sector Secretary”.²⁶⁶ PECH Chim was able to support this contention with meaningful direct evidence containing important corroborative detail. When specifically asked about the structure of the Sector 13 Committee, the witness drew a clear distinction between those persons on the Committee and others, including Ms. IM Chaem:

D119/83, A18-19; Written Record of Interview of MOENG Vet, 11 February 2014, **D119/84**, A19; Written Record of Interview of SAO Van, 27 February 2013, **D119/15**, A12; Written Record of Interview of MOENG Vet, 1-2 September 2015, **D219/488**, A36, A109.

- ²⁵⁸ Written Record of Interview of KHOEM Boeun, 21-23 May 2014, **D118/242**, A75 [“*Yeay* Chaem supervised the women of Sector 13”], A108 [“I saw her at the office that supervised the Sector Women”], A109 [“[S]he supervised all female cadres in the Sector.”].
- ²⁵⁹ Written Record of Interview of TOEB Phy, 14 September 2015, **D219/521**, A63 [“She was in charge of women’s units at sector level, Sector 13.”].
- ²⁶⁰ Written Record of Interview of PECH Chim, 19 June 2014, **D118/259**, A41 [saying that there were four women, including Ms. IM Chaem, in charge of the women section in Sector 13]; Written Record of Interview of PECH Chim, 26 June 2013, **D118/79**, A6 [“She was the chief of Sector 13 Female Mobilization Committee but she was not a Sector Secretary.”].
- ²⁶¹ Written Record of Interview of BUN Thoeun, 10 July 2014, **D118/274**, A28-29 [saying that Ms. IM Chaem was “the Chairwoman of the Sector 13 Female Association” and “perhaps became the Member of the Sector 14”].
- ²⁶² Written Record of Interview of MOENG Vet, 10 February 2014, **D119/83**, A19 [“I was assigned to work at Office 160; so then I knew that *Yeay* Chaem was responsible for the Sector 13 Women’s Unit”]; Written Record of Interview of MOENG Vet, 1-2 September 2015, **D219/488**, A36 [“*Yeay* Chaem was the chairperson of the women’s sector (the sector representative).”], A109 [“*Yeay* Chaem, the chairperson of Sector 13 Women’s group and later moved to the Northwest Sector”].
- ²⁶³ Written Record of Interview of SAO Van, 27 February 2013, **D119/15**, A12 [“I just knew that between 1970 and 1975 she was the Women Re-education Committee of Sector 13”].
- ²⁶⁴ This women’s unit was known under various titles including: the Female Association [Written Record of Interview of BUN Thoeun, 10 July 2014, **D118/274**, A28]; the Female Mobilization Committee [Written Record of Interview of PECH Chim, 26 June 2013, **D118/79**, A6]; the Women’s group [Written Record of Interview of MOENG Vet, 1-2 September 2015, **D219/488**, A109]; or the Women Leaders Committee [Written Record of Interview of MOUL Eng, 4-5 May 2015, **D219/294**, A141].
- ²⁶⁵ See, Final Submission, para. 52 (fn. 180), referring to Written Record of Interview of PECH Chim, 26 June 2013, **D118/79**, A6; Written Record of Interview of PECH Chim, 19 June 2014, **D118/259**, A40-41, A45.
- ²⁶⁶ Written Record of Interview of PECH Chim, 26 June 2013, **D118/79**, Q-A6 [“Q: What was IM Chaem’s role, when you left for Phnom Penh in February 1977? A6: She was still at Takeo province. She was the chief of Sector 13 Female Mobilization Committee but she was not a Sector Secretary.”].

Q: ... If [Ms. IM] Chaem was not on the sector committee, who was then?

A41: The people in the sector committee were Saom, Mut and Phen. *Yeay* Chaem was in charge of the women section of the sector; they were *Yeay* Chaem, Bau and Phorn. There was another woman working with *Yeay* Chaem, Bau and Phorn, but I do not recall her name.²⁶⁷

88. TOEB Phy, who the International Co-Prosecutor also seeks to rely upon,²⁶⁸ also drew this distinction: there was a clear difference between membership of the Sector 13 Committee and Ms. IM Chaem's role in relation to "women's units at sector level, Sector 13".²⁶⁹
89. As the evidence shows, witnesses were able to distinguish the two roles and the attendant responsibilities. The Committee was responsible for making decisions within the entire Sector: each echelon of the Democratic Kampuchea's organisational structure consisted of a three-member Committee (a secretary, a deputy secretary, and a member) that governed the area.²⁷⁰ As per the CPK Statute, the Sector Committees were tasked, *inter alia*, to "designate clear plans for work among the popular masses and for internal Party work, within its Sector – City framework."²⁷¹ They had "broad authority over personnel and organi[s]ational matters, security, and economics within their respective Sectors."²⁷²
90. On the other hand, as the evidence shows, Ms. IM Chaem's *own* post made her responsible for the welfare of the women in the Sector. She educated women on "how to grow rice and to do gardening by themselves"²⁷³ through study sessions in communes and villages.²⁷⁴

²⁶⁷ Written Record of Interview of PECH Chim, 19 June 2014, **D118/259**, Q-A41. *See also*, Written Record of Interview of KHOEM Boeun, 21-23 May 2014, **D118/242**, A58-59 [describing that *Ta* Saom may have been the Secretary of the Sector 13 Committee, later replaced by SAM Bit, later replaced by Ran; and confirming that Mut was also on the Committee].

²⁶⁸ *See*, Final Submission, para. 52 (fn. 180), *referring to* Written Record of Interview of Interview of TOEB Phy, 14 September 2015, **D219/521**, A63.

²⁶⁹ Written Record of Interview of TOEB Phy, 14 September 2015, **D219/521**, A59-60 ["Q: Do you know who was Sector 13 Committee? A59: *Ta* Saom. Q: Was he Sector 13 Secretary? A60: He was called Sector Committee."], A62-63 ["Q: Did you know a woman named IM Chaem in Sector 13? A62: I just knew her name and saw her face, but I never communicated with her. I just knew her position. Q: What was her position? A63: She was in charge of women's units at sector level, Sector 13. I never talked to her."].

²⁷⁰ *See*, Written Record of Analysis by Craig C. ETCHESON, 18 July 2007, **D1.3.15.1**, para. 8; Case 002/01 Trial Judgement, **E313**, para. 218.

²⁷¹ CPK Legal Documents entitled "Communist Party of Kampuchea Statute", undated, **D1.3.20.1** ("CPK Statute, **D1.3.20.1**"), Art. 15(2).

²⁷² *See*, Written Record of Analysis by Craig C. ETCHESON, 18 July 2007, **D1.3.15.1**, para. 58.

²⁷³ Interview of IM Chaem by Smiling Toad Productions, 26 April 2007, **D1.3.12.1**, EN ERN 00217520.

KHOEM Boeun, who supervised a women's unit at the village level²⁷⁵ and at the district level,²⁷⁶ described the same duties: she educated women and took turns in rice farming as well as growing crops.²⁷⁷ The women's unit was in charge of sewing clothes, distributing fabrics to the villages, and farming dry season rice.²⁷⁸

91. In sum, the International Co-Prosecutor's attempt to attribute great authority to Ms. IM Chaem through equating a role in the women's unit of the Sector to membership of the Sector 13 Committee is not based on evidence. Ms. IM Chaem was not involved in "all decision making" at the sector level in the Southwest Zone. As the evidence shows, her role was in the women's unit and revolved around agricultural work.

ii. Ms. IM Chaem did not act as a de facto Member of the Sector 13 Committee

92. To further bolster his claim that Ms. IM Chaem was a "Sector 13 leader"²⁷⁹ and was in command of certain crimes that occurred in the Southwest Zone²⁸⁰ (all of which fall outside

²⁷⁴ Written Record of Interview of PECH Chim, 19 June 2014, **D118/259**, A42-43.

²⁷⁵ Written Record of Interview of KHOEM Boeun, 21-23 May 2014, **D118/242**, A8.

²⁷⁶ Written Record of Interview of KHOEM Boeun, 21-23 May 2014, **D118/242**, A28.

²⁷⁷ Written Record of Interview of KHOEM Boeun, 21-23 May 2014, **D118/242**, A8, A127.

²⁷⁸ Written Record of Interview of KHOEM Boeun, 21-23 May 2014, **D118/242**, A168.

²⁷⁹ Final Submission, para. 65.

²⁸⁰ See, Final Submission, paras. 452-58 [characterising the crime against humanity of murder with reference to Wat Ang Srei Mealy, Prey Sokhon, Koh Andet District, Sector 13, and Khmer Krom], 459-61 [characterising the crime against humanity of extermination with reference to Sector 13, Wat Ang Srei Mealy, Prey Sokhon, and Khmer Krom], 464-67 [characterising the crime against humanity of imprisonment with reference to Wat Ang Srei Mealy and Khmer Krom], 468-71 [characterising the crime against humanity of torture with reference to Wat Ang Srei Mealy], 472-75 [characterising the crime against humanity of persecution with reference to Wat Ang Srei Mealy, Koh Andet District, Sector 13, and Khmer Krom], 476-77 [characterising the crime against humanity of other inhumane acts – forced marriage with reference to Sector 13], 478-81 [characterising the crime against humanity of other inhumane acts – rape with reference to Wat Ang Srei Mealy], 482-83 [characterising the crime against humanity of other inhumane acts – enforced disappearances with reference to Wat Ang Srei Mealy and Sector 13], 484-85 [characterising the crime against humanity of other inhumane acts – confinement in inhumane conditions with reference to Wat Ang Srei Mealy], 493-94 [characterising the crime of wilful killing as a grave breach of the Geneva Conventions with reference to Wat Ang Srei Mealy and Khmer Krom], 495-96 [characterising the crime of inhumane treatment as a grave breach of the Geneva Conventions with reference to Wat Ang Srei Mealy and Khmer Krom], 497 [characterising the crime of wilfully causing great suffering or serious injury to body or health as a grave breach of the Geneva Conventions with reference to Wat Ang Srei Mealy and Khmer Krom], 498-00 [characterising the crime of wilful deprivation of a fair and regular trial as a grave breach of the Geneva Conventions with reference to Wat Ang Srei Mealy, Sector 13 and

of the Notification of Charges²⁸¹), the International Co-Prosecutor attempts to suggest that Ms. IM Chaem played an active role at sector-level meetings.²⁸² In this regard, the International Co-Prosecutor seeks to rely upon one witness *only* to claim that Ms. IM Chaem talked about issues such as identifying internal enemies at sector-level meetings.²⁸³ However, as a fair reading of the interview reveals, even this solitary piece of evidence does not substantiate this claim.

93. In response to the OCIJ investigator's explicit query concerning whether the witness had ever heard Ms. IM Chaem talk openly about "the necessity of sweeping the enemy clean" at sector-level meetings,²⁸⁴ KHOEM Boeun first stated that she could not remember the content of the discussions.²⁸⁵ She however explained that whilst the topic of purges was discussed during meetings, "females did not raise purges and military affairs, because they did not understand much about those issues"; "[o]nly males managed military affairs or purges".²⁸⁶ Female cadres, in her words, "mostly analy[s]ed the children's side, the elderly, or education."²⁸⁷ Indeed, consistent with the Defence contention discussed

Khmer Krom], 501-03 [characterising the crime of unlawful confinement of a civilian as a grave breach of the Geneva Conventions with reference to Sector 13 and Khmer Krom].

²⁸¹ Cf, Notification of Charges, **D239.1**.

²⁸² See, Final Submission, paras. 65, 108.

²⁸³ See, Final Submission, paras. 65 (fn. 264), 108 (fn. 525). See also, Final Submission, para. 66 (fn. 272).

²⁸⁴ Written Record of Interview of KHOEM Boeun, 21-23 May 2014, **D118/242**, Q100.

²⁸⁵ Written Record of Interview of KHOEM Boeun, 21-23 May 2014, **D118/242**, A100.

²⁸⁶ Written Record of Interview of KHOEM Boeun, 21-23 May 2014, **D118/242**, A100 ["It is hard to say because at that time too many things were talked about. As for sweeping clean, it is hard for me to say, because I do not remember clearly what they talked about. Nevertheless, purging was brought up. Females did not raise purges and military affairs, because they did not understand much about those issues. Females were [sic] mostly analyzed the children's side, the elderly, or education. Even I myself did not know much about the military. Only males managed military affairs or purges and so on."].

²⁸⁷ Written Record of Interview of KHOEM Boeun, 21-23 May 2014, **D118/242**, A100 ["It is hard to say because at that time too many things were talked about. As for sweeping clean, it is hard for me to say, because I do not remember clearly what they talked about. Nevertheless, purging was brought up. Females did not raise purges and military affairs, because they did not understand much about those issues. Females were [sic] mostly analyzed the children's side, the elderly, or education. Even I myself did not know much about the military. Only males managed military affairs or purges and so on."].

above,²⁸⁸ traditional cultural attitudes towards women persisted: women were associated with “nurturing, domestic roles.”²⁸⁹

94. In any event, KHOEM Boeun, who was the Secretary of the Cheang Tong Commune²⁹⁰ and therefore lower in the hierarchy than the alleged sector-level position the International Co-Prosecutor seeks to attribute to Ms. IM Chaem,²⁹¹ explained that she also attended sector-level meetings.²⁹² She described them as being led by the Sector Chairman—a man.²⁹³ Participants, such as Ms. IM Chaem or the witness herself, were allowed to give their impressions *at the end of* the meetings,²⁹⁴ based on the topics that had been raised by the Sector Chairman,²⁹⁵ and to report on issues such as “the lack of rice and water, diseases, and so on.”²⁹⁶ Attendance in sector-level meetings and verbal reports were not uncommon. Quite the opposite, providing reports on the “situation and work done” to the upper echelons was specifically provided for in the CPK Statute.²⁹⁷ There was nothing unusual or significant in Ms. IM Chaem, or KHOEM Boeun for that matter, being present at meetings held by the Secretary of the Sector 13 Committee.
95. The International Co-Prosecutor’s claim that Ms. IM Chaem had an active role at sector-level meetings and that this is probative of her *de facto* authority is therefore untenable. Of course, even if this sole piece of evidence was credible or probative, in light of the burden and standard of proof, such an expansive and significant claim could not rest upon the

²⁸⁸ See, Response, paras. 75-79.

²⁸⁹ Jacobson T., ‘Into the Fields’, *Lost Goddesses: The Denial of Female Power in Cambodian History* (Nordic Studies of Asian Studies, 2008), p. 231 [attached as **Authority 23**].

²⁹⁰ See, Written Record of Interview of KHOEM Boeun, 21-23 May 2014, **D118/242**, A17.

²⁹¹ See, Final Submission, paras. 2, 52, 107, 512, 514.

²⁹² Written Record of Interview of KHOEM Boeun, 21-23 May 2014, **D118/242**, A87.

²⁹³ Written Record of Interview of KHOEM Boeun, 21-23 May 2014, **D118/242**, A98.

²⁹⁴ Written Record of Interview of KHOEM Boeun, 21-23 May 2014, **D118/242**, A91 [“When I spoke in those meetings, I gave my impressions on whether what the meeting chairperson had raised was correct and what further needed to be done. ... In those Sector meetings, mostly the district levels gave impressions and comments.”], A98 [“The first speaker was the Sector Chairman, a man. As for IM Chaem, she gave her impressions at the end, meaning they let her comment on what the meeting chairman had raised”].

²⁹⁵ Written Record of Interview of KHOEM Boeun, 21-23 May 2014, **D118/242**, A98, A99 [“The impressions were based on what the meeting chairman had raised. If the meeting chairman talked about those issues, IM Chaem would comment on those problems too”].

²⁹⁶ Written Record of Interview of KHOEM Boeun, 21-23 May 2014, **D118/242**, A88.

²⁹⁷ CPK Statute, **D1.3.20.1**, Art. 6(5) [“At the designated times, lower echelons must report to the upper echelon on the situation and on the work done”].

evidence of only one witness. Logic dictates that such a fact must be supported by a number of eyewitnesses or other authorities. By definition, one witness cannot provide sufficiently serious, consistent, or corroborated evidence on an issue of this import sufficient to provide more than nominal probative force. Instead, relevant and probative evidence establishes that Ms. IM Chaem's role at sector-level meetings was limited to the requirement to report and the ability to provide comments on topics raised by the Sector Chairman.

96. In sum, the International Co-Prosecutor has failed to demonstrate that Ms. IM Chaem exercised a *de jure* or *de facto* position in the Sector 13 Committee of the Southwest Zone. She could not have been "involved in all decision making affecting the District and Sector" in the Southwest Zone.²⁹⁸ The evidence shows that her sphere of authority was limited to enabling agricultural work amongst women. In any event, as Ms. IM Chaem was not charged with any crimes committed in the Southwest Zone,²⁹⁹ the Defence limits its observations on the International Co-Prosecutor's as aforesaid.

2. Ms. IM Chaem did not hold significant positions in the Northwest Zone

97. In an attempt to establish Ms. IM Chaem's responsibility for crimes allegedly committed in the Zone³⁰⁰ (the majority of which are not the subject of any charge contained in the

²⁹⁸ Final Submission, para. 107.

²⁹⁹ See, Notification of Charges, **D239.1**.

³⁰⁰ See, Final Submission, paras. 452-58 [characterising the crime against humanity of murder with reference to various locations in the Northwest Zone, including locations irrelevant to PTSC and SSWS], 459-61 [characterising the crime against humanity of extermination with reference to various locations in the Northwest Zone, including locations irrelevant to PTSC and SSWS], 464-67 [characterising the crime against humanity of imprisonment with reference to various locations in the Northwest Zone, including locations irrelevant to PTSC and SSWS], 468-71 [characterising the crime against humanity of torture with reference to various locations in the Northwest Zone, including locations irrelevant to PTSC and SSWS], 472-75 [characterising the crime against humanity of persecution with reference to various locations in the Northwest Zone, including locations irrelevant to PTSC and SSWS], 476-77 [characterising the crime against humanity of other inhumane acts – forced marriage with reference to various locations in the Northwest Zone, including locations irrelevant to PTSC and SSWS], 478-81 [characterising the crime against humanity of other inhumane acts – rape with reference to various locations in the Northwest Zone, including locations irrelevant to PTSC and SSWS], 482-83 [characterising the crime against humanity of other inhumane acts – enforced disappearances with reference to various locations in the Northwest Zone, including locations irrelevant to PTSC and SSWS], 484-85 [characterising the crime against humanity of other inhumane acts – confinement in inhumane conditions with

Notification of Charges³⁰¹), the International Co-Prosecutor submits that Ms. IM Chaem “acted both as Preah Net Preah District Secretary and Sector 5 Member and later Deputy Secretary”³⁰² of Sector 5, that she organised sector-level meetings,³⁰³ and that she had a specific relationship with *Ta Mok*.³⁰⁴

98. On the basis of these allegations, the International Co-Prosecutor concludes that Ms. IM Chaem was “involved in all decision making affecting the District and Sector”³⁰⁵ making her responsible for all alleged crimes in the Northwest Zone. As will be discussed below, the International Co-Prosecutor’s route to this conclusion is fundamentally flawed from the outset. Ms. IM Chaem was appointed the Secretary of Preah Net Preah in late 1977 or early 1978 and remained in this position until the end of the Democratic Kampuchea regime. The evidence relied upon by the International Co-Prosecutor does not establish that Ms. IM Chaem ever held a position at the sector level or otherwise could have been involved in decision making at the district or sector level to the extent that would make her responsible for the crimes in the Northwest Zone.

reference to various locations in the Northwest Zone, including locations irrelevant to PTSC and SSWS], 493-94 [characterising the crime of wilful killing as a grave breach of the Geneva Conventions with reference to various locations in the Northwest Zone, including locations irrelevant to PTSC and SSWS], 495-96 [characterising the crime of inhumane treatment as a grave breach of the Geneva Conventions with reference to various locations in the Northwest Zone, including locations irrelevant to PTSC and SSWS], 497 [characterising the crime of wilfully causing great suffering or serious injury to body or health as a grave breach of the Geneva Conventions with reference to various locations in the Northwest Zone, including locations irrelevant to PTSC and SSWS], 498-00 [characterising the crime of wilful deprivation of a fair and regular trial as a grave breach of the Geneva Conventions with reference to various locations in the Northwest Zone, including locations irrelevant to PTSC and SSWS], 501-03 [characterising the crime of unlawful confinement of a civilian as a grave breach of the Geneva Conventions with reference to various locations in the Northwest Zone, including locations irrelevant to PTSC and SSWS].

³⁰¹ *Cf.* Notification of Charges, **D239.1**.

³⁰² Final Submission, para. 117.

³⁰³ Final Submission, para. 123. *See also*, Final Submission, paras. 72-73.

³⁰⁴ *See*, Final Submission, para. 96.

³⁰⁵ Final Submission, para. 117.

i. Ms. IM Chaem did not hold a de jure position as a Member or the Deputy Secretary of the Sector 5 Committee

99. Determining the material and temporal scope of Ms. IM Chaem’s authority in the Northwest Zone is critical to an accurate assessment of her potential criminal responsibility at the two sector-level crime sites in relation to which she was charged, *i.e.* PTSC and SSWS. Without relevant *de jure* or apposite *de facto* authority, it is clear that Ms. IM Chaem must have been remote from any serious crimes at these locations and cannot overall be considered to be “most responsible” within the meaning of the term at the ECCC.
100. In attempting to implicate Ms. IM Chaem, the International Co-Prosecutor asserts that Ms. IM Chaem was appointed as District Secretary of Preah Net Preah in mid-1977,³⁰⁶ and was a Member of the Sector 5 Committee “shortly after” her arrival in the Northwest Zone,³⁰⁷ becoming Deputy Secretary of the Sector 5 Committee “in mid-to-late 1978”.³⁰⁸ To this end, the International Co-Prosecutor presents a timeline of allegations that is demonstrably incorrect.³⁰⁹
101. From the outset, it is plain that the International Co-Prosecutor’s case rests upon wishful thinking. The International Co-Prosecutor attempts to ground the dates of Ms. IM Chaem’s alleged appointments to the positions of Member and later Deputy Secretary of the Sector 5 Committee on “[c]ontemporaneous documents establish[ing] the dates when the previous Sector 5 Committee members were arrested”.³¹⁰ However, in the final analysis, this claim is based on nothing more than speculation: Ms. IM Chaem “must have”³¹¹ replaced *Ta Lai*

³⁰⁶ See, Final Submission, paras. 2 [“Im Chaem became Preah Net Preah District Secretary ... from mid-1977.”], 60 [“Im Chaem was the Preah Net Preah District Secretary from her arrival in mid-1977”], 174 [“Im Chaem replaced former District Secretary An Maong as Preah Net Preah District Committee ... Im Chaem must have arrived in Preah Net Preah by at least mid-June 1977.”].

³⁰⁷ See, Final Submission, para. 115 [“Im Chaem became a Member of the Sector 5 Committee shortly after arriving in the Northwest Zone.”]. See also, Final Submission, paras. 2, 58.

³⁰⁸ See, Final Submission, para. 115 [“Subsequently, in mid-to-late 1978, Im Chaem became the Deputy Secretary of Sector 5.”]. See also, Final Submission, paras. 2, 58.

³⁰⁹ Final Submission, paras. 58, 115.

³¹⁰ Final Submission, para. 115.

³¹¹ Final Submission, para. 115.

as Member of the Sector Committee no later than September 1977 *because* he was arrested at that time.³¹² Ms. IM Chaem “would have”³¹³ replaced *Ta Cheal* as the Sector Deputy Secretary no later than June 1978 *because* he was arrested at that time.³¹⁴ Self-evidently, resting claims of massive authority and responsibility for grave crimes that “affected tens of thousands of individuals, and caused many thousands of deaths”³¹⁵ on the proposition that a Suspect “must have” and “would have” occupied specific positions does not obviate the need for serious or corroborated evidence that provides a certain degree of probative force.

102. Putting this aside, the witnesses relied upon by the International Co-Prosecutor to contend that Ms. IM Chaem held a position at the sector level in Sector 5 will be assessed at paragraphs **105** and **106** of this Response. First, however, clarification is required; the claims regarding Ms. IM Chaem’s positions in the Northwest Zone rest upon the following misconceptions: i) that *Ta Rin* was Secretary of Sector 5 at the time of Ms. IM Chaem’s arrival in the Northwest Zone (and therefore was responsible for her appointments); and ii) that Ms. IM Chaem was the immediate replacement for *Ta Maong* as District Secretary of Preah Net Preah. These will be discussed below.

(i) The International Co-Prosecutor incorrectly contends that *Ta Rin* was the Secretary of Sector 5 from June 1977 until November 1978.³¹⁶ Although not expressly articulated in the Final Submission, the implication is that *Ta Rin*, being the senior-most cadre in Sector 5, was a vital figure in each of Ms. IM Chaem’s Northwest Zone appointments: this time period encompasses all the alleged dates of Ms. IM Chaem’s appointments as District Secretary (“mid-June 1977”),³¹⁷ Sector Committee Member (“September

³¹² See, Final Submission, para. 115 (fn. 560).

³¹³ Final Submission, para. 115.

³¹⁴ See, Final Submission, para. 115 (fn. 561).

³¹⁵ Final Submission, para. 530. See also, Final Submission, paras. 5, 529, 536.

³¹⁶ See, Final Submission, para. 58 [“Southwest cadre Heng Rin replaced Hoeng as Sector 5 Secretary in June 1977. Rin was subsequently purged in November 1978.”].

³¹⁷ See, Final Submission, para. 174 [“Im Chaem replaced former District Secretary An Maong as Preah Net Preah District Committee ... S-21 records establish that Preah Net Preah District Secretary An Maong entered S-21 on 28 June 1977, and was arrested at least 10 days earlier. Therefore, Im Chaem must have arrived in Preah Net Preah by at least mid-June 1977.”].

1977”),³¹⁸ and Sector Deputy Secretary (“June 1978”).³¹⁹ This hypothesis is not grounded in evidence. First, not a single authority cited by the International Co-Prosecutor in relation to any of Ms. IM Chaem’s appointments supports the notion that *Ta Rin* contributed to any of her promotions.³²⁰ In fact, SUON Mot contradicts this proposition.³²¹ Second, as the evidence shows, the Sector 5 Secretary who appointed Ms. IM Chaem as District Secretary of Preah Net Preah was *Ta Cheal*, *not Ta Rin*.³²² It is in fact clear that *Ta Cheal* was interim Secretary of the Sector 5 Committee³²³ from the time of Ms. IM Chaem’s arrival in the Northwest Zone until “March or April

³¹⁸ See, Final Submission, para. 115 [“Consequently, Im Chaem must have become a Sector 5 Committee Member no later than September 1977”].

³¹⁹ See, Final Submission, para. 115 [“Consequently, Im Chaem ... would have become Sector Deputy no later than June 1978.”].

³²⁰ See, Final Submission, paras. 58 (fns. 218-19), 115 (fns. 556-57), 174 (fn. 872).

³²¹ See, Final Submission, para. 58 (fn. 218), *referring to*, DC-Cam Interview with SUON Mot, 8 August 2014, **D219/4.1**, EN ERN 01056814 [“Q: What did the *Ta Rin* the straight-armed do? A: He was Sector Committee. He worked at the office. Q: Was he Sector Committee with *Yeay Chaem*? A: No. He apparently came from Siem Reap.”].

³²² Written Record of Interview of TUM Soeun, 16-17 October 2013, **D119/65**, A62-63 [“*Ta Chiel*, Secretary of Sector 5, was the person who appointed *Yeay Chem* [to be the chief of Preah Net Preah District].”].

³²³ Written Record of Interview of CHHIT Yoeuk, 26 April 2013, **D119/33**, A13 [“In Sector 5, after *Ta Hoeng* was arrested, *Ta Cheal* replaced him for a few months”]; Written Record of Interview of PAN Chhuong, 14 March 2013, **D119/29**, A17 [“After the arrest of *Ta Hing*, *Ta Cheal* became the sector committee chief (there was no deputy).”]; DC-Cam Interview of PAN Chhuong, 18 June 2011, **D67.6**, EN ERNs 00728686, 00728688 [stating that *Ta Cheal* became the chief of Sector 5 for about three months after *Ta Hing* was arrested]; DC-Cam Interview of KAO Phan, 18 June 2011, **D123/1/2.62**, EN ERN 01072684 [“After Hoeng had been arrested, he [*Ta Cheal*] could replace Hoeng as Sector Committee. He replaced Hoeng.”]; DC-Cam Interview of IM Chaem, 6 April 2012, **D123/1/5.1c**, EN ERN 00951854 [saying that *Ta Cheal* was in charge of Svay Sisophon province when she arrived and that *Ta Hing* had already disappeared]; DC-Cam Interview with IM Chaem, 20 June 2008, **D123/1/5.1b**, EN ERN 00951805 [stating that *Ta Rin* took over Sector 5 from *Ta Cheal*]. See also, Hypothesized Organizational Chart of Sector 5, North West Zone (Preah Net Preah District), last updated 19 June 2014, **D119/135.1**.

1978”.³²⁴ There is no evidence to suggest that *Ta* Cheal promoted Ms. IM Chaem to the Sector 5 Committee: *only* to the district echelon.³²⁵

- (ii) The International Co-Prosecutor claims that Ms. IM Chaem was the immediate replacement for *Ta* Maong as District Secretary of Preah Net Preah.³²⁶ *Ta* Maong was removed as District Secretary on 28 June 1977.³²⁷ Contrary to the theory postulated by the International Co-Prosecutor,³²⁸ Ms. IM Chaem did not step straight into this role upon her arrival in the Northwest Zone. Rather, there is evidence to show that *Ta* Maong’s immediate replacement as District Secretary was Phon.³²⁹ Ms. IM Chaem was only appointed to the role of Preah Net Preah Secretary in late 1977 or early 1978³³⁰ as a replacement for Phon.³³¹ She remained in this position until the arrival of

³²⁴ Written Record of Interview of CHHIT Yoeuk, 26 April 2013, **D119/33**, A13. *See also*, S-21 Confession of CHAN Sam alias KANG Chap alias Sae, 10 September 1978, **D1.3.4.2**, EN ERNs 00223044, 00223046 [stating that *Ta* Rin had been transferred to Sector 5 and was introduced to RUOS Nhim in February 1978 and that he attended a meeting in late March 1978 in his capacity as the Secretary of Sector 5]; Written Record of Interview of CHHOENG Choeun, 4 September 2014, **D119/156**, A29 [stating that *Ta* Rin was appointed “maybe in the early rainy season in May or June 1978.”]; DC-Cam Interview of IM Chaem, 20 June 2008, **D123/1/5.1b**, EN ERN 00951805; Written Record of Interview of PAN Chhuong, 14 March 2013, **D119/29**, A13 [saying that *Ta* Rin replaced *Ta* Cheal, the former Chairman of the Sector 5 Committee].

³²⁵ Written Record of Interview of TUM Soeun, 16-17 October 2013, **D119/65**, A62-63 [“*Ta* Chiel, Secretary of Sector 5, was the person who appointed *Yeay* Chem [to be the chief of Preah Net Preah District].”].

³²⁶ *See*, Final Submission, para. 174 [“Im Chaem replaced former District Secretary An Maong as Preah Net Preah District Committee.”].

³²⁷ S-21 Confession of AN Maong, 23 September 1977, **D1.3.4.1**, EN ERN 00786944 [noting that AN Maong was arrested by *Angkar* on 28 June 1977].

³²⁸ *See*, Final Submission, para. 174 [“Im Chaem replaced former District Secretary An Maong as Preah Net Preah District Committee.”].

³²⁹ Written Record of Interview of CHHIT Yoeuk, 26 April 2013, **D119/33**, A13 [“*Ta* Maong was arrested in 1977 and Phon (from the East Zone) replaced him”]; Written Record of Interview of CHUM Kan, 26 March 2014, **D119/110**, A41 [“At first, Phon (deceased) was Preah Net Preah District Committee, but later *Yeay* Chaem was Preah Net Preah District Committee because at that time, *Yeay* Chaem assigned me as Commune Committee.”]; Written Record of Interview of VAN Samut, 21 August 2015, **D219/477**, A29 [“After the arrival of the Southwest group, Phon from Svay Rieng Province came to replace *Ta* Maong”]. *See also*, Hypothesized Organizational Chart of Sector 5, North West Zone (Preah Net Preah District), last updated 19 June 2014, **D119/135.1**.

³³⁰ Written Record of Interview of CHHIT Yoeuk, 26 April 2013, **D119/33**, A13 [“By late 1977 or early 1978, *Yeay* Chaem became a chief of Preah Net Preah district.”]; Written Record of Interview of CHUM Kan, 26 March 2014, **D119/110**, A12, A41 [CHUM Kan was a member of the Phnom Lieb Commune Committee in late 1977 or early 1978 when Phon was the District Secretary of Preah Net Preah. He was appointed to be the chief of the Commune Committee by Ms. IM Chaem after she replaced Phon].

the Vietnamese.³³² Thus, an objective analysis of the evidence leads to the conclusion that Ms. IM Chaem's tenure as District Secretary of Preah Net Preah was at least one third shorter than alleged.

103. As will be discussed below,³³³ even taken at its highest, the evidence relied upon by the International Co-Prosecutor³³⁴ does not demonstrate that Ms. IM Chaem held a position in

³³¹ Written Record of Interview of CHHIT Yoek, 26 April 2013, **D119/33**, A13; Written Record of Interview of CHUM Kan, 26 March 2014, **D119/110**, A41. *See also*, Hypothesized Organizational Chart of Sector 5, North West Zone (Preah Net Preah District), last updated 19 June 2014, **D119/135.1**.

³³² *See, e.g.* Interview of IM Chaem by Smiling Toad Productions, 26 April 2007, **D1.3.12.1**, EN ERN 00217518 [“[M]y last promotion was (assigned) to be chief of Preah Net Preah district”]; Written Record of Interview of PAN Chhuong, 14 March 2013, **D119/29**, A9 [stating that he fled with IM Chaem in 1979 and that he gave her protection because she was a district chief]. *See also*, *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript of Trial Proceedings (CHHIT Yoek), 13 August 2015, **E1/330.1**, EN ERN 01131281 [stating that Ms. IM Chaem only ever worked at the district level].

³³³ *See*, Response, paras 105-10.

³³⁴ *See*, Final Submission, para. 58 (fn. 218) *referring to* Written Record of Interview of TUM Soeun, 16-17 October 2013, **D119/65**, A93-94; Written Record of Interview of PRAK Soem, 1 September 2013, **D118/93**, A19; Written Record of Interview of ORM Huon, 27 May 2014, **D119/130**, A118; Written Record of Interview of TIL Sengly, 1 April 2014, **D119/112**, A9; Written Record of Interview of CHIEM Tab, 19 February 2014, **D119/91**, A15, A25; Written Record of Interview of CHHAO Chat, 18-19 December 2014, **D219/130**, A75, A77; Written Record of Interview of SUON Mot, 16 October 2014, **D219/37**, A42; Written Record of Interview of LAT Suoy, 18 August 2014, **D119/144**, A94; Written Record of Interview of YONG Sin, 27 July 2015, **D219/433**, A8; Written Record of Interview of PECH Ruos, 12 March 2014, **D119/99**, A22; Civil Party Application of THANG Thoeuy, 21 March 2013, **D5/853**, EN ERN 00982862; Civil Party Application of ROEUNG Saruon, 15 September 2011, **D5/865**, EN ERN 00982872; Written Record of Interview of PRAK Soem, 1 September 2013, **D118/93**, A19-20; DC-Cam Statement of SUON Mot, 8 August 2014, **D219/4.1**, EN ERN 01056814; Written Record of Interview of LI Sinh, 13 March 2013, **D119/20**, A16; Written Record of Interview of LONG Vun, 26 November 2013, **D118/153**, A57. *See*, Final Submission, para. 58 (fn. 219), *referring to* Written Record of Interview of TOEK Suong, 30 October 2015, **D219/575**, A18-19; Written Record of Interview of CHIEM Tab, 19 February 2014, **D119/91**, A14, A20; Written Record of Interview of SOK Rum, 19-20 March 2014, **D119/108**, A107; Written Record of Interview of SUON Mot, 16 October 2014, **D219/37**, A42, A52-54; Written Record of Interview of BIN Heuy, 27 November 2013, **D119/66**, A12-13; Written Record of Interview of CHIM Chanthoeun, 27 May 2013, **D118/65**, A29; DC-Cam Statement of KROCH Toem, 18 October 2010, **D119/69/2**, EN ERN 00986290; Written Record of Interview of ORM Huon, 27 May 2014, **D119/130**, A118-19; Written Record of Interview of LAT Suoy, 18 August 2014, **D119/144**, A94; Written Record of Interview of YONG Sin, 27 July 2015, **D219/433**, A8; Written Record of Interview of PECH Ruos, 12 March 2014, **D119/99**, A22; Civil Party Application of THANG Thoeuy, 21 March 2013, **D5/853**, EN ERN 00982862; Civil Party Application of ROEUNG Saruon, 13 March 2013, **D5/865**, EN ERN 00982872; Written Record of Interview of PRAK Soem, 1 September 2013, **D118/93**, A19-20; DC-Cam Statement of SUON Mot, 8 August 2014, **D219/4.1**, EN ERN 01056808; Written Record of Interview of LONG Vun, 26 November 2013, **D118/153**, A57, A59. *See*, Final Submission, para. 115 (fn. 556), *referring to* Written Record of Interview of CHHAO Chat, 18-19 December 2014, **D219/130**, A75, A77; Written Record of Interview of LONG Vun, 26 November 2013, **D118/153**, A57, A59; Written Record of Interview of ORM Huon, 27 May 2014, **D119/130**, A117-19; Written Record of Interview of SUON Mot, 16 October 2014,

the Sector 5 Committee either “shortly after” her arrival in the Northwest Zone or at any time. Moreover, a reasonable and fair appraisal of the *totality* of the witness testimony in relation to this contention shows it to be demonstrably incorrect.

104. Unfortunately, as will be demonstrated below, such an appraisal also reveals a prosecutorial approach to the evidence that is far removed from that to be expected from a party enjoined to assist in the ascertainment of the truth. It is not helpful to rely on demonstrable exaggeration,³³⁵ speculation,³³⁶ or rumour³³⁷ without comment. It is wrong in principle to treat unsourced hearsay as direct evidence³³⁸ or, even more dangerous to rely upon parts of statements in full knowledge that the same witness provides a fuller explanation or contradictory evidence within the same statement.³³⁹
105. The International Co-Prosecutor refers to 15 authorities to claim that Ms. IM Chaem became a member of the Sector 5 Committee “shortly after her arrival in the Northwest Zone in mid-1977”³⁴⁰ and to support the claim that she “became the Deputy Secretary of Sector 5” in mid-to-late 1978.³⁴¹ As will be demonstrated below, the support offered by the volume of the authorities is illusory: the evidence is exaggerated, speculative, inconsistent and, in the main, little more than unreliable hearsay.
106. The International Co-Prosecutor’s approach in attempting to mask the quality of the evidence is regrettable. In particular:

D219/37, A42; Written Record of Interview of LAT Suoy, 18 August 2014, **D119/144**, A94; Written Record of Interview of YONG Sin, 27 July 2015, **D219/433**, A8-9; Written Record of Interview of PECH Ruos, 12 March 2014, **D119/99**, A22; Civil Party Application of THANG Thoeuy, 21 March 2013, **D5/853**, EN ERN 00982862; Civil Party Application of ROEUNG Saruon, 15 September 2011, **D5/865**, EN ERN 00982872. *See*, Final Submission, para. 115 (fn. 557), *referring to* Written Record of Interview of PRAK Soem, 1 September 2013, **D118/93**, A19; Written Record of Interview of TIL Sengly, 1 April 2014, **D119/112**, A9, A10; Written Record of Interview of CHIEM Tab, 19 February 2014, **D119/91**, A15, A25.

³³⁵ *See*, Response, para. 106, *noting the references to* TUM Soeun, CHHAO Chat, YONG Sin.

³³⁶ *See*, Response, para. 106, *noting the references to* LAT Suoy, SUON Mot, ROEUNG Saruon.

³³⁷ *See*, Response, para. 106, *noting the reference to* CHIM Chanthoeum.

³³⁸ *See*, Response, para. 106, *noting the references to* PECH Ruos, KROCH Toem, TIL Sengly, LIN Sinh, SOK Rum.

³³⁹ *See*, Response, para. 106, *noting the references to* THANG Thoeuy, ORM Huon, BIN Heuy, PRAK Soem, LONG Vun.

³⁴⁰ *See*, Final Submission, para. 58 (fn. 219).

³⁴¹ *See*, Final Submission, para. 58 (fn. 218). *See also*, Final Submission, paras. 2, 115.

- The reference to TUM Soeun is deceptive.³⁴² The International Co-Prosecutor placed TUM Soeun's statement³⁴³ first in a footnote containing 15 references allegedly supporting the allegation that Ms. IM Chaem became the Deputy Secretary of Sector 5³⁴⁴ giving the impression that that this was a relevant authority. However, TUM Soeun did not state that Ms. IM Chaem became the Deputy Secretary of Sector 5. Instead, he noted that Ms. IM Chaem worked with the former district-level organisational structure until 1978.³⁴⁵
- CHHAO Chat did not state that Ms. IM Chaem became the Deputy Secretary of Sector 5.³⁴⁶ He merely observed that Ms. IM Chaem held a high-ranking position at Phnom Lieb, Phnum Srok, and Phnom Trayoung Mountain.³⁴⁷ He cautiously conceded that he did not know her position,³⁴⁸ that he did not know if she had authority over other districts,³⁴⁹ and that he never attended a meeting where she was present.³⁵⁰
- PECH Ruos did not support the claim that Ms. IM Chaem was a Member and the Deputy Secretary of the Sector 5 Committee.³⁵¹ Instead, the witness said: "I heard from people in the mobile unit that she was a sector-level cadre and she

³⁴² See, Final submission, para. 58 (fn. 218), referring to Written Record of Interview of TUM Soeun, 16-17 October 2013, **D119/65**, A93-94.

³⁴³ Written Record of Interview of TUM Soeun, 16-17 October 2013, **D119/65**, Q-A93 ["Q: How long did Yeay Chem work with the ex-district-level organisational structure? A93: Until 1978 when the ex-cadres disappeared."], Q-A94 ["Q: How did they disappear? Was it because they resigned? A94: I did not know. I just knew that they were no longer present at the meetings. Also, we never heard of the chief of Sector Committee, Ta Chiel."].

³⁴⁴ See, Final Submission, para. 58 (fn. 218).

³⁴⁵ Written Record of Interview of TUM Soeun, 16-17 October 2013, **D119/65**, A93-94.

³⁴⁶ See, Final Submission, para. 58 (fn. 218), referring to Written Record of Interview of CHHAO Chat, 18-19 December 2014, **D219/130**, A77.

³⁴⁷ Written Record of Interview of CHHAO Chat, 18-19 December 2014, **D219/130**, A75, A77.

³⁴⁸ Written Record of Interview of CHHAO Chat, 18-19 December 2014, **D219/130**, A65.

³⁴⁹ Written Record of Interview of CHHAO Chat, 18-19 December 2014, **D219/130**, A78.

³⁵⁰ Written Record of Interview of CHHAO Chat, 18-19 December 2014, **D219/130**, A91.

³⁵¹ See, Final Submission, para. 58 (fn. 218-19), referring to Written Record of Interview of PECH Ruos, 12 March 2014, **D119/99**, A22.

stayed at Phnum Lieb.”³⁵² Moreover, the International Co-Prosecutor cherry-picked parts of the witness’ statement to remove the first part of his answer (which provides that “*Yeay Chaem* was the new Preah Net Preah District Committee”³⁵³) thereby distorting the account to give the appearance that he provided evidence in relation to the sector-level only. In fact, the only reliable evidence from this witness on this issue was that Ms. IM Chaem worked at the district level.

- YONG Sin did not support the claim that Ms. IM Chaem was a Member or the Deputy Secretary of the Sector 5 Committee.³⁵⁴ The Khmer original of YONG Sin’s statement confirms that the witness described Ms. IM Chaem as an important figure in his *area*; therefore not referring to the *sector* level (as implied by the English translation).³⁵⁵ The witness further indicated that he saw Ms. IM Chaem at only two sites, both located in Preah Net Preah District.³⁵⁶
- LAT Suoy did not provide evidential support for the claims that Ms. IM Chaem was a Member and the Deputy Secretary of the Sector 5 Committee.³⁵⁷ The witness speculated that *Yeay Chaem* and *Ta Mok* were on the Sector 5 Committee³⁵⁸ because, according to him, they were “well-known” and “there

³⁵² Written Record of Interview of PECH Ruos, 12 March 2014, **D119/99**, A22 (emphasis added). *See also*, Written Record of Interview of PECH Ruos, 12 March 2014, **D119/99**, A16 [“I do not know about the replacements in Sector 5.”].

³⁵³ Written Record of Interview of PECH Ruos, 12 March 2014, **D119/99**, A22.

³⁵⁴ *See*, Final Submission, para. 58 (fns. 218-19), *referring to* Written Record of Interview of YONG Sin, 27 July 2015, **D219/433**, A8.

³⁵⁵ Written Record of Interview of YONG Sin, 27 July 2015, **D219/433**, A8, Q-A9.

³⁵⁶ Written Record of Interview of YONG Sin, 27 July 2015, **D219/433**, A9.

³⁵⁷ *See*, Final Submission, paras. 58 (fns. 218-19), 115 (fn. 556), *referring to* Written Record of Interview of LAT Suoy, 18 August 2014, **D119/144**, Q-A94 [“Q: According to a document of the Documentation Centre of Cambodia, **D67.7**, ERN00728737 (English) you said that ‘after the arrest of *Ta Hoeng* who was on the Sector 5 Committee, *Yeay Chaem* or *Ta Mok* took over Sector 5.’ Why did you say so? A94: I said so because after the arrest of all the Northwest cadres there were no new district committees to replace them yet. During that time we just heard of the names of these two people, *Ta Mok* or *Yeay Chaem*, and both of them were well known during that time. This is why I said that perhaps *Yeay Chaem* or *Ta Mok* was on the Sector 5 Committee.”].

³⁵⁸ Written Record of Interview of LAT Suoy, 18 August 2014, **D119/144**, Q-A94 [“Q: According to a document of the Documentation Center of Cambodia ... you said that ‘after the arrest of *Ta Hoeng* who was on the Sector 5 Committee, *Yeay Chaem* or *Ta Mok* took over Sector 5.’ Why did you say so? A94: I said so because after the arrest of all the Northwest cadres there were no new district committees to replace them yet. During that time

were no new district committees” to replace the Northwest Zone cadres who had been arrested.³⁵⁹ The witness indicated that he saw Ms. IM Chaem only once from afar.³⁶⁰ He did not recognise Ms. IM Chaem in any of the pictures shown to him.³⁶¹

- SUON Mot did not provide any meaningful support for the assertion that Ms. IM Chaem was a Member and the Deputy Secretary of the Sector 5 Committee.³⁶² The witness admitted that he “does not know much” about the structure of Sector 5 and indicated that he does not know what position Ms. IM Chaem held in the Northwest Zone.³⁶³ SUON Mot came to the conclusion that Ms. IM Chaem worked at the sector level because she attended meetings at the Sector 5 Office;³⁶⁴ a duty Ms. IM Chaem had to attend to in her capacity of District Secretary pursuant to the CPK Statute³⁶⁵ and one that was far from unusual.³⁶⁶

we just heard of the names of these two people, *Ta Mok* or *Yeay Chaem*, and both of them were well known during that time. This is why I said that perhaps *Yeay Chaem* or *Ta Mok* was on the Sector 5 Committee.”].

³⁵⁹ Written Record of Interview of LAT Suoy, 18 August 2014, **D119/144**, A94.

³⁶⁰ Written Record of Interview of LAT Suoy, 18 August 2014, **D119/144**, A96.

³⁶¹ Written Record of Interview of LAT Suoy, 18 August 2014, **D119/144**, EN ERN 01031905.

³⁶² *See*, Final Submission, paras. 58 (fns. 218-19), 115 (fn. 556), *referring to* Written Record of Interview of SUON Mot, 16 October 2014, **D219/37**, A42 [“I did not know what position she held, but I saw *Yeay Chaem* come back and forth to hold meetings at the Svay Sisophon District Office when I attended meetings there.”], A44 [saying that he “did not know” if the Svay Sisophon Office (the Sector 5 Office) was also Ms. IM Chaem’s office but saw her there “at each meeting”], A52-54 [“Q: In your interview with the Documentation Center of Cambodia No. D219/4.1, you said that *Yeay Chaem* was Sector Committee at Preah Netr Preah. Could you clarify that in detail? A52: *Yeay Chaem* had many offices. Sometimes, she worked at the Svay Sisophon District Office, sometimes at Preah Netr Preah District, and sometimes at the Phnum Srok District Office. Q: How did *Yeay Chaem* travel from one office to another? A53: She sometimes travelled by motorcycle, and sometimes by Jeep. She most often travelled by motorcycle and horse-cart. Q: Could you explain what level of cadres had the right to travel by Jeep? A54: Only Sector level.”]; DC-Cam Statement of SUON Mot, 8 August 2014, **D219/4.1**, EN ERNs 01056808 [“Q: Did *Ta Chay* come to replace him? A: *Ta Chay* took his post together with *Yeay Chaem*. Q: HENG Rin, Cheal, and who else [was Sector Committee]? A: *Yeay Chaem*. An unknown man with one blind eye was arrested even before Cheal.”], 01056814 [“Q: They arrested *Ta Cheal* and later *Ta Rin*. Only *Yeay Chaem* remained? SUON Mot: Only *Yeay Chaem* remained, and then *Ta Chay* came.”].

³⁶³ Written Record of Interview of SUON Mot, 16 October 2014, **D219/37**, A42 [“I did not know what position she held”].

³⁶⁴ Written Record of Interview of SUON Mot, 16 October 2014, **D219/37**, A42 [“I did not know what position she held, but I saw *Yeay Chaem* come back and forth to hold meetings at the Svay Sisophon District Office when I attended meetings there.”], A44 [saying that he “did not know” if the Svay Sisophon Office (the Sector 5 Office) was also Ms. IM Chaem’s office but saw her there “at each meeting”].

³⁶⁵ CPK Statute, **D1.3.20.1**, Arts. 6(5), [1]4.

- The International Co-Prosecutor should not have relied upon THANG Thoeuy's Supplementary Information Form stating that Ms. IM Chaem "was in charge of all of the Sector 5"³⁶⁷ in support of the claim that Ms. IM Chaem was a Member and then the Deputy Secretary of the Sector 5 Committee.³⁶⁸ As the International Co-Prosecutor is aware, the witness provided contradictory evidence on this issue. In a later OCIJ statement, the civil party applicant indicated that she "did not know *Yeay* Chaem's exact position."³⁶⁹ She also clarified that she only knew that Ms. IM Chaem chaired the Children Mobile Unit the applicant worked in.³⁷⁰
- The International Co-Prosecutor should not have relied upon ORM Huon's assertion that Ms. IM Chaem worked at "[a]ll levels, including the Sector" in support of their case that Ms. IM Chaem became a Member and then the Deputy Secretary of the Sector 5 Committee.³⁷¹ The civil party applicant confirmed that she did not have direct knowledge of Ms. IM Chaem.³⁷²
- The International Co-Prosecutor should not have relied upon the unsourced hearsay provided by TIL Sengly and LIN Sinh in support of the claim that Ms. IM Chaem became the Deputy Secretary of Sector 5.³⁷³ Both men indicated that they *heard* that Ms. IM Chaem governed Sector 5 and that they *were told* this

³⁶⁶ See, Response, paras 94, 113, 117-18.

³⁶⁷ Civil Party Application of THANG Thoeuy, 21 March 2013, **D5/853**, EN ERN 00982862.

³⁶⁸ See, Final Submission, para. 58 (fns. 218-19), *referring to* Civil Party Application of THANG Thoeuy, 21 March 2013, **D5/853**, EN ERN 00982862.

³⁶⁹ Written Record of Interview of THANG Thoeuy, 16-17 June 2014, **D119/131**, A69.

³⁷⁰ See, Written Record of Interview of THANG Thoeuy, 16-17 June 2014, **D119/131**, A34 ["I just knew that [Ms. IM Chaem] was the Chairwoman of the Children Mobile Unit."], A35 [asked if Ms. IM Chaem was at the village, commune, district, or sector level, THANG Thoeuy answered: "I am not sure, but I just knew that she supervised my children mobile unit."].

³⁷¹ See, Final Submission, para. 58 (fns. 218-19), *referring to* Written Record of Interview of ORM Huon, 27 May 2014, **D119/130**, A118-19.

³⁷² See, e.g., Written Record of Interview of ORM Huon, 27 May 2014, **D119/130**, A64 ["I never saw her in person."], A88 ["I only heard about [*Ta Val* and *Yeay* Chaem]."], A92 ["I heard that *Yeay* Chaem ..."].

³⁷³ See, Final Submission, para. 58 (fn. 218), *referring to* Written Record of Interview of TIL Sengly, 1 April 2014, **D119/112**, A9; Written Record of Interview of LI Sinh, 13 March 2013, **D119/20**, A16.

information.³⁷⁴ Neither of the two provided further details, verifying the source of their knowledge or otherwise providing any other indices of reliability.

- The International Co-Prosecutor should not have relied upon the unsourced hearsay provided by ROEUNG Saruon to support the claims that Ms. IM Chaem was a Member and later the Deputy Secretary of the Sector 5 Committee.³⁷⁵ She was not interviewed by the OCIJ and only confirmed that *to her knowledge* Ms. IM Chaem “led the Sector”³⁷⁶ without proffering any detail that would permit the evidence to be tested or verified.
- CHIM Chanthoeum did not provide any probative evidence in support of the claim that Ms. IM Chaem was a Member the Sector Committee.³⁷⁷ He indicated that he never met or saw Ms. IM Chaem and provided nothing that could verify the source of his knowledge concerning Ms. IM Chaem’s alleged role in the “Sector 5 leading Committee”.³⁷⁸
- SOK Rum did not provide any probative evidence in support of the claim that Ms. IM Chaem held a position as Sector 5 Committee member.³⁷⁹ The witness acknowledged that she never saw Ms. IM Chaem at the location of the Sector 5 Office or even in the Northwest Zone.³⁸⁰ SOK Rum also acknowledged that, during her DC-Cam Interview, her neighbours had answered the questions that addressed Ms. IM Chaem’s alleged attendance at a meeting along with *Ta Cheal*, *Ta Rin*, and *Ta Chay*. She did not independently possess this knowledge.³⁸¹

³⁷⁴ Written Record of Interview of TIL Sengly, 1 April 2014, **D119/112**, A9-10, A18, A20; Written Record of Interview of LI Sinh, 13 March 2013, **D119/20**, A16.

³⁷⁵ See, Final Submission, para. 58 (fns. 218-19), referring to Civil Party Application of ROEUNG Saruon, 15 September 2011, **D5/865**, EN ERN 00982872.

³⁷⁶ Civil Party Application of ROEUNG Saruon, 15 September 2011, **D5/865**, EN ERN 00982872.

³⁷⁷ See, Final Submission, para. 58 (fn. 219), referring to Written Record of Interview of CHIM Chanthoeun, 27 May 2013, **D118/65**, A29.

³⁷⁸ See, Written Record of Interview of CHIM Chanthoeun, 27 May 2013, **D118/65**, A29.

³⁷⁹ See, Final Submission, para. 58 (fn. 219), referring to Written Record of Interview of SOK Rum, 19-20 March 2014, **D119/108**, A107, A124.

³⁸⁰ Written Record of Interview of SOK Rum, 19-20 March 2014, **D119/108**, A72-73.

³⁸¹ Written Record of Interview of SOK Rum, 19-20 March 2014, **D119/108**, A78.

- The International Co-Prosecutor should not have relied upon the evidence provided by CHIEM Tab to support the assertion that Ms. IM Chaem became a Member and then the Deputy Secretary of the Sector 5 Committee.³⁸² The witness erroneously claimed that Ms. IM Chaem replaced *Ta Hing* as the Sector 5 Secretary as early as July or August 1977³⁸³ when the evidence clearly establishes³⁸⁴ that *Ta Cheal* and later on *Ta Rin* acted as sector secretaries in Sector 5 after *Ta Hing*.³⁸⁵
- The evidence of TOEK Suong, according to which Ms. IM Chaem was introduced at her arrival in the Northwest Zone as the new ruler in Preah Net Preah District and Sector 5,³⁸⁶ (and who is also relied upon in support of the claim that Ms. IM Chaem became a Member of the Sector 5 Committee³⁸⁷) has the most nominal probative value. The evidence is not corroborated by evidence in Case File 004/1.³⁸⁸ It is also contradicted by the preponderance of evidence that shows that *Ta Cheal* governed Sector 5 at the time of Ms. IM Chaem's arrival, and was replaced by *Ta Rin*.³⁸⁹

³⁸² See, Final Submission, para. 58 (fns. 218-19), referring to Written Record of Interview of CHIEM Tab, 19 February 2014, **D119/91**, A14-15, A20, A25.

³⁸³ See, Written Record of Interview of CHIEM Tab, 19 February 2014, **D119/91**, A15.

³⁸⁴ See, Response, para. 102.

³⁸⁵ Written Record of Interview of CHHIT Yoeuk, 26 April 2013, **D119/33**, A13; Written Record of Interview of PAN Chhuong, 14 March 2013, **D119/29**, A17; Written Record of Interview of CHHOENG Choeun, 4 September 2014, **D119/156**, A29; Hypothesized Organizational Chart of Sector 5, North West Zone (Preah Net Preah District), last updated 19 June 2014, **D119/135.1**. See also, DC-Cam Interview of PAN Chhuong, 18 June 2011, **D67.6**, EN ERNs 00728686, 00728688; DC-Cam Interview of KAO Phan, 18 June 2011, **D123/1/2.62**, EN ERN 01072684; DC-Cam Interview with IM Chaem, 20 June 2008, **D123/1/5.1b**, EN ERN 00951805; DC-Cam Interview of IM Chaem, 6 April 2012, **D123/1/5.1c**, EN ERN 00951854; S-21 Confession of CHAN Sam alias KANG Chap alias Sae, 10 September 1978, **D1.3.4.2**, EN ERNs 00223044, 00223046.

³⁸⁶ Written Record of Interview of TOEK Suong, 30 October 2015, **D219/575**, A16-19.

³⁸⁷ See, Final Submission, para. 58 (fn. 219), referring to Written Record of Interview of TOEK Suong, 30 October 2015, **D219/575**, A18-19.

³⁸⁸ See, Response, para. 102.

³⁸⁹ Written Record of Interview of CHHIT Yoeuk, 26 April 2013, **D119/33**, A13; Written Record of Interview of PAN Chhuong, 14 March 2013, **D119/29**, A17; Written Record of Interview of CHHOENG Choeun, 4 September 2014, **D119/156**, A29; Hypothesized Organizational Chart of Sector 5, North West Zone (Preah Net Preah District), last updated 19 June 2014, **D119/135.1**. See also, DC-Cam Interview of PAN Chhuong, 18 June 2011, **D67.6**, EN ERNs 00728686, 00728688; DC-Cam Interview of KAO Phan, 18 June 2011, **D123/1/2.62**, EN ERN 01072684; DC-Cam Interview with IM Chaem, 20 June 2008, **D123/1/5.1b**, EN ERN

- The International Co-Prosecutor should not have relied upon the evidence provided by KROCH Toem in support of the claim that Ms. IM Chaem was a Member of the Sector 5 Committee.³⁹⁰ The witness indicated that his previous DC-Cam evidence, according to which Ms. IM Chaem was promoted to be the Sector 5 Committee,³⁹¹ came from information he learned from an unnamed person after the fall of the Democratic Kampuchea regime.³⁹² He eventually confirmed that he was not certain that Ms. IM Chaem ever worked at the sector level.³⁹³
- The International Co-Prosecutor should not have relied upon the evidence provided by BIN Heuy in support of the claim that Ms. IM Chaem was a Member of the Sector 5 Committee.³⁹⁴ BIN Heuy alleged that Ms. IM Chaem became the “Chief of Sector 5 in early 1978”³⁹⁵ but later on indicated that she was arrested at that time and therefore “did not know much about” Ms. IM Chaem.³⁹⁶
- The International Co-Prosecutor should not have relied upon the evidence provided by PRAK Soem concerning Ms. IM Chaem’s position in the Sector Committee.³⁹⁷ It is internally inconsistent. The witness stated that Ms. IM Chaem was the Deputy Secretary of the new Sector committee under *Ta Chay* and also claims that Ms. IM Chaem was, in fact, in charge of Preah Net Preah.³⁹⁸

00951805; DC-Cam Interview of IM Chaem, 6 April 2012, **D123/1/5.1c**, EN ERN 00951854; S-21 Confession of CHAN Sam alias KANG Chap alias Sae, 10 September 1978, **D1.3.4.2**, EN ERNs 00223044, 00223046.

³⁹⁰ See, Final Submission, para. 58 (fn. 219), referring to DC-Cam Interview of KROCH Toem, 18 October 2010, **D119/69/2**, EN ERNs 00986290.

³⁹¹ See, DC-Cam Interview of KROCH Toem, 18 October 2010, **D119/69/2**, EN ERNs 00986290-91.

³⁹² Written Record of Interview of KROCH Toem, 4 December 2013, **D119/69**, A83, A87, A91-92, A96-97.

³⁹³ Written Record of Interview of KROCH Toem, 4 December 2013, **D119/69**, A140 [“I knew that she was at the district level but I was not sure if she was at the sector level”].

³⁹⁴ See, Final Submission, para. 58 (fn. 219), referring to Written Record of Interview of BIN Heuy, 27 November 2013, **D119/66**, A12-13.

³⁹⁵ See, Written Record of Interview of BIN Heuy, 27 November 2013, **D119/66**, A9.

³⁹⁶ Written Record of Interview of BIN Heuy, 27 November 2013, **D119/66**, A10.

³⁹⁷ See, Final Submission, para. 58 (fn. 218), Written Record of Interview of PRAK Soem, 1 September 2013, **D118/93**, A19-20.

³⁹⁸ Written Record of Interview of PRAK Soem, 1 September 2013, **D118/93**, A19.

- The International Co-Prosecutor should not have relied upon the evidence provided by LONG Vun, who stated that Ms. IM Chaem became a member of the new Sector 3 Committee under *Ta Chay*³⁹⁹ (and was relied upon to support the claim that Ms. IM Chaem was a Member and then the Deputy Secretary of Sector 5⁴⁰⁰). The witness earlier indicated that *Ta Chay* governed the Sector alone.⁴⁰¹ LONG Vun, who worked in the Commerce Office of Sector 3,⁴⁰² also acknowledged that he “was told about [Ms. IM Chaem’s] position”.⁴⁰³ Had Ms. IM Chaem been a member of the Sector 3 Committee as indicated, it is likely that LONG Vun would have had direct knowledge of her position. LONG Vun was not asked to identify Ms. IM Chaem from photographs or even asked to describe her. Ms. IM Chaem would have been easily identifiable due to the late stage of her pregnancy at the relevant time.

107. In conclusion, the International Co-Prosecutor’s approach to the evidence fails to assess it with due regard to objectivity or the pursuit of the truth. The evidence relied upon is not serious or corroborated and singularly or collectively lacks any meaningful probative force. Further, as will be discussed below, when considered alongside other more reliable evidence, it is plain that any residual probative value is firmly and decisively removed.

108. In particular, despite being *Ta Chay*’s former messenger and the most knowledgeable witness on the administrative and communication structures in the last months of the Democratic Kampuchea regime,⁴⁰⁴ HEM Mean was not cited by the International Co-Prosecutor in regard to Ms. IM Chaem’s position in the Northwest Zone. HEM Mean confirmed that Ms. IM Chaem was in the Committee of Preah Net Preah District.⁴⁰⁵ He does not place her at the sector level, let alone at the level of Deputy Secretary of Sector 5.

³⁹⁹ Written Record of Interview of LONG Vun, 26 November 2013, **D118/153**, A57.

⁴⁰⁰ *See*, Final Submission, para. 58 (fn. 218-19), *referring to* Written Record of Interview of LONG Vun, 26 November 2013, **D118/153**, A57, A59.

⁴⁰¹ Written Record of Interview of LONG Vun, 26 November 2013, **D118/153**, A36.

⁴⁰² Written Record of Interview of LONG Vun, 26 November 2013, **D118/153**, A32.

⁴⁰³ Written Record of Interview of LONG Vun, 26 November 2013, **D118/153**, A59 [“Because when I attended a meeting, I met her and at that time I was told about her position”].

⁴⁰⁴ Written Record of Interview of HEM Mean, 6 May 2014, **D119/123**, A7.

⁴⁰⁵ Written Record of Interview of HEM Mean, 6 May 2014, **D119/123**, A6.

109. As the evidence also shows, in November 1978, the Northwest Zone underwent substantial administrative reform⁴⁰⁶ with parts of Sector 5 (including Preah Net Preah District) being incorporated into Sector 3,⁴⁰⁷ under the control of *Ta Chay*.⁴⁰⁸ However, by the time of the Vietnamese's arrival, the Sector "had not yet been completely reorganised."⁴⁰⁹ Ms. IM Chaem may well have been earmarked for some future role in the new Sector Committee.⁴¹⁰ This is not clear on the evidence. What is clear is that this did not materialise and any such plan, if it existed, was interrupted by the arrival of the Vietnamese. This is consistent with Ms. IM Chaem and other witnesses saying that she was in charge of Preah Net Preah District until the end of the Democratic Kampuchea regime.⁴¹¹ This is also consistent with the only S-21 confession referencing Ms. IM

⁴⁰⁶ DC-Cam Interview of IM Chaem, 20 June 2008, **D123/1/5.1b**, EN ERN 00951796 [noting that the Northwest was reorganised in December 1978 because it was chaos]; Written Record of Interview of LONG Vun, 26 November 2013, **D118/153**, A33-35, A55 [saying that two months before the Vietnamese arrived, Svay Sisophon District, Phnom Srok District, and Preah Net Preah District were incorporated into Sector 3]; Written Record of Interview of MOUL Eng, 4-5 May 2015, **D219/294**, A41, A47-48 [parts of Sector 5 were ceded to Sector 3 shortly before the arrival of the Vietnamese]. *See also*, Written Record of Interview of PRAK Soem, 1 September 2013, **D118/93**, A1, A16-19.

⁴⁰⁷ Written Record of Interview of LONG Vun, 26 November 2013, **D118/153**, A33-35, A55 [saying that two months before the Vietnamese arrived, Svay Sisophon District, Phnom Srok District, and Preah Net Preah District were incorporated into Sector 3]; Written Record of Interview of MOUL Eng, 4-5 May 2015, **D219/294**, A41, A47-48 [parts of Sector 5 were ceded to Sector 3 shortly before the arrival of the Vietnamese]. *See also*, Written Record of Interview of PRAK Soem, 1 September 2013, **D118/93**, A1, A16-19.

⁴⁰⁸ Written Record of Interview of SUON Mot, 16 October 2014, **D219/37**, A50 ["At first, *Ta Rin* was Sector Committee. After *Ta Rin* was arrested, *Ta Chay* ruled in place of *Ta Rin* and worked with *Yeay Chaem*"]; Written Record of Interview of LONG Vun, 26 November 2013, **D118/153**, A26 [noting that *Ta Chay* was the Sector 3 Chairman until the arrival of the Vietnamese two or three months later], A36 [noting that *Ta Chay* was the Sector 3 Committee when Sector 5 was incorporated into Sector 3]; Written Record of Interview of PRAK Soem, 1 September 2013, **D118/93**, A16-19, A33 [saying that *Ta Chay* was the chief of the Sector in which Mongkol Borei and Sisophon were located and that the Sector was comprised of *Ta Chay* as chief with, among others, *Yeay Chaem* being in charge of Preah Net Preah District]; Written Record of Interview of PRAK Soem, 17 October 2014, **D219/38**, A18 [saying that *Ta Chay* was on the Sector Committee of Mongkol Borei].

⁴⁰⁹ Written Record of Interview of LONG Vun, 26 November 2013, **D118/153**, A36. *See also*, Written Record of Interview of KHMET Mao, 5 January 2016, **D219/638**, A13 [saying that the country was in a state of total chaos close to the arrival of the Vietnamese troops].

⁴¹⁰ Written Record of Interview of PRAK Soem, 1 September 2013, **D118/93**, A1, A19 [indicating that Ms. IM Chaem was the Deputy Secretary of Sector 3 in charge of Preah Net Preah District]; Written Record of Interview of LONG Vun, 26 November 2013, **D118/153**, A59 [noting that Ms. IM Chaem became a member of the Sector 3 Committee]. *But see*, Written Record of Interview of LONG Vun, 26 November 2013, **D118/153**, A36 [indicating that *Ta Chay* governed the Sector Committee alone].

⁴¹¹ *See*, Interview of IM Chaem by Smiling Toad Productions, 26 April 2007, **D1.3.12.1**, EN ERN 00217518 ["[M]y last promotion was (assigned) to be chief of Preah Net Preah district"]; Written Record of Interview of PAN Chhuong, 14 March 2013, **D119/29**, A9 [stating that he fled with IM Chaem in 1979 and that he gave her

Chaem's position; placing her as the Preah Net Preah District Secretary in December 1978.⁴¹²

110. In sum, the evidence falls short of demonstrating with any degree of probative force that Ms. IM Chaem held a *de jure* position in the Sector 5 Committee. As will be demonstrated below, the evidence also falls short of establishing the International Co-Prosecutor's alternative case, namely that Ms. IM Chaem had a similar *de facto* authority at the sector level.

ii. Ms. IM Chaem did not act as a de facto Member or Deputy Secretary of the Sector 5 Committee

111. The International Co-Prosecutor seeks to bolster the case that Ms. IM Chaem acted as a sector leader⁴¹³ and, in particular, that she was a supervisor at PTSC and SSWS (the two Sector 5 crime sites in relation to which she was charged⁴¹⁴) by contending that i) Ms. IM Chaem was not just able to participate in, but also organised sector-level meetings⁴¹⁵ where issues such as internal enemies were discussed⁴¹⁶ and that ii) Ms. IM Chaem had authority to preside over a large meeting alongside *Ta Mok*.⁴¹⁷

112. As will be discussed below, these assertions do not rest on serious or corroborative evidence. First, a reasonable assessment of the evidence does not support the general claim that Ms. IM Chaem organised meetings at the sector-level, let alone that she organised meetings at which issues such as internal enemies were discussed. Second, the claim that Ms. IM Chaem presided over a large meeting with *Ta Mok* is of little relevance. Even if the claim was not based on the uncorroborated statement of a single witness, it is incapable

protection because she was a district chief]. *See also, Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript of Trial Proceedings (CHHIT Yoeuk), 13 August 2015, **E1/330.1**, EN ERN 01131281 [stating that IM Chaem only ever worked at the district level].

⁴¹² *See*, S-21 Confession of KUNG Sophal alias Keo, 5 December 1978, **D1.3.4.6**, EN ERN 00217743 [listing Ms. IM Chaem as the Secretary of Preah Net Preah District on 5 December 1978].

⁴¹³ *See*, Final Submission, paras. 72, 123.

⁴¹⁴ *See*, Final Submission, paras. 196-99, 261-63. *See*, Notification of Charges, **D239.1**.

⁴¹⁵ *See*, Final Submission, para. 123 (fn. 614).

⁴¹⁶ *See*, Final Submission, para. 123 (fn. 616).

⁴¹⁷ *See*, Final Submission, para. 123 (fn. 617).

of establishing anything meaningful concerning Ms. IM Chaem's purported *de facto* authority over activities or crimes.

Ms. IM Chaem's alleged authority to organise sector-level meetings

113. The following contextual evidence should be borne in mind when considering this issue. As demonstrated above, Ms. IM Chaem remained at the district level from late 1977 until the collapse of the Democratic Kampuchea regime⁴¹⁸ and did not have a position at the sector level.⁴¹⁹ NOP Ngim, who was a District Deputy Secretary in the Northwest Zone,⁴²⁰ noted that, as a general rule, district-level cadres did not have the right to act in place of sector-level cadres saying that “[t]he work was clearly separated between the Sector and district.”⁴²¹ In her capacity as *de jure* and *de facto* District Secretary, Ms. IM Chaem had direct communication only with the echelons immediately above and immediately below her own. Preah Net Preah District, and the Northwest Zone, was subject to the same strict chain of command that was demanded by the CPK Statute and seen in practice throughout the remainder of the country.⁴²²

⁴¹⁸ See, Response, paras. 102-10. See also, Response, paras. 122-42.

⁴¹⁹ See, Response, paras. 102-10. See also, Response, paras. 122-42.

⁴²⁰ See, Written Record of Interview of NOP Ngim, 12-14 August 2014, **D118/285**, A31.

⁴²¹ Written Record of Interview of NOP Ngim, 12-14 August 2014, **D118/285**, Q-A47 [“Q: Did the district level cadres have rights to act in place of Sector cadres? A47: The work was clearly separated between the Sector and district.”].

⁴²² See, Case 002/01 Trial Judgement, **E313**, para. 270. See, e.g., Written Record of Interview of CHAN Phon, 20 February 2014, **D119/93**, A10 [“Kirivoan Cooperative had to report to the Chob Veari Commune Committee, Ta Ruos. Ta Ruos had to report to the Preah Netr Preah District Committee, Ta Sam-At. Ta Sam-At had to report to the Sector Committee, but I do not know the Sector 5 Committee. The Sector Committee had to report to the Zone Committee, but I do not know the Zone Committee.”]; Written Record of Interview of CHHIM Phan, 13 April 2013, **D119/32**, A41 [“Usually the report started from the people to the group chairperson and on to the village chairperson and to the commune chairperson and then up to the district chairperson.”]; Written Record of Interview of PUM Kho, 6-7 October 2014, **D219/23**, A37 [“[T]he District Committee received information from the Sector level about the number of the people it had received. Then the District Committee called the commune committees together for a meeting during which the information about the number of people to be allocated to each commune was provided.”]. See also, Written Record of Interview of NOP Ngim, 12-14 August 2014, **D118/285**, A44 [“Generally, the reports were made from cooperative to commune, from commune to district, from district to Sector, and from Sector to Zone.”]; Written Record of Interview of CHOM Vong, 3-5 August 2015, **D219/442**, A43 [“Everyone knew that for every task, regardless of how big or small it was, [it] had to be reported to the upper levels”].

114. The International Co-Prosecutor relies upon seven authorities to allege that Ms. IM Chaem *organised* sector-level meetings⁴²³ and a single authority⁴²⁴ for the assertion that, at such meetings, internal enemies were discussed.⁴²⁵ LONG Vun, who describes a meeting held in Sector 3,⁴²⁶ is the only witness cited in relation to the claim that at “sector meetings discussed seeking out internal enemies”.⁴²⁷ However, it must be noted that, when initially asked about the topics discussed at such meetings, LONG Vun answered: the “building of dams, canals, road-construction, and sawmills. In short, agriculture and preparing plans for the next month’s work”.⁴²⁸ It was only after being prompted that enemies or traitors may have been discussed during meetings that the witness extended his initial response.⁴²⁹ Clearly, even if this evidence was capable of sustaining such a weighty and critical inference, the manner in which it was adduced cannot be disregarded. It is underwhelming evidence in support of a critical plank in the International Co-Prosecutor’s ‘*de facto*’ authority case.
115. Moreover, the seven authorities the International Co-Prosecutor places reliance upon to assert that Ms. IM Chaem *organised* sector-level meetings provide no meaningful corroboration of this evidence or support for this claim.⁴³⁰ On the contrary, despite forensic manoeuvring by the International Co-Prosecutor, it is plain this additional

⁴²³ See, Final Submission, para. 123 (fn. 614), *referring to* Written Record of Interview of IM Man, 26 February 2014, **D119/96**, A74, A104, A105; Written Record of Interview of LIEM Sarem, 22 January 2014, **D119/76**, A19-20, A23; Written Record of Interview of CHHOENG Choeun, 4 September 2014, **D119/156**, A17-18; Written Record of Interview of CHUM Kan, 26 March 2014, **D119/110**, A59, A61; Written Record of Interview of MOUL Eng, 4-5 May 2015, **D219/294**, A55, A58-59; Written Record of Interview of BOU Tuok, 9 July 2015, **D219/400**, A147; Written Record of Interview of PREAP Hin, 17 August 2015, **D219/473**, A14.

⁴²⁴ See, Final Submission, para. 123 (fn. 616) *referring to*, Written Record of Interview of LONG Vun, 26 November 2013, **D118/153**, A57, A59, A61-62.

⁴²⁵ See, Final Submission, para. 123 (fns. 614, 616).

⁴²⁶ See, Written Record of Interview of LONG Vun, 26 November 2013, **D118/153**, A59-61.

⁴²⁷ See, Final Submission, para. 123 (fn. 616).

⁴²⁸ Written Record of Interview of LONG Vun, 26 November 2013, **D118/153**, A60.

⁴²⁹ See, Written Record of Interview of LONG Vun, 26 November 2013, **D118/153**, Q-A61.

⁴³⁰ See, Final Submission, para. 123 (fn. 614), *referring to* Written Record of Interview of IM Man, 26 February 2014, **D119/96**, A74, A104, A105; Written Record of Interview of LIEM Sarem, 22 January 2014, **D119/76**, A19-20, A23; Written Record of Interview of CHHOENG Choeun, 4 September 2014, **D119/156**, A17-18; Written Record of Interview of CHUM Kan, 26 March 2014, **D119/110**, A59, A61; Written Record of Interview of MOUL Eng, 4-5 May 2015, **D219/294**, A55, A58-59; Written Record of Interview of BOU Tuok, 9 July 2015, **D219/400**, A147; Written Record of Interview of PREAP Hin, 17 August 2015, **D219/473**, A14.

evidence shows that Ms. IM Chaem's *de jure* and *de facto* authority was restricted to that of an ordinary district secretary.

116. First, CHHOENG Choeun's statement⁴³¹ is entirely irrelevant to any alleged role Ms. IM Chaem played in the Northwest Zone. It testifies to the fact that Ms. IM Chaem organised meetings with echelons *below* the district *whilst in* the Southwest Zone.⁴³² The statements of IM Man, BOU Tuok, and PREAP Hin are limited to providing evidence that Ms. IM Chaem was able to use a variety of modes of transportation to get to meetings.⁴³³ Whilst LIEM Sarem asserts that she attended one meeting where Ms. IM Chaem *spoke* along with the Sector 5 Mobile Unit Chairman *Ta Val*,⁴³⁴ the witness was unable to identify Ms. IM Chaem from pictures shown to her.⁴³⁵ The witness further acknowledged that there was no talk about killings and the meeting merely addressed "the Great Leap and having [the people] help *Angkar* achieve its plans."⁴³⁶
117. In the final analysis, only two of the seven accounts offer a scintilla of evidence in support of the International Co-Prosecutor's claim that Ms. IM Chaem *organised* sector-level meetings. Once again, this evidence is distinctly underwhelming. In fact, the two accounts merely suggest that Ms. IM Chaem *attended* meetings where cadres from the upper echelon were present.⁴³⁷ They do not establish that Ms. IM Chaem could or did organise sector-level meetings. Further, neither of the two witnesses suggests that issues relevant to security affairs were discussed during these meetings: instead, both witnesses stated that

⁴³¹ See, Final Submission, para. 123 (fn. 614), *referring to* Written Record of Interview of CHHOENG Choeun, 4 September 2014, **D119/156**, A17, A18.

⁴³² See, Written Record of Interview of CHHOENG Choeun, 4 September 2014, **D119/156**, A15-18.

⁴³³ See, Final Submission, para. 123 (fn. 614), *referring to* Written Record of Interview of IM Man, 26 February 2014, **D119/96**, A74, Q-A104, A105; Written Record of Interview of BOU Tuok, 9 July 2015, **D219/400**, A147; Written Record of Interview of PREAP Hin, 17 August 2015, **D219/473**, A14.

⁴³⁴ See, Final Submission, para. 123 (fn. 614), *referring to* Written Record of Interview of LIEM Sarem, 22 January 2014, **D119/76**, A19-20, A23.

⁴³⁵ See, Written Record of Interview of LIEM Sarem, 22 January 2014, **D119/76**, EN ERNs 00980712-13.

⁴³⁶ Written Record of Interview of LIEM Sarem, 22 January 2014, **D119/76**, A21-22.

⁴³⁷ See, Final Submission, para. 123 (fn. 614), *referring to* Written Record of Interview of CHUM Kan, 26 March 2014, **D119/110**, A59, Q-A61; Written Record of Interview of MOUL Eng, 4-5 May 2015, **D219/294**, A55, A58, A59.

agricultural work and canal construction were addressed.⁴³⁸ As previously discussed, that Ms. IM Chaem attended sector-level meetings was nothing but usual for district-level cadres.⁴³⁹

Ms. IM Chaem's alleged authority to preside over a large meeting with *Ta Mok*

118. Communication with echelons above the sector level, such as with zone-level cadre *Ta Mok*, would only occur during scheduled large-scale meetings. As the evidence shows, Ms. IM Chaem would not speak unless she was required to report.⁴⁴⁰
119. The International Co-Prosecutor relies upon a single witness, BIN Heuy, to claim that a large meeting was presided over by both *Ta Mok* and Ms. IM Chaem in 1978.⁴⁴¹ Even if this evidence was reliable, a single meeting provides little by way of probative evidence of generalised authority, let alone control over the commission of grave crimes. Moreover, the account is transparently not reliable. First, despite the reliance placed on BIN Heuy's account by the International Co-Prosecutor, and the assertion that *thousands* attended the meeting,⁴⁴² the account is wholly uncorroborated. Further, it is significant that BIN Heuy "did not know much about" Ms. IM Chaem.⁴⁴³ Given the paucity of internal or external corroboration for her account, the question of whether the witness correctly identified Ms. IM Chaem arises and remains unanswered. The witness has not been tested on her ability to identify Ms. IM Chaem.

⁴³⁸ Written Record of Interview of MOUL Eng, 4-5 May 2015, **D219/294**, A58 [saying that during the meeting IM Chaem had spoken about farming and food shortages]; Written Record of Interview of CHUM Kan, 26 March 2014, **D119/110**, A58 ["[T]hey had held the meeting instructing us to choose workers for them."].

⁴³⁹ See, Response, paras. 94, 113, 117-18.

⁴⁴⁰ See, Written Record of Interview of CHUM Kan, 26-27 March 2014, **D119/110**, A58-63 [recalling a meeting held in Preah Net Preah District office during which Sector 5 cadres requested people from the base for worksites in which IM Chaem, while present, did not speak]. See also, Written Record of Interview of NOP Ngim, 12-14 August 2014, **D118/285**, A55 ["In the meeting, each representative had to report the situation in their Sector. For example, in my district, we gave presentations of daily and monthly reports."]; Written Record of Interview of PRAK Yut, 28 May 2013, **D117/70**, A5 ["I had to give verbal reports [to the Sector Secretary] during a monthly meeting"].

⁴⁴¹ See, Final Submission, para. 123 (fn. 617), referring to Written Record of Interview of BIN Heuy, 27 November 2013, **D119/66**, A15.

⁴⁴² See, Written Record of Interview of BIN Heuy, 27 November 2013, **D119/66**, A15.

⁴⁴³ Written Record of Interview of BIN Heuy, 27 November 2013, **D119/66**, A10.

120. In conclusion, consistent with this potential misidentification is the stark fact that not a single witness suggests that *Ta Mok* met or spoke with Ms. IM Chaem personally while in the Northwest Zone, other than during large-scale, scheduled meetings. As discussed above,⁴⁴⁴ it was indeed common practice for district secretaries to attend scheduled meetings where both sector and zone cadres were present.⁴⁴⁵ The absence of a direct relationship between the zone level (*Ta Mok*) and Ms. IM Chaem is further confirmed by the former messenger of the Sector 3 Secretary who said that it would have been *impossible* for Ms. IM Chaem, in her position, to send letters to and receive letters from the Northwest Zone Secretary *without* the knowledge of the Sector Secretary;⁴⁴⁶ that is without the letters going through him first. He confirmed that communication between *Ta Mok* and Ms. IM Chaem was not direct.⁴⁴⁷
121. In sum, there is nothing to support BIN Heuy's account. The witness fabricated the evidence or is mistaken. The remainder of the evidence clearly shows the extent of Ms. IM Chaem's participation in sector-level meetings was within the confines of her position as Preah Net Preah District Secretary.

⁴⁴⁴ See, Response, paras. 68-74.

⁴⁴⁵ See, e.g., DC-Cam Interview of CHHIT Yoeuk, 19 June 2011, **D67.9**, EN ERNs 00731126-28 [describing a meeting at Svay Sisophon District in Sector 5 attended by the Northwest Zone Secretary, *Ta Nhim*, Central party members, the Region Chief, and members of the District Committee in 1977 to discuss Trapeang Thma Dam]; Written Record of Interview of SUON Kanil, 19 August 2009, **D6.1.707**, EN ERNs 00390074-75 ["The meeting was attended by the district committee, the sector committee, and the commune committee. During the meeting they reported about the result of their work. The agenda of the meeting included the plans for building the irrigation system, dams, and digging canals."]. See also, Written Record of Interview of MOUL Eng, 4-5 May 2015, **D219/294**, A55 [saying that while he was the Secretary of Bavel District in Sector 3 he attended a meeting at Battambang University where *Ta Mok* spoke. Also saying that Ms. IM Chaem, *Ta Bo* and possibly *Ta An* attended], A56 [saying the meeting was organised for the district and sector levels].

⁴⁴⁶ Written Record of Interview of HEM Mean, 6 May 2014, **D119/123**, A18 ["That was impossible. Every letter from *Yeay Chaem* had to be passed through *Ta Chay* first before they were further forwarded to *Ta Mok* in Battambang"].

⁴⁴⁷ See, Written Record of Interview of HEM Mean, 6 May 2014, **D119/123**, A14, A18, A20.

3. Ms. IM Chaem's responsibilities in the Northwest Zone were strictly limited to her *de jure* and *de facto* role as a District Secretary

i. In her capacity as District Secretary, Ms. IM Chaem focused on improving the living conditions in Preah Net Preah District by tackling food shortage issues

122. The International Co-Prosecutor claims that Ms. IM Chaem wilfully contributed to the deteriorating living conditions in Preah Net Preah District⁴⁴⁸ It is claimed that she intended to create conditions of life that led to the death of a large number of people or in the knowledge that they were substantially likely to cause the deaths of a large number of persons, and failed to act to remedy the inhumane conditions.⁴⁴⁹ The Defence submits that these claims are wholly unsubstantiated. As the evidence shows, food shortage was a long-standing issue that had reached a calamitous stage prior to Ms. IM Chaem's arrival in the Northwest Zone. Upon her arrival, she took all actions necessary, within her power, to resolve the issue.
123. In May 1977—before Ms. IM Chaem was transferred to the Northwest Zone—the Sector 5 Committee reported to RUOS Nhim that the entire Sector, including Preah Net Preah District, suffered from a food shortage due to the lack of rainfall and an irrigation system to ensure water reached the rice fields.⁴⁵⁰ The Northwest Zone Secretary also noted that the drought had severely damaged food production in Sector 5.⁴⁵¹ A short-term solution was found which involved sharing the rice produced in Preah Net Preah and Prasat communes with Phnom Leab, Tuek Chour, and Rohal communes.⁴⁵² A long-term solution required the raising of dikes and completion of the digging of canals and reservoirs.⁴⁵³ In June 1977, the situation had not improved: Preah Net Preah District, under the control of *Ta Maong*, was described as the “worst place of starvation” with a death toll of more than

⁴⁴⁸ See, Final Submission, para. 99.

⁴⁴⁹ See, Final Submission, paras. 457, 460-461, 485.

⁴⁵⁰ Weekly Report of the Committee of Region 5, 21 May 1977, **D1.3.10.1**, EN ERNs 00342717-20.

⁴⁵¹ DK-Government Report by Mo-560 on the Situation in the Northwest Zone, 29 May 1977, **D1.3.27.3**, EN ERN 00183016.

⁴⁵² Weekly Report of the Committee of Region 5, 21 May 1977, **D1.3.10.1**, EN ERN 00342721.

⁴⁵³ Weekly Report of the Committee of Region 5, 21 May 1977, **D1.3.10.1**, EN ERNs 00342719-20.

20,000 civilians in 1976 only.⁴⁵⁴ Ms. IM Chaem made a similar observation upon her arrival in the area in mid-June 1977.⁴⁵⁵

124. Ms. IM Chaem, who had previous experience in agricultural work in the Southwest Zone,⁴⁵⁶ made it her priority to resolve issues relevant to the lack of food in Preah Net Preah District. She observed that the people lacked food and were sick because her predecessors had organised strict collective eating⁴⁵⁷ and did not make food reserves in warehouses accessible to them.⁴⁵⁸ Under the rule of her predecessors, people were also prevented from eating the food they had produced.⁴⁵⁹
125. Ms. IM Chaem opted for an opposite, lawful and humane approach: she distributed jars of water to cooperatives,⁴⁶⁰ released all stocks from the warehouses for the people to eat,⁴⁶¹

⁴⁵⁴ Base General View of Sector 5 Northwest Zone, 27 June 1977, **D1.3.10.3**, EN ERN 00223176-77.

⁴⁵⁵ *See, e.g.*, Transcript of Interview of IM Chaem, undated, **D6.1.75**, EN ERN 01040640 [“They did not have enough food to eat because they were strictly organised to have collective eating ... there was nothing in the cooking pans and pots. There was no water in the jars ... All people were empty-handed”]; DC-Cam Interview of IM Chaem, 20 June 2008, **D123/1/5.1b**, EN ERN 00951801 [“They did not give people anything to eat. The fishermen were not allowed to eat any fishes they had caught ... They treated the cooks the same way. They did not let them eat their food.”]; DC-Cam Interview of IM Chaem, 4 March 2007, **D123/1/5.1a**, EN ERN 0089776 [“That was the hardship of people of Preah Net Preah district before I arrived there. It was said that those growing vegetables at the back had put their production in warehouses: rice, pigs, and coconuts. All the productions were put in the warehouse, while those producers had nothing to eat.”].

⁴⁵⁶ *See*, Interview of IM Chaem by Smiling Toad Productions, 26 April 2007, **D1.3.12.1**, EN ERN 00217520 [saying that in 1975, she had been in charge of a group of women evacuated from the frontline of the battlefields and was tasked with teaching them how to grow rice and do gardening].

⁴⁵⁷ *See, e.g.*, Transcript of Interview of IM Chaem, undated, **D6.1.75**, EN ERN 01040640 [“They did not have enough food to eat because they were strictly organised to have collective eating ... there was nothing in the cooking pans and pots. There was no water in the jars ... All people were empty-handed”].

⁴⁵⁸ *See, e.g.*, DC-Cam Interview of IM Chaem, 4 March 2007, **D123/1/5.1a**, EN ERN 0089776 [“That was the hardship of people of Preah Net Preah district before I arrived there. It was said that those growing vegetables at the back had put their production in warehouses: rice, pigs, and coconuts. All the productions were put in the warehouse, while those producers had nothing to eat.”].

⁴⁵⁹ *See, e.g.*, DC-Cam Interview of IM Chaem, 20 June 2008, **D123/1/5.1b**, EN ERN 00951801 [“They did not give people anything to eat. The fishermen were not allowed to eat any fishes they had caught ... They treated the cooks the same way. They did not let them eat their food.”]; DC-Cam Interview of IM Chaem, 4 March 2007, **D123/1/5.1a**, EN ERN 0089776 [“That was the hardship of people of Preah Net Preah district before I arrived there. It was said that those growing vegetables at the back had put their production in warehouses: rice, pigs, and coconuts. All the productions were put in the warehouse, while those producers had nothing to eat.”].

⁴⁶⁰ Interview of IM Chaem by Smiling Toad Productions, 26 April 2007, **D1.3.12.1**, EN ERN 00217519; Transcript of Interview of IM Chaem, undated, **D6.1.75**, EN ERN 01040641.

⁴⁶¹ Interview of IM Chaem by Smiling Toad Productions, 26 April 2007, **D1.3.12.1**, EN ERNs 00217521-22; Transcript of Interview of IM Chaem, undated, **D6.1.75**, EN ERN 01040643; DC-Cam Interview of IM Chaem,

encouraged people to pick food for themselves,⁴⁶² and asked around for donations of food to distribute them to those living in the District.⁴⁶³ During holidays, desserts were cooked for everyone.⁴⁶⁴ In sum, upon her arrival, Ms. IM Chaem made the best efforts to tackle the immediate needs of those living in Preah Net Preah District.

126. Ms. IM Chaem also envisaged long-term solutions. She visited all communes in the District and counted their inhabitants⁴⁶⁵ and learned about the geographical location of communes in the District.⁴⁶⁶ She also asked for information relevant to agricultural work, such as “which places were shallow when in flood and which places were deep, which places were high land and which were plains; what kinds of rice should be grown where and so on.”⁴⁶⁷ Ms. IM Chaem then reorganised forces to work on food production in Preah Net Preah District.⁴⁶⁸

4 March 2007, **D123/1/5.1a**, EN ERN 00089780; DC-Cam Interview of IM Chaem, 20 June 2008, **D123/1/5.1b**, EN ERN 00951802-04.

⁴⁶² Written Record of Interview of KRET Ret, 20 May 2013, **D119/42**, A19 [“[S]he ordered any usable coconut leaves to be cut off and had us pick up coconut fruits to eat if we were so hungry and exhausted.”]; DC-Cam Interview of IM Chaem, 20 June 2008, **D123/1/5.1b**, EN ERN 00951805 [“When I arrived, I let them go out to find their own food. I gave them rice whenever they needed it. When planting rice, they could look for whatever food available on site and ate as much as they needed ... They could look for food for themselves.”].

⁴⁶³ Interview of IM Chaem by Smiling Toad Productions, 26 April 2007, **D1.3.12.1**, EN ERN 00217521; Transcript of Interview of IM Chaem, undated, **D6.1.75**, EN ERNs 01040642-43 [“I made a request for and transported crops such as yams and cassava from the Southwest and from Kandal Province. I asked as if I were begging. I requested these supplies for my people who would ask me for a sack of Southwest Zone pumpkin seeds. When I arrived at pepper farm, I asked for pepper. Whatever I saw, I would ask them for it, so that I could distribute to my people.”].

⁴⁶⁴ DC-Cam Interview of IM Chaem, 20 June 2008, **D123/1/5.1b**, EN ERN 00951805 [“On each holiday we cooked dessert called Nom Ko for people to eat. For example, on the 10th, we cooked Nom Ko and put it on the basket before we cut it into pieces and gave them to the people. We gave Nom Ko to the people working at the front and the rear lines to eat. As for the people working at the front worksite, we gave them sugar and rice so that they could make it by themselves. But these things must be distributed equally ... And for example, on the 20th, if they wanted to cook the sticky rice cake called Nom Ânsâm, I let them make it. If they wanted to eat pork, I gave it to them. Whatever they asked for, I just gave to them.”].

⁴⁶⁵ Interview of IM Chaem by Smiling Toad Productions, 26 April 2007, **D1.3.12.1**, EN ERN 00217518; Transcript of Interview of IM Chaem, undated, **D6.1.75**, EN ERNs 01040639-40.

⁴⁶⁶ Written Record of Interview of PUM Kho, 6 August 2015, **D219/443**, A58, A65-66, A115.

⁴⁶⁷ Written Record of Interview of BIN Sokh, 2 July 2015, **D219/397**, A12.

⁴⁶⁸ *See, e.g.*, Transcript of Interview of IM Chaem, undated, **D6.1.75**, EN ERN 01040642 [“I started to arrange people into two groups: the mobile unit which was arranged earlier was a militia group whom I requested to disarm and join the mobile unit working in the worksites building dams, cannels and dikes. Another group which was prepared before the Trapeang Thma Dam grew dry-season rice.”]; DC-Cam Interview of IM Chaem, 4 March 2007, **D123/1/5.1a**, EN ERNs 00089777 [“I assigned human forces to do the farm and build dams,

127. That is not to argue or suggest that measures taken by Ms. IM Chaem to improve the living conditions in the District may be equated to general, extensive, unilateral or arbitrary decision making authority as the International Co-Prosecutor may claim and as addressed below.⁴⁶⁹ At all times, Ms. IM Chaem required authorisation or instruction from the upper echelon—the sector level—to take actions within the limits of specific responsibilities and tasks.
128. First, contrary to the International Co-Prosecutor’s suggestion,⁴⁷⁰ Ms. IM Chaem did not disarm the existing militia by herself—she did not have such power. She requested authorisation from *Ta Cheal*, the Sector Secretary at the time, to disarm all militiamen and incorporate them into existing mobile units working at various worksites and rice fields.⁴⁷¹ This authorisation, and not Ms. IM Chaem’s independent authority, led to a variety of reassignments linked to the furtherance of her agricultural responsibilities. For example, TOEK Suong, who had been appointed by *Ta Maong* as the chairman of the Phnom Leab Commune militia in 1975,⁴⁷² testified that shortly after Ms. IM Chaem arrived in the area he was removed from his position and assigned to plough rice fields.⁴⁷³ Similarly, TRY Phoeut, another militiaman under *Ta Maong*, stated that when Ms. IM Chaem became the Secretary of Preah Net Preah District he stopped working in this capacity and was transferred to work in a rice mill.⁴⁷⁴ Likewise, ROS Hil indicated that after the arrival of the Southwest Zone cadres he was removed from his position and assigned to harvest rice.⁴⁷⁵

while forces dug canals to prepare for the summer and rainy rice transplanted. Other groups grow [sic] potatoes.”].

⁴⁶⁹ See, Response, para. 128.

⁴⁷⁰ See, Final Submission, paras. 60, 140, 178.

⁴⁷¹ Interview of IM Chaem by Smiling Toad Productions, 26 April 2007, **D1.3.12.1**, EN ERNs 00217520-21; Transcript of Interview of IM Chaem, undated, **D6.1.75**, EN ERN 01040642; DC-Cam Interview of IM Chaem, 4 March 2007, **D123/1/5.1a**, EN ERNs 00089776-77; DC-Cam Interview of IM Chaem, 20 June 2008, **D123/1/5.1b**, EN ERNs 00951802, 00951804.

⁴⁷² Written Record of Interview of TOEK Suong, 27 October 2015, **D219/572**, A19.

⁴⁷³ Written Record of Interview of TOEK Suong, 30 October 2015, **D219/575**, A3.

⁴⁷⁴ Written Record of Interview of TRY Phoeut, 28 October 2015, **D219/574**, A17, A27-28.

⁴⁷⁵ Written Record of Investigation Action (ROS Hil), 29 October 2015, **D219/579**, EN ERN 01166380.

129. Second, Ms. IM Chaem received work plans from the sector level.⁴⁷⁶ She held meetings on rice production, including with regard to dam and canal construction within Preah Net Preah District.⁴⁷⁷ According to CHHIM Phan, some people were even “praising her [because] she was more tolerant than the previous district committees.”⁴⁷⁸ Given the thrust of the International Co-Prosecutor’s case, the consistency of witnesses testifying to Ms. IM Chaem’s exclusive focus in meetings on food production⁴⁷⁹ and this praise is surprising to say the least.

ii. In her capacity as District Secretary, Ms. IM Chaem was not in charge of security affairs in Preah Net Preah District

130. The International Co-Prosecutor asserts that “overwhelming evidence” shows that Ms. IM Chaem possessed authority to order killings⁴⁸⁰ because, *inter alia*, she controlled the

⁴⁷⁶ DC-Cam Interview of IM Chaem, 4 March 2007, **D123/1/5.1a**, EN ERNs 00089773, 00089776-77; Written Record of Interview of TUM Soeun, 16-17 October 2013, **D119/65**, A100;

⁴⁷⁷ Written Record of Interview of CHHIM Phan, 13 April 2013, **D119/32**, A48 [“In the meeting she spoke about work plan and how to produce enough food for the people to eat.”]; Written Record of Interview of IM Man, 26 February 2014, **D119/96**, A74-77 [noting that Ms. IM Chaem talked “about rice cultivation and canal construction, Ta Pon Bridge, etc” in meetings held every two-three months in the District]; Written Record of LI Sinh, 13 March 2013, **D119/20**, A9 [“During that time, she said about working hard in farming paddies and building dams and canals.”]; Written Record of Interview of BIN Sokh, 2 July 2015, **D219/397**, A2 [noting that when Ms. IM Chaem arrived in Phnom Leab, she instructed the people to restore and manage the economy and the farming. She then instructed them to build dams and canals]; Transcript of Interview of TUM Soeun, 29 March 2012, **D219/422.9**, EN ERN 011369568 [“She [Ms. IM Chaem] did not say anything about my work. She only addressed our attention to farming, protecting our cultivated crops, digging canals to irrigate rice fields and helping the people.”]; Transcript of Interview of LAY Khann, 28 March 2012, **D219/422.2**, EN ERN 01136768 [“She told us to work hard so we could have three dishes to eat per meal. She just said that.”].

⁴⁷⁸ Written Record of Interview of CHHIM Phan, 13 April 2013, **D119/32**, A49.

⁴⁷⁹ Written Record of Investigation Action, 27 July 2015, **D219/438**, EN ERN 01124203 [YONG Sann attended three meetings with Ms. IM Chaem at which she “always spoke about improving rice production and strengthening the common effort to stay unified.” Also saying that Ms. IM Chaem never mentioned security matters and/or internal enemies]; Written Record of Interview of CHHIT Yoeuk, 26 April 2013, **D119/33**, A20 [“At each meeting we discussed only on rice supply.”]. *See also*, Written Record of Interview of LEUY Taes, 10 June 2015, **D219/361**, A76-79 [saying that meetings chaired by Ms. IM Chaem talked about dam construction. Also saying that she only talked about making a commitment to work and never talked about the enemy]; Written Record of Interview of YENG Chhan, 25 June 2014, **D119/132**, A24-27 [saying that meetings chaired by Ms. IM Chaem in each respective village encouraged people to work hard and discussed common planting and common eating]; Written Record of Interview of CHHIM Phan, 13 April 2013, **D119/32**, A48 [“In the meeting she spoke about work plan and how to produce enough food for the people to eat.”].

⁴⁸⁰ *See*, Final Submission, para. 156.

“armed forces” in Preah Net Preah District.⁴⁸¹ In referring to the term “armed forces”,⁴⁸² the International Co-Prosecutor considers the terms military and militia to be synonymous.⁴⁸³ As will be discussed below, the military and the militia were separate and distinct entities. The evidence shows that Ms. IM Chaem did not exercise any *de jure* or *de facto* authority over either entity.

131. In the paragraphs below,⁴⁸⁴ the Defence will address the International Co-Prosecutor’s claim that Ms. IM Chaem had authority over the “armed forces”, which in the International Co-Prosecutor’s view involves both the military and the militia. In support of the claim that Ms. IM Chaem controlled the armed forces in Preah Net Preah District, the International Co-Prosecutor relies upon 13 authorities that are qualified as “overwhelming evidence”.⁴⁸⁵ Two of the accounts relied upon, a DC-Cam interview of Ms. IM Chaem and a statement from TUM Soeun, do not clearly relate to the military, the militia, or the armed forces⁴⁸⁶ and will therefore not be addressed. The remainder of the authorities will be discussed below.
132. As will be seen, in part, the International Co-Prosecutor’s erroneous claim that Ms. IM Chaem had authority over the whole of the armed forces is based on the mistaken view that the military and militia were the same entity. Before addressing the specific and separate evidence against Ms. IM Chaem in relation to the two distinct entities, it is useful to correct this misconception. As found by the Trial Chamber in Case 001, the military and the

⁴⁸¹ Final Submission, paras. 140, 156.

⁴⁸² Final Submission, paras. 140, 156.

⁴⁸³ See, e.g., Final Submission, paras. 111 (fn. 537) [saying that Ms. IM Chaem brought 500 *military personnel* to the Northwest Zone], 140 (fn. 692) [saying that Ms. IM Chaem brought 500 *armed militiamen* to the Northwest Zone], 178 (fn. 903) [saying that Ms. IM Chaem was accompanied to the Northwest Zone by *her own military contingent*], all referring to the same authority (Interview of IM Chaem by Smiling Toad Productions, 26 April 2007, **D1.3.12.1**, EN ERN 00217519). See also, Final Submission, para. 450 [“These CPK cadres/soldiers/militia acted under the direct and/or indirect authority and control of Im Chaem or on the basis of her influence, encouragement or assistance.”].

⁴⁸⁴ See, Response, paras. 133-38.

⁴⁸⁵ Final Submission, paras. 140 (fn. 696), 156 (fn. 773).

⁴⁸⁶ Final Submission, paras. 140 (fn. 696), 156 (fn. 773), referring to DC-Cam Interview of IM Chaem, 20 June 2008, **D123/1/5.1b**, EN ERN 00951815-16 [mentioning that, upon her arrival, she ordered *guards* to free an old man who had been arrested and assigned him to produce traditional medicines]; Written Record of Interview of TUM Soeun, 16-17 October 2013, **D119/65**, A82 [mentioning that Ms. IM Chaem and the existing District Committee reorganised existing *forces* in the District at her arrival].

militia were two separate entities during the Democratic Kampuchea regime.⁴⁸⁷ The evidence in Case File 004/1 supports this finding: TOEK Suong, who was a soldier and subsequently worked as a militiaman (before Ms. IM Chaem arrived in the Northwest Zone) explained that the two were different.⁴⁸⁸ LAT Suoy, who worked as a soldier in Phnom Srok District, confirms that tasks assigned to soldiers were distinct from those assigned to militiamen.⁴⁸⁹

Ms. IM Chaem's alleged authority over the *military*

133. Out of the 11 relevant authorities relied upon in support of the claim that Ms. IM Chaem controlled the armed forces, seven witnesses and an interview given by Ms. IM Chaem to Smiling Toad Productions are cited in support of the allegation that she controlled the military in Preah Net Preah District.⁴⁹⁰ These will be addressed in turn below.
134. On the face of Ms. IM Chaem's statement to Smiling Toad Productions, she appears to accept that she exercised a degree of control over some soldiers: she stated that she "brought in" 500 soldiers when she transferred to the Northwest Zone.⁴⁹¹ As a matter of inference, this is incapable of amounting to anything more than evidence of a single exercise of authority over a fixed number of soldiers. Moreover, this statement must be

⁴⁸⁷ See, Case 001 Trial Judgement, **E188**, para. 96 ["Zones and Sectors also commanded armed units under a General Staff, and Districts controlled less formal militia."]; Case 002 Trial Judgement, **E313**, para. 245 ["Both the DK Constitution and the CPK Statute distinguished between three branches of the RAK: the 'regular' forces, the 'regional' or 'Sector' forces and the 'guerrilla' forces or 'militia'."].

⁴⁸⁸ See, Written Record of Interview of TOEK Suong, 27 October 2015, **D219/572**, A18 ["When I worked as the militiamen chief, I had already stopped serving as a soldier."], Q-A21 ["Q: Given that you worked both as a soldier and the militia chairman, how were the military and the militia different? A21: They were different. When I served as a soldier, I slept in the forests and fought the LON Nol soldiers. When I served as a militia chief, I slept and lived in the village normally."].

⁴⁸⁹ See, Written Record of Interview of LAT Suoy, 18 August 2014, **D119/144**, Q-A58 ["Q: You were a district soldier. Could you explain the differences between the work of the district soldiers and the militiamen's? A58: Usually the district soldiers were tasked to defend villages, communes and districts while the militia spied on people and arrested people in villages and communes."].

⁴⁹⁰ See, Final Submission, paras. 140 (fn. 696), 156 (fn. 773), referring to Written Record of Interview of CHHAO Chat, 18-19 December 2014, **D219/130**, A65, A66-68, A267; Written Record of Interview of ORM Huon, 27 May 2014, **D119/130**, A87; Written Record of Interview of CHHUM Seng, 18 February 2014, **D119/89**, A37; Written Record of Interview of LAT Suoy, 18 August 2014, **D119/144**, A53; Written Record of Interview of HEAK Sa, 8 June 2015, **D219/357**, A124-25; Written Record of Interview of PUM Kho, 6-7 October 2014, **D219/23**, A57-59; Written Record of Interview of KAO Phan, 17 February 2014, **D119/88**, A30; Interview of IM Chaem by Smiling Toad Productions, 26 April 2007, **D1.3.12.1**, EN ERN 00217519.

⁴⁹¹ Interview of IM Chaem by Smiling Toad Productions, 26 April 2007, **D1.3.12.1**, EN ERN 00217519.

seen within the relevant context. TUM Soeun clarified the circumstances of these events: TUM Soeun, Ms. IM Chaem, and around 500 or 600 other families including soldiers, were transferred at the same time to the Northwest Zone.⁴⁹² As explained by TUM Soeun: someone other than Ms. IM Chaem in fact supervised the transferring soldiers.⁴⁹³ Ms. IM Chaem was in charge of the civilian families.⁴⁹⁴ As may be seen, when a modicum of contextual evidence is considered, Ms. IM Chaem's testimony appears in a more nuanced light. It does not even speak of control over those specific soldiers at that time, let alone testify to any form of generalised authority over these or any soldier after the transfer was completed. As confirmed by Ms. IM Chaem in a later testimony, she did not control the military in Preah Net Preah District.⁴⁹⁵

135. Moreover, given the enormity of the International Co-Prosecutor's claim—that Ms. IM Chaem commanded all the “armed forces” in Preah Net Preah District⁴⁹⁶—the fact that the remainder of the evidence fails in every respect to identify actual incidents of command and control is instructive. Self-evidently, if Ms. IM Chaem had controlled the military or the armed forces as a whole, this would have been observed first hand, on many occasions

⁴⁹² See, Written Record of Interview of TUM Soeun, 16-17 October 2013, **D119/65**, A40 [“Totally, there were around 500 or 600 families ... Among those people, there was a women's unit from Srae Ambel with around 300 or 400 members and there were around 300 troops.”].

⁴⁹³ See, Written Record of Interview of TUM Soeun, 16-17 October 2013, **D119/65**, Q-A44 [“Q: You said that when you went to the Northwest Zone there were around 500 to 600 families. There was a women's unit from Srae Ambel consisting of around 300 to 400 women and there were around 300 soldiers. Who was responsible for all those civilian families? Who controlled the women's unit? Who was in charge of the soldiers? Who controlled all of the people sent to the Northwest Zone? A44: The chief of the women's unit controlled the women's unit, but I did not know her name. The soldiers were controlled by another person whose name I did not know. *Yeay* Chem controlled the civilian families and was also responsible for all of the people sent to the Northwest Zone at the time.”].

⁴⁹⁴ See, Written Record of Interview of TUM Soeun, 16-17 October 2013, **D119/65**, Q-A44 [“Q: You said that when you went to the Northwest Zone there were around 500 to 600 families. There was a women's unit from Srae Ambel consisting of around 300 to 400 women and there were around 300 soldiers. Who was responsible for all those civilian families? Who controlled the women's unit? Who was in charge of the soldiers? Who controlled all of the people sent to the Northwest Zone? A44: The chief of the women's unit controlled the women's unit, but I did not know her name. The soldiers were controlled by another person whose name I did not know. *Yeay* Chem controlled the civilian families and was also responsible for all of the people sent to the Northwest Zone at the time.”].

⁴⁹⁵ DC-Cam Interview with IM Chaem, 20 June 2008, **D123/1/5.1b**, EN ERN 00951802 [“I had asked the upper echelon to disarm the Chhlorps and the militias in my district first ... As for the soldiers, when I asked to disarm them, they refused it ... That was the problem with the soldiers.”].

⁴⁹⁶ Final Submission, paras. 140, 156.

and in many circumstances. Instead, out of the seven other witnesses relied upon; five provide unattributed hearsay accounts of this purported command incapable of bearing even the most limited probative value.⁴⁹⁷ The remaining two witnesses may safely be disregarded as of no relevance to the issue: KAO Phan merely testified to seeing Ms. IM Chaem in a truck with unarmed soldiers, and PUM Kho merely noted that he handed back his weapon after the arrival of Southwest Zone cadres in the region, not at Ms. IM Chaem's request, but on his own initiative.⁴⁹⁸ The fact that the International Co-Prosecutor failed to identify a single witness who as a soldier took orders from Ms. IM Chaem, or otherwise was able to provide first hand evidence of her alleged command, demonstrates beyond doubt the falsity of the claim.

136. The evidence in Case File 004/1 shows that, under the Northwest Zone cadres administration, the top military commanders in Preah Net Preah District were Thuok and his deputy, Huor.⁴⁹⁹ They were however arrested by Southwest Zone cadres in the purge

⁴⁹⁷ Written Record of Interview of CHHAO Chat, 18-19 December 2014, **D219/130**, A66-70, A267 [indicating that he *heard* that Ms. IM Chaem could give orders to soldiers], *but see* A65 ["I do not know *Yeay* Chaem's position clearly."]; Q-A265 ["Q: Did you ever see *Yeay* Chaem? A265: No."]; Written Record of Interview of CHHUM Seng, 18 February 2014, **D119/89**, Q-A37 ["Q: Did you ever meet *Yeay* Chem during the Khmer Rouge Regime? A37: I never met her. I only know that she was a Southwest person. I want to clarify on page 30 of my interview with the Documentation Center of Cambodia (00728637): I never met *Yeay* Chem. At that time, I asked soldiers in a vehicle and they told me they were going to transport *Yeay* Chem."]; Written Record of Interview of LAT Suoy, 18 August 2014, **D119/144**, A53 ["...I *heard* people living in Preah Net Preah saying that *Yeay* Chaem had authority to control all these people, and the district military chairman had to report to her as well." (emphasis added)], *but see* Written Record of Interview of LAT Suoy, 18 August 2014, **D119/144**, A47 [saying that he, coming from Phnom Srok District, was not allowed to travel to Preah Net Preah District and did not know who was on the District Committee], *and* DC-Cam Interview of LAT Suoy, 18 May 2011, **D67.7**, EN ERN 00728711 [saying that he did not know who was in charge of soldiers in Preah Net Preah District]; Written Record of Interview of ORM Huon, 27 May 2014, **D119/130**, A87 ["I *heard* that *Yeay* Chaem led the soldiers and people to work at Trapeang Thma Reservoir. *Yeay* Chaem also supervised the soldiers." (emphasis added)], *but see* Written Record of Interview of ORM Huon, 27 May 2014, **D119/130**, A64 ["Yes, I did [*hear* of Ms. IM Chaem]. But I *never saw her* in person." (emphasis added)], Q-A89 ["Q: Did you know what their [*Ta* Val and Ms. IM Chaem's] positions were? A89: No, I did not."]; Written Record of Interview of HEAK Sa, 8 June 2015, **D219/357**, A124-25 [saying that he *heard* from others that Ms. IM Chaem was a military commander].

⁴⁹⁸ Written Record of Interview of KAO Phan, 17 February 2014, **D119/88**, A30 [saying that he saw Ms. IM Chaem in a GMC lorry with unarmed soldiers]; Written Record of PUM Kho, 6-7 October 2014, **D219/23**, Q-A59 ["Q: Did you offer to give [your gun] to [*Yeay* Chaem], or did she request to disarm you? A59: I offered to give it to her in 1977."]; A66 ["At that time, *Yeay* Chaem did not propose disarming me. I handed the weapon to *Yeay* Chaem straight away."].

⁴⁹⁹ Written Record of Investigation Action (SEM Siet), 19 March 2013, **D119/27**, EN ERN 00894530.

that began in late 1976 or early 1977 (*i.e.* before Ms. IM Chaem was transferred to the Northwest Zone).⁵⁰⁰ The evidence on Case File 004/1 does not indicate that they were ever replaced. According to CHRACH Kit, there was no military site in the District after the arrival of the Southwest Zone cadres.⁵⁰¹ This is further reinforced by the statement of CHUM Kan, a soldier who was transferred from the Southwest to the Northwest and was removed from the military after the arrival of the Southwest Zone cadres.⁵⁰² When asked if Ms. IM Chaem could control both the military and administrative sides, CHUM Kan, answered that “[t]o [his] understanding, there was no military structure in Preah Net Preah District.”⁵⁰³ He also noted that, “at that time, the security structure was different from the administrative structure.”⁵⁰⁴ BOU Mao, a witness relied upon by the International Co-Prosecutor for the claim that Ms. IM Chaem was in charge of the “armed forces”,⁵⁰⁵ also confirmed that, unlike *Ta Maong* (the former Preah Net Preah District Secretary) Ms. IM Chaem was not in charge of the military.⁵⁰⁶

Ms. IM Chaem’s alleged authority over the *militia*

137. The International Co-Prosecutor relies upon three accounts including a statement given by Ms. IM Chaem to Youth For Peace in support of the claim that she controlled the militia and in turn this meant overall control of the armed forces.⁵⁰⁷ Reliance on Ms. IM Chaem’s statement to Youth For Peace has marginal utility: her account is not an admission of

⁵⁰⁰ See, Written Record of Investigation Action (SEM Siet), 19 March 2013, **D119/27**, EN ERN 00894530.

⁵⁰¹ See, Written Record of Interview of CHRACH Kit, 15 February 2012, **D106/2**, A14.

⁵⁰² Written Record of Interview of CHUM Kan, 26-27 March 2014, **D119/110**, A41-42.

⁵⁰³ Written Record of Interview of CHUM Kan, 26-27 March 2014, **D119/110**, Q-A92.

⁵⁰⁴ Written Record of Interview of CHUM Kan, 26-27 March 2014, **D119/110**, A23.

⁵⁰⁵ See, Final Submission, paras. 140 (fn. 696), 156 (fn. 773), referring to Written Record of Interview of BOU Mao, 21 February 2014, **D119/94**, A54.

⁵⁰⁶ Written Record of Interview of BOU Mao, 21 February 2014, **D119/94**, A42 [“*Ta Maong* was Preah Net Preah District Committee. When *Yeay Chem* came to Preah Net Preah District, she replaced *Ta Moang*. The reason I say that *Ta Maong* and *Ta Val* were more vicious than *Yeay Chem* is because *Ta Moang* was previously in charge of the military, and *Ta Moang* and *Ta Val* always spoke loudly, so everyone was afraid of them.”].

⁵⁰⁷ See, Final Submission, paras. 140 (fn. 696), 156 (fn. 773), referring to Written Record of Interview of KOR Len, 29 April 2014, **D119/121**, A32; Written Record of Interview of BOU Mao, 21 February 2014, **D119/94**, A54; Transcript of Interview of IM Chaem by Youth For Peace, undated, **D219/264.1**, EN ERN 01117960.

control but a discussion of the variety of roles assigned to militiamen during the Democratic Kampuchea regime.⁵⁰⁸

138. Whilst BOU Mao and KOR Len claim that Ms. IM Chaem supervised militiamen,⁵⁰⁹ this is unconvincing, especially when situated amongst the preponderance of the evidence. The evidence in Case File 004/1 shows that, after Ms. IM Chaem arrived in Preah Net Preah District, the commune militia—previously under the supervision of the District Committee⁵¹⁰—was dissolved. When Ms. IM Chaem was Secretary of Preah Net Preah District, TUM Soeun, a Sector 5 cadre stationed in Preah Net Preah District and the Chairman of PTSC, indicated that there was no more militia in the District.⁵¹¹ As previously discussed,⁵¹² Ms. IM Chaem *requested the authorisation* from the sector level to assign all former militiamen to work in rice fields.⁵¹³

⁵⁰⁸ See, Transcript of Interview of IM Chaem by Youth For Peace, undated, **D219/264.1**, EN ERN 01117960 [“Q: Were the militiamen assigned to do rice farming also? Im Chaem: Yes, they were. It depended on what we assigned them to do. Q: For were the militiamen for? Im Chaem: The militiamen were to protect the village in case there were thieves or merchants. When people were needed to help with the dry season rice farming they would be also assigned to do farming.”].

⁵⁰⁹ Written Record of Interview of KOR Len, 29 April 2014, **D119/121**, A32; Written Record of Interview of BOU Mao, 21 February 2014, **D119/94**, A54.

⁵¹⁰ See, Written Record of Investigation Action (SAU Lang), 29 October 2015, **D219/579**, EN ERN 01166381 [“The District Secretary would only supervise the commune militiamen units and not the military from the District because those were under the Sector supervision.”]; Written Record of Interview of TOEK Suong, 27 October 2015, **D219/572**, A22 [saying that when he was a militiaman, i.e. prior to the Southwest Zone cadres’ arrival, the District level was in charge of “everything”, including the communes militiamen].

⁵¹¹ Written Record of Interview of TUM Soeun, 16-17 October 2013, **D119/65**, Q-A203 [“Q: As a secretary of the district, was she also in charge of the military, as well as, the militia? A203: There was no militia in the district at that time. There was only a unit consisting of six messengers of hers.”], Q-A204 [“Q: Were there no security guards or militiamen in the district at all? A204: No, there were none of them. But I did see some soldiers patrolling around the district. I asked them what they were doing there while we met and they said to me that they were going for a walk.”].

⁵¹² See, Response, para. 128.

⁵¹³ Interview of IM Chaem by Smiling Toad Productions, 26 April 2007, **D1.3.12.1**, EN ERNs 00217520-21; Transcript of Interview of IM Chaem, undated, **D6.1.75**, EN ERN 01040642 [“... I requested to disarm and join the mobile unit working in the worksites building dams, cannels [sic] and dikes.”]; DC-Cam Interview of IM Chaem, 4 March 2007, **D123/1/5.1a**, EN ERNs 00089776-77; DC-Cam Interview of IM Chaem, 20 June 2008, **D123/1/5.1b**, EN ERNs 00951802 [“I had asked the upper echelon to disarm the Chhlorps and the militias in my district first ... They did not dare to object my request even [though] I was a new comer.”], 00951804 [saying she submitted her request to disarm the chhlorps to the sector]. See also, Written Record of Interview of TOEK Suong, 30 October 2015, **D219/575**, A3; Written Record of Interview of TRY Phoet, 28 October 2015, **D219/574**, A17, A27-28; Written Record of Investigation Action (ROS Hil), 29 October 2015, **D219/579**, EN ERN 01166380.

Ms. IM Chaem's alleged responsibility over security affairs in Preah Net Preah District

139. The evidence in Case File 004/1 shows that after the arrival of the Southwest Zone cadres in the Northwest Zone, districts were no longer in charge of security affairs in general and would request assistance from the sector level in case of security concern. NOP Ngim, who was transferred to the Northwest Zone in August 1977⁵¹⁴ and became the Deputy Secretary of Samlout District in Sector 1,⁵¹⁵ indicated that, "the Khmer Rouge soldiers and militiamen were appointed by the Sector to guard the districts."⁵¹⁶ Similarly, MOUL Eng, who became the Secretary of Bavel District in Sector 3 of the Northwest Zone after his transfer,⁵¹⁷ stated, in relevant parts:

Q: As a District Secretary were you also in charge of the militiamen?

A182: As a newcomer I was not supposed to be in charge of the militiamen. The Sector echelons were in charge of them. Nevertheless the previous District Secretaries perhaps were in charge of the militiamen. But as the newcomer I didn't have any militiamen under my supervision.

Q: If a security issue arose in the district and you needed assistance, whom did you contact?

A183: I immediately requested assistance from sector soldiers.

...

Q: You stated that if a security concern arose in your district you would seek assistance from the sector military. Is that correct?

A189: Yes, it is. If an issue happened in my district, I would have sought assistance from the sector military.⁵¹⁸

140. Further, the evidence in Case File 004/1 establishes that the chain of command described by MOUL Eng existed in Preah Net Preah District after the arrival of the Southwest Zone

⁵¹⁴ Written Record of Interview of NOP Ngim, 12-14 August 2014, **D118/285**, A8.

⁵¹⁵ Written Record of Interview of NOP Ngim, 12-14 August 2014, **D118/285**, A41 [saying that *Ta Mok* appointed her as Deputy Secretary of Samlout District], A59 [saying that she remained the Deputy Secretary of Samlout District until the end of the Democratic Kampuchea regime].

⁵¹⁶ Written Record of Interview of NOP Ngim, 12-14 August 2014, **D118/285**, A50.

⁵¹⁷ Written Record of Interview of MOUL Eng, 4-5 May 2015, **D219/294**, A36.

⁵¹⁸ The Defence notes translation errors between the English and Khmer versions of this portion of MOUL Eng's written record of interview. For this reason, the Defence is providing an accurate translation of the Khmer original of the witness' interview. See, Written Record of Interview of MOUL Eng, 4-5 May 2015, **D219/294** (Khmer original), A182-83, A189.

cadres. In sum, security affairs were under the authority of sector-level cadres *Ta Cheal*⁵¹⁹ and TUM Soeun. TUM Soeun, who was a military veteran,⁵²⁰ was appointed to be the chief of a Sector 5 mobile unit by *Ta Cheal*⁵²¹ and was identified by CHUM Kan as “the Security Chairman walking around to arrest people” in the District.⁵²² He also was the Chairman of PTSC, the Sector 5 security centre, as will be developed at paragraphs **148** to **152** of this Response.

141. In conclusion, any claim that Ms. IM Chaem exercised generalised authority over the military, the militia, or the armed forces is manifestly not supported by reliable evidence. On the contrary, there is clear and consistent evidence showing that Ms. IM Chaem had no authority in relation to security matters in Preah Net Preah District. As discussed, following her transfer, as a newcomer to Preah Net Preah District, Ms. IM Chaem had no military or militia at her disposal. Instead, when a security issue arose, she would have had to request assistance from the sector-level. In sum, as the evidence shows, her limited role as Preah Net Preah District Secretary did not allow or demand control over the “armed forces”.⁵²³
142. Moreover, as discussed, none of the witness testimony descends to the type of concrete, factual eyewitness testimony that would be available if Ms. IM Chaem had exercised this extensive control over a range of “armed forces”, especially in light of the fact that the exercise of this authority by a woman would have been highly unusual and therefore enduringly memorable.⁵²⁴ If it was the case, the evidence would not be limited to witnesses whose evidence is little more than speculation based upon *de jure* position or hearsay based

⁵¹⁹ See, e.g., *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript of Trial Proceedings (PAN Chhuong), 1 December 2015, **E1/360.1**, EN ERNs 01176176-77 [saying that *Ta Cheal* used to conduct arrests in the area and that when *Ta Val*, the former Chairman of the Sector 5 Mobile Unit, was arrested, he entered the car belonging to *Ta Cheal*]. See also, Written Record of Interview of CHHAO Chat, 18-19 December 2014, **D219/130**, A225-26 [saying that *Ta Val* was arrested by the sector echelon before the arrival of the Southwest Zone].

⁵²⁰ Written Record of Interview of CHUM Kan, 26-27 March 2014, **D119/110**, A17 [“I knew Soeun well because we both were military veterans.”].

⁵²¹ Written Record of Interview of TUM Soeun, 16-17 October 2013, **D119/65**, A85, A87; Written Record of Interview of TUM Soeun, 2 December 2014, **D219/102**, A28.

⁵²² Written Record of Interview of CHUM Kan, 26-27 March 2014, **D119/110**, A17.

⁵²³ Final Submission, paras. 140, 156.

⁵²⁴ See, Response, paras. 75-80.

upon conjecture. The evidence does not establish this degree of control, let alone that she used this control to commit serious crimes.

143. As will be discussed below,⁵²⁵ the evidence also does not establish that she had authority over PTSC or SSWS, as submitted by the International Co-Prosecutor.⁵²⁶

D. MS. IM CHAEM DID NOT PLAY A ROLE IN CRIMES ALLEGEDLY COMMITTED AT PHNOM TRAYOUNG SECURITY CENTRE AND SPEAN SRENG WORKSITE

144. The International Co-Prosecutor's case concerning Ms. IM Chaem's responsibility for crimes allegedly committed at PTSC and SSWS rests on her alleged *de jure* and *de facto* positions during the Democratic Kampuchea regime. The International Co-Prosecutor argues that as a consequence of her positions at PTSC and SSWS, Ms. IM Chaem "played a key role" in the commission of grave crimes that occurred systematically throughout the time that she was in the Northwest Zone⁵²⁷ and which allegedly led to the deaths of thousands of individuals and affected the lives of many others.⁵²⁸
145. The Defence submits that these claims are not based on a reasoned or objective interpretation of the available evidence. As will be discussed below, there is little reliable evidence to show that crimes of the gravity alleged by the International Co-Prosecutor occurred at PTCS and SSWS. Moreover, the evidence in Case File 004/1 clearly shows that PTSC and SSWS were under the formal and effective authority of sector-level cadres.⁵²⁹ In any event, there is no reliable evidence to suggest the participation of Ms. IM Chaem in grave crimes committed at either location. In sum, the Defence submits that an examination of the evidence in relation to the two cumulative criteria (gravity of the alleged crimes charged and Ms. IM Chaem's alleged level of responsibility in them) shows that Ms. IM Chaem cannot be considered to be "most responsible" for the crimes. These will be further developed below.

⁵²⁵ See, Response, paras. 144-226.

⁵²⁶ See, Final Submission, paras. 196 [PTSC], 262 [SSWS].

⁵²⁷ See, Final Submission, paras. 530-32. See also, Final Submission, paras. 2-5

⁵²⁸ See, Final Submission, paras. 5, 530, 536.

⁵²⁹ See, Response, paras 148-54, 193-207.

**1. Ms. IM Chaem did not play a key role in crimes of sufficient gravity
allegedly committed at Phnom Trayoung Security Centre**

146. The International Co-Prosecutor contends that i) Ms. IM Chaem was responsible for PTSC and exercised “wide-ranging authority” over the Security Centre⁵³⁰ and its Chairman⁵³¹ and that ii) she was actively implicated in the detention of thousands of prisoners,⁵³² thousands of whom died due to starvation, illness, overwork,⁵³³ and executions.⁵³⁴
147. As will be discussed below, the evidence shows that both claims are incorrect. First, the evidence overwhelmingly establishes that PTSC and any alleged perpetrators were under the responsibility of the sector level.⁵³⁵ Ms. IM Chaem had no authority over this echelon.⁵³⁶ Second, the evidence does not suggest that Ms. IM Chaem was involved in any crimes. Moreover, the International Co-Prosecutor’s extravagant claims regarding the gravity of the alleged crimes at this location during the relevant time period are based on an analysis of the evidence that lacks objectivity.⁵³⁷ In sum, the Defence submits that a reasonable assessment of the two cumulative criteria (gravity of the crimes charged at PTSC and level of responsibility of the said crimes) leads firmly to the conclusion that there is little serious, corroborative, or otherwise probative evidence to suggest that Ms. IM Chaem’s involvement in PTSC can be equated to significant or even proximate responsibility for any grave crimes. As a body of evidence, it offers little or no support for the claim that she falls into the ECCC’s “most responsible” category.

*i. Phnom Trayoung Security Centre was under the formal
and effective control of Sector 5 cadre TUM Soeun*

148. Contrary to the International Co-Prosecutor’s narrative,⁵³⁸ the evidence in Case File 004/1 does not suggest that Ms. IM Chaem had the *de jure* or *de facto* authority required to be

⁵³⁰ See, Final Submission, para. 196.

⁵³¹ See, Final Submission, paras. 197-98.

⁵³² See, Final Submission, paras. 177, 200.

⁵³³ See, Final Submission, para. 205.

⁵³⁴ See, Final Submission, para. 212.

⁵³⁵ See, Response, paras. 148-54.

⁵³⁶ See, Response, paras. 97-142.

⁵³⁷ See, Response, paras. 155-86.

⁵³⁸ See, Final Submission, para. 196.

“responsible for” PTSC. As will be discussed below, PTSC was the Sector 5 Security Centre under the complete formal and effective authority of sector-level cadre TUM Soeun and operated by Sector 5 soldiers, where prisoners would be sent pursuant to the sector echelon’s orders.

149. PTSC served as the Sector 5 Security Centre with prisoners arriving from various districts in the Sector.⁵³⁹ TUM Soeun, who was a military veteran,⁵⁴⁰ was appointed to be the chief of a Sector 5 mobile unit by *Ta Cheal*⁵⁴¹ and was identified by CHUM Kan as “the Security Chairman walking around to arrest people” in the District.⁵⁴² Former prisoners and guards⁵⁴³ as well as TUM Soeun⁵⁴⁴ never saw Ms. IM Chaem visiting PTSC. TUM Soeun, on the other hand, lived at PTSC just a few metres away from where serious prisoners were allegedly detained and executed.⁵⁴⁵ According to a former prisoner assigned to be a cook, TUM Soeun stayed there “permanently with his wife and children”,⁵⁴⁶ and built his house

⁵³⁹ *See, e.g.*, Written Record of Interview of PHOUN Sunty, 20 March 2013, **D119/30**, A28 [“Phnom Trayaung Prison was Sector 5 prison”]; Written Record of Interview of BOU Tuok, 9 July 2015, **D219/400**, A57 [saying that PTSC “belonged to Sector 5, because there were people from many districts.”]; Written Record of Interview of CHHIT Yoeuk, 26 April 2013, **D119/33**, A22 [saying that Phnom Trayaung was a security office for Preah Net Preah District but it was under the supervision of Sector 5]; Written Record of Interview of CHUM Kan, 26-27 March 2014, **D119/110**, A89 [“To my knowledge, Phnum Troyaung Security Office was a security office of the Sector.”]. *See also*, *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript of Trial Proceedings (CHHIT Yoeuk), 13 August 2015, **E1/330.1**, EN ERNs 01131283-84 [saying that he distributed rice to PTSC under the authority of *Ta Rin*, the Sector 5 Secretary].

⁵⁴⁰ Written Record of Interview of CHUM Kan, 26-27 March 2014, **D119/110**, A17 [“I knew Soeun well because we both were military veterans.”].

⁵⁴¹ Written Record of Interview of TUM Soeun, 16-17 October 2013, **D119/65**, A85, A87; Written Record of Interview of TUM Soeun, 2 December 2014, **D219/102**, A28.

⁵⁴² Written Record of Interview of CHUM Kan, 26-27 March 2014, **D119/110**, A17.

⁵⁴³ Written Record of Interview of SUM Sal, 31 March 2012, **D106/7**, A35; Written Record of Interview of PHON Mon, 12 March 2013, **D119/19**, A40; Written Record of Interview of PHOUN Sunty, 20 March 2013, **D119/30**, A27; Written Record of Interview of PHON Mon, 1 December 2014, **D219/95**, A22; Transcript of Interview of LAY Khann, 28 March 2012, **D219/422.2**, EN ERN 01136766; Written Record of Interview of DENG Leap, 30 March 2015, **D219/252**, A39; Written Record of Interview of ORM Huon, 27 May 2014, **D119/130**, A64-65; Written Record of Interview of KAO Phan, 17 February 2014, **D119/88**, A28; Written Record of Interview of KIM Yet, 1 December 2014, **D219/94**, A91.

⁵⁴⁴ Written Record of Interview of TUM Soeun, 16-17 October 2013, **D119/65**, A184 [“During the times when I was present in that place I never saw her visiting us. But she may have come to the place during the times when I was out on my visits to various communes”].

⁵⁴⁵ Written Record of Interview of PHON Mon, 1 December 2014, **D219/95**, A9; Written Record of Interview of PHOUN Sunty, 1 December 2014, **D219/92**, A45; Written Record of Interview of KIM Yet, 1 December 2014, **D219/94**, A64-65.

⁵⁴⁶ Written Record of Interview of IM Soeun, 23 January 2015, **D219/153**, A22.

with wood coming from the sector-level.⁵⁴⁷ TUM Soeun was described by former PTSC guard SUM Sal⁵⁴⁸ as the “only big chief” at the Prison;⁵⁴⁹ a fact that is corroborated by numerous witnesses.⁵⁵⁰ PHOUN Sunty, a former prisoner later appointed to be a guard at PTSC,⁵⁵¹ indicated that TUM Soeun “seemed to be not afraid of Yeay Chem much because he might not be under [her] control.”⁵⁵²

150. The International Co-Prosecutor cited 13 witnesses to contend that Ms. IM Chaem was responsible for PTSC.⁵⁵³ Taking the evidence at its highest, the only witness asserting with

⁵⁴⁷ Written Record of Interview of TUM Soeun, 16-17 October 2013, **D119/65**, A208 [“I once saw wood being brought by the people from the sector level to be temporarily kept in Phnum Trayoung for future construction of a new security office at Phnum Sramaoch Mountain. However, they had no chance to build it and I took the remaining wood to build my own house.”].

⁵⁴⁸ See, Written Record of Interview of SUM Sal, 31 March 2012, **D106/7**, Q-A7.

⁵⁴⁹ Written Record of Interview of SUM Sal, 31 March 2012, **D106/7**, A20.

⁵⁵⁰ See, Written Record of Interview of KIM Yet, 30 March 2012, **D106/6**, A18-19 [saying that everyone knew that *Ta* Soeun was the security centre chief]; Written Record of Interview of SUM Sal, 31 March 2012, **D106/7**, A9 [“*Ta* Soeun, who was the chief of the security centre ...”]; Written Record of Interview of THIB Samphat, 2 April 2012, **D106/8**, A16 [saying that *Ta* Soeun was the chairman of Phnom Trayoung Security Office]; Written Record of Interview of PHON Mon, 12 March 2013, **D119/19**, A32 [“*Grandfather* Soeun was formerly the chief of Trayaung mountain prison.”]; Written Record of Interview of PHOUN Sunty, 20 March 2013, **D119/30**, A24 [“The prison chief at Phnom Trayaung [was] named Soeun.”]; Written Record of Interview of CHUM Chim, 20 January 2015, **D219/149**, A36 [“I did not know who issued the orders, but I knew Soeun was in control there.”]; Written Record of Interview of KAO Phan, 17 February 2014, **D119/88**, A23 [saying that *Ta* Soeun was in charge of the prisoners at Phnom Trayoung security centre]; Written Record of Interview of SUM Sal, 2 December 2014, **D219/103**, A28-33 [noting that, as a guard at PTSC, SUM Sal received orders from and reported directly to *Ta* Soeun]; Written Record of Interview of IM Soeun, 23 January 2015, **D219/153**, A13 [indicating that a cadre named Soeun was in charge of Phnom Trayoung mountain]; Written Record of Interview of DENG Leap, 30 March 2015, **D219/252**, A29 [“Soeun, from the Southwest Zone, was the chief at Phnom Tropyauang.”]; Written Record of Investigation Action (SAU Lang), 29 October 2015, **D219/579**, EN ERN 01166381 [saying that he had good contacts with *Ta* Soeun, the chief of Phnom Trayoung prison].

⁵⁵¹ Written Record of Interview of PHOUN Sunty, 20 March 2013, **D119/30**, A24.

⁵⁵² Written Record of Interview of PHOUN Sunty, 20 March 2013, **D119/30**, A28.

⁵⁵³ See, Final Submission, para. 196 (fn. 975), referring to Written Record of Interview of THIB Samphat, 2 April 2012, **D106/8**, A35; Written Record of HEM Soeun, 30 October 2015, **D219/567**, A131; Written Record of Interview of CHUM Kan, 26-27 March 2014, **D119/110**, A89; Written Record of Interview of OEURY Poeu, 24 June 2015, **D219/383**, A36; Written Record of Interview of BOU Tuok, 9 July 2015, **D219/400**, A59-62; Written Record of Interview of IM Soeun, 23 January 2015, **D219/153**, A20; Written Record of Interview of LAT Suoy, 18 August 2014, **D119/144**, A69; Written Record of Interview of MI Tal, 2 April 2015, **D219/256**, A25; SOAS/HRW Interview of YAEM Kaong, 21 October 2005, **D1.3.11.66**; Written Record of Interview of BOU Mao, 21 February 2014, **D119/94**, A56; Written Record of Interview of LEM Phenh, 10 February 2015, **D219/174**, A71; Written Record of Interview of PUM Kho, 6-7 October 2014, **D219/23**, A112-14; Written Record of Interview of YUOK Neam, 29 July 2011, **D43**, EN ERN 00727233-34; Written Record of Interview of TUM Soeun, 29 March 2012, **D106/5**, A28; Written Record of TUM Soeun, 16-17 October 2013, **D119/65**, A148, A158, A171, A173, A175, A178, A183; Written Record of Interview of TUM Soeun, 2 December 2014,

certainty that Ms. IM Chaem was “responsible for the site” is, conveniently, TUM Soeun himself,⁵⁵⁴ though he later on conceded that he was the Chairman of PTSC.⁵⁵⁵ Given TUM Soeun’s implication in the crimes allegedly committed at PTSC,⁵⁵⁶ and his clear motive to fabricate or shift blame, caution must be exercised before relying upon his statements.⁵⁵⁷ TUM Soeun must be regarded as an accomplice.⁵⁵⁸ This requires a careful assessment of a range of features of his testimony, including any underlying motive and whether he stands to benefit from his testimony by way of avoiding responsibility, the extent to which discrepancies in the testimony are explained, and whether his account is corroborated.⁵⁵⁹

151. TUM Soeun benefited from *three* letters of assurance that he would not be prosecuted at the ECCC.⁵⁶⁰ It is instructive that he is the only witness relevant to Ms. IM Chaem who benefitted from multiple letters of assurance. Unsurprisingly, his statements are replete with significant inconsistencies on material issues that have not been explained.⁵⁶¹ There is no meaningful corroboration of his incriminatory account. Indeed, the other witnesses cited by the International Co-Prosecutor in support of the contention that Ms. IM Chaem

D219/102, A6-7, A45; Written Record of Confrontation (TUM Soeun), 3-4 December 2014, **D230**, EN ERN 01072619; DC-Cam Interview of TUM Soeun, 11 October 2011, **D119/64.1**, EN ERN 00951706-07.

⁵⁵⁴ See, Final Submission, para. 196 (fn. 975).

⁵⁵⁵ See, Written Record of Confrontation (TUM Soeun), 3-4 December 2014, **D230**, EN ERN 01072599 [“... I was Phnum Troyoung Security Office Chairman.”].

⁵⁵⁶ Cf, Response, paras. 152-53, 155-86.

⁵⁵⁷ See, *Augustin Bizimungu v. Prosecutor* (ICTR-00-56B-A), AC, Judgement, 30 June 2014, para. 63 [attached as **Authority 25**].

⁵⁵⁸ See, Final Submission, paras. 196 (fn. 975), 197 (fn. 983).

⁵⁵⁹ See, *Simeon Nchamihigo v. Prosecutor* (ICTR-2001-63-A), AC, Judgement, 18 March 2010, para. 47 [attached as **Authority 26**].

⁵⁶⁰ ICIJ’s Letter of Assurance to TUM Soeun, 16-17 October 2013, **D119/65/1**; Letter of Assurance from the ICIJ, 2 December 2014, **D219/102/1**; Letter of Assurance from the ICIJ, 4 December 2014, **D230/1**.

⁵⁶¹ See, e.g., Written Record of Confrontation (TUM Soeun), 3-4 December 2014, **D230**, EN ERN 01072599 [“... I was Phnum Troyoung Security Office Chairman.”] *contra* Transcript of Interview of TUM Soeun, 29 March 2012, **D219/422.9**, EN ERN 01136968 [“The entire area was controlled by Yeay Chaem. She was the one who issued orders. She was the decision maker.”]; Transcript of Interview of TUM Soeun, 29 March 2012, **D219/422.9**, EN ERNs 01136971-72 [“Sometimes, in her letters, she asked me to send ten people for her. Sometimes, only her messenger would come and ask me to send him 10 or 20 people to perform some work ... Because the letters did not address important matters, so I threw them away.”] *contra* Written Record of Interview of TUM Soeun, 2 December 2014, **D219/102**, Q-A63, A64 [“Were any related documents sent along with the prisoners to indicate what they had done wrong? Normally, there was no document to indicate what they had done wrong ... No, no such documents were ever sent to me.”].

was responsible for PTSC,⁵⁶² admit having little knowledge of Ms. IM Chaem's role at PTSC or provide hearsay or wholly speculative evidence that lacks probative value. It is regrettable that the International Co-Prosecutor attempts to mask these deficiencies by excising relevant aspects of their testimony or otherwise citing to it in a highly selective manner.⁵⁶³

152. Putting aside this demonstrably flawed approach, the first hand and independent evidence points in only one direction: it places TUM Soeun firmly in charge of PTSC. Whenever a meeting took place at PTSC, TUM Soeun would be the only person to address the audience.⁵⁶⁴ Former guards testified to directly receiving instructions from and reporting to

⁵⁶² Final Submission, para. 196 (fn. 975).

⁵⁶³ See, Final Submission, para. 196 (fn. 975), referring to Written Record of Interview of THIB Samphat, 2 April 2012, **D106/8**, A35 [the first part of the witness' answer saying that he was *not sure* is not referenced, instead referring to the end of the sentence saying that he assumed that Ms. IM Chaem was TUM Soeun's superior based on a letter he read]; Written Record of HEM Soeun, 30 October 2015, **D219/567**, A131 [*Yeay* Chaem was the superior"] but not referencing A129-30 [saying that the witness did not know about Ms. IM Chaem's responsibilities or about the relationship between her and TUM Soeun]; Written Record of Interview of BOU Tuok, 9 July 2015, **D219/400**, A59-62, [saying that he *does not remember* the prison chairperson and *was told* that Ms. IM Chaem had been at PTSC]; Written Record of Interview of PUM Kho, 6-7 October 2014, **D219/23**, A113 [saying that he never went to PTSC], A114 [saying that he does not know who supervised the quarry at PTSC, but that the workforce belonged to Ms. IM Chaem]; Written Record of Interview of YUOK Neam, 29 July 2011, **D43**, EN ERN 00727233-34 [saying that he does not know the details regarding the control of PTSC]; Written Record of Interview of IM Soeun, 23 January 2015, **D219/153**, A20 ["I had *heard* from guards and prisoners at Phnum Troyoung Mountain that *Yeay* Chaem was *Ta* Soeun's superior." (emphasis added)]; Written Record of Interview of LAT Suoy, 18 August 2014, **D119/144**, A69 ["I *heard* of Trayoung Mountain. Trayoung Mountain was under the control of *Yeay* Chaem." (emphasis added)]; Written Record of Interview of MI Tal, 2 April 2015, **D219/256**, A25, ["I knew that *Yeay* Chaem controlled Phnom Troyaung because some ox-cart drivers who transported supplies from the district to Phnom Troyaung Prison *told me about this story.*" (emphasis added)]; Written Record of Interview of OEURY Poeu, 24 June 2015, **D219/383**, A28 [saying that he did not know who was in charge of PTSC and *heard* that it was Ms. IM Chaem]; Written Record of Interview of BOU Mao, 21 February 2014, **D119/94**, A56 [*Based on my observations, Yeay* Chem was in charge of the security offices" but not saying how he knows]; Written Record of Interview of LEM Phenh, 10 February 2015, **D219/174**, A71 [saying that he *heard* Ms. IM Chaem's name as being the most senior leader because she chaired meetings in mobile units, but not linking her to PTSC]; Written Record of Interview of CHUM Kan, 26-27 March 2014 **D119/110**, A89-90 [saying that *to his knowledge*, PTSC was under the sector level, and *to his knowledge*, prisoners coming from the Sector, they would report to the sector level, whereas if they were coming from the District, they would report to Ms. IM Chaem, but not saying how he knows].

⁵⁶⁴ Written Record of Investigative Action (CHAM Buor), 20 March 2013, **D119/28**, EN ERN 00894533 ["At the prison whenever a meeting would take place, only *Ta* Soeun would hold it and speak"]; Written Record of Interview of PHOUN Sunty, 19 March 2013, **D119/30**, A24 ["One day after he returned from the meeting, *Ta* Soeun called all the prisoners of about 300 persons to attend a meeting."]; Written Record of Confrontation (TUM Soeun), 3-4 December 2014, **D230**, EN ERN 01072611 [saying that he called a meeting when the Vietnamese troops arrived and ordered prisoners to go back from where they came from.]

TUM Soeun.⁵⁶⁵ Consistent, independent evidence shows that TUM Soeun had authority to receive prisoners,⁵⁶⁶ categorise them as serious or light offence prisoners,⁵⁶⁷ appoint them as guards⁵⁶⁸ issue an array of other instructions,⁵⁶⁹ determine whether prisoners should be released,⁵⁷⁰ and whether they should be killed.⁵⁷¹

153. On a daily basis, Sector 5 soldiers under the authority of TUM Soeun operated PTSC.⁵⁷² Soldiers were tasked with arresting and taking prisoners to the Security Centre,⁵⁷³ greeting

⁵⁶⁵ See, Written Record of Interview of KIM Yet, 30 March 2012, **D106/6**, A30; Written Record of Interview of SUM Sal, 31 March 2012, **D106/7**, A9; Written Record of Interview of PHOUN Sunt, 20 March 2013, **D119/30**, A24-25.

⁵⁶⁶ See, e.g., Written Record of Interview of THIB Samphat, 15 June 2013, **D119/49**, A43 [saying that TUM Soeun was waiting for him at PTSC when he arrived there]; Written Record of Interview of SUM Sal, 31 March 2012, **D106/7**, A9 [“I immediately reported to *Ta Soeun*”].

⁵⁶⁷ Written Record of Confrontation (TUM Soeun), 3-4 December 2014, **D230**, EN ERNs 01072597 [“I received prisoners ... Then I evaluated the category in which each prisoner would fit ... I evaluated whether or not they were really traitors”], 01072613 [“Sometimes, I was the one who decided to re-classify prisoners”].

⁵⁶⁸ Written Record of Confrontation, 3-4 December 2014 (TUM Soeun), **D230**, EN ERN 0107594 [“Some of them [the guards] were prisoners with minor offences whom I selected to be guards”]. See also, Written Record of Interview of PHOUN Sunt, 20 March 2013, **D119/30**, A24 [“When I told [TUM Soeun] that my name was Phoun Ty from Prasat, he said that I was a chief of all the prisoners here”].

⁵⁶⁹ See, e.g., Written Record of Interview of THIB Samphat, 15 June 2013, **D119/49**, A51 [“At first, *Ta Soeun* assigned me to grow banana trees and to flatten mounds of bamboos and wedge to get farming land. After working there a month, *Ta Soeun* ordered me to work closely with him. He assigned me to district rice bran to the swollen prisoners.”]; Written Record of Interview of IM Soeun, **D219/153**, A22 [“*Ta Soeun* assigned us to dig holes in which to grow bananas, clear glass, and clean up the place.”], A26 [saying that she was later on assigned to be a cook at PTSC].

⁵⁷⁰ Written Record of Confrontation (TUM Soeun), 3-4 December 2014, **D230**, EN ERNs 01072611 [“I called a meeting when the Vietnamese entered, and I told them [the prisoners at PTSC] to go back to where they had come from because I could no longer protect them.”], 01072612 [“I released them [prisoners] based on my own examination”]. See also, Written Record of Interview of SUM Sal, 31 March 2012, **D106/7**, A28 [“*Ta Soeun* allowed people to return to their villages” upon the arrival of the Vietnamese].

⁵⁷¹ Written Record of Confrontation (TUM Soeun), 3-4 December 2014, **D230**, EN ERN 01072622 [“If they wanted to kill someone, they had to receive the information from me”]. See also, Written Record of Interview of PHOUN Sunt, 20 March 2013, **D119/30**, A24 [stating that TUM Soeun “said I would be killed if there was any prisoner disappearing.”]; Written Record of Interview of THIB Samphat, 15 June 2013, **D119/49**, A62 [“*Ta Soeun* authorized the execution”].

⁵⁷² See, Written Record of Interview of PRANG Sal, 15 December 2014, **D219/127**, A40 [“I cannot estimate the number of people who died there because only the soldiers under *Ta Soeun*’s command would have known that”], A49 [“A number of soldiers slept near *Ta Soeun*, north of his quarters.”]; Written Record of Investigation Action (SAU Lang), 29 October 2015, **D219/579**, EN ERN 01166381 [saying that *Ta Soeun* was the chairman of PTSC which “was guarded by soldiers from Sector 5”].

⁵⁷³ See, e.g., Written Record of Interview of NOU Kham, 3 November 2015, **D219/583**, A35-36 [saying that there was only one guard to take prisoners to *Ta Poal*’s place but there were five soldiers with five rifles to take them to PTSC]; Written Record of Investigation Action (TEP Sreuy), 15 March 2013, **D119/25**, EN ERN 00894525 [“The arrests were made by the military, not by the local militia.”]; Written Record of Interview of THIB

them,⁵⁷⁴ guarding them,⁵⁷⁵ directly supervising their work,⁵⁷⁶ interrogating them,⁵⁷⁷ shackling and unshackling them,⁵⁷⁸ executing them,⁵⁷⁹ and ordering other prisoners to dig pits to bury bodies.⁵⁸⁰

154. In sum, there can be no doubt that PTSC was under the formal and effective authority of sector-level cadre TUM Soeun. In these circumstances, TUM Soeun's account concerning Ms. IM Chaem's responsibility over the Security Centre must be rejected as wholly self-serving and motivated by a clear hostile animus. In relying on this account without due regard for his status as an accomplice and without seeking reliable corroboration from the remainder of the evidence, the International Co-Prosecutor fails to exercise the caution

Samphat, 2 April 2012, **D106/8**, A14 ["[W]hen the prison chief came to [take] me away he came with two soldiers"], Q-A15 ["Q: When the prison chief and the two soldiers took you away, were you at Phnom Liep or at the Security Office? A15: It happened when I was at the Security Office."].

⁵⁷⁴ See, e.g., Written Record of Interview of NOU Kham, 3 November 2015, **D219/583**, A50 ["When we arrived at Phnum Troyoung Prison, a lot of Khmer Rouge soldiers carried guns here and there."]; Written Record of Interview of PHOUN Sunty, 1 December 2014, **D219/92**, A19-20 [saying that he saw ten armed soldiers dressed in black at the foot of Phnom Trayoung Mountain when he arrived in 1978].

⁵⁷⁵ See, e.g., Written Record of Interview of PRANG Sal, 15 December 2014, **D219/127**, A53 ["Every morning ... I saw four or five soldiers with weapons guarding [30 prisoners]"]; Written Record of Investigation Action (SAU Lang), 29 October 2015, **D219/579**, EN ERN 01166381 ["The prison was guarded by soldiers from Sector 5 and many of them were deployed at Trayoung Mountain"]; Written Record of Interview of BOU Tuok, 9 July 2015, **D219/400**, A86-87 [saying that there were about 20 armed soldiers guarding at PTSC]; Written Record of PHON Mon, 12 March 2013, **D119/19**, A27 ["[D]uring the day time, I was released to thresh rice, guarded by soldiers."].

⁵⁷⁶ See, e.g., Written Record of Interview of PHOUN Sunty, 20 March 2013, **D119/30**, A25 ["Each unit did not have a chief, but it was directly supervised by a soldier ... In the morning, after meeting, the soldier took them out to work."].

⁵⁷⁷ See, e.g., Civil Party Application of TOR Pinthang, 20 May 2013, **D5/1075**, EN ERN 01144959; Written Record of Interview of BOU Tuok, 9 July 2015, **D219/400**, A123-126 [saying he was interrogated five or six times by soldiers while at PTSC].

⁵⁷⁸ See, e.g., Written Record of Interview of PHOUN Sunty, 1 December 2014, **D219/92**, A31 ["Three soldiers came to remove the shackles from us."].

⁵⁷⁹ See, e.g., Civil Party Application of TOR Pinthang, 20 May 2013, **D5/1075**, EN ERN 01144959 [saying that soldiers took prisoners to be killed at Phnom Trayoung every night]; Written Record of Interview of THIB Samphat, 15 June 2013, **D119/49**, A62 [describing the execution of prisoners at PTSC shortly before the arrival of the Vietnamese: "Ta Soeun authorized the execution, and 30 soldiers killed those prisoners"].

⁵⁸⁰ See, e.g., Written Record of Interview of PHOUN Sunty, 1 December 2014, **D219/92**, A31 ["Three soldiers came to remove the shackles from us. Samun and I were used by those three soldiers to dig a large pit for burying those seven corpses"]; Written Record of Interview of THIB Samphat, 15 June 2013, **D119/49**, A60 ["Back then, the Vietnamese was approaching the place, so they wanted to get rid of all the prisoners. They ordered five people including me to dig that pit at midnight."], A62 [describing the execution of prisoners at PTSC shortly before the arrival of the Vietnamese: "Ta Soeun authorized the execution, and 30 soldiers killed those prisoners"].

necessary for the ascertainment of the truth. It is plain that the evidence does not establish that Ms. IM Chaem had the *de jure* or *de facto* authority alleged or any that would allow her to be considered “responsible for” PTSC or any of the crimes committed at that location.

ii. Ms. IM Chaem did not participate in crimes of sufficient gravity allegedly committed at Phnom Trayoung Security Centre

155. In the paragraphs below,⁵⁸¹ the Defence addresses those alleged crimes with which Ms. IM Chaem is charged in relation to PTSC and which the International Co-Prosecutor addressed in the Final Submission. The extravagant claims concerning torture and sexual abuse at PTSC⁵⁸² are outside of the scope of the charges against Ms. IM Chaem and consequently are not addressed in this Response. In responding, the Defence adopts Judge Bohlander’s cautious approach to the assessment of the evidence.⁵⁸³
156. The International Co-Prosecutor’s allegations against Ms. IM Chaem regarding PTSC are rooted in the assertion that she had responsibility over the Security Centre,⁵⁸⁴ which “expanded over time, imprisoning *thousands* of people throughout its period of operation”⁵⁸⁵ and at which the families of the *large number* of Northwest Zone cadres sent to S-21 were arrested and detained.⁵⁸⁶ From there, the International Co-Prosecutor concludes that *thousands* of prisoners “died due to starvation, illness, and overwork”,⁵⁸⁷ and that *thousands* were executed at PTSC.⁵⁸⁸ These unsubstantiated assertions will be addressed in turn below.

⁵⁸¹ Response, paras. 157-86.

⁵⁸² See, Final Submission, paras. 208-11.

⁵⁸³ See, Response, para. 31.

⁵⁸⁴ See, Final Submission, para. 196.

⁵⁸⁵ Final Submission, para. 200 (emphasis added).

⁵⁸⁶ See, Final Submission, para. 177.

⁵⁸⁷ See, Final Submission, para. 205.

⁵⁸⁸ See, Final Submission, para. 212.

Ms. IM Chaem’s alleged implication in the detention of thousands of prisoners at Phnom
Trayoung Security Centre

157. The International Co-Prosecutor claims that the evidence shows that Ms. IM Chaem intended to deprive individuals of their physical liberty⁵⁸⁹ and ordered the arrest and detention of *thousands* of prisoners at PTSC,⁵⁹⁰ including the family members of a *large number* of Northwest Zone cadres who were sent to S-21.⁵⁹¹ First, the International Prosecutor’s approach to assessing the number of prisoners at PTSC is at odds with any objective approach to the assessment of evidence, including that propounded by Judge Bohlander.⁵⁹² Second, as the evidence plainly shows, in her position as district secretary, Ms. IM Chaem did not have the *de jure* or *de facto* authority to order the detention of prisoners at PTSC.⁵⁹³
158. The International Co-Prosecutor’s approach to the 20 accounts that address the numbers of prisoners is a highly selective cherry pick: relying only upon the five most exaggerated accounts (out of the 20) to support the claim that *thousands* were detained at PTSC.⁵⁹⁴ 14 of the remaining accounts are plainly to be preferred: they suggest that there were between 100 to a maximum of 1,000 of prisoners.⁵⁹⁵

⁵⁸⁹ See, Final Submission, para. 467.

⁵⁹⁰ See, Final Submission, paras. 196, 199-200. See also, Final Submission, paras. 464-66.

⁵⁹¹ See, Final Submission, para. 177.

⁵⁹² See, *Case of AO An et al.*, 004/07-09-2009/ECCC/OCIJ, Decision on AO An’s Amended Fourth Request for Investigative Action, 17 October 2016, **D244/1**, paras. 24-26.

⁵⁹³ See, Response, paras. 162-68.

⁵⁹⁴ See, Final Submission, para. 200 (fn. 997), referring to Written Record of Interview of CHUM Chim, 20 January 2014, **D219/149**, A37; Written Record of Interview of DAN Tam, 20 May 2015, **D219/318**, A55; Written Record of Interview of IM Soeun, 23 January 2015, **D219/153**, A21; Written Record of Interview of HEM Soeun, 13 October 2013, **D219/567**, A79; Written Record of Interview of RIN Kheng, 16 June 2013, **D119/51**, A26.

⁵⁹⁵ Final Submission, para. 200 (fn. 997), referring to OCP Statement of YUOK Neam, 5 August 2008, **D1.3.11.69**, EN ERN 00210575 [“I estimate up to 1000, *not more than 1000.*” (emphasis added)]; Written Record of Interview of DENG Leap, 30 March 2015, **D219/252**, A31 [“I saw many detainees, *around 1,000 in total.*” (emphasis added)]; Written Record of Interview of NOU Kham, 3 November 2015, **D219/583**, A52 [“One prison cell had about 350 to 400 prisoners. In total, there were *about 500 to 1,000* prisoners.” (emphasis added)]; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/OCIJ, Transcript of proceedings (Chhit Yoeuk), 13 August 2015, **D219/494.1.7**, EN ERNs 01131284-85 [“While I was in charge of rice distribution, ... that

159. Instead of relying upon these 14 accounts, or explaining why these more measured accounts should be disregarded, the International Co-Prosecutor attempts to seek corroboration for their favoured five from evidence that is obviously not capable of offering even the slightest support. In particular, the International Co-Prosecutor relies upon a witness who provides evidence of a crime site that is outside of the scope of the charges⁵⁹⁶ and a witness who made it plain that he was not in fact detained at PTSC.⁵⁹⁷ The International Co-Prosecutor takes a similar approach to the claim that *families of a large number* of Northwest Zone cadres were arrested and detained at PTSC.⁵⁹⁸ Instead of

continued until the arrival of the Vietnamese, and if my recollection is right, there were *about 600 of them*" (emphasis added); Transcript of Interview of TUM Soeun, 29 March 2012, **D219/422.9**, EN ERN 01136964 ["The population living there, including my unit members and the newly sent people, might be *300-400 people*." (emphasis added)]; Written Record of Confrontation (TUM Soeun), 3-4 December 2014, **D230**, EN ERN 01072599 ["There were about five or six serious offence prisoners there. The minor offence prisoners came in with their families, and there were *about 500 of them*." (emphasis added)]; Written Record of Interview of LENG Voeng, 12 September 2014, **D119/159**, A49 ["There were *about 500* prisoners at Phnum Troyoung Mountain, and there were about 20 guards." (emphasis added)]; Written Record of Interview of UN Yeng, 18 December 2014, **D219/129** A16 ["There were *hundreds* [of prisoners working], but I do not know the exact number." (emphasis added)]; Written Record of Interview of ORM Huon, 27 May 2014, **D119/30**, A33 [referring to how many people worked there: "Hundreds."]; Written Record of Interview of KIM Yet, 30 March 2012, **D106/6**, A31 ["I can hardly estimate the exact number of prisoners; however, in general, at one point, there were some *200-300 prisoners*." (emphasis added)]; Written Record of Interview of KAO Phan, **D119/88**, 17 February 2014, A20 ["When I stayed there, there were *less than a hundred* prisoners. After I left, lorries transported many prisoners into the place, and they built houses for prisoners to stay in. I estimate that there were more than 100 to 200 prisoners." (emphasis added)]; SOAS/HRW Interview of KEUM Nov, 21 October 2005, **D1.3.11.20**, EN ERN 00211886 ["There were two categories of prisoners: light and serious. We were kept separate from the serious prisoners. There were *100+ light prisoners*, some whole families. ... I'm not sure how many serious prisoners there were, because we were kept separate from them." (emphasis added)]; Written Record of Interview of BOU Tuok, 9 July 2015, **D219/400**, A94-95 ["That hall was for the *70 serious crime prisoners*. There were many minor crime prisoners as well. ... *About 80*. I cannot estimate fully since the minor crime prisoners stayed far from the serious crime prisoners because they were afraid of confusion." (emphasis added)]; Written Record of Interview of PRANG Sal, 15 December 2014, **D219/127**, A32 ["I cannot estimate"], A52 ["I saw prisoners who had committed minor mistakes working in other teams: there were hundreds of them."].

⁵⁹⁶ See, Final Submission, para. 200 (fn. 997), referring to Written Record of Interview of LEM Phenh, 10 February 2015, **D219/174**, A58 [Witness worked in a village mobile unit in Preah Net Preah and was imprisoned at Chamkar Khnor: "I do not know the exact number, but when I reached there [Chamkar Khnor], there were about 400 to 500 prisoners."].

⁵⁹⁷ See, Final Submission, para. 200 (fn. 997), referring to Written Record of Interview of ORM Huon, 27 May 2014, **D119/130**, A33. *But see*, Written Record of Interview of ORM Huon, 27 May 2014, **D119/130**, A26-27 [saying that he was not detained at PTSC and only stayed close to the mountain].

⁵⁹⁸ The Defence notes, for example, that HANG Horn mentioned "Liem", the wife of a Northwest Zone cadre who was allegedly sent to PTSC. See, Written Record of Interview of HANG Horn, 11 February 2015, **D219/175**,

relevant or probative direct evidence from any detained family member, the Prosecution relies upon a further two witnesses who were not detained at PTSC.⁵⁹⁹

160. Moreover, if this latter assertion was reliable, the evidence might have been expected to have established that CHEAM Kin for example, who is the former wife of *Ta Val* (the Chairman of the Sector 5 Mobile Unit until he was sent to S-21 in June 1977)⁶⁰⁰ was amongst those family members of Northwest Zone cadres who had been arrested and detained at PTSC. Yet, the evidence does not establish that CHEAM Kin was ever sent to PTSC.⁶⁰¹ Moreover, she had not even heard of Ms. IM Chaem until *after* the collapse of the Democratic Kampuchea regime.⁶⁰²
161. A careful analysis of the eyewitness evidence establishes that the total number of detainees ranged from less than 100 to no more than 500 prisoners.⁶⁰³ TUM Soeun indicated that the “population living there, including [his] unit members and the newly sent people, might be 300-400 people.”⁶⁰⁴ Similarly, KIM Yet, who was assigned to count prisoners at PTSC on

A32. The Defence could not find her interview in Case File 004/1 and the International Co-Prosecutor never requested an investigative action in this regard.

⁵⁹⁹ See, Final Submission, para. 177 (fn. 897), referring to Written Record of Interview of HANG Horn, 11 February 2015, **D219/175**, A31 [not saying how he knows that family members of Northwest Zone cadres were sent to PTSC]; Written Record of Interview of LAT Suoy, 18 August 2014, **D119/144**, A37 [not providing evidence relevant to PTSC].

⁶⁰⁰ See, S-21 Execution Log, Uncatalogued Execution of 39 Prisoners, 6 March 1978, **D6.1.1128**, EN ERN 00193556.

⁶⁰¹ Written Record of Interview of CHEAM Kin, 13 February 2014, **D119/100**, A8, A23-24, A33 [saying that after her husband’s arrest, she was arrested and detained in a prison in Svay], A35-36 [saying that she never went to Phnum Lieb and did not know about PTSC].

⁶⁰² Written Record of Interview of CHEAM Kin, 13 February 2014, **D119/100**, A38 [“I neither knew nor heard of *Yeay Chaem* during the Khmer Rouge regime.”].

⁶⁰³ Written Record of Interview of KAO Phan, 17 February 2014, **D119/88**, A20 [KAO Phan transported rocks to the mountain and stayed at PTSC: “When I stayed there, there were *less than a hundred* prisoners. After I left ... I estimate that there were more than 100 to 200 prisoners.” (emphasis added)]; Written Record of Interview of BOU Tuok, 9 July 2015, **D219/400**, A76-77, A94-95 [BOU Tuok was a prisoner at PTSC and stated that there were 70 serious crime prisoners and 80 minor crime prisoners]; Written Record of Interview of PHOUN Sunt, 20 March 2013, **D119/30**, A24 [PHOUN Sunt was a prisoner later appointed to be a guard: “Ta Soeun called all the prisoners of about 300 persons to attend a meeting.”]; Written Record of Interview of LENG Voeng, 12 September 2014, **D119/159**, A49 [LENG Voeng was a prisoner for a month: “There were about 500 prisoners at Phnum Troyoung Mountain, and there were about 20 guards.”].

⁶⁰⁴ Transcript of Interview of TUM Soeun, 29 March 2012, **D219/422.9**, EN ERN 01136964.

one occasion and stayed for a year until the Vietnamese troops arrived,⁶⁰⁵ stated, “in general, at one point, there were some 200-300 prisoners.”⁶⁰⁶

162. In any event, contrary to the International Co-Prosecutor’s assertion,⁶⁰⁷ the evidence does not begin to establish that Ms. IM Chaem had *de jure* or *de facto* authority sufficient to order the detention of, or otherwise control, the prisoners at PTSC. MOUL Eng, the former Secretary of Bavel District in Sector 3 of the Northwest Zone,⁶⁰⁸ explained that, in regard to arrests, the same rule applied throughout the country:⁶⁰⁹ district secretaries did not have the power to arrest anyone in their district and had to report first to sector cadres.⁶¹⁰ According to him, they had “no rights to decide on such matters.”⁶¹¹
163. Even TUM Soeun admitted that he did not know if, in her capacity as a district secretary, Ms. IM Chaem was authorised to order an arrest or to transfer anyone to PTSC.⁶¹² The fact that numerous witnesses indicated that they had never seen Ms. IM Chaem ordering arrests, or did not know if she had this authority, is highly corroborative of the correctness of these exculpatory accounts.⁶¹³

⁶⁰⁵ Written Record of Interview of KIM Yet, 30 March 2012, **D106/6**, A31; Written Record of Interview of KIM Yet, 1 December 2014, **D219/94** A44-49.

⁶⁰⁶ Written Record of Interview of KIM Yet, 30 March 2012, **D106/6**, A31 [“I stayed there until the Vietnamese came. It was approximately one year. I can hardly estimate the exact number of prisoners; however, in general, at one point, there were some 200-300 prisoners.”]; Written Record of Interview of KIM Yet, 1 December 2014, **D219/94**, A76 [confirms previous answer].

⁶⁰⁷ *See*, Final Submission, paras. 141, 144, 177, 200.

⁶⁰⁸ Written Record of Interview of MOUL Eng, 4-5 May 2015, **D219/294**, A36.

⁶⁰⁹ Written Record of Interview of MOUL Eng, 4-5 May 2015, **D219/294**, A196.

⁶¹⁰ Written Record of Interview of MOUL Eng, 4-5 May 2015, **D219/294**, A194-96. *See also*, Response, paras. 139-42.

⁶¹¹ Written Record of Interview of MOUL Eng, 4-5 May 2015, **D219/294**, A198.

⁶¹² Written Record of Interview of TUM Soeun, 16-17 October 2013, **D119/65**, A202.

⁶¹³ *See, e.g.*, Written Record of Interview of SUM Sal, 2 December 2014, **D219/103**, A68 [SUM Sal, a guard at PTSC, stated that he never heard of Ms. IM Chaem ordering prisoners to be sent to PTSC]; Written Record of Interview of CHHIT Yoeuk, 26 April 2013, **D119/33**, A28 [CHHIT Yoeuk, who ran the Economic Affairs of Sector 5 and one of the most knowledgeable witnesses on the administrative structure, has stated that he did not know if Ms. IM Chaem had the right and authority to order an arrest]; Written Record of Interview of TOR Pinthang, 2 September 2011, **D101/1.2**, EN ERN 00751069 [TOR Pinthang, who was arrested in approximately 1978 and sent to PTSC for six months, never saw Ms. IM Chaem at PTSC and never heard of a case in which Ms. IM Chaem ordered an arrest or a killing]; Written Record of Interview of ORM Houn, 27 May 2014, **D119/130**, A36 [ORM Huon, who was staying close to Phnom Trayoung, does not know who ordered the arrest and dispatch of people to PTSC], A65 [and never heard of Ms. IM Chaem when she was at Phnom Trayoung];

164. Further, even if the evidence established or reliably suggested that Ms. IM Chaem had been entitled to make arrests, the strict hierarchical structure of the Democratic Kampuchea would have prevented her from ordering the arrests of cadres operating at echelons above her own.⁶¹⁴ As a district secretary, Ms. IM Chaem would only have been entitled to order the arrests of cadres at a similar or lower level than her own district echelon. Again, as a cogent rebuttal of the International Co-Prosecutor's overall claims concerning Ms. IM Chaem's alleged authority or criminality, the evidence fails to identify a single person who worked at a similar or lower level who was subject to arrest. For example, throughout the Democratic Kampuchea regime, none of the following cadres, all occupying positions at a similar level, or below that of Ms. IM Chaem, were ever arrested: TOEK Suong, the Chairman of the Phnom Lieb Commune militia;⁶¹⁵ Sokh, the Chairman of the Phnom Lieb Village Committee;⁶¹⁶ CHHIM Phan, a member of the Preah Net Preah Commune Committee;⁶¹⁷ PUM Kho, a member of the Preah Net Preah District Committee.⁶¹⁸

Written Record of Interview of SAUR Chansareth, 13-14 August 2015, **D219/455**, A84 [SAUR Chansareth who arrested people and took them to Phnum Lieb confirmed that he does not where the order to arrest came from].

⁶¹⁴ *See, e.g.*, Written Record of Interview of CHHIT Yoeuk, 26 April 2013, **D119/33**, A13 [“[A]n arrest would normally be made from higher level to the lower one, i.e. from the Zone to the Sector and then to the district level. An arrest may also be made at a commune level.”]; Written Record of Interview of CHUM Kan, 26-27 March 2014, **D119/110**, A84 [“My understanding about the command structure is that arrests or any orders were in writing from the Zone level. The Zone level sent the letters to the Sectors, the Sectors sent them to the districts, the districts forwarded them to the communes, and the communes forwarded them to the villages or cooperatives requesting the village or cooperative chairpersons to look for those they wanted to arrest.”]; Written Record of Interview of CHHIM Phan, 13 April 2013, **D119/32**, A39 [“When they came to arrest people, I heard that they were from the upper echelon, but I did not know what level of the upper echelon they were from.”]. *See, more generally*, Case 002/01 Trial Judgement, **E313**, para. 270.

⁶¹⁵ *See*, Written Record of Interview of TOEK Suong, 30 October 2015, **D219/575**, A3 [saying that upon the arrival of the Southwest Zone cadres, he was removed from his position and worked in rice fields instead].

⁶¹⁶ *See*, Written Record of Interview of PUM Kho, 6-7 October 2014, **D219/23**, A77-80 [witness was a member of the Preah Net Preah Commune Committee throughout the Democratic Kampuchea regime and identifies Sokh, a cadre from the Northwest Zone who was the chief of Phnom Lieb Village, who was not arrested].

⁶¹⁷ *See*, Written Record of Interview of CHHIM Phan, 13 April 2013, **D119/32**, A27 [witness was a member of the Preah Net Preah Commune Committee and says that both he and PUM Kho were “still alive after the arrival of the Southwest Zone group”].

⁶¹⁸ *See*, Written Record of Interview of PUM Kho, 6-7 October 2014, **D219/23**, A33, A45, A56 [saying that he was an assistant to the Preah Net Preah District Committee from 1975 and after the Southwest cadres arrived he was assigned to monitor workers in the district]; Written Record of Interview of CHHIM Phan, 13 April 2013, **D119/32**, A27 [witness was a member of the Preah Net Preah Commune Committee and says that both he and PUM Kho were “still alive after the arrival of the Southwest Zone group”].

165. The only evidence linking Ms. IM Chaem to an order to arrest is that provided by THIB Samphat who claims to have seen a letter purportedly bearing a red stamp and Ms. IM Chaem's signature that was allegedly shown to the witness by TUM Soeun upon his arrival at PTSC.⁶¹⁹ No such letter was ever placed on Case File 004/1. KIM Yet, who was arrested along with THIB Samphat, has no recollection of the incident involving the letter.⁶²⁰ In contradistinction to THIB Samphat's evidence, TUM Soeun indicated that prisoners arriving at PTSC did not receive letters of arrest from Ms. IM Chaem.⁶²¹ TUM Soeun went further: letters originating from Ms. IM Chaem did not bear her signature⁶²² and were about requests for supplies.⁶²³
166. Even if THIB Samphat's uncorroborated account might provide a modicum of serious evidence, there is nothing to support it. Indeed, his reference to a red stamp on the letter is persuasive evidence that the order was made by a Sector 5 cadre, rather than by Ms. IM Chaem. UL Hoeun, who worked in Tram Kak District in the Southwest Zone⁶²⁴ indicated that arrest orders bearing red annotations came from the sector echelon,⁶²⁵ with the district level only playing a transmission role rather than having any decision-making power:
- For instance, the province sent reports with the names of the people to be arrested annotated in red ink to districts, and then the districts would send the reports to the communes. Then the communes would arrest the people whose names were annotated in red ink.⁶²⁶
167. CHUM Kan, the former Secretary of Phnum Lieb Commune,⁶²⁷ confirmed that, while he received arrest orders through Ms. IM Chaem, they did not bear her signature but did bear that of one of the sector-level cadres.⁶²⁸

⁶¹⁹ Written Record of Interview of THIB Samphat, 15 June 2013, **D119/49**, A44.

⁶²⁰ Written Record of Interview of KIM Yet, 1 December 2014, **D219/94**, A15.

⁶²¹ Written Record of Interview of TUM Soeun, 16-17 October 2013, **D119/65**, A187. *See also*, Written Record of Interview RIN Kheng, 16 June 2013, **D119/51**, Q-A18 ["Q: When they came to arrest you and your mother, did they have an arrest warrant? A18: No."].

⁶²² Written Record of Confrontation (TUM Soeun), 3-4 December 2014, **D230**, EN ERN 01072598.

⁶²³ Written Record of Confrontation (TUM Soeun), 3-4 December 2014, **D230**, EN ERN 01072598-99.

⁶²⁴ Written Record of Interview of UL Hoeun, 13 October 2014, **D219/34**, A5.

⁶²⁵ Written Record of Interview of UL Hoeun, 13 October 2014, **D219/34**, A24, A26.

⁶²⁶ Written Record of Interview of UL Hoeun, 13 October 2014, **D219/34**, A24.

⁶²⁷ Written Record of Interview of CHUM Kan, 26-27 March 2014, **D119/110**, A25, A29, A42.

⁶²⁸ Written Record of Interview of CHUM Kan, 26-27 March 2014, **D119/110**, A76.

168. Finally, if after an examination of the totality of this evidence, any doubt about the unreliability of THIB Samphat remains, it must be noted: it is only evidence that on one occasion Ms. IM Chaem sent a prisoner to PTSC. This does not begin to establish a pattern or otherwise suggest real authority or a course of conduct relevant to the “most responsible” determination. On its own, it is incapable of amounting to probative evidence of systematic conduct. It cannot substitute for relevant or probative evidence of crime and is incapable of demonstrating that Ms. IM Chaem supervised, or was proximate to, a system that sent prisoners to PTSC.

Ms. IM Chaem’s alleged implication in the death of thousands of prisoners due to starvation, illness, and overwork at Phnom Trayoung Security Centre

169. On the basis of the erroneous claim that PTSC contained *thousands* of detainees,⁶²⁹ the International Co-Prosecutor submits that *thousands* of prisoners “died due to starvation, illness, and overwork”⁶³⁰ and seeks to place responsibility for these deaths onto Ms. IM Chaem.⁶³¹ First, the International Co-Prosecutor fails to cite any reliable evidence in support of these claims.⁶³² Second, the International Co-Prosecutor fails to establish that Ms. IM Chaem played any role in relation to those who allegedly died.⁶³³

170. At the highest, the International Co-Prosecutor relies upon a mere handful of accounts that contain any indication of the numbers of prisoners who are alleged to have died. In the main, the International Co-Prosecutor relies upon witnesses who do not provide any

⁶²⁹ See, Final Submission, paras. 196, 199-200. Cf. Response, paras. 157-61.

⁶³⁰ See, Final Submission, para. 205. See also, Final Submission paras. 453, 465-66, 484, 495.

⁶³¹ See, Final Submission, paras. 196, 198, 205.

⁶³² See, Response, paras. 170-72.

⁶³³ See, Response, para. 173.

specific figure relevant to the alleged death toll⁶³⁴ or otherwise indicate a lack of relevant knowledge.⁶³⁵

171. Those that do indicate numbers include THIB Samphat, LENG Voeng, and PHUONG Phai.⁶³⁶ The two former witnesses indicated that an average of two prisoners died of starvation per day,⁶³⁷ while the latter, without indicating the cause of death, noted that three to five prisoners died per day.⁶³⁸ A straightforward calculation establishes that their accounts do not support the International Co-Prosecutor's extravagant case. THIB Samphat's estimate relates to his up-to-four months stay at PTSC⁶³⁹ and suggests a maximum of 240. Further, LENG Voeng spent less than one month at PTSC,⁶⁴⁰ equating

⁶³⁴ Final Submission, para. 205 (fn. 1043), *referring to* Written Record of Interview of SUM Sal, 31 March 2012, **D106/7**, A26 ["What I can recollect was that the prisoners died due to overwork and starvation."]; DC-Cam Interview of SUM Sal, 24 September 2011, **D123/1/1.67**, EN ERN 00945539 ["Q: Did you see people die at Phnom Troyaung? A: Yes. Some of them died by disease and starvation."]; Written Record of Interview of SUM Sal, 2 December 2014, **D219/103**, A44-46; Written Record of Interview of DAN Tam, 20 May 2015, **D219/318**, A64; Written Record of Interview of ORM Huon, 27 May 2014, **D119/130**, A47; Civil Party Application of ORM Mok, 16 August 2009, **D5/1202**, EN ERN 01143628.

⁶³⁵ *See*, Final Submission, para. 205 (fn. 1043), *referring to* Written Record of Interview of SUM Sal, 2 December 2014, **D219/103**, A44-46 [At A46, witness says: "I do not know about the number of prisoners who died."].

⁶³⁶ *See*, Final Submission, para. 205 (fn. 1043), *referring to* Written Record of Interview of THIB Samphat, 15 June 2013, **D119/49**, A57; Written Record of Interview of LENG Voeng, 18 March 2015, **D219/230**, A21-22; Written Record of Interview of PHUONG Phai, 27 December 2013, **D5/998**, EN ERN 01190851. *Cf.* *Case of AO An et al.*, 004/07-09-2009-ECCC/OCIJ, Decision on AO An's Amended Fourth Request for Investigative Action, 17 October 2016, **D244/1**, para 26 ["In light of the effect of the principle of *in dubio pro reo* I will use only the lower count established on the evidence and not the average between that and the maximum count when determining victim numbers for the purposes and in the context of the Closing Order."].

⁶³⁷ *See*, Written Record of Interview of THIB Samphat, 15 June 2013, **D119/49**, A57 ["An average of two prisoners died of starvation per day, but I do not know the number of people who were killed."]; Written Record of Interview of LENG Voeng, 18 March 2015, **D219/230**, A21 ["I witnessed the prisoners who died in the warehouse being taken out. Prisoners died each day in the warehouse. Two or three of them died a day."], Q-A22 ["Q: Did they die from torture, starvation, or forced labour? A22: Most of them died of starvation."].

⁶³⁸ *See*, Civil Party Application of PHUONG Phai, 27 December 2013, **D5/998**, EN ERN 01190851 ["Each day, I saw between three and five people dying."].

⁶³⁹ Written Record of Interview of THIB Samphat, 2 April 2012, **D106/8**, Q-A22 ["Q: When were you sent to that Security Office? Do you remember? A22: I don't remember clearly. But I simply recall that I had been there about four months before the arrival of Vietnamese troops."]. *See*, Written Record of Interview of THIB Samphat, 15 June 2013, **D119/49**, A33 ["I was imprisoned from early August 1978 until the arrival of the Vietnamese army."].

⁶⁴⁰ Written Record of Interview of LENG Voeng, 12 September 2014, **D119/159**, Q-A46 ["Q: How long were you detained in Phnum Troyoung Mountain Security Office? A46: I was detained there for three days short of one month ... One week after they released us from Phnum Troyoung Mountain, the Khmer Rouge regime fell."].

his estimate to a figure of less than 60.⁶⁴¹ In other words, the logic of their accounts, if accepted, would suggest that a maximum of a thousand prisoners died over the relevant period.

172. Similarly, PHUONG Phai's estimate of three deaths per day would equate to around a thousand deaths throughout the period from the beginning of 1978 until the fall of the Democratic Kampuchea regime. Whilst these numbers still represent many a personal tragedy, they expose the International Co-Prosecutor's profligate interpretation of the evidence and the lack of support for the flamboyant claims now being advanced against Ms. IM Chaem.
173. As concerns Ms. IM Chaem's alleged responsibility for these deaths or any crimes arising, the evidence shows that the only relationship Ms. IM Chaem had with the Sector 5 Security Centre or its Chairman was that she was enjoined to provide food *at the request* of TUM Soeun.⁶⁴² MI Tal, a rice and vegetable carrier during the Democratic Kampuchea regime⁶⁴³ confirmed that the district-level sent food to PTSC.⁶⁴⁴
174. In sum, the evidence clearly shows that Ms. IM Chaem was concerned with food production only. TUM Soeun himself acknowledged this fact.⁶⁴⁵ Whilst some witnesses suggest that prisoners died from starvation, illness, or overwork at PTSC,⁶⁴⁶ the existence of a link between Ms. IM Chaem and the food supplies sent to PTSC at the request of TUM

⁶⁴¹ Cf. *Case of AO An et al.*, 004/07-09-2009-ECCC/OCIJ, Decision on AO An's Amended Fourth Request for Investigative Action, 17 October 2016, **D244/1**, para 26 ["In light of the effect of the principle of *in dubio pro reo* I will use only the lower count established on the evidence and not the average between that and the maximum count when determining victim numbers for the purposes and in the context of the Closing Order."].

⁶⁴² Written Record of Confrontation (TUM Soeun), 3-4 December 2014, **D230**, EN ERNs 01072598-99 ["[H]er letters instructed me to report the number of forces, and request for materials and food ... She also advised us not to eat more than the people, and not to provide more food rations than other places ... I requested *Yeay Chaem* for food"], 01072622 ["I told *Yeay Chaem* that I needed sufficient food for them to eat so that they would have energy to work and she agreed."]; Written Record of Interview of TUM Soeun, 2 December 2014, **D219/102**, A47 ["After the list of names was made, I sent it to *Yeay Chaem* to request rice for them. In fact, the name list did not contain the people's names. It only detailed the total number of people."].

⁶⁴³ Written Record of Interview of MI Tal, 2 April 2015, **D219/256**, A20.

⁶⁴⁴ Written Record of Interview of MI Tal, 2 April 2015, **D219/256**, A22 ["I never transported rice and vegetables to that place. The district sent food directly to Phnom Troyaung."].

⁶⁴⁵ Transcript of Interview of TUM Soeun, 29 March 2012, **D219/422.9**, EN ERN 01136968 ["She did not say anything about my work. She only addressed our attention to farming, protecting our cultivated crops, digging canals to irrigate rice fields and helping the people."].

⁶⁴⁶ See, Response, paras. 170-72.

Soeun is incapable of establishing any chain of causation to crime; least of all one that demonstrates that Ms. IM Chaem instituted or implemented or supervised or was involved in any way in a deliberate policy of killing prisoners. To the contrary, the deaths were likely to be the result of more than two years of sustained agricultural difficulties in the District.⁶⁴⁷

Ms. IM Chaem's alleged implication in the killings of thousands of prisoners at Phnom
Trayoung Security Centre

175. The International Co-Prosecutor describes daily executions⁶⁴⁸ and argues that *thousands* were executed at PTSC on the orders of Ms. IM Chaem⁶⁴⁹ and that she significantly contributed to the killings of *countless* civilians.⁶⁵⁰ The evidence relied upon by the International Co-Prosecutor is premised on the most obviously flawed and unreliable hearsay accounts.
176. In regard to the alleged executions, TUM Soeun stated that there were no killings at PTSC.⁶⁵¹ Consistent with his status as an accomplice, his testimony must be approached with due caution. However, in this instance, when read in light of the presumption of innocence and in light of other corroborative evidence, it may be accepted.
177. At the highest, the International Co-Prosecutor relies upon four authorities, two relating to interviews of the same witness, containing figures on executions at PTSC. These include a report prepared in 1984 by the Preah Net Preah Office of Propaganda, and the accounts of PRANG Sal and PHOUN Sunty.⁶⁵² These authorities will be assessed in turn below.
178. As the International Co-Prosecutor is aware, the report from the Preah Net Preah District Propaganda Office prepared in 1984 stating “Phnom Trayoung - Beaten and Killed - 20

⁶⁴⁷ See, Response, para. 123.

⁶⁴⁸ See, Final Submission, paras. 212-13.

⁶⁴⁹ See, Final Submission, para. 212.

⁶⁵⁰ See, Final Submission, paras. 452, 454, 456, 459.

⁶⁵¹ Written Record of Interview of TUM Soeun, 16-17 October 2013, **D119/65**, A191-93, A217.

⁶⁵² See, Final Submission, para. 212 (fn. 1070), *referring to* Preah Net Preah District Propaganda Office Report on the Lists of Ancient Temples, Shrines and Artists, 28 June 1984, **D119/50.2**, EN ERN 00938421; Written Record of Interview of PRANG Sal, 15 December 2014, **D219/127**, A54; Written Record of Interview of PHOUN Sunty, 20 March 2013, **D119/30**, A31; Written Record of Interview of PHOUN Sunty, 1 December 2014, **D219/92**, A48.

000”⁶⁵³ is uncorroborated and only tangentially relevant to PTSC. The authors of the report were assigned to collect statistics of the victims *in the District*.⁶⁵⁴ Further, no exhumations were conducted at PTSC that might have provided a degree of specification.⁶⁵⁵ Contrary to the International Co-Prosecutor’s own strategy, one of the contributors to the report was willing to approach its contents with a degree of caution: admitting that due to the manner in which the figures were obtained, the numbers “might not be of [sic] the reality”⁶⁵⁶ and that “many victims were buried in their o[w]n villages and did not belong to any of the crime sites”⁶⁵⁷ identified in the report.

179. The International Co-Prosecutor’s lack of caution is also evident in relation to PRANG Sal, who was a guard at PTSC. The International Co-Prosecutor relies upon this witness who estimated that 5,000 to 10,000 prisoners died at PTSC.⁶⁵⁸ This evidence is highly unsatisfactory. It is plain that the witness does not have any reliable evidence on the relevant issues. First, the witness did not observe a single execution.⁶⁵⁹ He later admitted that he could not estimate the death toll because “only the soldiers under *Ta Soeun*’s command would have known that.”⁶⁶⁰ Second, the witness suggested that the majority of the prisoners died of sickness and insufficient food, or “*maybe* they were killed by the

⁶⁵³ Preah Netr Preah District Propaganda Office Report on the Lists of Ancient Temples, Shrines and Artists, 28 June 1984, **D119/50.2**, EN ERNs 00938416 [“the district’s propaganda cadres have conducted onsite searches and examinations in each commune to establish the actual statistics of ancient temples, shrines and artists and provided figures”], 00938421.

⁶⁵⁴ Written Record of Investigation Action (CHHAY Thnam), 21 January 2015, **D219/155**, EN ERN 01058773 [“[T]he current chief of the Preah Net Preah District Council Group ... explained that he was a former member of the District Youth Group who was assigned to collect all the statistics of the victims for the Preah Net Preah District that one can read on the 28 June 1984 Report.”].

⁶⁵⁵ Written Record of Investigation Action (CHHAY Thnam), 21 January 2015, **D219/155**, EN ERN 01058773 [“[T]he gathering of the number of victims started in 1980, by going from one village to another, in each Commune within the District. Doing so, the Group members met each single family living in those villages. Those statistics on number of victims were only obtained by asking villagers for their missing ones and not by doing any exhumations at the sites identified in the Report.”].

⁶⁵⁶ Written Record of Investigation Action (CHHAY Thnam), 21 January 2015, **D219/155**, EN ERN 01058773.

⁶⁵⁷ Written Record of Investigation Action (CHHAY Thnam), 21 January 2015, **D219/155**, EN ERN 01058773.

⁶⁵⁸ Final Submission, para. 212 (fn. 1070), *referring to* Written Record of Interview of PRANG Sal, 15 December 2014, **D219/127**, A54.

⁶⁵⁹ Written Record of Interview of PRANG Sal, 15 December 2014, **D219/127**, A39 [“As for me personally, I knew Phnum Troyoung Prison was a place to refashion prisoners, and when prisoners had been tempered two or three times and still refused to be reformed, they were taken to be killed. This was only my assumption because I never witnessed killings at Phnum Troyoung.”].

⁶⁶⁰ Written Record of Interview of PRANG Sal, 15 December 2014, **D219/127**, A40.

soldiers, but [he] *did not know* the number of persons killed by the soldiers.”⁶⁶¹ It is not surprising that the International Co-Prosecutor is unable to disentangle this evidence. However, it is surprising that any reliance whatsoever is placed upon it in the Final Submission.

180. The International Co-Prosecutor’s strategy is further exposed in relation to the evidence of PHOUN Santy, a prisoner promoted by TUM Soeun to be a chief at PTSC.⁶⁶² He was relied upon for his assertion that 30 to 50 prisoners were executed daily at the Security Centre; therefore “tens of thousands” were killed there.⁶⁶³ Surprisingly, given this vast and terrible count, PHOUN Santy admits to have only ever witnessed one execution involving seven prisoners.⁶⁶⁴ However, this might (in part) be explained by the fact that PHOUN Santy did not in fact state that 30 to 50 prisoners were executed. Rather, he stated that *some of that total* was executed.⁶⁶⁵ His lack of serious or corroborated evidence might be explained by its source: his conclusion was based on the information given to him by PRANG Sal⁶⁶⁶—a textbook case of the unreliability of hearsay based upon hearsay.
181. The other accounts relied upon for general support by the International Co-Prosecutor also fall well short of supporting the claim that *thousands* were executed, instead indicating a clear lack of knowledge⁶⁶⁷ that demonstrates that far from being a regular occurrence, executions were a rare occurrence.⁶⁶⁸ In light of these obvious and inconvenient

⁶⁶¹ Written Record of Interview of PRANG Sal, 15 December 2014, **D219/127**, A54 (emphasis added).

⁶⁶² Written Record of Interview of PHOUN Santy, 20 March 2013, **D119/30**, A24.

⁶⁶³ See, Final Submission, para. 212 (fn. 1070), *referring to* Written Record of Interview of PHOUN Santy, 20 March 2013, **D119/30**, A31; Written Record of Interview PHOUN Santy, 1 December 2014, **D219/92**, A48.

⁶⁶⁴ Written Record of Interview of PHOUN Santy, 20 March 2013, **D119/30**, A20-21 [saying that he witnessed the killing of seven persons].

⁶⁶⁵ Written Record of Interview of PHOUN Santy, 1 December 2014, **D219/92**, A50 [“As far as I noticed, some of that total died of illness, starvation, overwork, and killing. I remember I buried two people who died of illnesses when they were there.”].

⁶⁶⁶ See, Written Record of Interview of PHOUN Santy, 20 March 2013, **D119/30**, A31; Written Record of Interview PHOUN Santy, 1 December 2014, **D219/92**, A48; Written Record of Confrontation (PHOUN Santy), 4 December 2014, **D231**, EN ERN 01056932 [saying that SUM Sal, who he was confronted with, was not the guard who told him the information, but that it was another Sal, also a guard at PTSC, who is short].

⁶⁶⁷ See, Final Submission, para. 212 (fn. 1070), *referring to* Written Record of Interview of KIM Yet, 1 December 2014, **D219/94**, A60; Written Record of Interview of KIM Yet, 13 March 2012, **D106/6**, A16.

⁶⁶⁸ See, Final Submission, para. 212 (fn. 1070), *referring to* Written Record of Interview of BOU Tuok, 9 July 2015, **D219/400**, A69; Written Record of Interview of DENG Leap, 30 March 2015, **D219/252**, A31; Written Record of Interview of THIB Samphat, 15 June 2013, **D119/49**, A58-59.

inferences, the International Co-Prosecutor falls back once again on cherry picking. KIM Yet did state that he witnessed “many people being taken to be killed”⁶⁶⁹ and initially stated that killings occurred weekly.⁶⁷⁰ However, he later explained that it happened only once⁶⁷¹ and admitted that he did not witness any killings first-hand.⁶⁷² BOU Tuok did say that “[t]hey killed until they had completely cleared out the prison. When the prison was cleared out, they filled it again with new prisoners.”⁶⁷³ However, he clarified, in the same interview, that he only ever witnessed first-hand the executions of two persons.⁶⁷⁴ While BOU Tuok claimed to have witnessed prisoners from the area disappearing every day,⁶⁷⁵ he also accepted that he did not know what happened to them and confirmed that his claim, that soldiers had executed the prisoners, was a mere assumption.⁶⁷⁶

182. Further, DENG Leap did claim that sometimes prisoners were tied up and killed at night, (even though she admitted to not knowing how many).⁶⁷⁷ However, the witness also stated that she witnessed “one or two cases where weak detainees who could not continue their work were killed.”⁶⁷⁸ The same witness indicated that among the 30 detainees who were sent to PTSC with her, all survived.⁶⁷⁹ Similarly, THIB Samphat, who was relied upon for

⁶⁶⁹ See, Final Submission, para. 212 (fn. 1070), *referring to* Written Record of Interview of KIM Yet, 13 March 2012, **D106/6**, A16.

⁶⁷⁰ See, Written Record of Interview of KIM Yet, 13 March 2012, **D106/6**, A31.

⁶⁷¹ Written Record of Interview of KIM Yet, 1 December 2014, **D219/94**, A70.

⁶⁷² Written Record of Interview of KIM Yet, 1 December 2014, **D219/94**, A60.

⁶⁷³ See, Final Submission, para. 212 (fn. 1070), *referring to* Written Record of Interview of BOU Tuok, 9 July 2015, **D219/400**, A69.

⁶⁷⁴ Written Record of Interview of BOU Tuok, 9 July 2015, **D219/400**, A98.

⁶⁷⁵ Written Record of Interview of BOU Tuok, 9 July 2015, **D219/400**, A108-20.

⁶⁷⁶ Written Record of Interview of BOU Tuok, 9 July 2015, **D219/400**, A118-20.

⁶⁷⁷ See, Final Submission, para. 212 (fn. 1070), *referring to* Written Record of Interview of DENG Leap, 30 March 2015, **D219/252**, A31.

⁶⁷⁸ Written Record of Interview of DENG Leap, 30 March 2015, **D219/252**, A31 [“... My team was assigned to grow some plants and watermelon. Each person was given a scoop of rice porridge per meal. Those who were too weak or too exhausted to continue working were killed by the militiamen. They would be beaten with the wooden sticks or the rifle butts. I saw a great number of such cases first-hand. I did not witness them daily. I usually saw it happening in the evenings. I saw one or two cases where weak detainees who could not continue their work were killed.”].

⁶⁷⁹ See, Written Record of Interview of DENG Leap, 30 March 2015, **D219/252**, A44-45.

his assertion that killings occurred every night, also stated that did not know how many were executed⁶⁸⁰ and had only ever witnessed one such occurrence.⁶⁸¹

183. In conclusion, rather than resting on relevant and probative evidence, the International Co-Prosecutor's case rests upon the selective use of incomplete and hearsay testimonies that are incapable of supporting serious allegations of crime. A careful analysis of the direct evidence suggests that executions were rare and occurred in the short period of time before the Vietnamese arrived. Despite major discrepancies in witnesses' recollection, the highest figure given in relation to killings at PTSC on any single occasion is that of 90 persons killed by soldiers at a time when the Vietnamese army was approaching;⁶⁸² an event the International Co-Prosecutor acknowledged occurred as a consequence of an order by TUM Soeun.⁶⁸³ Whilst of course, 90 killings is a terrible crime, when seen in light of the intention of those who defined the "most responsible" test, it cannot be considered as possessing serious or corroborative probative force.
184. The International Co-Prosecutor's approach is designed to obscure the fragility of the incriminatory evidence directly connecting Ms. IM Chaem to serious crime. Despite the International Co-Prosecutor's general claim that Ms. IM Chaem ordered executions at PTSC,⁶⁸⁴ the evidence taken at its highest is only capable of linking Ms. IM Chaem to the alleged execution of *four* prisoners.⁶⁸⁵ Whilst this is not accepted as truth, it is instructive to examine this single account and the motivation described. Even when describing the event, TUM Soeun explained that Ms. IM Chaem ordered him to execute the prisoners

⁶⁸⁰ See, Final Submission, para. 212 (fn. 1070), referring to Written Record of Interview of THIB Samphat, 15 June 2013, **D119/49**, A58-59.

⁶⁸¹ Written Record of Interview of THIB Samphat, 15 June 2013, **D119/49**, A60, Q-A63-64 [describing the killing of 90 prisoners by soldiers].

⁶⁸² Written Record of Interview of THIB Samphat, 15 June 2013, **D119/49**, A60, Q-A63-64.

⁶⁸³ Final Submission, para. 215. See also, Written Record of Interview of THIB Samphat, 15 June 2013, **D119/49**, A62.

⁶⁸⁴ See, Final Submission, para. 212.

⁶⁸⁵ See, Final Submission, para. 212 ["For instance, Im Chaem ordered Tum Soeun to execute four prisoners who had been badly tortured."].

because they had been badly tortured prior to entering PTSC,⁶⁸⁶ rendering their condition too serious to be treated.⁶⁸⁷

185. In conclusion, concerning PTSC, the evidence provides no support for the proposition that Ms. IM Chaem could be most responsible for the crimes in that location or that the evidence amounts to serious or corroborative evidence in support of the claim that she falls into the category of those overall “most responsible”. Rather than considering the two cumulative criteria in relation to the totality of the evidence with a view to the ascertainment of the truth, the International Co-Prosecutor engages in the most subjective and selective analysis—a strategy that often involves little more than selecting the most exaggerated incriminatory evidence and attributing it to Ms. IM Chaem through rumour and speculation.
186. A reasonable analysis of the evidence shows that Ms. IM Chaem was a district-level cadre who did not exercise a *de jure* or *de facto* authority over Chairman TUM Soeun or any of the PTSC’s operations controlled by him or the upper echelon. Relevant and reliable evidence indicates that the gravity of the crimes allegedly committed at PTSC was relatively low and in any event substantially less than alleged by the International Co-Prosecutor. The evidence indicates that Ms. IM Chaem was concerned with food production only and that her sole role in relation to PTSC consisted in providing food supplies at the request of Chairman TUM Soeun, based on lists he prepared. Ms. IM Chaem’s role as food supplier was remote from any crimes committed at PTSC. This role cannot amount to serious, corroborative, or otherwise probative evidence of responsibility for any serious crimes or any associated “most responsible” determination.

⁶⁸⁶ See, Final Submission, para. 212 (fn. 1073), referring to Written Record of Confrontation (TUM Soeun), 3-4 December 2014, **D230**, EN ERN 01072613 [“I remember that four prisoners had been tortured before being sent to Phnum Troyoung Security Office. ... Their condition was serious and could not be treated. *Yeay* Chaem ordered me to kill those four prisoners. I ordered the guards to kill them.”].

⁶⁸⁷ Written Record of Confrontation (TUM Soeun), 3-4 December 2014, **D230**, EN ERN 01072613 [“I remember that four prisoners had been tortured before being sent to Phnum Troyoung Security Office. ... Their condition was serious and could not be treated. *Yeay* Chaem ordered me to kill those four prisoners. I ordered the guards to kill them.”].

2. Ms. IM Chaem did not play any role in crimes allegedly committed at Spean Sreng Worksite

187. The International Co-Prosecutor contends that i) Ms. IM Chaem was responsible for all worksites previously controlled by the former Sector 5 Mobile Unit Chairman⁶⁸⁸ (including SSWS⁶⁸⁹), as well as supervising the new Sector 5 Mobile Unit Chairman⁶⁹⁰ and that ii) she was actively implicated in the forced labour of thousands of workers,⁶⁹¹ many of whom died due to starvation and disease⁶⁹² and disappeared⁶⁹³ on a regular basis.⁶⁹⁴
188. As will be discussed below, the evidence shows that both claims are not based on an objective assessment of the evidence. First, the evidence clearly establishes that SSWS was under the formal control of the Sector 5 Committee and under the effective control of the Sector 5 Mobile Unit Chairman, *Ta Poal*, who held a position higher in the hierarchy than Ms. IM Chaem.⁶⁹⁵ Second, the evidence does not support the claims regarding the gravity of the alleged crimes or Ms. IM Chaem's participation in them.⁶⁹⁶
189. In sum, the Defence submits that a reasonable assessment of the two cumulative criteria (gravity of the crimes charged at SSWS and level of responsibility for the said crimes) leads firmly to the conclusion that there is little serious, corroborative, or otherwise probative evidence to suggest that Ms. IM Chaem's involvement in the SSWS can be equated to significant or even proximate responsibility for any grave crimes. As a body of evidence, it offers little or no support for the claim that she falls into the ECCC's "most responsible" category.

⁶⁸⁸ See, Final Submission, para. 262.

⁶⁸⁹ See, Final Submission, paras. 262-63, 532.

⁶⁹⁰ See, Final Submission, para. 262 (fn. 1330).

⁶⁹¹ See, Final Submission, para. 264.

⁶⁹² See, Final Submission, para. 267.

⁶⁹³ See, Final Submission, para. 270.

⁶⁹⁴ See, Final Submission, paras. 264-71.

⁶⁹⁵ See, Response, paras. 196-207.

⁶⁹⁶ See, Response, paras. 208-26.

i. Particulars regarding the geographical scope of Spean Sreng Worksite

190. Prior to addressing the substance of the International Co-Prosecutor's arguments, the Defence submits that there is doubt as to whether the Ou Lieb Worksite was in fact included in the scope of charges against Ms. IM Chaem. In this respect, the Notification of Charges and the reference to "Spean Sreng worksite" are ambiguous and lack the required specificity.⁶⁹⁷ The Ou Lieb Worksite was not included in either the Third Introductory Submission or the statements annexed to it.⁶⁹⁸
191. Witnesses are also largely confused when asked to describe the locations of Spean Sreng Canal and Ou Lieb Canal.⁶⁹⁹ For example, CHHAO Chat, who worked at both locations, states that there were two Spean Sreng canals as well as two other canals, one being called Ou Lieb Canal and the other one named Ou Tha Phal Canal.⁷⁰⁰ This confusion was never explicitly addressed or clarified by OCIJ investigators, who conducted their last investigative actions aimed at locating Spean Sreng Canal and Dam seven months before CHHAO Chat's statement was taken.⁷⁰¹ The Defence notes that, whilst OCIJ investigators

⁶⁹⁷ See, Notification of Charges, **D239.1**, paras. 6, 8.

⁶⁹⁸ See, Third Introductory Submission, **D1**, para. 79 (fns. 324-30).

⁶⁹⁹ See, e.g., Written Record of Interview of CHHAO Chat, 18-19 December 2014, **D219/130**, A197 [asked whether Spean Sraeng and Ou Leab canals were the same canal, CHHAO Chat answered "Spean Sraeng Canal and the canal in Char Village met at Ou Leab Canal."]; Written Record of Interview of NITH Sorth, 3 July 2014, **D119/133**, Q-A11 ["Q: Was Ou Lieb dam, where you worked called Spean Sraeng dam? A11: No, it was not. My work place [Ou Lieb Dam] was located in Phnum Lieb Commune, whereas Spean Sraeng dam was located in Tuek Chour Commune."], A13 ["[Ou Lieb Dam] was located to the north of the National Road 6."], A121 ["Nowadays, it is named Ou Lieb Canal, the water of which is sourced from Spean Sraeng bridge"]; Written Record of Interview of KOR Len, 11 March 2014, **D119/98**, A27 [During his work at Spean Sraeng Dam, "I worked west of Spean Sraeng River in Spean Sraeng or Pongro communes, Phnom Sruoch District, Sector 5"], A28 ["Spean Sraeng Dam stretched from east of Phnum Srok District to Sraeng Bridge, the ancient bridge located in Rouk Village, Spean Sraeng Commune, to the east."], A29 ["My commune mobile unit finished building Spean Sraeng Dam, and we were transferred to Ou Lieb Reservoir."]; Written Record of Interview of BIN Sokh, 2 July 2015, **D219/397**, A5 ["[Au Leap] canal ran from Au Leap to the North until Spean Sraeng Bridge."]; Written Record of Interview of SUM Tao, 20 February 2014, **D119/92**, A21 ["Ou Lieb Canal was about one kilometre east of Phnum Leab"].

⁷⁰⁰ Written Record of Interview of CHHAO Chat, 18-19 December 2014, **D219/130**, A195-96.

⁷⁰¹ See, Written Record of Investigation Action (KOR Len), 8 May 2014, **D119/129**.

conducted three site visits in relation to SSWS,⁷⁰² a definitive conclusion was never reached regarding the geographical scope of the Worksite.

192. Under these circumstances and applying the principle *in dubio pro reo*, any doubts over the geographical scope of the Spean Sreng and Prey Roneam Dam worksite must be resolved in favour of Ms. IM Chaem. As such, the Defence submits that the Co-Investigating Judges should limit their consideration of this alleged crime site to locations specifically identified in the Third Introductory Submission, and that evidence containing no explicit reference to events that occurred at Spean Sreng and Prey Roneam Dam should be disregarded. In this Response, and unless otherwise indicated, all references to “SSWS” should be understood as only encompassing Spean Sreng and / or Prey Roneam Dam.

ii. Spean Sreng Worksite was under the formal and effective authority of the Sector 5 Committee and Sector 5 Mobile Unit Chairman, Ta Poal, respectively

193. Contrary to the International Co-Prosecutor’s narrative,⁷⁰³ the evidence in Case File 004/1 does not suggest that Ms. IM Chaem had the *de jure* or *de facto* authority required to be held responsible for SSWS. As will be discussed below, SSWS was under the formal authority of the Sector 5 Committee and under the effective control of the Sector 5 Mobile Unit Chairmen *Ta Val* (until mid-1977) and *Ta Poal* (from mid-1977), respectively; over whom Ms. IM Chaem had no authority.
194. SSWS, which expanded across two districts (namely Phnom Srok and Preah Net Preah Districts),⁷⁰⁴ was under the formal authority of the Sector 5 Committee throughout the Democratic Kampuchea regime.⁷⁰⁵ Construction started as early as November 1975⁷⁰⁶ with

⁷⁰² Site Identification Report Spean Sreng Worksite, 11 April 2012, **D106/19**; Written Record of Investigation Action, 19 February 2014, **D119/95**; Written Record of Investigation Action (KOR Len), 8 May 2014, **D119/129**.

⁷⁰³ See, Final Submission, para. 262.

⁷⁰⁴ See, Final Submission, paras. 257-60.

⁷⁰⁵ See, *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript of Trial Proceedings (PAN Chhuong), 30 November 2015, **E1/359.1**, EN ERN 01175682 [“Regarding the work that I was asked to do, *Ta Hoeng* issued the instruction to *Ta Val*, and then *Ta Val* relayed the instruction to me, which I had to comply with it ... with them, with the instructions.”]; Written Record of Interview of CHHAO Chat, 18-19 December 2014, **D219/130**, Q-A164 [“Q: You talked about *Ta Poal*, who replaced *Ta Val*. To whom did *Ta Poal* report? A164:

consistent evidence showing that the main part of SSWS was completed before the arrival of the Southwest Zone cadres and Ms. IM Chaem in the Northwest Zone.⁷⁰⁷ In May 1977, *i.e.* prior to Ms. IM Chaem's arrival in the Northwest Zone,⁷⁰⁸ the Sector 5 Committee detailed the severe food shortage in all districts due to the lack of rainfall and an irrigation system to water rice fields⁷⁰⁹ and made the following plans in regard to worksites: attacking

He reported to the Sector level, because he was in charge of the Sector Mobile Unit.”]; Written Record of Interview of SAUR Chansareth, 13-14 August 2015, **D219/455**, A90 [“*Ta Rin* was *Ta Poal*'s chairperson”]; Written Record of Interview of PUM Kho, 6-7 October 2014, **D219/23**, A97 [saying that Pralay Spean Sraeng Canal and Pralay Ou Lieb Canal were dug by the Sector Mobile Unit], A99 [saying that Pralay Ou Lieb Canal Worksite was supervised by the sector level].

⁷⁰⁶ *See*, Written Record of Interview of NITH Sorth, 3 July 2014, **D119/133**, A4-5 [saying that he worked at Ou Lieb Dam, Phnum Lieb Commune, in November 1975 for three or four months before he was sent to work at a dam located in Prasat Commune], A11, A13 [saying that Ou Lieb Dam was north of the National Road 6], A121 [saying that Spean Sreng Canal is named Ou Lieb Canal nowadays], A123 [saying that the digging of Ou Lieb Canal was first under the control of the Northwest Zone cadres and that he heard that it was under *Ta Val*'s supervision], A127 [saying that he never heard of Ms. IM Chaem controlling the digging of Ou Lieb Canal]; Written Record of Interview of CHHAO Chat, 18-19 December 2014, **D219/130**, A230 [saying that he worked at Spean Sreng Canal under the rule of both Northwest and Southwest Zone cadres]; Written Record of Interview of HEAK Sa, 8 June 2015, **D219/357**, A62 [saying that the work at Spean Sreng Canal under the rule of Southwest Zone cadres was the same as what *Ta Val* did before]. *See also*, Written Record of Interview of KROCH Toem, 4 December 2013, **D119/69**, A68-74 [saying that he was sent to cultivate dry season rice in the vicinity of SSWS, where other mobile units were in charge of digging Spean Sreng Canal, and that the Worksite was under the authority of the Northwest Zone]; Weekly Report of the Committee of Region 5, 21 May 1977, **D1.3.10.1**, EN ERN 00342719 [noting that in May 1977, a canal dug from Spean Sreng river to a dam near Wat Cha was being completed by workers from Prasat Commune]; DK-Government Report by Mo-560 on the Situation in the Northwest Zone, 29 May 1977, **D1.3.27.3**, EN ERN 00183017 [same information].

⁷⁰⁷ Transcript of Interview of TAK Buy, 3 April 2012, **D219/422.8**, EN ERNs 01136936-37 [Spean Sreng Canal “had been completed when they came to undertake the administration. I do not know if the people of *Yeay Chaem* repaired it because I was here away from the work.”], 01136937 [“Actually, the digging of the canal was completed before the Southwest and *Yeay Chaem* came. But when *Yeay Chaem* and the Southwest came, maybe they also worked on the canal. I did not know because at that time I was already transferred out to another location.”]; Site Identification Report Spean Sreng Worksite, 11 April 2012, **D106/19**, EN ERN 00801031 [“From witness information given during interview (Tak Buy) it appears that the canal was dug prior [to] the arrival of IM Chaem as responsible for the Preah Net Preah District.”]; Written Record of Interview of CHHAY Phan, 19 May 2013, **D119/40**, A15 [“The construction of Spean Sraeng dam was completed before the arrival of the Southwesterners.”]; Written Record of Investigation Action (KOR Len), 8 May 2014, **D119/129**, EN ERN 00988076 [“That North part of the canal was already built prior [to] the arrival of IM Chaem and the South West cadres.”]; Written Record of Interview of RIM Seut, 4 April 2012, **D106/10**, A4-5, A9, A14 [witness worked at the Prey Roneam worksite before the Khmer New Year in 1977 and says that Spean Sreng Canal had been completed before he started working on Prey Roream canal.].

⁷⁰⁸ *Cf.*, Response, para. 102.

⁷⁰⁹ *See, e.g.*, Weekly Report of the Committee of Region 5, 21 May 1977, **D1.3.10.1**, EN ERNs 00342717 [“The objective reason for the delay [in rice production] being that it resulted from shortage of water as we have not mastered of the water; and until now it has had no sufficient rain fall to facilitate the ploughing”], 00342718 [“From January, February until today [May 1977], the rain fell only one time”, “[I]t was caused by the fact that

the bund-canal systems, completing the building of canals divided per districts, completing dams in the base at the district and commune levels, continuing working on major water gates, and strengthening existing dams.⁷¹⁰ As is plain, the Sector 5 Committee was in charge of elaborating irrigation systems plans for the whole Sector.

195. On a daily basis, all workers at SSWS were placed under the effective supervision of the Chairman of Sector 5 Mobile Unit: until mid-1977, workers were under *Ta Val*,⁷¹¹ who was arrested in June 1977.⁷¹²
196. In order to seek indictment, the International Co-Prosecutor first asserts that Ms. IM Chaem assumed “authority over all worksites previously controlled by *Ta Val* upon becoming District Secretary”.⁷¹³ Second, the International Co-Prosecutor submits that Ms. IM Chaem

one failed to master of the water, but depended on the sky.”], 00342719-20 [In Phnom Srok District, “the rain fell one time, they [maize and beans] were planted; after being planted, it became dry, then the the plants were burned and dead. When the rain came again, they were planted again, it became dry again and they were dead again.”].

⁷¹⁰ See, Weekly Report of the Committee of Region 5, 21 May 1977, **D1.3.10.1**, EN ERN 00342720.

⁷¹¹ Written Record of Interview of CHHAY Phan, 19 May 2013, **D119/40**, Q-A12 [“Q: Who controlled Spean Sraeng worksite in general? A12: *Ta Val* controlled that location.”], A15 [“*Ta Val* from the Northwest controlled [Spean Sraeng dam] directly.”]; Written Record of Interview of CHUM Chim, 20 January 2015, **D219/149**, A9 [indicating that *Ta Val* controlled forces at Tumnob Spean Sraeng worksite]; Written Record of Interview of CHHUM Seng, 18 February 2014, **D119/89**, A35 [In 1977, “*Ta Val* was in charge of Spean Sreang worksite and Trapeang Thma Dam worksite.”]; Written Record of Interview of MUN Mot, 25 July 2014, **D119/139**, A60 [“While I worked at the Spean Sraeng Canal worksite, *Ta San* and *Ta Val* were the main managers at that Spean Sraeng Canal worksite”]; Transcript of Interview of TAK Buy, 3 April 2012, **D219/422.8**, EN ERN 01136921 [“I was a [sector] mobile unit member during that regime. I was tasked with building dams and digging canals. *Ta Val* was in charge of that place ... After we had completed building that reservoir, my unit was moved to the place that we went to this morning to dig that reservoir for water that flew from Trapeang Thma Reservoir ... It’s Spean Sraeng.”]; Written Record of Interview of SAM Sak, 23 April 2014, **D119/120**, A61, A62 [saying that *Ta Val* was in charge of all mobile units at SSWS], A70 [“I did not know [who was in charge of the SSWS], but orders were received from *Ta Val*.”]; Written Record of Interview of MOM Chhouk, 17 June 2013, **D119/52**, A11 [“Comrade Vall, who was responsible for building dams and canals ...”] See also, Written Record of Interview of PUM Kho, 6-7 October 2014, **D219/23**, A97 [asked if he heard of Pralay Spean Sraeng canal or Pralay Ou Lieb Canal, PUM Kho responded: “Yes, I did. That canal was dug by the Sector Mobile Unit.”]; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript of Trial Proceedings (LAT Suoy), 12 August 2015, **E1/329.1**, EN ERN 01131111 [“*Ta Val* was overall in charge in Sector 5. In fact, he was in charge of all the dam construction projects within Sector 5 ... including Spean Sreng”].

⁷¹² S-21 Execution Log, Uncatalogued Execution of 39 Prisoners, 7 March 1978, **D6.1.1128**, EN ERN 00193556 [recording *Ta Val*’s arrest to 29 June 1977].

⁷¹³ Final Submission, para. 262.

supervised the new Chairman of the Sector 5 Mobile Unit, *Ta Poal*.⁷¹⁴ These claims will be addressed in turn below.

197. In relation to the first claim that Ms. IM Chaem took over all worksites from *Ta Val*, the International Co-Prosecutor relies on four authorities.⁷¹⁵ Had the International Co-Prosecutor examined the evidence reasonably or impartially, the conclusion that two of those authorities, MUN Mot and SEN Sophon, established nothing more than rumour would have been obvious. Once again the International Co-Prosecutor engages in cherry picking and the disregard of inconvenient evidence—even when it emerges from the same witness. MUN Mot did state in his DC-Cam statement that Ms. IM Chaem took over from *Ta Val*,⁷¹⁶ but clarified, in his OCIJ interview that *a cadre named Ta Nhav replaced Ta Val*.⁷¹⁷ He further indicated that Ms. IM Chaem stayed in the Preah Net Preah District Committee until the Democratic Kampuchea collapsed⁷¹⁸ and that he did not know about her “management and power” in the District.⁷¹⁹ In violation of an obligation to assist in the ascertainment of the truth, the International Co-Prosecutor failed to mention these critical facts.
198. Similarly, SEN Sophon was relied upon for her statement that, after the Southwest Zone cadres were transferred to the Northwest Zone, the name of *Ta Val* was no longer used and she instead heard the name of Ms. IM Chaem.⁷²⁰ Of course, this statement lacks probative value, is uncorroborated and ultimately merely prejudicial. Notwithstanding the

⁷¹⁴ See, Final Submission, para. 262.

⁷¹⁵ Final Submission, para. 262 (fn. 1336), referring to Written Record of Interview of TUM Soeun, 16-17 October 2013, **D119/65**, A65; Transcript of Interview of IM Chaem by Youth For Peace, undated, **D219/264.1** EN ERN 01117963; DC-Cam Interview of MUN Mot, 16 June 2011, **D67.10**, EN ERN 00731186; Transcript of Trial Proceedings (SEN Sophon), 27 July 2015, **D219/494.1.1**, EN ERN 01122690.

⁷¹⁶ Final Submission, para. 262 (fn. 1336), referring to DC-Cam Interview of MUN Mot, 16 June 2011, **D67.10**, EN ERN 00731186.

⁷¹⁷ Written Record of Interview of MUN Mot, 25 July 2014 **D119/139**, A33 [*“Ta Val was the manager of the Sector 5 Mobile Units.”*], A34 [*“Ta Val was arrested and replaced by a Southwest cadre whose name was NHAV.”*], Q-A40 [*“Q: After Ta Val and Ta Hing disappeared, under whose management did you work in the mobile unit? A40: I worked under the management of Ta Nhav. I worked in the mobile unit until the Khmer Rouge regime collapsed.”*].

⁷¹⁸ Written Record of Interview of MUN Mot, 25 July 2014, **D119/139**, A38.

⁷¹⁹ Written Record of Interview of MUN Mot, 25 July 2014, **D119/139**, A59.

⁷²⁰ Final Submission, para. 262 (fn. 1336), referring to Transcript of Trial Proceedings (SEN Sophon), 27 July 2015, **D219/494.1.1**, EN ERN 01122690.

International Co-Prosecutor's reliance upon it, it is incapable of bearing any real probative value in relation to the question of whether Ms. IM Chaem took over worksites previously controlled by *Ta Val*. In any event, as the International Co-Prosecutor is aware but chooses to ignore, SEN Sophon further indicated that she "neither saw *Ta Val* nor *Yeay Chaem*"⁷²¹ and in any event she did "not know much about" Ms. IM Chaem.⁷²²

199. The remaining two authorities relied upon by the International Co-Prosecutor are even more devoid of probative value. They are entirely irrelevant to the issue in question and only serve to confirm that Ms. IM Chaem was appointed the Secretary of Preah Net Preah District.⁷²³
200. A fair assessment of the evidence in Case 004/1 makes it clear that upon his arrest in June 1977, *Ta Val* was in fact replaced by *Ta Poal* as Chairman of the Sector 5 Mobile Unit.⁷²⁴ CHHUM Seng, who worked at the SSWS pump-station, was told during a meeting that, "from that time forward, *Ta Poal* would be in charge instead of *Ta Val*, because *Ta Val* had been called away to study by *Angkar*."⁷²⁵ CHHAO Chat, who worked at SSWS under the rule of both the Northwest and the Southwest Zone cadres⁷²⁶ indicated that *Ta Poal* was the only Southwest Zone leader at the Worksite.⁷²⁷ Like *Ta Val*, *Ta Poal* enjoyed full effective authority over the Worksite⁷²⁸ and formally reported to the Sector Secretary.⁷²⁹

⁷²¹ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript of Trial Proceedings (SEN Sophon), 27 July 2015, **D219/494.1.1**, EN ERN 01122690.

⁷²² Written Record of Interview of SEN Sophon, 15 September 2015, **D219/506**, A36.

⁷²³ Final Submission, para. 262 (fn. 1336), referring to Written Record of Interview of TUM Soeun, 16-17 October 2013, **D119/65**, A65 [saying that Ms. IM Chaem was appointed on the Committee of Preah Net Preah District]; Youth for Peace Interview with IM Chaem, undated, **D219/264.1** EN ERN 01117963 [saying that she became the Secretary of Preah Net Preah District].

⁷²⁴ Written Record of Interview of CHHAO Chat, 18-19 December 2014, **D219/130**, A103 [*"Ta Poal* came from the Southwest to replace [*Ta Val*"]]; Written Record of Interview of CHHUM Seng, 18 February 2014, **D119/89**, A23 [*"Ta Poal* replaced *Ta Val*"], A33 [*"One morning, there was a meeting and Ta Nin announced that from that time forward, Ta Poal would be in charge instead of Ta Val"*]; DC-Cam Interview of YEM Kim Ruos, 16 June 2011, **D123/1/2.44**, EN ERN 00985230-31 [saying that *Ta Poal* replaced *Ta Val* and had the same status as him. Also saying that *Ta Poal* visited worksites]; DC-Cam Interview of CHHIT Yoeuk, 19 June 2011, **D67.9**, EN ERN 00731137-38 [saying that *Ta Poal* replaced *Ta Val*].

⁷²⁵ Written Record of Interview of CHHUM Seng, 18 February 2014, **D119/89**, A33, A35.

⁷²⁶ Written Record of Interview of CHHAO Chat, 18-19 December 2014, **D219/130**, A230.

⁷²⁷ Written Record of Interview of CHHAO Chat, 18-19 December 2014, **D219/130**, A232.

⁷²⁸ Written Record of Interview of CHHAO Chat, 18-19 December 2014, **D219/130**, A228 [*"After the Southwest cadres arrived, Ta Poal was in charge of the canal."*], A230 [saying that he kept working at Spean Sreng Canal

201. The International Co-Prosecutor's additional claim that Ms. IM Chaem was *Ta Poal*'s supervisor⁷³⁰ rests on more unhelpful cherry picking. The claim that CHHAO Chat, KOR Len, YEM KIM Ruos, and CHHIT Yoeuk⁷³¹ support the Prosecution's case is simply wrong.⁷³² They state that worksites under the previous authority of *Ta Val* were taken over by *Ta Poal*—not by Ms. IM Chaem.
202. In further illustration of the International Co-Prosecutor's curious approach to straightforward issues of inference, it is also worthwhile examining the evidence provided by SAUR Chansareth and the manner in which it is relied upon. First, SAUR Chansareth was relied upon for his statement that he received a letter of introduction from *Ta Poal* to go meet with Ms. IM Chaem.⁷³³ Naturally, this does not establish that Ms. IM Chaem had

and that *Ta Poal* was in charge]. A232 [saying that *Ta Poal* was the only Southwest Zone leader at the Spean Sreng Canal]; Written Record of Interview of CHHUM Seng, 18 February 2014, **D119/89**, A23, A33, A35 [saying that *Ta Val*, who was in charge of Spean Sreang worksite in 1977, was replaced by *Ta Poal*]. *See also*, Written Record of Interview of KOR Len, 11 March 2014, **D119/98**, A26, A31 [saying that Khon was the Chairman of the mobile units in Preah Net Preah District and that “sometimes *Ta Rin* and *Ta Poal* came to monitor Spean Sreng and Ou Lieb worksites themselves” in early 1978]. *See also*, Written Record of Interview of PUM Kho, 6-7 October 2014, **D219/23**, A97 [saying that Pralay Spean Sraeng Canal and Pralay Ou Lieb Canal were dug by the Sector Mobile Unit], A99 [saying that Pralay Ou Lieb Canal Worksite was supervised by the sector level].

⁷²⁹ *See*, Written Record of Interview of CHHAO Chat, 18-19 December 2014, **D219/130**, Q-A164 [“Q: You talked about *Ta Poal*, who replaced *Ta Val*. To whom did *Ta Poal* report? A: He reported to the Sector level, because he was in charge of the Sector Mobile Unit.”]; Written Record of Interview of SAUR Chansareth, 13-14 August 2015, **D219/455**, A54 [“I worked at the rice-threshing worksite [of SSWS] with Poal the chairperson of Sector 5 Mobile Unit; he had replaced *Ta Val*. At that time, Rin, the Sector 5 frequently came to supervise the worksite.”], A90 [“*Ta Rin* was *Ta Poal*'s chairperson”]. *See also*, *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript of Trial Proceedings (PAN Chhuong), 30 November 2015, **E1/359.1**, EN ERN 01175682 [“Regarding the work that I was asked to do, *Ta Hoeng* issued the instruction to *Ta Val*, and then *Ta Val* relayed the instruction to me, which I had to comply with it ... with them, with the instructions.”].

⁷³⁰ *See*, Final Submission, para. 262.

⁷³¹ *See*, Final Submission, para. 262 (fn. 1339), *referring to* Written Record of CHHAO Chat, 18-19 December 2014, **D219/130**, A103, A228; Written Record of Interview of KOR Len, 11 March 2014, **D119/98**, A26, A31; DC-Cam Interview of YEM KIM Ruos, 16 June 2011, **D123/1/2.44**, EN ERN 00985230-31; DC-Cam Interview of CHHIT Yoeuk, 19 June 2011, **D67.9**, EN ERNs 00731137-38.

⁷³² *See*, Final Submission, para. 262.

⁷³³ *See*, Final Submission, para. 262 (fn. 1339), *referring to* Written Record of Interview of SAUR Chansareth, 13-14 August 2015, **D219/455**, A68, A91.

a position of authority over *Ta Poal* but only that SAUR Chansareth could not travel around without a permit, just like anyone else during the Democratic Kampuchea regime.⁷³⁴

203. Appreciating this issue, the International Co-Prosecutor attempted to resolve this deficiency. SAUR Chansareth's statement was cited in the Final Submission as follows:

D219/455 Saur Chansareth Written Record of Interview, 13 August 2015, A91, EN 01151199 ["If we think about the hierarchy, *Ta Poal* was Sector Mobile Unit Chairperson, whereas *Yeay Chaem* was District Committee. Therefore, *Ta Poal*'s position should have been senior to *Yeay Chaem*'s. But according to my observations, *Ta Poal* respected and feared *Yeay Chaem* very much [...] I believe *Yeay Chaem* must have been senior to *Ta Poal*. I also noticed that amongst all the district committee, *Yeay Chaem* was the most powerful [...] I saw that *Ta Poal* respected her very much."] ⁷³⁵

204. However, the International Co-Prosecutor omitted to reference SAUR Chansareth's previous answer in the same statement. In his previous answer, SAUR Chansareth specifically stated that, "*Ta Rin* [the Sector 5 Chairman] was *Ta Poal*'s chairperson. *Ta Rin* came to work at my place frequently. I had a meal with *Ta Rin* once; he was very simple".⁷³⁶
205. Further, the following must be taken into account. First, SAUR Chansareth began his answer with "I do not know for sure [what responsibilities Ms. IM Chaem had in that sector]" and clarified in the following answer that he never attended any meeting with Ms. IM Chaem. Second, the interview of SAUR Chansareth in fact contains a translation error. The Khmer original of his interview states that, "*Ta Poal* seemed to respect and obey *Yeay*

⁷³⁴ See, e.g., Written Record of Interview of HO Hoeun, 21 April 2015, **D219/285**, A2 ["We used to roam freely. We used to enjoy our private ownership. But when the Khmer Rouge was in power we were not allowed to travel freely. We needed to get a permission letter to go from one place to another"]; Written Record of Interview of KEAN Ley, 24 June 2014, **D117/57**, A16 ["Before I started my trips, the commune issued me a travel permit. When I arrived somewhere, I showed this letter to village authorities there, and they would help supply as requested"]; Written Record of Interview of UONG Sav, 11 March 2014, **D118/199**, A43 ["At that time travelling from one place to another was not allowed without a travel permit signed by the group chief"]; Written Record of Interview of CHOM Vong, 3-5 August 2015, **D219/442**, A135 ["Normally, the office chairpersons issued the permission letters to travel. The office chairpersons were in charge for the movement of their subordinates. For the high level cadres, such as district secretaries, they had to inform *Ta An*. I do not know if it was Am or Aun who reported to *Ta An*."].

⁷³⁵ Final Submission, para. 262 (fn. 1339) (emphasis added).

⁷³⁶ Written Record of Interview of SAUR Chansareth, 13-14 August 2015, **D219/455**, A90.

Chaem” which was erroneously translated into English as “*Ta Poal* respected and feared *Yeay Chaem*.”⁷³⁷

206. As is plain, in her capacity as district secretary, Ms. IM Chaem worked at the echelon below that of *Ta Poal*.⁷³⁸ The International Co-Prosecutor’s claim that she supervised *Ta Poal* is not adequately substantiated: upon her appointment as the Preah Net Preah District Secretary, Ms. IM Chaem received the work plans for Preah Net Preah District, including those involving canals and dams construction, during meetings with the upper level.⁷³⁹ She would then meet with the concerned village and commune committee members to implement these plans.⁷⁴⁰ That Ms. IM Chaem met with *Ta Poal* to discuss her role in this regard was, therefore, normal and certainly not capable of establishing that she exercised any authority over him.⁷⁴¹ Meetings were indeed held by the sector level to request labourers from the lower echelons to work at SSWS.⁷⁴²
207. In sum, none of the above establishes that Ms. IM Chaem exercised the required *de jure* or *de facto* authority over SSWS to any extent alleged by the International Co-Prosecutor. As

⁷³⁷ Compare, Written Record of Interview of SAUR Chansareth, 13-14 August 2015, **D219/455**, A91 (KH ERN 01129820; EN ERN 01151199).

⁷³⁸ Cf, Response, paras. 99-110.

⁷³⁹ DC-Cam Interview of IM Chaem, 4 March 2007, **D123/1/5.1a**, EN ERN 00089773 [“[The work plan] was made from Zone, province and down to [sic] ... At the Zone was Ta Nhim and at the province was Ta Lai at Svay Sisophon... The policy was made hierarchically. For example, it was from district to sub-district in the meantime... They called us to join the meetings to receive the plan. For example, this month, there was an assignment to dig canals to start summer rice transplantation. So, we prepared the forces at the back to transplant rice at the front. I divided forces into two groups: one at the construction sites and another one at the back taking responsibility to grow summer and rainy rice”].

⁷⁴⁰ Written Record of Interview of MOM Chhouk, 17 June 2013, **D119/52**, A18 [recalling a meeting with Ms. IM Chaem discussing the construction of dams and canals from Trapeang Thma to Phnum Lieb]; Written Record of Interview of IM Man, 26 February 2014, **D119/96**, A74-77 [noting that Ms. IM Chaem talked “about rice cultivation and canal construction, Ta Pon Bridge, etc” in meetings held every two-three months in the District]; Written Record of LI Sinh, 13 March 2013, **D119/20**, A9 [“During that time, she said [sic] about working hard in farming paddies and building dams and canals”]; Written Record of Interview of BIN Sokh, 2 July 2015, **D219/397**, A2 [noting that when Ms. IM Chaem arrived in Phnom Leab, she instructed the people to restore and manage the economy and the farming. She then instructed them to build dams and canals].

⁷⁴¹ See, Final Submission, para. 262 (fn. 1339), referring to Written Record of Interview of KOR Len, 11 March 2014, **D119/98**, A39.

⁷⁴² See, Written Record of Interview of CHUM Kan, 26-27 March 2014, **D119/110**, A49 [“My duty was only select people from the Sector to be sent to work at the different worksites following their orders.”], A51 [“I had to report to the Sector level who worked at that worksite.”]. See, Written Record of Interview of PUM Kho, 6-7 October 2014, **D219/23**, A27 [“The Sector supervised those worksites, and the district provided the workforce upon Sector proposal.”].

is evident from the International Co-Prosecutor's failed attempt to show otherwise: the evidence points to the Sector 5 Mobile Unit Chairman being under the command of the Sector 5 Committee and Ms. IM Chaem had no command over any relevant perpetrators, did not participate in their crimes and otherwise bears no responsibility for them.

iii. Ms. IM Chaem did not participate in crimes of sufficient gravity allegedly committed at Spean Sreng Worksite

208. In the paragraphs below, the Defence has only addressed those alleged crimes with which Ms. IM Chaem was charged in relation to SSWS and which the International Co-Prosecutor addressed in the Final Submission. For this reason, allegations of forced marriage at SSWS⁷⁴³ that are outside of the scope of the charges against Ms. IM Chaem are not addressed in this Response.

209. The International Co-Prosecutor's allegations against Ms. IM Chaem regarding SSWS are rooted in the assertion that she assumed authority over the Worksite⁷⁴⁴ where "[t]housands of people were forced to work"⁷⁴⁵ and where deaths from starvation and disease⁷⁴⁶ and disappearances⁷⁴⁷ were *common*.⁷⁴⁸ These allegations will be addressed in turn below. As above,⁷⁴⁹ the Defence has adopted Judge Bohlander's cautious approach to assessing the evidence.⁷⁵⁰ As will be argued below, this is an approach abandoned by the International Co-Prosecutor.

Ms. IM Chaem's alleged implication in the forced labour of thousands of workers at Spean Sreng Worksite

210. The International Co-Prosecutor claims that Ms. IM Chaem intended to inflict serious bodily and / or mental harm⁷⁵¹ on workers through the forced labour of *thousands* of them

⁷⁴³ See, Final Submission, paras. 269, 476-77.

⁷⁴⁴ See, Final Submission, paras. 262-63, 532.

⁷⁴⁵ Final Submission, para. 264 (emphasis added).

⁷⁴⁶ See, Final Submission, para. 267.

⁷⁴⁷ See, Final Submission, para. 270.

⁷⁴⁸ See, Final Submission, paras. 264-71.

⁷⁴⁹ Cf, Response, para. 155.

⁷⁵⁰ See, Response, para. 31.

⁷⁵¹ See, Final Submission, paras. 484-85.

at SSWS.⁷⁵² The International Prosecutor's approach to assessing the number of workers at SSWS is highly selective. Moreover, it fails to focus upon the critical question, namely, the number of labourers who worked at SSWS at the time Ms. IM Chaem was *present* in the Northwest Zone.⁷⁵³ In addition, as an objective approach to the evidence shows, in her position as district secretary, Ms. IM Chaem did not have the *de jure* or *de facto* authority to supervise labourers at SSWS.⁷⁵⁴

211. The International Co-Prosecutor relies upon seven accounts to state that *thousands* of people were forced to work at SSWS.⁷⁵⁵ In fact, only four individuals referenced in the Final Submission provide any figures. These include CHUM Kan, CHHAO Chat, KOR Len, and Ms. IM Chaem herself. CHUM Kan was relied upon for his claim that "tens of thousands" of workers were sent from the entire Battambang Province to worksites,⁷⁵⁶ and that his duty, as the Chairman of Phnum Lieb Commune and at the request of the sector level, was to select 30 to 40 people per village within his commune to work at various worksites around the region.⁷⁵⁷ CHUM Kan is only relevant to the extent of what he knew or reliably heard. He admits that he never visited SSWS⁷⁵⁸ and therefore is unlikely to have known how many people worked there. Moreover, given that CHUM Kan did not provide any figure regarding the number of labourers he selected to go work *at SSWS in particular*, his statement does not assist the International Co-Prosecutor's specific case against Ms. IM Chaem.

⁷⁵² Final Submission, paras. 263-64.

⁷⁵³ See, Response, paras. 211-13.

⁷⁵⁴ See, Response, paras. 214-15.

⁷⁵⁵ See, Final Submission, para. 264 (fn. 1343), *referring to* Written Record of Interview of CHUM Kan, 26-27 March 2014, **D119/110**, A46, 48-49; Transcript of Interview of IM Chaem by Youth For Peace, undated, **D219/264.1**, EN ERN 01117962; DC-Cam Interview of IM Chaem, 4 March 2007, **D123/1/5.1a**, EN ERNs 00089775, 00089778-79; Youth For Peace Interview of IM Chaem, 2011, **D215/1.1.1**, EN ERN 01030495; Written Record of Interview of KRET Ret, 20 May 2013, **D119/42**, A5; Written Record of Interview of KOR Len, 11 March 2014, **D119/98**, A26; Written Record of Interview of KROCH Toem, 4-5 December 2013, **D119/69**, A68-69; Written Record of Interview of HEAK Sa, 8 June 2015, **D219/357**, A54, A59, A65; Written Record of Interview of CHHAO Chat, 18-19 December 2014, **D219/130**, A236-37.

⁷⁵⁶ See, Final Submission, para. 264 (fn. 1343), *referring to* Written Record of Interview of CHUM Kan, 26-27 March 2014, **D119/110**, A48-49.

⁷⁵⁷ Written Record of Interview of CHUM Kan, 26-27 March 2014, **D119/110**, A47, 49.

⁷⁵⁸ Written Record of Interview of CHUM Kan, 26-27 March 2014, **D119/110**, A47.

212. Only three individuals relied upon, CHHAO Chat, KOR Len, and Ms. IM Chaem herself provide any meaningful precision in relation to the numbers of workers who worked at SSWS. CHHAO Chat stated that 500 workers dug the entire canal from Spean Sraeng across Pongro Village through to national Road 6.⁷⁵⁹ Although CHHAO Chat does not provide any timeframe for his figure, the Civil Party Applicant worked at SSWS under the rule of both the Southwest and Northwest cadres⁷⁶⁰ and therefore provides a figure bearing indicia of relevance and reliability. However, his statement does not assist in clarifying the extent of Ms. IM Chaem's authority: it does not estimate the number of workers at SSWS *after* Ms. IM Chaem was transferred to the Northwest Zone.⁷⁶¹ KOR Len and Ms. IM Chaem provide such detail. KOR Len, the leader of the Preah Net Preah Commune mobile unit at SSWS, indicated that his unit was comprised of "about 200"⁷⁶² workers. This is consistent with Ms. IM Chaem's acknowledgment that up to 800 workers came from Preah Net Preah District—200 per sub-district—to work at SSWS during the time she was the District Secretary.⁷⁶³ At its highest, this therefore equates to less than a thousand workers at SSWS during the relevant period, not the *thousands* alleged by the International Co-Prosecutor.
213. There is little to suggest these three accounts do not represent a truthful attempt to provide an account of the numbers. Instead of confronting them fairly and objectively, the International Co-Prosecutor avoids them, opting to bolster the claim that there were *thousands* through reliance on other evidence that lacks relevance and probative value. In particular, the International Co-Prosecutor relies upon KROCH Toem⁷⁶⁴ who worked at

⁷⁵⁹ See, Final Submission, para. 264 (fn. 1343), *referring to* Written Record of Interview of CHHAO Chat, 18-19 December 2014, **D219/130**, Q-A236 ["Q: Could you estimate the number of labourers working at the canal under the supervision of the Southwest group? A236: Not many. There were only three units, which would be about 100 workers (for Phnum Srok District)."], Q-A237 ["Q: Did these 100 workers dig the canal or build the bridge? A237: Different workers built the bridge. About 500 workers dug the entire canal from Spean Sraeng across Pongro Village through to national Road 6."].

⁷⁶⁰ Written Record of Interview of CHHAO Chat, 18-19 December 2014, **D219/130**, A230.

⁷⁶¹ Final Submission, paras. 263-64.

⁷⁶² See, e.g., Written Record of Interview of KOR Len, 11 March 2014, **D119/98**, A26.

⁷⁶³ See, e.g., DC-Cam Interview of IM Chaem, 4 March 2007, **D123/1/5.1a**, EN ERNs 00089778-79 [saying that there were 800 workers, 200 from each sub-districts, at a canal linking Spean Sreng dam and Prey Roneam dam].

⁷⁶⁴ See, Final Submission, para. 264 (fn. 1343), *referring to* Written Record of Interview of KROCH Toem, 4 December 2013, **D119/69**, A68-69.

SSWS *before* Ms. IM Chaem was transferred to the Northwest Zone,⁷⁶⁵ HEAK Sa⁷⁶⁶ who worked at the part of the Worksite located in Phnum Srok District,⁷⁶⁷ and KRET Ret⁷⁶⁸ who gave no figure at all in relation to workers at SSWS.⁷⁶⁹ As is plain, the International Co-Prosecutor's claim that Ms. IM Chaem was engaged in the forced labour of *thousands* of workers at SSWS is not based on any serious or corroborative evidence.

214. Moreover, even if this claim bore any relation to the evidence, other evidence shows, that Ms. IM Chaem did not have the *de jure* or *de facto* authority to supervise all workers at SSWS.⁷⁷⁰ Upon a reasonable and fair assessment, the evidence shows that Ms. IM Chaem's role in relation to SSWS was limited to providing forces at the request of the sector echelon. CHUM Kan, the former Phnom Lieb Commune Secretary, recalls a meeting held in Preah Net Preah District Office during which Sector 5 cadres requested people from the base for worksites.⁷⁷¹ Ms. IM Chaem, though present at the meeting, did not speak.⁷⁷² He further explained that his duty was to provide workers at the request of the sector level.⁷⁷³ PUM Kho, who worked in the Preah Net Preah District Committee, stated that the district echelon had the same duty to provide forces to sector-level worksites.⁷⁷⁴

⁷⁶⁵ Written Record of Interview of KROCH Toem, 20 May 2013, **D119/69**, A73-74 [saying that he worked at SSWS "probably early 1977" under the rule of Northwest Zone cadres].

⁷⁶⁶ *See*, Final Submission, para. 264 (fn. 1343), *referring to* Written Record of Interview of HEAK Sa, 8 June 2015, **D219/357**, A54, A59, A65.

⁷⁶⁷ Written Record of Interview of HEAK Sa, 8 June 2015, **D219/357**, A54, A59, A65 [saying that there were 150 members in the mobile unit of Phnum Srok District and that he was sent to build SSWS located in Phnum Srok District].

⁷⁶⁸ *See*, Final Submission, para. 264 (fn. 1343), *referring to* Written Record of Interview of KRET Ret, 20 May 2013, **D119/42**, A5 ["In mobile units there were thousands of people who had to be equipped with earth-carrying baskets, hoes, shovels and to move from worksite to worksite."].

⁷⁶⁹ *See*, Written Record of Interview of KRET Ret, 20 May 2013, **D119/42**, A5.

⁷⁷⁰ *Cf.* Final Submission, para. 262.

⁷⁷¹ Written Record of Interview of CHUM Kan, 26-27 March 2014, **D119/110**, A57-59 [recalling a meeting at the District Office that persons from each commune attended during which the sector echelon requested workers from the base].

⁷⁷² Written Record of Interview of CHUM Kan, 26-27 March 2014, **D119/110**, A63.

⁷⁷³ Written Record of Interview of CHUM Kan, 26-27 March 2014, **D119/110**, A49 ["My duty was only select people from the Sector to be sent to work at the different worksites following their orders."], A51 ["I had to report to the Sector level who worked at that worksite."].

⁷⁷⁴ *See*, Written Record of Interview of PUM Kho, 6-7 October 2014, **D219/23**, A27 ["[T]he Sector supervised those worksites, and the district provided the workforce upon Sector proposal."].

215. In other words, Ms. IM Chaem's authority at SSWS, if any, would have been limited to selecting labourers from her District. It follows that there would have been nothing abnormal in her infrequent visits to SSWS.⁷⁷⁵ That it was infrequent is confirmed by the fact that the majority of former workers at SSWS who testified did so to the effect that they did not know her⁷⁷⁶ or had not seen her visit the Worksite.⁷⁷⁷ In fact, despite evidence suggesting that Ms. IM Chaem may have had authority over those coming from her District,⁷⁷⁸ both CHUM Kan (who selected workers from the villages) and KOR Len (who led a commune mobile unit) said that they reported directly to the sector-level;⁷⁷⁹ *i.e.* not to Ms. IM Chaem.

⁷⁷⁵ See, Final Submission, para. 263. See also, Written Record of Interview of MUN Mot, 25 July 2014, **D119/139**, A60 ["While I worked at the Spean Sraeng Canal worksite, *Ta San* and *Ta Val* were the main managers at that Spean Sraeng Canal worksite, but once I saw *Yeay Chaem* and a few cadres come to see that worksite as well."]; Written Record of Investigation Action (KOR Len), 8 May 2014, **D119/129**, EN ERN 00988076 [saying that he saw Ms. IM Chaem visiting a canal connected to SSWS and that she carried earth herself sometimes]; Written Record of Interview of KOR Len, 11 March 2014, **D119/98**, A32 [saying that Ms. IM Chaem would visit *Ou Lieb* worksite and help workers there].

⁷⁷⁶ Written Record of Interview of YOU Mut, 8 September 2014, **D219/1**, A77 ["I never heard of" Ms. IM Chaem], A83 ["I do not" recall who led the SSWS].

⁷⁷⁷ Transcript of Interview of TAK Buy, 3 April 2012, **D219/422.8**, EN ERN 01136933-34 ["Q: But, while you were digging the canal at Spean Sraeng, did you ever meet *Yeay Chaem*? A: No, I didn't. I never saw what *Yeay Chaem* looked like. I just saw her when the DC-Cam brought her to me."]; Written Record of Interview of SVA Nung, 23 May 2013, **D119/43**, A20 ["I never saw her."]; Written Record of Interview of KHOR Mot, 18 August 2011, **D53**, EN ERN 00730079 ["I never saw her at the worksites."]; Written Record of Interview of SUM Tao, 20 February 2014, **D119/92**, A20-21, A24 [witness was told that Ms. IM Chaem visited *Ou Lieb* canal but never saw her himself]; Written Record of Interview of CHHAO Chat, 18-19 December 2014, **D219/130**, A261-62, A265 [saying that he never saw Ms. IM Chaem at SSWS nor did he know if she had a role there]; Written Record of Interview of VAN Teav, 1 September 2014, **D119/152**, A27-28 [witness never saw Ms. IM Chaem at *Ou Lieb* dam]; Written Record of interview of EAM Vuy, 19 May 2015, **D219/317**, A26-27 [witness never saw Ms. IM Chaem monitoring any worksite].

⁷⁷⁸ See, Written Record of Investigation Action (KOR Len), 8 May 2014, **D119/129**, EN ERN 00988076 ["*Ta Poal*, a cadre from Sector committee, would supervise all projects in the Sector 5 and IM Chaem supervised the District mobile unit."]; Written Record of Interview of CHHUM Seng, 18 February 2014, **D119/89**, A36 ["There were two mobile unit groups at Spean Sreng. The sector mobile unit was under the control of *Ta Val*, and the cooperative mobile unit was under the control of *Yeay Chem*."].

⁷⁷⁹ Written Record of Interview of KOR Len, 11 March 2014, **D119/98**, A31 ["[As commune mobile unit] I did not report to anyone; the Sector Chairman came to monitor the worksite by himself. Sector Committee Brother Rin (East Zone) came to personally lead the unit. My personal leader was Khon (male), who is deceased. Khon was chairman of all the mobile units in Preah Netr Preah District. I got direct orders from Khon, sometimes from *Ta Rin* and *Ta Poal* (Southwest) came to monitor the worksite themselves."]; Written Record of Interview of CHUM Kan, 26-27 March 2014, **D119/110**, A51 ["I had to report to the Sector level who worked at that worksite ... If they required us to find supplementary forces, we had to communicate with the village chairpersons whose people were sick to find new forces to replace them."].

216. In sum, despite the International Co-Prosecutor's assertions, the evidence points towards the conclusion that Ms. IM Chaem's only role at SSWS was to provide forces at the request of the sector echelon.⁷⁸⁰ The existence of a link between Ms. IM Chaem and the requirement to provide labourers to work at SSWS in this manner does not establish that Ms. IM Chaem instituted or implemented a deliberate policy of forced labour or that she had any supervisory role over the workers once they were at SSWS or otherwise participated in any crimes arising at that location.

Ms. IM Chaem's alleged implication in deaths from starvation and disease at Spean Sreng
Worksite

217. The International Co-Prosecutor claims that Ms. IM Chaem intended to inflict serious bodily and / or mental harm and / or inhumane and degrading treatment including starvation on workers at SSWS⁷⁸¹ therefore contributing to the deterioration of already abhorrent conditions in the Sector.⁷⁸² In this respect, the International Co-Prosecutor submits that Ms. IM Chaem is responsible for deaths from starvation and disease that were "common" occurrences.⁷⁸³ The evidence does not support these allegations: the International Co-Prosecutor fails to establish that deaths were frequent or that there exists any meaningful link between Ms. IM Chaem and those who allegedly died.

218. There is little to support the International Co-Prosecutor's claim concerning the frequency of these alleged crimes. The claim that "[d]eath from starvation and disease was common"⁷⁸⁴ is an exaggeration of the uncorroborated statement of SAM Sak—who worked at the part of the Worksite located in Phnum Srok for two weeks.⁷⁸⁵ Although the witness

⁷⁸⁰ Written Record of Interview of CHUM Kan, 26-27 March 2014, **D119/110**, A57-59 [recalling a meeting at the District Office that persons from each commune attended during which the sector echelon requested workers from the base].

⁷⁸¹ See, Final Submission, paras. 452-58, 484-85.

⁷⁸² See, Final Submission, para. 485. See also, Final Submission, para. 545.

⁷⁸³ Final Submission, para. 267.

⁷⁸⁴ Final Submission, para. 267 (fn. 1355).

⁷⁸⁵ Written Record of Interview of SAM Sak, 23 April 2014, **D119/120**, A23-24 [saying that he was based in Phnum Srok Dsitric], A77 [saying that he worked at Spean Sreng Dam for two weeks before going back to Trapeang Thma Dam], A80-81 [saying that he knows neither about a canal excavation worksite near the Spean Sreng river, nor about the Prey Roneam reservoir and only worked at Spean Sreng Dam].

stated that deaths did occur at SSWS, he did not assert that that they were “common”.⁷⁸⁶ He admitted that he did not know how many people died at SSWS.⁷⁸⁷ This evidence is incapable of supporting the claim that deaths occurred as a result of a deliberate policy. On the contrary, as argued above, the deaths were likely due to two years of sustained agricultural difficulties in the District.⁷⁸⁸

219. The evidence does not establish a link between Ms. IM Chaem and deaths due to starvation and disease at SSWS. As argued above, the evidence shows that Ms. IM Chaem did not have any *de jure* or *de facto* authority that allowed her to implement any kind of policy designed to cause deaths from starvation or illness. To assert so is to ignore the evidence that shows that SSWS was under the supervision of sector-level cadre *Ta* Poal and that Ms. IM Chaem had no authority in any capacity at this echelon.⁷⁸⁹ It is also to infer a policy without sufficient evidence of relevant conduct or established pattern of deaths.⁷⁹⁰

Ms. IM Chaem’s alleged implication in arrests, detention, executions, and disappearances at Spean Sreng Worksite

220. In relation to SSWS, the International Co-Prosecutor alleges that Ms. IM Chaem had “the power to order arrests at Spean Sreng canal and Prey Roneam reservoir and to impose punishments, including detention and execution” and that “[d]isappearances from the worksite were common”.⁷⁹¹ The evidence does not support these contentions. Instead, the International Co-Prosecutor attempts to support the claims through reliance on evidence that is plainly irrelevant to the issue and an approach to the remainder that lacks sufficient objectivity. These approaches will be discussed below.
221. The vast majority of the authorities relied upon are incapable of establishing that Ms. IM Chaem had authority to order arrests at SSWS.⁷⁹² As previously addressed at paragraphs

⁷⁸⁶ Written Record of Interview of SAM Sak, 23 April 2014, **D119/120**, A96.

⁷⁸⁷ Written Record of Interview of SAM Sak, 23 April 2014, **D119/120**, A97.

⁷⁸⁸ *See*, Response, para. 123.

⁷⁸⁹ *Cf.*, Response, paras. 97-129.

⁷⁹⁰ *See*, Response, paras. 218-19.

⁷⁹¹ Final Submission, para. 270.

⁷⁹² *See*, Final Submission, para. 270 (fn. 1365), *referring to* DC-Cam Interview of THIB Samphat, 11 September 2011, **D123/1/2.66**, EN ERN 00987606 [talking about an event that occurred in Phnum Lieb Commune]; Written Record of Interview of NITH Sorth, 3 July 2014, **D119/133**, A82-83 [talking about an event he was told

139 to **142** and paragraph **162** of this Response, the evidence shows that Ms. IM Chaem did not have this authority. At most, five witnesses attest to being aware of disappearances at the Worksite. However, none make any suggestion that these were common⁷⁹³ or the consequence of Ms. IM Chaem's actions.⁷⁹⁴ CHHAO Chat, a witness relied upon by the International Co-Prosecutor accepted that whilst working at SSWS, Ms. IM Chaem was not present.⁷⁹⁵ The witness had no knowledge suggesting that Ms. IM Chaem had a role at that location.⁷⁹⁶

about, that occurred in Phnum Lieb Commune]; Written Record of Interview of CHUM Kan, 26-27 March 2014, **D119/110**, A76 [talking about letters of arrest bearing the sector-level signature when he was the Chairman of the Phnum Lieb Commune Chief]; Written Record of Interview of IV Mara, 2 September 2014, **D119/154**, A32, A36 [saying that she heard from others that people who made mistakes would be sent to meet Ms. IM Chaem and consequently imprisoned or killed; not mentioning that such events are tied to SSWS]; Written Record of Interview of SAR Lorm, 24 July 2014, **D119/138**, A38-39 [saying that he heard that Ms. IM Chaem was in charge of Phnum Lieb Mountain]; Written Record of Interview of KRET Ret, 20 May 2013, **D119/42**, A16 [saying that Ms. IM Chaem ordered workers to work well and erect dykes in a straight manner]; Written Record of Interview of PECH Ruos, 12 March 2014, **D119/99**, A32 [speaking of an event that occurred at Veal Dang Kieb Dam]. *See also*, Final Submission, para. 270 (fn. 1368), *referring to* Written Record of Interview of CHHAO Chat, 18-19 December 2014, **D219/130**, A147-48 [talking about an event he did not witness without mentioning any location].

⁷⁹³ Written Record of Interview of KROCH Toem, 4 December 2013, **D119/69**, A71 ["I never witnessed it first hands [sic], but I did know people were missing. I did not really know where these people were sent to."]; Written Record of Interview of SEN Sophon, 15 September 2015, **D219/506**, A42 ["I saw no one arrested. However, I saw people disappear for no reason; for example people in my group. I do not know the number of people who disappeared, but I know that some persons in my group disappeared. Therefore, people might also have disappeared in other groups."], A43.

⁷⁹⁴ Written Record of Interview of NITH Sorth, 3 July 2014, **D119/133**, Q-A46 ["Q: When *Yeay* Chaem told us not to be tricked by enemies or to conspire with the enemies, what was meant by that? A46: I found it very difficult to infer from these words because I did not understand her leadership"], Q-A47 ["Q: Did she explain that if anyone was deemed as an enemy of *Angkar*, what would happen to him/her? A47: She did not explain this matter."], Q-A49 ["Q: Did you know who ordered the taking of people to get educated? A49: I did not know that. Indeed, all of us worked hard only for our survival purposes."], Q-A84 ["Q: Did you know if there was anyone who was arrested on the orders of *Yeay* Chaem? A84: No, I did not."]; Written Record of Interview of CHUM Chim, 20 January 2015, **D219/149**, Q-A41 [The only reference made by the witness to Ms. IM Chaem is the following: "Q: Did you ever hear of *Yeay* Chaem? A41: I heard the name, but I never personally saw or knew her."]; Written Record of Interview of KOR Len, 11 March 2014, **D119/98**, Q-A40 ["Q: With *Yeay* Chaem being Preah Netr Preah District Committee, do you know if she directly ruled the various worksites, military, militia, or the various security offices? A40: I have no grasp on that because I worked in the mobile unit."].

⁷⁹⁵ Written Record of Interview of CHHAO Chat, 18-19 December 2014, **D219/130**, Q-A261 ["Q: Did *Yeay* Chaem ever go there then [when the witness worked at Spean Sreng Canal]? A261: No."].

⁷⁹⁶ Written Record of Interview of CHHAO Chat, 18-19 December 2014, **D219/130**, A262 ["Q: Did you hear that *Yeay* Chaem had a role at that canal [Spean Sreng]? A262: No, I do not know."].

222. The remainder of the witnesses relied upon by the International Co-Prosecutor do not assist further. They are replete with hearsay that amounts to speculation and rumour⁷⁹⁷ or have no relevance to SSWS at all.⁷⁹⁸ The reliance on CHUM Chim is a case in point: he “heard” from others that people disappeared.⁷⁹⁹ However, whilst in his unit, he “never saw anyone disappear,”⁸⁰⁰ nor did he ever witness any arrests or people taken to be killed while working at SSWS.⁸⁰¹ Of course, even if he had seen people ‘taken to be killed’, this would not be sufficient. At least one witness explained that some people “disappeared” and were in fact sent back to other cooperatives.⁸⁰² Later, the witness had occasion to meet some of those who had “disappeared”; they were alive and well.⁸⁰³
223. In conclusion, as with PTSC, a fair and reasonable analysis of the evidence provides no support for the proposition that Ms. IM Chaem could be most responsible for the crimes in that location. Rather than considering the totality of the evidence with a view to the ascertainment of the truth, the International Co-Prosecutor’s approach is highly selective. However, this cannot conceal the paucity of evidence in support of the case alleged against Ms. IM Chaem.
224. A reasonable analysis of the evidence shows that Ms. IM Chaem was a district-level cadre until the end of the regime without *de jure* or *de facto* authority over SSWS at any time. SSWS, the construction of which was started prior to Ms. IM Chaem arriving in the

⁷⁹⁷ Written Record of Interview of CHUM Chim, 20 January 2015, **D219/149**, A16 [“I only heard from my teammates about the disappearances of people”].

⁷⁹⁸ DC-Cam Interview of THIB Samphat, 11 September 2011, **D123/1/2.66**, EN 00987612-13 [referring to families being sent to be imprisoned at Phnom Trayoung Security Centre but not specifying where they came from]; Written Record of Interview of CHHAO Chat, 18-19 December 2014, **D219/130**, Q-A134, A147-48 [following a line of questioning in relation to work at Trapeang Thma Dam].

⁷⁹⁹ Written Record of Interview of CHUM Chim, 20 January 2015, **D219/149**, A16.

⁸⁰⁰ Written Record of Interview of CHUM Chim, 20 January 2015, **D219/149**, A13.

⁸⁰¹ Written Record of Interview of CHUM Chim, 20 January 2015, **D219/149**, A16 [“In fact, I never saw them arresting and taking people to be killed. I only heard from my teammates about the disappearances of people, so I became frightened and decided to escape.”].

⁸⁰² Written Record of Interview of KOR Len, 11 March 2014, **D119/98**, A42 [“Sometimes, they disappeared, but I did not know if they were sent back to their cooperatives. I did not know about disappearances and deaths attributed to sickness in other units.”].

⁸⁰³ Written Record of Interview of KOR Len, 29 April 2014, **D119/121**, A33 [“As, I remember, half of the people in my entire unit disappeared, but I do not know where they went. Probably they went to the cooperatives. Later I met some of them, not all. At that time, I had around 200 group members.”].

Northwest, was under the formal authority of the sector-level and under the effective authority of *Ta Val* (until mid-1977) and later *Ta Poal* (from mid-1977).

225. Moreover, as argued above, the evidence does not support the International Co-Prosecutor's allegations concerning the scale, frequency, or gravity of any crimes. The claim that Ms. IM Chaem was involved in forcing "thousands" of people to work at SSWS, and the supervision and administration of a system of punishments (e.g., as detention and execution) and deaths by starvation, disease, and disappearances are not supported by reliable evidence. Ms. IM Chaem's role at SSWS was to provide labourers to work at the Worksite if and when the sector echelon requested them. Accordingly, even if the evidence suggested that the crimes were particularly grave, it does not suggest that Ms. IM Chaem played any proximate role in them: her role must have been remote from any crimes committed at SSWS.
226. In summary, the totality of the evidence in support of the claim that Ms. IM Chaem is most responsible for the crimes at SSWS lacks seriousness, consistency, and corroboration. It is incapable of amounting to sufficient evidence of her falling into the ECCC's "most responsible" category.

E. CONCLUSION ON PERSONAL JURISDICTION

227. The International Co-Prosecutor submits that Ms. IM Chaem was "among those who were most responsible" for the crimes allegedly committed during the Democratic Kampuchea regime⁸⁰⁴ on the basis that she was "a CPK official of significant rank at the District and Sector level [who] played a key role in the commission of crimes which affected tens of thousands of individuals, and caused many thousands of deaths."⁸⁰⁵ As discussed above, the International Co-Prosecutor's case rests on the following claims: i) Ms. IM Chaem ascended from the position of cooperative chief in the Southwest Zone before 1975 to that of Deputy Secretary of Sector 5 in the Northwest Zone in 1978;⁸⁰⁶ ii) every role she held

⁸⁰⁴ Final Submission, paras. 529-38.

⁸⁰⁵ Final Submission, para. 530.

⁸⁰⁶ See, Final Submission, para. 531. *See also*, Final Submission, paras. 530-32.

was assigned to her by *Ta Mok*;⁸⁰⁷ and ii) she played a key role in the commission of serious crimes in both the Southwest Zone and the Northwest Zone from 1976 to 1979.⁸⁰⁸

228. On this basis, the International Co-Prosecutor contends that Ms. IM Chaem's responsibility "is roughly equivalent to that of Kaing Guek Eav *alias* Duch".⁸⁰⁹ The International Co-Prosecutor claims that Ms. IM Chaem had a higher level of authority than Duch, controlled the lives of many more civilian victims, and that PTSC had the same or a greater number of victims than S-21 over a shorter period of operation.⁸¹⁰
229. As argued throughout this Response, the International Co-Prosecutor erred in law and in fact in concluding that Ms. IM Chaem falls into the "most responsible" category. First, the International Co-Prosecutor erred in law in resting his claim on all the evidence contained in Case File 004/1 without regard to the Notification of Charges and its' delimitation to the scope of any indictment.⁸¹¹ Second, the International Co-Prosecutor's assessment of the evidence is one that no reasonable trier of fact could adopt. It lacks the objectivity required to contribute to the ascertainment of the truth. It shows insufficient regard for a prosecutor's duty to act as a minister of justice.⁸¹²
230. Based on the evidence concerning Ms. IM Chaem's alleged formal and effective authority at PTSC and SSWS and her alleged participation in crimes of sufficient gravity, it is plain that she ought not to be indicted. The evidence is not "sufficiently serious and corroborative" and fails to reach the requisite level of probative force to establish that Ms. IM Chaem is probably amongst those "most responsible".⁸¹³ Had the evidence provided this indication, the International Co-Prosecutor would have been content to rest this case on the charges contained in the Notification of the Charges and taken a more objective approach to the evidence and the ascertainment of the truth. Instead, throughout the Final Submission, the International Co-Prosecutor disregards Judge Bohlander's cautious

⁸⁰⁷ See, Final Submission, para. 531.

⁸⁰⁸ See, Final Submission, para. 532.

⁸⁰⁹ Final Submission, para. 534.

⁸¹⁰ Final Submission, para. 534.

⁸¹¹ See, Response, paras. 54-60. See also, Response, paras. 20-29.

⁸¹² See, Response, paras. 30-36. Cf. Case 001 Decision on the Standing of Civil Party Lawyers to Make Submissions, E72/3, paras. 20-21, 24, 34.

⁸¹³ Case 002 Closing Order, D427, para. 1323.

approach to the evidence in support of the charges outlined in the Notification of Charges (including the principle of *in dubio pro reo*). Instead of establishing that the ECCC has jurisdiction over Ms. IM Chaem, the International Co-Prosecutor's approach to the law and the facts merely serves as an eloquent demonstration of the paucity of relevant and probative evidence in support of the claim that Ms. IM Chaem falls into the category of "those who were most responsible".

231. Ms. IM Chaem was the *de jure* and *de facto* Preah Net Preah District Secretary from, at the earliest, late 1977 to the end of the Democratic Kampuchea regime.⁸¹⁴ The two crime sites in relation to which Ms. IM Chaem was charged, PTSC and SSWS, were under the *de jure* and *de facto* authority of sector-level cadre TUM Soeun⁸¹⁵ and the Sector Committee and *Ta Poal*,⁸¹⁶ respectively. As the evidence clearly shows, in her capacity as a *de jure* and *de facto* district secretary, Ms. IM Chaem was engaged in agricultural work and food production⁸¹⁷ as well as canal and dam construction.⁸¹⁸ Ms. IM Chaem received instructions from, and reported to, the echelon immediately above hers—the sector level.⁸¹⁹ Consistent with traditional gender roles and her position as a district-level cadre, Ms. IM Chaem was not enjoined to act on security matters⁸²⁰ and had no control over the military,⁸²¹ the militia,⁸²² or over security centres such as PTSC.⁸²³ She did not have the power to order arrests and detentions or otherwise exercise control over crimes.⁸²⁴
232. The evidence does not suggest that PTSC was subject to a deliberate and systematic policy to starve, overwork or otherwise act inhumanely to the prisoners or that Ms. IM Chaem took part in such a plan.⁸²⁵ The evidence does not suggest she even visited the Security

⁸¹⁴ See, Response, paras. 102, 108-09.

⁸¹⁵ See, Response, paras. 148-54.

⁸¹⁶ See, Response, paras. 193-207.

⁸¹⁷ See, Response, paras. 122-29, 173-74.

⁸¹⁸ See, Response, paras. 122-29, 214-16.

⁸¹⁹ See, Response, paras. 113, 117, 127-29, 173, 214.

⁸²⁰ See, Response, paras. 75-79.

⁸²¹ See, Response, paras. 133-36.

⁸²² See, Response, paras. 137-38.

⁸²³ See, *generally*, Response, paras. 148-54.

⁸²⁴ See, Response, paras. 139-42, 162-64, 173, 214-15, 219, 221.

⁸²⁵ Cf, Response, 157-86.

Centre.⁸²⁶ Conversely, the evidence establishes that PTSC was a sector-level security centre, under the authority of TUM Soeun, and operated by sector-level soldiers.⁸²⁷ Consistent with her role throughout the Democratic Kampuchea regime, Ms. IM Chaem's only relationship to PTSC was limited to providing food supplies at the request of TUM Soeun.⁸²⁸ As a food supplier, Ms. IM Chaem's role in regard to any grave crimes allegedly committed at PTSC is too remote for her to be considered amongst those who were "most responsible" for even the crimes at this location.

233. Similarly, the evidence does not suggest that SSWS was subject to a policy of inhumane treatment leading to death and injury or that any crimes were the consequence of Ms. IM Chaem's orders or activities.⁸²⁹ Ms. IM Chaem's role was limited to providing workers at the request of the sector level.⁸³⁰ Consistent with the fact that SSWS was a sector-level worksite under the authority of the Sector 5 Committee and operated by the sector-level mobile unit under the direct supervision of *Ta Poal*,⁸³¹ workers would report directly to their respective sector-level supervisors.⁸³² In her duty to provide workers, Ms. IM Chaem's role in regard to the few crimes committed at SSWS is too remote for her to be considered among those who were "most responsible" for even the crimes at the location.

234. The Defence agrees that the case of Duch provides a useful comparison. However, as briefly discussed below, the International Co-Prosecutor's attempt to show equivalence between Ms. IM Chaem and Duch's responsibility for crimes during the Democratic Kampuchea regime stretches the bounds of incredulity and must fail. A cursory examination of the relevant facts demonstrates the absurdity of the suggestion that Ms. IM Chaem's responsibility "is roughly equivalent to that of Kaing Guek Eav *alias* Duch".⁸³³ There is no serious or corroborative evidence to support this rhetoric and it has no place in

⁸²⁶ See, Response, para. 149.

⁸²⁷ See, Response, paras. 148-54.

⁸²⁸ See, Response, paras. 173-74. Cf, Response, paras. 76, 124-29.

⁸²⁹ Cf, Response, paras. 157-86.

⁸³⁰ See, Response, para. 214.

⁸³¹ See, Response, paras. 193-207.

⁸³² Cf, Response, para. 215.

⁸³³ Final Submission, para. 534.

this case. Any fair comparison underscores the ECCC's lack of personal jurisdiction over Ms. IM Chaem.

235. Duch was tried and convicted on the basis that he served as the Deputy Chairman of S-21,⁸³⁴ the Secretary of the S-21 Committee,⁸³⁵ and the Chairman of S-21,⁸³⁶ a security centre that carried out nation-wide operations where, between 1975 and 1979,⁸³⁷ at least 12,273 individuals were systematically imprisoned,⁸³⁸ tortured,⁸³⁹ and executed.⁸⁴⁰ In his capacity as Chairman of S-21 and Secretary of the S-21 Committee,⁸⁴¹ Duch played an active role in ordering the arrests of prisoners,⁸⁴² and their execution⁸⁴³ and supervised an interrogation unit comprised of 20 subordinates⁸⁴⁴ that administered a regime of systematic torture.⁸⁴⁵ Duch had been directly appointed to these positions by the Central Committee⁸⁴⁶ and reported directly to both SON Sen and NUON Chea⁸⁴⁷ who were members of the Central and Standing Committees, respectively. He had full authority over all S-21 staff⁸⁴⁸ and was in charge of various units such as the one registering and maintaining records of staff and detainees,⁸⁴⁹ and the one tasked with obtaining written confessions, including through torture.⁸⁵⁰ During his trial, Duch confirmed that he knew exactly what was happening on a daily basis at S-21⁸⁵¹ due to a comprehensive reporting system that he established and which ensured his orders were carried out “immediately and precisely.”⁸⁵²

⁸³⁴ Case 001 Trial Judgement, **E188**, para. 111.

⁸³⁵ Case 001 Trial Judgement, **E188**, para. 132.

⁸³⁶ Case 001 Trial Judgement, **E188**, para. 111.

⁸³⁷ Case 001 Trial Judgement, **E188**, para. 111.

⁸³⁸ Case 001 Trial Judgement, **E188**, paras. 141, 234-39.

⁸³⁹ Case 001 Trial Judgement, **E188**, paras. 240-56.

⁸⁴⁰ Case 001 Trial Judgement, **E188**, paras. 205-24.

⁸⁴¹ Case 001 Trial Judgement, **E188**, para. 132.

⁸⁴² Case 001 Trial Judgement, **E188**, paras. 169-72.

⁸⁴³ Case 001 Trial Judgement, **E188**, paras. 181-83.

⁸⁴⁴ Case 001 Trial Judgement, **E188**, paras. 125-26.

⁸⁴⁵ Case 001 Trial Judgement, **E188**, paras. 127, 153.

⁸⁴⁶ Case 001 Trial Judgement, **E188**, paras. 119-20, *referring to* Case 001 Closing Order, **D99**, paras. 20-21.

⁸⁴⁷ Case 001 Trial Judgement, **E188**, para. 131.

⁸⁴⁸ Case 001 Trial Judgement, **E188**, paras. 132, 162-65.

⁸⁴⁹ Case 001 Trial Judgement, **E188**, para. 145.

⁸⁵⁰ Case 001 Trial Judgement, **E188**, paras. 150-52.

⁸⁵¹ Case 001 Trial Judgement, **E188**, para. 133.

⁸⁵² Case 001 Trial Judgement, **E188**, para. 144.

236. In relation to the level of participation in the alleged crimes, Duch commanded every level of S-21 operations, from the broad planning of its operations to the ordering of executions.⁸⁵³ Ms. IM Chaem sent workers to SSWS,⁸⁵⁴ and provided food supplies to PTSC.⁸⁵⁵ In terms of hierarchical rank, Duch directly “report[ed] to the very highest levels of the CPK leadership”⁸⁵⁶ whereas Ms. IM Chaem had direct communications with the sector echelon only.⁸⁵⁷ As to the permanence of their positions, Duch was involved in S-21, either as Deputy Chairman or Chairman, for the entire life of the Centre, *i.e.* for more than four years.⁸⁵⁸ In contrast, Ms. IM Chaem held her post as District Secretary of Preah Net Preah for little more than one year.⁸⁵⁹
237. The gravity of crimes committed at S-21 and those allegedly carried out at PTSC and SSWS are incomparable. There were more than 12,273 detainees at S-21.⁸⁶⁰ The crimes committed at S-21 were “of a particularly heinous and shocking character”⁸⁶¹ and it was the scene of more than 12,273 instances of murder⁸⁶² and unlawful imprisonment,⁸⁶³ wherein the “vast majority” of the victims were also tortured.⁸⁶⁴ On the other hand, even taking a generous approach to the International Co-Prosecutor’s case, barely a thousand persons were affected at PTSC and SSWS respectively⁸⁶⁵ and in circumstances that cannot reasonably be considered alike or equivalent. The geographical scope of S-21’s activities “reached across the entire country”;⁸⁶⁶ Ms. IM Chaem’s responsibilities extended to a single district.⁸⁶⁷ S-21 functioned for almost the entirety of the Khmer Rouge rule,⁸⁶⁸ Ms.

⁸⁵³ See, Case 001 Trial Judgement, **E188**, para. 23.

⁸⁵⁴ See, Response, para. 214.

⁸⁵⁵ See, Response, paras. 173-74. *Cf.* Response, paras. 76, 124-29.

⁸⁵⁶ See, Case 001 Trial Judgement, **E188**, para. 23.

⁸⁵⁷ See, Response, paras. 113, 117, 127-29, 173, 214.

⁸⁵⁸ See, Case 001 Trial Judgement, **E188**, paras. 121, 125, 128, 203.

⁸⁵⁹ See, Response, paras. 102, 108-09.

⁸⁶⁰ See, Case 001 Trial Judgement, **E188**, paras. 23 (fn. 31), 141.

⁸⁶¹ See, Case 001 Trial Judgement, **E188**, para. 597.

⁸⁶² Case 001 Trial Judgement, **E188**, para. 208.

⁸⁶³ Case 001 Trial Judgement, **E188**, para. 235.

⁸⁶⁴ See, Case 001 Trial Judgement, **E188**, para. 240.

⁸⁶⁵ *Cf.* Response, paras. 155-86, 208-26.

⁸⁶⁶ Case 001 Trial Judgement, **E188**, para. 23.

⁸⁶⁷ *Cf.* Response, paras. 97-142.

⁸⁶⁸ Case 001 Trial Judgement, **E188**, para. 23 [“S-21 was operational from October 1975 to early 1979, thus covering a significant portion of the DK regime’s existence.”].

IM Chaem was not appointed to any position in Preah Net Preah District until little over just one year before the fall of the Democratic Kampuchea regime.⁸⁶⁹ As discussed above, the evidence does not support any serious or convincing claim that Ms. IM Chaem commanded, supervised, or even contributed to the implementation of any system of torture, murder, unlawful imprisonment, or other similar atrocity crime. Indeed, the evidence does not even support the claim that the crimes at PTSC⁸⁷⁰ and SSWS⁸⁷¹ at the relevant time were serious, widespread or systematic.

238. In summary, when assessing the number of victims, the geographical and temporal scope and manner in which they were allegedly committed, as well as the number of separate incidents, it is plain that the *gravity of the crimes* arising at PTSC and SSWS during the relevant time tends towards the low, and significantly lower than other cases at the ECCC, including the case of Duch. In absolute contrast to the facts underpinning Duch's responsibility, an assessment of Ms. IM Chaem's *level of responsibility* for those crimes, in terms of the level of participation, her *de jure* and *de facto* hierarchical rank and authority, including the hierarchical echelons above her, shows that she did not participate directly in, or act in furtherance, of any relevant crimes. Rather than being *probably* most responsible for crime, the evidence shows that her acts and conduct at PTSC and SSWS were remote from any criminal wrongdoing.
239. Moreover, even if Ms. IM Chaem could be considered to be most responsible, the evidence discussed in this Response establishing her remoteness from criminal wrongdoing is also evidence of her lack of contribution and *mens rea* for any crimes against humanity that may have occurred at PTSC and SSWS.⁸⁷² As noted, the evidence does not support any reasoned inference that Ms. IM Chaem's contributed to crime in any significant or proximate way. Ms. IM Chaem i) did not possess any specific relationship with higher echelons such as *Ta Mok*;⁸⁷³ ii) did not play a significant role in security related matters;

⁸⁶⁹ See, Response, paras. 102, 108-09.

⁸⁷⁰ Cf, Response, paras. 157-86.

⁸⁷¹ Cf, Response, paras. 210-26.

⁸⁷² Cf, Case 001 Trial Judgement, **E188**, para. 44. See also, General Comment 32 on Article 14 of the ICCPR, HRC, CCPR/C/GC/32 (2007), para. 30 ["The presumption of innocence, which is fundamental to the protection of human rights, imposes on the prosecution the burden of proving the charge"] [attached as **Authority 27**].

⁸⁷³ See, Response, paras. 68-73. See also, Response, paras. 118-21.

iii) did not hold significant positions during the Democratic Kampuchea regime;⁸⁷⁴ and iv) had neither *de jure* nor *de facto* authority over direct perpetrators at PTSC and SSWS.⁸⁷⁵ In the final analysis, the evidence does not suggest that Ms. IM Chaem contributed to crime or otherwise acted with the intention to further policies connected to any widespread or systematic attack against a civilian population.

240. Returning to the main question of this Response, there can be little doubt that the totality of the evidence shows that Ms. IM Chaem's responsibility for serious crime is nominal, wholly inconsistent with other cases at the ECCC and any reasoned view of those who bear the most responsibility for the grave crimes committed during the period of the existence of the Democratic Kampuchea regime.

VI. RELIEF REQUESTED

241. On the basis of the arguments above, the Defence respectfully requests that, in the exercise of their discretion, and in the interests of justice, the Co-Investigating Judges:

- a) Find that Ms. IM Chaem does not fall within the category of "those who were most responsible" for crimes under the ECCC's subject-matter jurisdiction; and
- b) Dismiss the International Co-Prosecutor's allegations against Ms. IM Chaem.

Respectfully submitted,



BIT Seanglim



Wayne JORDASH, QC

Co-Lawyers for Ms. IM Chaem
Signed on the 28th of November, 2016

⁸⁷⁴ See, Response, paras. 83-142.

⁸⁷⁵ Cf, Response, paras. 114-226.