

**BEFORE THE PRE-TRIAL CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

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**INTERNATIONAL CO-PROSECUTOR'S APPEAL OF CLOSING ORDER
(REASONS)**

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I. INTRODUCTION

1. Pursuant to Rules 67(5) and 74(2) of the Internal Rules,¹ the International Co-Prosecutor (“Co-Prosecutor”) appeals the Co-Investigating Judge’s (“CIJs”) “Closing Order (Reasons)” in which the CIJs found that Im Chaem does not fall under the personal jurisdiction of the ECCC.² This appeal sets out six grounds of appeal related to legal and factual errors by the CIJs in the analysis contained in their Closing Order.
2. Broadly, the grounds of appeal relate to (i) the failure of the CIJs to consider all of the facts of which they were seised in the Initial and Supplementary Submissions for the Im Chaem case and how these facts could impact on the issue as to whether Im Chaem was among those “most responsible” for the crimes within the jurisdiction of the ECCC; (ii) errors in how the CIJs analysed and applied the elements of the crimes of extermination and enforced disappearances; and (iii) errors in the findings regarding Im Chaem’s position at the district and sector level in Sector 13.
3. The appeal asks the Pre-Trial Chamber (“PTC”) to correct these legal and factual errors and either send the casefile back to the CIJs with instructions for them to re-evaluate whether Im Chaem falls within the personal jurisdiction of the ECCC; or, in the alternative, for the PTC to itself re-evaluate the case considering all of the facts from the Co-Prosecutor’s Introductory and Supplementary Submissions, the true extent of Im Chaem’s positions of authority in Sector 13 of the Southwest Zone, and properly applying the definitions of extermination and enforced disappearances.

II. PROCEDURAL HISTORY

4. On 7 September 2009, the then Acting International Co-Prosecutor filed the Third Introductory Submission requesting a judicial investigation be conducted regarding the responsibility of Im Chaem and three other individuals.³ Subsequently, the Co-Prosecutor filed four Supplementary Submissions.⁴

¹ Extraordinary Chambers in the Courts of Cambodia, Internal Rules (Rev. 9), as revised on 16 January 2015.

² **D308/3** Closing Order (Reasons), 10 July 2017.

³ **D1** Co-Prosecutors’ Third Introductory Submission, 20 November 2008.

⁴ **D65** Co-Prosecutors’ Supplementary Submission regarding Sector 1 Crime Sites and Persecution of Khmer Krom, 18 July 2011; **D191** Co-Prosecutors’ Supplementary Submission regarding Forced Marriage and Sexual or Gender-Based Violence, 24 April 2014; **D254/1** Response to Forwarding Order and Supplementary Submission regarding Wat Ta Meak, 4 August 2015; **D272/1** Response to Forwarding Order dated 5 November 2015 and Supplementary Submission regarding the Scope of Investigation into Forced Marriage in Sectors 1 and 4, 20 November 2015.

5. On 24 July 2015, the CIJs requested submissions from the parties on whether Im Chaem should be considered a “senior leader of Democratic Kampuchea” or among “those who were most responsible”.⁵ The Co-Prosecutor submitted that Im Chaem was not a senior leader but was among those most responsible and thus fell within the personal jurisdiction of the ECCC.⁶
6. On 18 December 2015, the CIJs filed the Notice of Conclusion of Judicial Investigation against Im Chaem⁷ and the Notice of Intent to Dismiss the Charges against Im Chaem and to Sever the Proceedings against Her.⁸ On 27 July 2016, the CIJs issued the Forwarding Order.⁹ On 27 October 2016, the Co-Prosecutor filed his Rule 66 Final Submission Against Im Chaem, submitting that Im Chaem should be indicted.¹⁰
7. On 22 February 2017, the CIJs issued the Closing Order (Disposition) dismissing the charges against Im Chaem.¹¹ On 2 March 2017, the Co-Prosecutor filed his Request to File Notice of Appeal against Case 004/01 Closing Order after the Co-Investigating Judges’ Delivery of Full Reasons,¹² submitting that he could not make an informed decision on whether there was a basis for appeal without knowing the full reasons for the dismissal of charges. The PTC granted this request on 6 March 2017.¹³
8. On 10 July 2017, the CIJs issued the Closing Order (Reasons).¹⁴ On the same day, the CIJs issued their decision on the Co-Prosecutor’s Request for Closing Order Reasons and CIJ’s Decision to be made Public,¹⁵ and filed a heavily redacted version of the Closing

⁵ **D251** Request for Submissions on Whether Im Chaem Should Be Considered A “Senior Leader” Or Among “Those Who Were Most Responsible”, 24 July 2015.

⁶ **D251/5** 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, paras 44, 45, 51.

⁷ **D285** Notice of Conclusion of Judicial Investigation against Im Chaem, 18 December 2015.

⁸ **D286** Notice of Intent to Dismiss the Charges against Im Chaem and to Sever the Proceedings against Her, 18 December 2015.

⁹ **D304** Forwarding Order pursuant to Internal Rule 66(4), 27 July 2016.

¹⁰ **D304/2** International Co-Prosecutor’s Rule 66 Final Submission Against Im Chaem, 27 October 2016 (“Co-Prosecutor’s Rule 66 Final Submission”).

¹¹ **D308** Closing Order (Disposition), 22 February 2017.

¹² **D308/1** International Co-Prosecutor’s Request to File Notice of Appeal against Case 004/01 Closing Order after the Co-Investigating Judges’ Delivery of Full Reasons, 2 March 2017.

¹³ **D308/2** Order on International Co-Prosecutor’s Request to File Notice of Appeal against Case 004/01 Closing Order after the Co-Investigating Judges’ Delivery of Full Reasons, 6 March 2017.

¹⁴ **D308/3** Closing Order (Reasons), 10 July 2017.

¹⁵ **D309/2** Decision on International Co-Prosecutor’s Request for Closing Order Reasons and CIJ’s Decision to be Made Public, 10 July 2017.

Order (Reasons). On 20 July 2017, the Co-Prosecutor filed his Notice of Appeal against the CIJs' Closing Order (Reasons).¹⁶

III. APPLICABLE LAW

9. Under Rule 67, the CIJs – in their Closing Order – “make their final determinations with respect of the legal characterisation of the acts alleged by the Co-Prosecutors and determine whether they amount to crimes within the jurisdiction of the ECCC”.¹⁷ Pursuant to Rule 67(5), the Closing Order is subject to appeal by the Co-Prosecutors as provided in Rule 74 – which governs the “Grounds for Pre-Trial Appeals”. Rule 74(2) provides that the Co-Prosecutors “may appeal against all orders by the Co-Investigating Judges.”
10. The Pre-Trial Chamber has found it to be established international jurisprudence that, on appeal, “alleged errors of law are reviewed *de novo* to determine whether the legal decisions are correct and alleged errors of fact are reviewed under a standard of reasonableness to determine whether no reasonable trier of fact could have reached the finding of fact at issue.”¹⁸

IV. APPEAL SUBMISSIONS

GROUND 1: THE CIJS ERRED IN LAW BY FINDING THAT ALLEGATIONS IN THE CO-PROSECUTOR'S INTRODUCTORY SUBMISSIONS MUST BE CHARGED IN ORDER TO BE PART OF A CLOSING ORDER

11. Under ECCC and Cambodian law, investigating judges are seised *in rem* with all factual allegations in the prosecution's introductory or supplementary submissions. They have an obligation to investigate these facts and to consider whether the evidence establishes that the person(s) named in the submission(s) is criminally responsible for any crimes under any applicable mode of liability.
12. However, in the Closing Order (Reasons), the CIJs failed to consider all of the factual allegations of which they were seised or the Co-Prosecutors arguments in his Final Submission as to how the evidence supports Im Chaem's criminal responsibility for several very serious crimes. The CIJ's asserted that they had no need to give a reasoned

¹⁶ **D308/3/1** International Co-Prosecutor's Notice of Appeal against the Co-Investigating Judges' Closing Order (Reasons), 20 July 2017.

¹⁷ Case 002-D427/3/15 Decision on Appeals by Nuon Chea and Ieng Thirith Against the Closing Order, 15 February 2011, para. 79.

¹⁸ Case 002-D427/1/30 Decision on Ieng Sary's Appeal Against the Closing Order, 11 April 2011, para. 113.

decision as to whether the evidence established Im Chaem's responsibility for those crimes since the CIJs themselves had not "charged" Im Chaem with those offences or modes of liability. They explained their rationale as follows:

Im Chaem was only charged for some of the crimes for which the ICP alleged that she is criminally responsible, namely violations of the 1956 Penal Code and crimes against humanity allegedly committed at Phnom Trayoung security centre and Spean Sreng Canal worksite.

Nevertheless, the ICP requests the CIJs to indict Im Chaem for a much wider set of crimes, committed via more modes of liability, than those that she was charged with. As correctly objected to by the Defence, this is impermissible. Being informed in detail of the nature and cause of the charges is a fundamental pillar of due process, and it is critical to the effective exercise of a charged person's right to prepare his or her defence. A charged person may thus only be indicted for crimes that he or she has been charged with and duly notified of.¹⁹

13. The CIJs' reasoning is flawed for several reasons. First, the Defence is put on notice as to the facts which could lead to an indictment through access to the Co-Prosecutor's Introductory and any Supplementary Submissions. Under an investigative judge/civil law system such as the ECCC, the Defence understands that the CIJs are obligated to investigate all facts in such submissions.
14. Im Chaem's own filings over the course of the investigation demonstrate that not only has she understood that facts not "charged" by the CIJs could be investigated and ultimately lead to indictment, she has made specific investigative requests regarding crime sites where she had not been charged. After the issuance of the initial *in absentia* charging document – Im Chaem requested that the CIJs place trial transcripts from Case 002/02 onto her Case File "[g]iven that Ms. IM Chaem is also being investigated in regard to Trapeang Thma Dam"²⁰ – despite Trapeang Thma not being expressly enumerated in the *in absentia* charging document. As acknowledged by Im Chaem, the request to place trial testimonies relating to Trapeang Thma onto Case 004/01 was made "in order to safeguard Ms. IM Chaem's fair trial rights, to adequately facilitate the preparation of her defence, and to examine witnesses against her."²¹ Im Chaem supported the request by quoting Article 14 of the International Covenant on Civil and Political Rights, namely

¹⁹ **D308/3** Closing Order (Reasons), paras 244-245.

²⁰ **D283** Im Chaem's Request for Disclosure of Unredacted Case 002 Transcripts and Related Documents Relevant to her, 15 December 2015, para. 2 ("Im Chaem's Request for Case 002 Transcripts").

²¹ **D283** Im Chaem's Request for Case 002 Transcripts, para. 3.

“that a charged person is entitled [...] to examine the evidence against them.”²² Had Im Chaem considered that the allegations as regards this crime site were beyond the permissible scope of a possible indictment – requesting this evidence be placed on the Case File would have been unnecessary. Moreover, the CIJs granted the request,²³ demonstrating that they also understood that facts not yet included in the “charges” for which they had informed Im Chaem were still relevant as they could lead to indictment.

15. Secondly, the CIJs’ position effectively denies the Co-Prosecutors the right to be heard on the evidence of Im Chaem’s responsibility for these crimes. The Internal Rules do not provide the Co-Prosecutors any opportunity to be heard on which crimes the CIJs include in their notification of charges pursuant to Rule 57. In the current case, the Co-Prosecutors were not invited to submit on which crimes Im Chaem should be charged with and were not invited to the hearings where she was notified of the charges. A fundamental aspect of due process is to provide all parties an opportunity to be heard.²⁴ If the arguments in the Co-Prosecutor’s Final Submission concerning facts not charged are ignored, it would result in facts being dismissed without any reasoned decision and without the Co-Prosecutors ever having an opportunity to be heard by the CIJs.
16. Thirdly, the CIJ’s position would deny the Co-Prosecutors the right to appeal the CIJs findings as to the evidence on facts for which the CIJs have been seised but have not charged. The CIJ’s issued no decision prior to charging Im Chaem with a limited number of the allegations in the Co-Prosecutor’s Introductory Submission and Judge Harmon specifically notified Im Chaem that she could later be charged with additional crimes.²⁵ There was no “decision” for the Co-Prosecutors to appeal at any time during the

²² **D283** Im Chaem’s Request for Case 002 Transcripts, para. 10.

²³ **D289** Decision on Im Chaem’s Request for Disclosure of Unredacted Case 002 Transcripts and Related Documents Relevant to her and the International Co-Prosecutor’s Request in Response to the Notice of the Conclusion of Judicial Investigation Against Im Chaem, 11 January 2016.

²⁴ See, **D121/4/1/4** Considerations of the Pre-Trial Chamber on [Redacted] Appeal against the Decision Denying his Requests to Access the Case File and Take Part in the Judicial Investigation, 15 January 2014, Opinions of Judges Chang-Ho Chung and Rowan Downing, para. 9, *citing with approval, inter alia*, Case 002- **E163/5/1/13** Decision on the Co Prosecutors’ Immediate Appeal of the Trial Chamber’s Decision Concerning the Scope of Case 002/01, 8 February 2013, para. 42 (“The need to respect the right to be heard in criminal proceedings [...] is dictated by common sense and the interests of meaningful justice and conforms with comparable international legal standards.”); International Court of Justice, *Australia v. France*, Judgment (Nuclear Tests Case - Dissenting Opinion of Judge Sir Garfield Barwick), 20 December 1974, p. 391 (“In any case the Applicant must have been entitled to make submissions as to all the matters involved in the decision of the Court.”); ECtHR, *Niderost-Huber v. Switzerland*, Application No. 18990/91, Judgment, 18 February 1997, para. 29 (emphasising that the “litigants’ confidence in the workings of justice [...] is based on, inter alia, the knowledge that they have had the opportunity to express their views on every document in the file”).

²⁵ **D239.1** Notification of Charges against Im Chaem, 3 March 2015, para. 19.

investigation. If the Closing Order does not address facts of which the CIJs were seised but which they have not charged the suspect, the Co-Prosecutors are denied the right to appeal to the PTC the reasonableness of any decision not to charge specific crimes or modes of liability.

17. The fact that the CIJs cannot simply drop the investigation of facts for which they were seised without hearing from the Co-Prosecutors and without a reasoned decision is further confirmed by the Internal Rules most recent amendment. Rule 66 *bis* provides a means for the CIJs to streamline an investigation and reduce the scope of the investigation by excluding some facts set out in the Co-Prosecutor's Introductory or Supplementary Submissions provided that the remaining facts are represented. However, the rule requires the CIJs to wait until the conclusion of the investigation and to give the Co-Prosecutors and the other parties notice of their intent to utilise the rule to reduce the scope of the investigation. They must allow the Co-Prosecutors and other parties an opportunity to make submissions on the proposed reduction. Any decision to exclude facts under Rule 66 *bis* is subject to appeal, clearly implying that it must be a reasoned decision. There would be no need for Rule 66 *bis* if the CIJs could simply ignore any facts that they themselves have not charged without giving any opportunity to the parties to be heard and without any decision.
18. Fourthly, the CIJs' reliance on a decision issued by their office during the Case 002 investigation is unpersuasive. The CIJs failed to interpret the decision in its totality. The CIJ's rely on a single sentence from the prior decision stating that "the Co-Investigating Judges may not indict a person for facts in relation to which he or she has not first been charged".²⁶
19. However, the immediately preceding sentence is critical to interpreting the decision as a whole and directly contradicts the CIJs' assertion that the Closing Order can ignore facts contained in the Co-Prosecutor's Introductory or Supplementary Submissions simply because they have not "charged" the suspect with these specific crimes or modes of liability. It states that: "The Co-Investigating Judges have the obligation to make a decision, in the Closing Order, with respect to each of the facts of which they have been

²⁶ Case 002-**D198/1** Order Concerning the Co-Prosecutors' Request for Clarification of Charges, 20 November 2009, para. 10.

validly seised, either by issuing an indictment or dismissing the case”.²⁷ This holding is based on civil law jurisprudence setting out the existence of an obligation for the investigating judge to make a determinative finding in the closing order on every allegation which the investigating judge is seised to investigate.²⁸ This obligation would cease if the CIJs could only indict based on facts *they have charged* as opposed to facts of which *they have been seised*.

20. The Case 002 decision relied on by the CIJs cites two examples of French law to support its proposition on indicting without charging. The first declares that:

*Nul ne pouvant être jugé, ni mis en accusation sans avoir été entendu ou dûment appelé, une instruction ne doit pas être close et la mise en accusation prononcée contre un inculpé, même arrêté postérieurement à la date de l'ordonnance de transmission de pièces au Procureur général, sans qu'il ait été mis en mesure de répondre aux inculpations et de produire ses justifications.*²⁹

21. The second notes that:

*Lorsqu'un inculpé s'est expliqué sur le fond lors de sa première comparution devant le Juge d'instruction il n'est pas fondé à soutenir qu'en l'absence d'interrogatoire ultérieur, il y a eu atteinte aux droits de la défense.*³⁰

22. These sources stand for the basic assertion that an individual must be “informed in detail of the nature and cause of the charges” alleged against them.³¹ This is the very purpose of the Co-Prosecutor’s Introductory Submission and any subsequent Supplementary Submissions. The Case 002 decision relied on by the CIJs merely reaffirms the applicability to the ECCC of the civil law practice that an individual cannot be indicted

²⁷ Case 002-**D198/1** Order Concerning the Co-Prosecutors’ Request for Clarification of Charges, 20 November 2009, para. 10 (emphasis added).

²⁸ See, e.g., Crim 24 mars 1977 Bull crim N°112, « *Le juge d’instruction est tenu d’informer sur tous les faits dont il a été régulièrement saisi* »; See also: « *Le juge est tenu de statuer par ordonnance du règlement sur tous les faits dont il a été régulièrement saisi* ».

²⁹ Crim 12 octobre 1972, Bull crim N° 286 (“As no person can be judged nor indicted without being heard or called, then the investigation cannot be closed and the indictment issued against the charged person, even if he was arrested after the date of the transmission of the case file to the Attorney General, if he hasn’t been put in a position to respond to the charges and produce his defense.”) (OCP unofficial translation) *cited in* Case 002-**D198/1** Order on Request for Clarification of Charges, fn. 15.

³⁰ Crim 6 novembre 1979, Bull crim N° 306 (“Once the charged person has given his explanation on the substance during his first appearance before the investigating judge, he is not legally allowed to submit that without a later interrogation, his defence rights would have been violated”) (OCP unofficial translation) *cited in* Case 002-**D198/1** Order on Request for Clarification of Charges, fn. 15.

³¹ See, **D308/3** Closing Order (Reasons), para. 245.

for factual allegations unless the investigating judge is validly seized of those facts by virtue of an introductory or supplementary submission.³²

GROUND 2: THE CIJS ERRED IN LAW BY FAILING TO ADDRESS FACTS OF WHICH THEY WERE SEISED

23. The CIJs failed to address numerous allegations set out in the Co-Prosecutor's Final Submission. The Closing Order (Reasons) claims to "provide a brief overview of the evidence related to crime sites in Sector 5 for which Im Chaem has not been charged,"³³ and states that, even if considered, the evidence regarding these crime sites would not alter their personal jurisdiction decision.³⁴ However, the Closing Order (Reasons) fails to deal with facts regarding several very significant crimes of which the CIJs were seized in the Co-Prosecutor's Introductory Submission and Supplementary Submissions that were not "charged" by the CIJs.³⁵ These include allegations regarding: (i) the purge of the Northwest Zone; (ii) forced marriages in Sector 13 of the Southwest Zone and Sector 5 of the Northwest Zone; (iii) persecution of the Vietnamese in Sector 5 of the Northwest Zone; (iv) crimes against the Khmer Krom in Sector 13 of the Southwest Zone; and (v) persecution of various political and ethnic groups and torture, enforced disappearances and other inhumane acts at specified sites for which they were seized by the Co-Prosecutor's Introductory Submission and Supplementary Submissions.

A. The CIJs failed to consider evidence of Im Chaem's responsibility for the purge of the Northwest Zone

24. Despite detailed findings that Im Chaem led and participated in what the CIJs describe as the "major coordination task" that was purging the Northwest Zone,³⁶ the CIJs failed to consider the large-scale killings that resulted from the purges when assessing Im Chaem's

³² See *e.g.*, French Code of Criminal Procedure, Article 80: "Where an offence not covered by the prosecution submissions is brought to the knowledge of the investigating judge, he must communicate forthwith to the district prosecutor the complaints or the official records which establish its existence. The district prosecutor may then require the investigating judge, by an additional submission, to investigate the additional facts, or require him to open a separate investigation, or send the case to the trial court, or order an inquiry, or decide to drop the case, or proceed to one of the measures provided for in articles 41-1 to 41-3, or to transfer the complaint or the official reports to the district prosecutor who is territorially competent"; Article 181: "The indictment order contains, under pain of nullity, a presentation and the legal qualification of the matters to which the accusation relates, and specifies the accused's identity."

³³ **D308/3** Closing Order (Reasons), para. 246.

³⁴ **D308/3** Closing Order (Reasons), para. 246.

³⁵ See, **D1** Co-Prosecutor's Third Introductory Submission, 20 November 2008; **D65** Co-Prosecutors' Supplementary Submission regarding Sector 1 Crime Sites and Persecution of Khmer Krom, 18 July 2011; **D191** Co-Prosecutors' Supplementary Submission regarding Forced Marriage and Sexual or Gender-Based Violence, 24 April 2014.

³⁶ **D308/3** Closing Order (Reasons), 10 July 2017, para. 316.

responsibility. The Closing Order (Reasons) includes no discussion of the gravity of these crimes – such as estimates of the numbers killed, the use of torture and the vulnerability of the victims (for example, the young children killed simply for being the offspring of those labelled enemies by the regime).

25. In the Closing Order (Reasons), the CIJs found that Im Chaem was chosen by Ta Mok³⁷ to lead the second wave of Southwest Zone cadres to the Northwest Zone in the 1977 and 1978 operation designed to purge Northwest Zone cadres.³⁸ The CIJs further found that “[a]fter the arrival of the Southwest Zone cadres, Northwest Zone military and civilian cadres were arrested and detained in security centres throughout the Northwest Zone and in S-21 in Phnom Penh, assigned to various worksites in the Northwest Zone for ‘re-fashioning’, or killed.”³⁹ Im Chaem “replaced former Northwest cadres both at the district and sector levels” who were purged.⁴⁰ The Closing Order (Reasons) further states that:

[Im Chaem] led the Southwest Zone cadres to the Northwest Zone, and once there became responsible for worksites and a sector-level security centre. The evidence shows that she was informed of what was happening on the ground through multiple sources such as reports, personal visits, meetings, and messengers. We are thus satisfied that she was aware of the existence of the attack and that her actions were part of it.⁴¹

26. While finding that Im Chaem played a key role in the purge of the Northwest Zone, the CIJs failed to consider the resulting killings and related crimes when assessing whether Im Chaem fell among those Khmer Rouge officials “most responsible” for the crimes of the regime. The Co-Prosecutor’s Final Submission provides evidence of the purging of all administrative levels in the Northwest Zone, from the cooperative, commune and mobile units, to district and sector-level cadres.⁴² The number of Northwest Zone cadres sent to S-21 alone totalled approximately 1,200, with the majority recorded as having entered S-21 between June 1977 and May 1978.⁴³ The evidence establishes that many

³⁷ **D308/3** Closing Order (Reasons), 10 July 2017, para. 155.

³⁸ *See also*, **D308/3** Closing Order (Reasons), 10 July 2017, para. 152, “The second wave was in 1977 and early 1978, when Ta Mok sent Southwest Zone cadres, together with their families, to arrest and replace Northwest Zone cadres at the commune, cooperative, and district levels, and was led by Im Chaem”; para. 316, “We are aware of the fact that based on the evidence available to us [Im Chaem] was tasked to lead the Southwest Zone cadres to the Northwest Zone and thus had a role which did not correspond to the average district secretary.”

³⁹ **D308/3** Closing Order (Reasons), paras 153-154.

⁴⁰ **D308/3** Closing Order (Reasons), para. 154.

⁴¹ **D308/3** Closing Order (Reasons), para. 284.

⁴² **D304/2** Co-Prosecutor’s Rule 66 Final Submission, para. 177.

⁴³ **D304/2** Co-Prosecutor’s Rule 66 Final Submission para. 177.

other Northwest Zone cadres were arrested and killed in the Northwest Zone itself.⁴⁴ However, the CIJs made no findings as to the numbers killed, or the gravity of the crimes and failed to consider these killings in their assessment as to whether Im Chaem was within the personal jurisdiction of the ECCC.

B. The CIJs failed to consider evidence of Im Chaem's responsibility for forced marriages

27. The Co-Prosecutor's Final Submission details Im Chaem's involvement in the commission of the other inhumane act of forced marriage.⁴⁵ The Co-Prosecutor demonstrated how Im Chaem implemented the CPK's policy of forcing individuals to marry through her various positions in the Southwest and Northwest Zones.⁴⁶ In particular, Im Chaem forced young women in Sector 13 to marry disabled soldiers.⁴⁷ And in the Northwest Zone, Im Chaem presided over a forced marriage ceremony involving witness Thang Thoeuy – who was a teenager at the time – and others.⁴⁸ Im Chaem ordered subordinates to spy on couples in order to ensure that marriages were consummated.⁴⁹ Witnesses report that some women who refused to have sex were killed.⁵⁰ Im Chaem's subordinates also conducted forced marriages and lists of those to be forcibly married were sent up the hierarchical chain.⁵¹ Forced marriages took place at crime sites, including Spean Spreng Canal Worksite⁵² and Trapeang Thma Dam Worksite,⁵³ and other areas in which Im Chaem held authority.⁵⁴
28. The CIJs failed to assess Im Chaem's culpability for forced marriage, which falls within the elements of the crime against humanity of other inhumane acts. The Closing Order (Reasons) failed to assess the severe gravity of this offence, its effect on those victimised and on Khmer society. Im Chaem's contributions to this campaign of forced marriages

⁴⁴ **D304/2** Co-Prosecutor's Rule 66 Final Submission para. 177.

⁴⁵ **D304/2** Co-Prosecutor's Rule 66 Final Submission paras 356-359, 451.

⁴⁶ **D304/2** Co-Prosecutor's Rule 66 Final Submission paras 2-4, 108, 132, 134, 476, 477, 480. *See also*, paras 51, 57, 59, 61, 72, 91-94, 356-359, 451.

⁴⁷ **D304/2** Co-Prosecutor's Rule 66 Final Submission, para. 134.

⁴⁸ **D304/2** Co-Prosecutor's Rule 66 Final Submission, para. 132.

⁴⁹ **D304/2** Co-Prosecutor's Rule 66 Final Submission, paras 132-133.

⁵⁰ **D304/2** Co-Prosecutor's Rule 66 Final Submission, para. 132.

⁵¹ **D304/2** Co-Prosecutor's Rule 66 Final Submission, para. 133.

⁵² **D304/2** Co-Prosecutor's Rule 66 Final Submission, paras 269, 476.

⁵³ **D304/2** Co-Prosecutor's Rule 66 Final Submission, paras 288, 476.

⁵⁴ **D304/2** Co-Prosecutor's Rule 66 Final Submission, para. 476.

should have been considered in evaluating whether she falls within the personal jurisdiction of the court as one of those officials “most responsible” for the crimes.

C. The CIJs failed to consider evidence of Im Chaem’s responsibility for crimes against the Vietnamese

29. The Co-Prosecutor’s Final Submission details Im Chaem’s involvement in the commission of the crime against humanity of persecution and various grave breaches of the Geneva Conventions in relation to the treatment of the Vietnamese in Sector 5 of the Northwest Zone.⁵⁵
30. As detailed by the Co-Prosecutor, Im Chaem admitted receiving orders from upper echelons to search for and arrest “Vietnamese agents”.⁵⁶ Im Chaem received biographies of persons under her control, gave orders regarding those identified as Vietnamese⁵⁷ and has acknowledged that “Vietnamese agents” were “all captured”.⁵⁸
31. The Co-Prosecutor’s Final Submission includes evidence of an organised campaign of arrests, detentions and executions of Vietnamese and those perceived to be linked with Vietnam at the following locations under Im Chaem’s authority: Phnom Trayoung Security Centre and Worksite,⁵⁹ Spean Sreng Canal Worksite,⁶⁰ Chamkar Khnol Security Office,⁶¹ Prey Ta Ruth Execution Site,⁶² Trapeang Thma Dam Worksite,⁶³ Phnum Chakrey Security Centre⁶⁴ and Wat Preah Net Preah.⁶⁵ Im Chaem also personally ordered the killing of two Vietnamese women.⁶⁶
32. The CIJs found that prisoners detained and killed at Phnom Trayoung Security Centre included Vietnamese⁶⁷ and individuals at Spean Spreng Canal Worksite were arrested for having Vietnamese origins.⁶⁸ However, the CIJs failed to consider the majority of the allegations regarding Im Chaem’s treatment of the Vietnamese. The Closing Order

⁵⁵ **D304/2** Co-Prosecutor’s Rule 66 Final Submission, paras 472-475, 486-503.

⁵⁶ **D304/2** Co-Prosecutor’s Rule 66 Final Submission, para. 184.

⁵⁷ **D304/2** Co-Prosecutor’s Rule 66 Final Submission, para. 186.

⁵⁸ **D304/2** Co-Prosecutor’s Rule 66 Final Submission, para. 187.

⁵⁹ **D304/2** Co-Prosecutor’s Rule 66 Final Submission, paras 190, 474.

⁶⁰ **D304/2** Co-Prosecutor’s Rule 66 Final Submission, para. 192.

⁶¹ **D304/2** Co-Prosecutor’s Rule 66 Final Submission, paras 189, 474.

⁶² **D304/2** Co-Prosecutor’s Rule 66 Final Submission, para. 189.

⁶³ **D304/2** Co-Prosecutor’s Rule 66 Final Submission, para. 191.

⁶⁴ **D304/2** Co-Prosecutor’s Rule 66 Final Submission, para. 474.

⁶⁵ **D304/2** Co-Prosecutor’s Rule 66 Final Submission, para. 474.

⁶⁶ **D304/2** Co-Prosecutor’s Rule 66 Final Submission, para. 192.

⁶⁷ **D308/3** Closing Order (Reasons), paras 202, 281.

⁶⁸ **D308/3** Closing Order (Reasons), para. 238.

(Reasons) fails to consider the Co-Prosecutor's arguments as to the gravity of these crimes and Im Chaem's responsibility.

D. The CIJs failed to consider evidence of Im Chaem's responsibility for crimes against the Khmer Krom

33. The Co-Prosecutor's Final Submission details Im Chaem's involvement in the commission of the crime against humanity of persecution and various grave breaches of the Geneva Conventions in relation to the treatment of the Khmer Krom in Sector 13 of the Southwest Zone.⁶⁹ Im Chaem implemented the CPK's policy to 'sweep clean' the Khmer Krom from areas where she had authority.⁷⁰ She participated in sector meetings at which, *inter alia*, instructions to seek out "internal enemies" were issued.⁷¹ The CIJs noted that the Khmer Krom were one of the main groups detained at Wat Ang Srei Mealy Security Centre and killed at Prey Sokhon Execution Site on a regular basis.⁷² Both of these sites were located in Koh Andet District.⁷³ Im Chaem was the District Secretary of Koh Andet.⁷⁴

34. The CIJs' failure to review and include the evidence of Im Chaem's culpability for these crimes in the Closing Order (Reasons) requires a reassessment of Im Chaem's responsibility. As detailed in Grounds 5 and 6, the CIJs further erred in finding that Im Chaem was not responsible for crimes sites and criminal incidents in Sector 13 of the Southwest Zone.

E. The CIJs failed to consider evidence of Im Chaem's responsibility for several other crimes of which they were seised

35. The Co-Prosecutor's Final Submission details Im Chaem's involvement in the commission of persecution against various political and ethnic groups, including: the persecution of Northwest Zone cadres;⁷⁵ the persecution of former Khmer Republic

⁶⁹ D304/2 Co-Prosecutor's Rule 66 Final Submission, paras 472-475, 486-503.

⁷⁰ D304/2 Co-Prosecutor's Rule 66 Final Submission, paras 158-162.

⁷¹ D304/2 Co-Prosecutor's Rule 66 Final Submission, para. 167.

⁷² D308/3 Closing Order (Reasons), para. 249.

⁷³ D308/3 Closing Order (Reasons), para. 248.

⁷⁴ See, Ground 5.

⁷⁵ D304/2 Co-Prosecutor's Rule 66 Final Submission, paras 173-178, 451, 473.

officials, and their relatives;⁷⁶ and, the persecution of ethnic minorities, including the Cham,⁷⁷ Chinese,⁷⁸ Laotians,⁷⁹ and Khmer Leu.⁸⁰

36. The CIJs limited their findings to persecution on political grounds of groups detained at Phnom Trayoung Security Centre.⁸¹ While the CIJs made a cursory finding that persecution took place at crime sites not charged,⁸² there is no indication as to which group or groups of people the CIJs considered to be the victims and no assessment of the gravity of these crimes and Im Chaem's responsibility.
37. Additionally, the CIJs did not review several other factual allegations of which they were seised. The CIJs failed to assess the Co-Prosecutor's allegations regarding torture committed at Phnom Trayoung Security Centre⁸³ and Wat Chamkar Khnol Security Centre,⁸⁴ imprisonment and enforced disappearances at Wat Ang Srei Mealy Security Centre,⁸⁵ and inhumane living conditions at Phnum Chakrey Security Centre.⁸⁶ The CIJs' conclusion on Im Chaem's responsibility is erroneous in light of the numerous allegations contained in the Co-Prosecutor's Final Submission which were not considered.

GROUND 3: THE CIJS ERRED IN LAW AND FACT WHEN DEFINING THE CRIME OF EXTERMINATION AND APPLYING THE DEFINITION TO THE FINDINGS

38. The CIJs failed to hold Im Chaem responsible for extermination at Phnom Trayoung. The CIJs erred in law by finding that the intent for the crime of extermination – kill on a “massive” scale – must be formed “*ex ante*”.⁸⁷ The CIJs also erred in fact by failing to find that Im Chaem has the requisite *mens rea* for extermination.
39. The Closing Order (Reasons) found that killings “were committed on a regular basis” at the Phnom Trayoung Security Centre, that the victims were “killed for [a] similar reason; that is behaviour contrary to the ideologies and policies of the CPK” and the killings

⁷⁶ **D304/2** Co-Prosecutor's Rule 66 Final Submission, paras 151, 473.

⁷⁷ **D304/2** Co-Prosecutor's Rule 66 Final Submission, paras 82, 168, 240, 447.

⁷⁸ **D304/2** Co-Prosecutor's Rule 66 Final Submission, paras 152, 240.

⁷⁹ **D304/2** Co-Prosecutor's Rule 66 Final Submission, para. 240.

⁸⁰ **D304/2** Co-Prosecutor's Rule 66 Final Submission, para. 168.

⁸¹ **D308/3** Closing Order (Reasons), 10 July 2017, para. 295.

⁸² **D308/3** Closing Order (Reasons), 10 July 2017, para. 305.

⁸³ **D304/2** Co-Prosecutor's Rule 66 Final Submission, paras 208-211.

⁸⁴ **D304/2** Co-Prosecutor's Rule 66 Final Submission, para. 238.

⁸⁵ **D304/2** Co-Prosecutor's Rule 66 Final Submission, para. 168.

⁸⁶ **D304/2** Co-Prosecutor's Rule 66 Final Submission, para. 224.

⁸⁷ **D308/3** Closing Order (Reasons), para. 288.

“reache[d] the threshold of massiveness”.⁸⁸ However, the CIJs stated that they were not convinced that these killings amounted to extermination. They explained their reasoning by noting that the executions: “were carried out during a longer period of time and by different physical perpetrators. These circumstances make it unclear whether the executions were carried out with the *ex ante* intent to kill on a massive scale.”⁸⁹

40. The CIJs erred in requiring that the accused must possess the specific intent for extermination – to kill persons on a large scale or to create conditions of life calculated to bring about the death of a large number of people⁹⁰ – prior to any killings taking place. Nothing in the jurisprudence of the ECCC or international courts includes such a requirement for the crime of extermination, nor is there a logical basis to include such a requirement.
41. One can imagine a situation where a commander in a continuous campaign orders the executions of small groups of civilian nationals of an opposing party to a conflict at each time the opportunity presents itself, ultimately killing thousands of individuals in the campaign. It would make no sense and foster impunity to hold that his intent to kill on a mass scale was unproven because the first groups of victims to fall under the control of his forces was not itself a massive number.
42. Even the crime of genocide, the *mens rea* for which is said to “give its speciality and distinguishes it from an ordinary crime and other crimes against international humanitarian law”,⁹¹ does not require proof that the accused possessed genocidal intent *ex ante* to the perpetration of the crime. The jurisprudence on this point is clear.
43. The ICTR Appeals Chamber held in *Simba* that for the crime of genocide, “The inquiry is not whether the specific intent was formed prior to the commission of the acts.”⁹² This was reaffirmed in *Munyakazi*, where the Appeals Chamber upheld the Trial Chamber’s finding establishing Munyakazi’s intent “based on his personal participation and leadership role in attacks, which resulted in the death of thousands of mostly Tutsi civilians.”⁹³

⁸⁸ D308/3 Closing Order (Reasons), para. 288.

⁸⁹ D308/3 Closing Order (Reasons), para. 288.

⁹⁰ Case 002/01-F36 (Appeal Judgment), 23 November 2016, paras 521-522, 525.

⁹¹ *Prosecutor v. Goran Jelisić (Trial Judgment)*, IT-95-10-T, ICTY, 14 December 1999, para. 66.

⁹² *Aloys Simba v. The Prosecutor (Appeal Judgment)*, ICTR-01-76-A, ICTR, 27 November 2007, para. 266.

⁹³ *Prosecutor v. Yussuf Munyakazi (Appeal Judgment)*, ICTR-97-36A-A, ICTR, 28 September 2011, para. 142.

44. The same legal rationale is seen at the ICTY, where Trial Chamber I held that:

the [ICTY] Statute does not require that the genocidal acts be premeditated over a long period. It is conceivable that, although the intention at the outset of an operation was not the destruction of a group, it may become the goal at some later point during the implementation of the operation.⁹⁴

45. In practice, knowledge that numerous killings are taking place and an accused's continued participation in related killings demonstrates intent to kill on a large scale.⁹⁵ If not for their error in holding that proof of an *ex ante* intent was required for extermination, the CIJs factual findings clearly support finding Im Chaem responsible for extermination at Phnom Trayoung Security Centre. The CIJs found that Im Chaem: had overall authority over Phnom Trayoung, issued its regulations and oversaw its operations;⁹⁶ appointed the chief of Phnom Trayoung⁹⁷ – who reported directly to her on matters relating to the security centre and received orders directly from her, either personally or via messengers;⁹⁸ ordered the arrest,⁹⁹ categorization,¹⁰⁰ detention¹⁰¹ and execution of prisoners at Phnom Trayoung;¹⁰² visited Phnom Trayoung¹⁰³ and may have been present at a meeting of senior cadres held before a “large execution” there;¹⁰⁴ had her messengers visit Phnom Trayoung every two or three days,¹⁰⁵ held regular meetings to determine who was to be sent to the Phnom Trayoung and used militiamen to make arrests of persons to be taken to Phnom Trayoung.¹⁰⁶
46. Im Chaem therefore not only knew what was occurring, but oversaw its occurrence at Phnom Trayoung – a sector level security centre at which prisoners arrived weekly, but often on a daily basis also, in groups of two to 200 at a time.¹⁰⁷ The CIJs found that

⁹⁴ *Prosecutor v. Radislav Krstić (Trial Judgment)*, IT 98-33, ICTY, 2 August 2001, para. 572.

⁹⁵ *See generally, Prosecutor v. Clement Kayishema and Obed Ruzidana (Appeal Judgment)*, ICTR-95-1-A, ICTR, 1 June 2001, para. 198, where the the ICTR Appeals Chamber noted that “intent to participate in the commission of a crime may thus be inferred from the accused’s participation” and there “must on the part of the Accused be a clear awareness that this participation will lead to the commission of a crime”.

⁹⁶ **D308/3** Closing Order (Reasons), para. 195.

⁹⁷ **D308/3** Closing Order (Reasons), para. 192.

⁹⁸ **D308/3** Closing Order (Reasons), para. 195.

⁹⁹ **D308/3** Closing Order (Reasons), para. 200.

¹⁰⁰ **D308/3** Closing Order (Reasons), para. 203.

¹⁰¹ **D308/3** Closing Order (Reasons), para. 200.

¹⁰² **D308/3** Closing Order (Reasons), para. 201.

¹⁰³ **D308/3** Closing Order (Reasons), paras 217, 222.

¹⁰⁴ **D308/3** Closing Order (Reasons), paras 213, 217.

¹⁰⁵ **D308/3** Closing Order (Reasons), para. 222.

¹⁰⁶ **D308/3** Closing Order (Reasons), para. 200.

¹⁰⁷ **D308/3** Closing Order (Reasons), para. 197.

hundreds of prisoners were mistreated,¹⁰⁸ given insufficient food and water,¹⁰⁹ and subjected to hard labour¹¹⁰ while detained at the Phnom Trayoung and, consequently, hundreds of those prisoners died of starvation,¹¹¹ illness,¹¹² overwork¹¹³ and mistreatment.¹¹⁴ Detainees were routinely executed or prisoners were brought from other locations to be executed at Phnom Trayoung.¹¹⁵ The CIJs conservatively estimated that over 2,000 prisoners were executed at Phnom Trayoung between mid-1977 and January 1979¹¹⁶ – at least about 1,000 prisoners killed in 1977 and about 1,000 in 1978.¹¹⁷ This was not a case of disparate unrelated events. Im Chaem was responsible for the operation of Phnom Trayoung and knew of the large scale killing taking place there. Her intent to kill on a large scale basis is clearly demonstrated by the CIJs findings.

GROUND 4: THE CIJS ERRED IN LAW AND FACT WHEN DEFINING THE CRIME OF ENFORCED DISAPPEARANCE AND APPLYING THE DEFINITION TO THE FINDINGS

47. The CIJs erred by failing to find that the crime of enforced disappearance as an other inhumane act took place at Spean Spreng Canal Worksite. First, the CIJs wrongly applied the definition of the modern crime of enforced disappearance – which was not in existence in 1975 – instead of the elements of other inhumane acts as a crime against humanity. Second, whether categorized as an other inhumane act or as the modern crime of enforced disappearances, the CIJs erroneously applied an element of the crime – proof that persons had sought information about the whereabouts of an individual in the hands of the authorities – which is unenforceable where the authorities kill those who question its actions.¹¹⁸

A. The CIJs failed to follow Supreme Court Chamber jurisprudence on enforced disappearances

¹⁰⁸ D308/3 Closing Order (Reasons), paras 189, 207.

¹⁰⁹ D308/3 Closing Order (Reasons), paras 189, 206.

¹¹⁰ D308/3 Closing Order (Reasons), paras 189, 219.

¹¹¹ D308/3 Closing Order (Reasons), paras 189, 219, 220.

¹¹² D308/3 Closing Order (Reasons), paras 189, 219.

¹¹³ D308/3 Closing Order (Reasons), para. 219.

¹¹⁴ D308/3 Closing Order (Reasons), para. 219.

¹¹⁵ D308/3 Closing Order (Reasons), para. 208.

¹¹⁶ D308/3 Closing Order (Reasons), para. 189.

¹¹⁷ D308/3 Closing Order (Reasons), para. 218.

¹¹⁸ D308/3 Closing Order (Reasons), para. 302.

48. Enforced disappearance as the crime against humanity of other inhumane acts was alleged against Im Chaem.¹¹⁹ The Supreme Court Chamber held in the Case 002/01 Appeal Judgment that the applicable *actus reus* and *mens rea* for enforced disappearance as an other inhumane act do not differ from the *actus reus* and *mens rea* of other inhumane acts based on any other type of prohibited conduct. The Supreme Court Chamber found that the Trial Chamber had erred by defining and applying elements of enforced disappearance rather than applying the definition of other inhumane acts. The Supreme Court Chamber held:

While it is clear that other inhumane acts was an accepted category of crimes against humanity in 1975, it is equally clear that enforced disappearances and forced transfer had not yet crystallised into separate categories of crimes against humanity. Indeed, such crystallisation would occur only many years later [...] Accordingly, enforced disappearances or forced transfer did not, in 1975, form discrete categories of crimes against humanity, nor did enforced disappearances and forced transfer have specific legal definitions and elements. For that reason, stipulating elements of enforced disappearance or enforced transfer as though they constituted separate categories of crimes against humanity was anachronistic and legally incorrect [...] Rather, the guiding issue – and indeed the only one of relevance – was whether the conduct in question, in light of all the specific circumstances of the case at hand, actually fulfilled the definition of other inhumane acts.¹²⁰

49. In the Closing Order (Reasons), the CIJs should have applied the elements of other inhumane acts, defined by the Supreme Court Chamber as conduct which “violates a basic right of the victims and is of similar nature and gravity to other enumerated crimes against humanity”.¹²¹ Instead, the CIJs incorrectly found that “[a]lthough there is little doubt that disappeared labourers’ families were unable to determine their fate or whereabouts, there is no evidence to indicate that inquiries to that effect were made of the authorities in charge at the site.”¹²² The CIJs consequently concluded that “[f]or this reason alone, the evidence does not allow us to conclude that the crime against humanity of other inhumane acts by enforced disappearance was committed at Spean Sreng Canal worksite”.¹²³
50. The Supreme Court Chamber addressed this specific point in Case 002/01, identifying it as an error in the following terms:

¹¹⁹ **D308/3** Closing Order (Reasons), paras 75, 302.

¹²⁰ Case 002/01-**F36** (Appeal Judgment), 23 November 2016, para. 589.

¹²¹ Case 002/01-**F36** (Appeal Judgment), 23 November 2016, para. 586.

¹²² **D308/3** Closing Order (Reasons), para. 302.

¹²³ **D308/3** Closing Order (Reasons), para. 302 (emphasis added).

As to the Trial Chamber's findings that the Khmer Rouge deliberately refused to give information about the whereabouts of the evacuees and the associated arguments of NUON Chea and KHIEU Samphan, the Supreme Court Chamber recalls that these findings are relevant only to the purported specific elements of enforced disappearances, but not to whether the elements of other inhumane acts were fulfilled as such.¹²⁴

51. Had the CIJs applied the correct legal definition, Im Chaem would have been considered responsible for enforced disappearances at Spean Spreng. The CIJs found that "[a]rrests and disappearances of workers were common occurrences at Spean Spreng Canal worksite".¹²⁵ The Trial Chamber in Case 002/01 held that enforced disappearances rise to the level of other inhumane acts given the great suffering caused to those who disappeared, as well as to family members and others with special bonds of affection to those who have been disappeared.¹²⁶ The mental anguish and suffering for those at Spean Spreng was no different.

B. The burden to request information about an individual forcibly disappeared disregards the realities of the CPK

52. The Co-Prosecutor submits that regardless of whether the crime is characterised as enforced disappearance or an other inhumane act, the crime is proven when it is established that individuals were taken away by the authorities with no information given to their family or associates about their whereabouts. The CIJs erred when requiring as an element of the offence that persons must have enquired as to the victim's whereabouts, without taking into account the extremely coercive circumstances that prevailed at the time. In a lawless state such as that run by the CPK, where those who asked questions about persons who were detained or disappeared put themselves at great risk of meeting the same fate, to require proof that family or friends had made inquiries about the fate or whereabouts of disappeared persons is unreasonable.
53. The case-law of the Inter-American Court of Human Rights ("IACtHR") is illustrative. In countries where enforced disappearances have occurred on a large scale, the IACtHR has opted to shift the burden of disproving disappearances to the State. The first case to address the issue, *Velásquez Rodríguez v Honduras*, established the following precedent:

If it can be shown that there was an official practice of disappearances in Honduras, carried out by the government or at least tolerated by it, and if the

¹²⁴ Case 002/01-F36 (Appeal Judgment), 23 November 2016, para. 653.

¹²⁵ D308/3 Closing Order (Reasons), para. 238.

¹²⁶ Case 002/01-E313 (Trial Judgment), 7 August 2014, para. 643.

disappearance of Manfredo Velásquez can be linked to that practice, the Commission's allegations will have been proven to the Court's satisfaction, so long as the evidence presented on both points meets the standard of proof required.¹²⁷

54. The Court's rationale, namely that if there is a practice of disappearances and the disappearance in question is linked, then the person is presumed disappeared and the burden shifts to the State to prove otherwise – was confirmed by subsequent decisions such as *Godínez Cruz* and *Caballero-Delgado & Santana*.¹²⁸
55. Though not a criminal court and therefore applying different evidentiary standards – the principle applied by the IACtHR is directly applicable to the present circumstances. To be clear, shifting the burden to the State in the human rights context does not suggest shifting the burden to the defence in the criminal context. Rather, it is recognition that prevailing circumstances have to be considered so as to ensure that the law can function. The law would cease to protect the interests it is designed to if, as in the case of a lawless authority like the Democratic Kampuchea (“DK”), a regime could hide behind a procedural formality to avoid accountability – when its ruthless and barbaric method of governing is the reason it can ensure its own impunity.
56. The evidence relied upon by the CIJs demonstrates this point. The Closing Order (Reasons) details extensive evidence of Im Chaem publicly “exhort[ing] the local population to be vigilant against possible enemies of the CPK” and “instruct[ing] workers to follow the CPK’s ideology and work hard, under threat of dire consequences if they failed to do so”.¹²⁹ The CIJs found that “Im Chaem warned those in attendance [at meetings] that persons who would get involved with the CIA, be lazy, or otherwise oppose Angkar would be sent “to study”, which very often meant to be detained or killed.”¹³⁰ The Closing Order (Reasons) continues that “[t]hese were not empty threats. After the Southwest Zone cadres and Im Chaem took control [...] they carried out a systematic campaign of arrests targeting Northwest cadres at the cooperative, commune, district, and sector levels.”¹³¹ This targeting was not limited to Northwest Zone cadres, as the CIJs found that “under Im Chaem's tenure [...] workers who committed mistakes,

¹²⁷ *Case of Velásquez-Rodríguez v. Honduras*, 1989 Inter-Am. Ct. H.R. (ser. C), 29 July 1988, para. 126.

¹²⁸ See, e.g. *Case of Godínez-Cruz v. Honduras*, 1989 Inter-Am. Ct. H.R. (ser. C), 20 January 1989, para. 76; *Case of Caballero-Delgado and Santana v. Colombia*, Inter-Am. Ct. H.R. (ser. C) No. 22., 8 December 1995, para. 72(5).

¹²⁹ **D308/3** Closing Order (Reasons), para. 181.

¹³⁰ **D308/3** Closing Order (Reasons), para. 184.

¹³¹ **D308/3** Closing Order (Reasons), para. 185.

people with ties to Vietnam, and former Khmer Republic officials were arrested and killed.”¹³²

57. Within this all-encompassing atmosphere in which the threat of death or being disappeared loomed for trivial matters,¹³³ obliging an individual to seek information from Angkar – the unquestionable authority – is totally unrealistic.

GROUND 5: THE CIJS ERRED IN FACT WHEN FINDING THAT IM CHAEM WAS NOT KOH ANDET DISTRICT SECRETARY

58. The CIJs erred in fact when finding that Im Chaem was not Koh Andet District Secretary.¹³⁴ The CIJs failed to properly assess the evidence reviewed in the Closing Order (Reasons) and in some instances omitted relevant evidence. No reasonable trier of fact could have found that Im Chaem was not Koh Andet District Secretary based on a proper review of the evidence.
59. The Closing Order (Reasons) wrongly concludes that Im Chaem’s position in the Southwest Zone was confined to chief of the Sector 13 Women’s Association.¹³⁵ In arriving at this conclusion, the CIJs failed to properly assess Im Chaem’s interviews evincing her position as Secretary of Koh Andet. Im Chaem told DC-Cam that “the provincial authority assigned me to take charge of organizing people” in Koh Andet.¹³⁶ Im Chaem admitted that in Koh Andet District she “led [the people] to work on the rice paddy and farm [...] [and that] at the places under my control I helped them in general”,¹³⁷ continuing that:

I helped people [in Koh Andet] in general. But if there were any persons being accused of being something which would affect their life, I would help them. I would argue that those specific persons were not wrong. I had the spirit to resist and protect the life of the right persons.¹³⁸

¹³² D308/3 Closing Order (Reasons), para. 186.

¹³³ See, e.g. D308/3 Closing Order (Reasons), paras 233, 238, 275, 289, 297, 298.

¹³⁴ D308/3 Closing Order (Reasons), para. 144.

¹³⁵ D308/3 Closing Order (Reasons), paras 143-150.

¹³⁶ D123/1/5.1b Im Chaem DC-Cam Interview, 20 June 2008, EN 00951795.

¹³⁷ D123/1/5.1b Im Chaem DC-Cam Interview, 20 June 2008, EN 00951819.

¹³⁸ D123/1/5.1b Im Chaem DC-Cam Interview, 20 June 2008, EN 00951820.

60. When asked why she was transferred from Angkor Chey District to Koh Andet, Im Chaem responded “[b]ecause I could fulfil the plan.”¹³⁹ Im Chaem told DC-Cam the following:

DC-Cam: Why were you transferred to Kaoh Andaet? Why was the committee in Kaoh Andaet removed?

Im Chaem: There were frequent conflicts among the committee. When I arrived there the chairman was transferred to Kirivong.

DC-Cam: So who was in charge of Kaoh Andaet at that time?

Im Chaem: Grandmother Sieng.

DC-Cam: Sieng?

Im Chaem: Yes.

DC-Cam: Was Sieng transferred to Kirivong?

Im Chaem: Yes. Then there were three people: a male member, my deputy was Ta Mok’s younger brother in law and me.

DC-Cam: Who?

Im Chaem: Grandfather San, Ta Mok’s younger brother-in-law.

DC-Cam: So while you were in Kaoh Andaet, there were you, Grandfather San and ...?

Im Chaem: Also Grandfather Chan, but he was very old.¹⁴⁰

61. The Closing Order (Reasons) refers to this statement by Im Chaem that she was on a three person committee when transferred to Koh Andet.¹⁴¹ However, the CIJs implausibly conclude that the three-person committee was “focused on rice production”¹⁴² and was working in Koh Andet “by virtue of [Im Chaem’s] positions as chief of the Sector 13 Women’s Association.”¹⁴³ To the contrary, Im Chaem’s statement is clear. Sieng, who was Secretary of Koh Andet District,¹⁴⁴ was transferred away from the district and “[t]hen there were three people” in Koh Andet – with Im Chaem the Secretary.

62. Im Chaem also told DC-Cam that when she arrived in Koh Andet, “they [had] already organized to eat communally”, and

[w]e set up policies as follows: first, they built a big kitchen and rice barn. But it was not difficult for me because we had separate work to do. I was at the rear

¹³⁹ **D123/1/5.1c** Im Chaem DC-Cam Interview, 6 April 2012, EN 00951845.

¹⁴⁰ **D123/1/5.1c** Im Chaem DC-Cam Interview, 6 April 2012, EN 00951845-46.

¹⁴¹ **D308/3** Closing Order (Reasons), para. 146.

¹⁴² **D308/3** Closing Order (Reasons), para. 146.

¹⁴³ **D308/3** Closing Order (Reasons), para. 146.

¹⁴⁴ See, **D119/82** Neang Ouch WRI, 28 January 2014, A17, A27, A34; **D119/84** Moeng Vey WRI, 11 February 2014, A21, EN 00982704; **D6.1.651** Pech Chim WRI, 26 August 2009, ERN 00379303

line focusing on rice cultivating while Uncle San, my deputy, was in charge of Boeng district near the Vietnamese territory.¹⁴⁵

63. Im Chaem's admissions regarding her position are corroborated by witness evidence. The CIJs failed, however, to properly assess this additional supporting evidence. The following examples are demonstrative.
64. First, the CIJs dismissed the evidence of Ul Hoeun on the basis that he claimed Im Chaem was Secretary of "Tani District, alias District 106".¹⁴⁶ However the CIJs failed to consider two crucial aspects of Ul Hoeun's evidence. First, he said that he was not sure which district was District 106, telling the CIJs that "Prior to the Khmer Rouge regime, it was located in Kaoh Andaet District."¹⁴⁷ Secondly, District 106 was Angkor Chey District during the DK regime and was overseen by Ta Nhen – Im Chaem's husband.¹⁴⁸ Ul Hoeun's answer as to which district Im Chaem presided over can thus be explained by his confusion as to the parameters of the district or its association to Im Chaem through her husband's position. At a minimum, it is corroborative of Im Chaem being a District Secretary in Sector 13.
65. Second, the CIJs misinterpreted the evidence of Neang Ouch, erroneously concluding that his evidence only supported Im Chaem being the Chief of the Sector 13 Women's Association.¹⁴⁹ Evidence from other witnesses demonstrates that Neang Ouch was on the Koh Andet District Committee.¹⁵⁰ He denied holding this position just as he denied later being the District Secretary of Tram Kok, but the evidence is overwhelming that these denials were merely fabrications in an attempt to distance himself from crimes committed in these areas.¹⁵¹ The Closing Order failed to consider Im Chaem's statement describing Neang Ouch as "my deputy" in Koh Andet.¹⁵² Im Chaem said that "Uncle San [aka Neang Ouch], my deputy, was in charge of Boeng district near the Vietnamese territory."¹⁵³ The CIJs failed to properly consider that when Im Chaem's statement was put to Neang Ouch by the CIJs, he did not deny being her "deputy". Certainly it would not be reasonable to

¹⁴⁵ **D123/1/5.1c** Im Chaem DC-Cam Interview, 6 April 2012, EN 00951847.

¹⁴⁶ **D118/208** Ul Hoeun WRI, 4 March 2014, A62 *referred to in* **D308/3** Closing Order (Reasons), para. 149.

¹⁴⁷ **D118/208** Ul Hoeun WRI, 4 March 2014, A65 (emphasis added).

¹⁴⁸ *See*, **D308/3** Closing Order (Reasons), para. 149.

¹⁴⁹ **D308/3** Closing Order (Reasons), para. 145.

¹⁵⁰ *See*, e.g., **D193.8.2** Ul Houen WRI, 13 October 2014, A7; **D119.63** Nem Bav WRI, 25 September 2013, A4; **D6.1.651** Pech Chim WRI, 26 August 2009, EN 00379303.

¹⁵¹ *See*, **E1/273.1** Neang Ouch T. 9 March 2015, 15.17.20-15.26.34.

¹⁵² **D123/1/5.1c** Im Chaem DC-Cam Interview, 6 April 2012, 00951847.

¹⁵³ **D123/1/5.1c** Im Chaem DC-Cam Interview, 6 April 2012, 00951847.

believe Neang Ouch was saying he was deputy of the Women's Association. When confronted with Im Chaem's statement that he was her deputy, Neang Ouch told OCIJ, "Yes, that is correct. I went to work at Boeng Prek Lpov and Thung Lech building canals",¹⁵⁴ before then claiming he did not know his own position.¹⁵⁵ Neang Ouch thus admits that he went to work in the specific geographical area where Im Chaem previously told DC-Cam he operated as her deputy. The CIJs' reliance on Neang Ouch's evidence to suggest that Im Chaem was only Chief of the Sector 13 Women's Association is consequently flawed as his evidence actually supports the assertion that Im Chaem was Koh Andet District Chief.

66. Third, the CIJs dismissed (in a footnote)¹⁵⁶ the evidence of Kao Chheng, who worked in Koh Andet District in 1975, and who told the CIJs that Im Chaem was "in charge of district military" in Koh Andet.¹⁵⁷ The CIJs considered this evidence "isolated" and "hearsay".¹⁵⁸ However, viewed in context and in addition to the other evidence referred to by the Co-Prosecutor, Kao Chheng's evidence corroborates Im Chaem's position as Koh Andet District Secretary.
67. Fourth, the CIJs failed to refer to the evidence of Sok Run, a worker in Koh Andet in 1976, who told the CIJs that Im Chaem "was District Committee"¹⁵⁹ and held large meetings in Koh Andet "including men and women" where attendees were told "to keep working hard [...] [about] the invasion by the Vietnamese [...] and about mobilisation of all forces to work at various cooperatives in order to achieve the targets as set forth in their plan in a timely manner."¹⁶⁰ In addition to Sok Run's evidence that Im Chaem was Koh Andet District Secretary and that she later held "a more senior position than Ta Nhen [her husband who was Angkor Chey District Secretary]",¹⁶¹ his evidence of the type and substance of meetings she called undermine the CIJs' conclusion that Im Chaem's only position in Koh Andet was leading the Sector 13 Women's Association.¹⁶²
68. Fifth, the CIJs did not refer to the evidence of Riel Son, who was responsible for economics in Tram Kak District between 1975 and 1976 and who stated that Im Chaem

¹⁵⁴ **D119/82** Neang Ouch WRI, 28 January 2014, A48.

¹⁵⁵ **D119/82** Neang Ouch WRI, 28 January 2014, A48.

¹⁵⁶ **D308/3** Closing Order (Reasons), fn. 275.

¹⁵⁷ **D119/16** Kao Chheng WRI, 28 February 2013, A24.

¹⁵⁸ **D308/3** Closing Order (Reasons), 10 July 2017, fn. 275.

¹⁵⁹ **D119/108** Sok Rum WRI, 19 March 2014, A105.

¹⁶⁰ **D119/108** Sok Rum WRI, 19 March 2014, A48.

¹⁶¹ **D119/108** Sok Rum WRI, 19 March 2014, A105.

¹⁶² **D308/3** Closing Order (Reasons), 10 July 2017, paras 143-150.

“was Commune Committee and later was appointed District Committee”.¹⁶³ Though Riel Son did not know which district Im Chaem was secretary of,¹⁶⁴ given that he operated at the district level in Sector 13 – his evidence should have been considered and again corroborates that Im Chaem was a District Secretary in Sector 13.

69. Despite the Closing Order (Reasons) referring to the Supreme Court Chamber’s approval of the use of statements by Nuon Chea for inculpatory purposes when assessed together with other evidence on the case file,¹⁶⁵ the CIJs failed to adopt the same approach to Im Chaem. Consideration of her admissions and the corroborative evidence on the case file demonstrates the CIJs’ error of not finding that Im Chaem was Koh Andet Secretary.

GROUND 6: THE CIJS ERRED IN FACT WHEN FINDING THAT IM CHAEM WAS NOT THE SECTOR 13 COMMITTEE MEMBER

70. The CIJs erred in fact by finding that Im Chaem was not the Sector 13 Committee Member.¹⁶⁶ The CIJs failed to properly assess the evidence reviewed in the Closing Order (Reasons) and failed to refer to other relevant evidence. No reasonable trier of fact could have failed to find that Im Chaem was the Sector 13 Committee Member based on a proper review of the evidence.
71. The Closing Order (Reasons) wrongly concluded that the only position Im Chaem held in the Southwest Zone was chief of the Sector 13 Women’s Association.¹⁶⁷ The problematic approach to the evidence adopted in the Closing Order (Reasons) is exemplified by the CIJs noting Im Chaem’s admission that “she took the place of Ta Saom (who was the Sector 13 District [sic] Secretary), for a short time, once he became ill.”¹⁶⁸ The CIJs make no further reference to this admission by Im Chaem and ultimately conclude that she did not hold such a position.¹⁶⁹
72. Further, the CIJs summary of Im Chaem’s DC-Cam statement is misleading. Im Chaem said “When my chairman Uncle Saom became sick I was promoted to ... (inaudible). But

¹⁶³ **D118/181** Riel Son WRI, 18 February 2014, A224 *referred to in* **D304/2** Co-Prosecutor’s Rule 66 Final Submission, para. 54.

¹⁶⁴ **D118/181** Riel Son WRI, 18 February 2014, A224.

¹⁶⁵ **D308/3** Closing Order (Reasons), 10 July 2017, para. 138.

¹⁶⁶ **D308/3** Closing Order (Reasons), 10 July 2017, para. 144.

¹⁶⁷ **D308/3** Closing Order (Reasons), para. 143.

¹⁶⁸ **D308/3** Closing Order (Reasons), para. 147.

¹⁶⁹ **D308/3** Closing Order (Reasons), para. 148.

I did that for a short time, around one year; then, I was transferred to Battambang.”¹⁷⁰ Im Chaem described the promotion in these terms:

Im Chaem: No, I succeeded my chairman and was just a member.

DC-Cam: Sector member?

Im Chaem: Yes.¹⁷¹

73. Im Chaem thus admitted to being promoted to be Member of the Sector 13 Committee and that she held the position for a year before being transferred to the Northwest Zone – which as the CIJs found elsewhere in the Closing Order (Reasons), was when she led the purge.¹⁷² Yet, inexplicably, the CIJs disregarded this evidence without further discussion.
74. On top of this error, the CIJs incorrectly failed to properly assess several witnesses’ evidence corroborating Im Chaem’s role on the Sector 13 Committee. The CIJs discounted these statements on the basis that witnesses gave evidence “with different degrees of certainty and specificity” as to Im Chaem’s role.¹⁷³ However, witnesses were specific and unequivocal that Im Chaem had a role on the Sector 13 Committee independent of her position as chief of the Sector 13 Women’s Association. Suon Mot, a Southwest cadre who transferred to the Northwest Zone with Im Chaem’s purge forces, stated that “[t]o my knowledge, Yeay Chaem was a member of the Sector Committee in Takeo Province [...] I knew and saw her because she came to chair meetings and work where I lived.”¹⁷⁴ Suon Mot added that as the Member of the Sector 13 Committee, Im Chaem controlled many “small sections under the Sector, such as the dam-building branch, the canal-digging branch, the economics branch, and so on.”¹⁷⁵ Witness Ul Hoeun, who worked in Tram Kak District, told the CIJs that “Yeay Chaem ranked third in Sector 13 [...] Ta Saom ranked first; Ta Mut was second, and Ta Keav was third. After Ta Keav was pulled out to work at the rock quarry site at Phnum Chrey Ou Phnov Mountain, Yeay Chaem replaced Ta Keav.”¹⁷⁶ Additionally, On Sopheap, a CPK soldier, told the CIJs that “I know that [Im Chaem] was the Sector 13 Committee because I saw her photo in a magazine during the Khmer Rouge regime. In the photo, she was wearing

¹⁷⁰ D123/1/5.1c Im Chaem DC-Cam Interview, 6 April 2012, EN 00951849.

¹⁷¹ D123/1/5.1c Im Chaem DC-Cam Interview, 6 April 2012, EN 00951849.

¹⁷² D308/3 Closing Order (Reasons), para. 152.

¹⁷³ D308/3 Closing Order (Reasons), para. 148.

¹⁷⁴ D219/37 Suon Mot WRI, 16 October 2014, A17-18.

¹⁷⁵ D219/37 Suon Mot WRI, 16 October 2014, A25.

¹⁷⁶ D193/8.2 Ul Hoeun, WRI, 13 October 2014, A10.

simple black clothes and standing alone. Under the photo, it was written, “IM Chem, Sector 13 Committee”.¹⁷⁷

75. The CIJs focused on evidence supporting the conclusion that Im Chaem was chief of the Sector 13 Women’s Association and failed to consider that the evidence can only be reconciled with the fact that she was the Sector 13 Committee Member at the same time. The evidence demonstrates that Im Chaem held both of these sector positions in tandem. For example, Moul Eng, the Bavel District Secretary during the DK, unequivocally stated that “*Yeay* Chaem held two positions. She was both the Secretary of Sector 13 along with *Ta* Saom and the Chairperson of the Women Leaders Committee of Sector 13.”¹⁷⁸ Moeng Vet, who worked at Office 160 in Sector 13, told the CIJs that “*Yeay* Chaem was a deputy in the Sector 13 Committee and was in charge of the women in the Sector. We could say that she was a member of Sector 13 Standing Committee.”¹⁷⁹ Moeng Vet also told the CIJs that he was present at a Sector 13 meeting and “saw writing on the back side of a letter that *Ta* Saom sent to *Yeay* Chem. It wrote, ‘To *Comrade* Chem, Sector 13 Standing Committee.’”¹⁸⁰ Additionally, Pech Chim, Deputy Secretary of Tram Kak District, told the CIJs that people thought Im Chaem “was on the sector committee and in charge of women [affairs] because she always went to work in all the districts in Sector 13”.¹⁸¹
76. The CIJs refer to the evidence of Bun Thoeun, a Sanlong Commune Committee Member, as indicative of witnesses giving more specific information regarding Im Chaem’s role as chief of the Sector 13 Women’s Association rather than a position on the Sector 13 Committee.¹⁸² However, Bun Thoeun told the CIJs that *in addition* to being “Chairwoman of the Sector 13 Female Association”,¹⁸³ Im Chaem “became the Member of the Sector 13”.¹⁸⁴ Bun Thoeun based this on Im Chaem being “with the upper echelon”¹⁸⁵ and her “presence during every meeting of the Sector.”¹⁸⁶
77. The CIJs wrongly characterised other relevant evidence as merely evincing that Im Chaem’s “responsibilities included assigning people to different jobs and locations.”¹⁸⁷

¹⁷⁷ **D118/78** On Sopheap WRI, 25 June 2013, A8.

¹⁷⁸ **D219/294** Moul Eng WRI, 4 May 2015, A143.

¹⁷⁹ **D119/83** Moeng Vet WRI, 10 February 2014, A18.

¹⁸⁰ **D119/84** Moeng Vet WRI, 11 February 2014, A20.

¹⁸¹ **D118/259** Pech Chim WRI, 19 June 2014, A40 (emphasis added).

¹⁸² **D308/3** Closing Order (Reasons), para. 148, fn. 271.

¹⁸³ **D118/274** Bun Thoeun WRI, 10 July 2014, A28.

¹⁸⁴ **D118/274** Bun Thoeun WRI, 10 July 2014, A29.

¹⁸⁵ **D118/274** Bun Thoeun WRI, 10 July 2014, A55.

¹⁸⁶ **D118/274** Bun Thoeun WRI, 10 July 2014, A29. *See also*, A72.

¹⁸⁷ **D308/3** Closing Order (Reasons), para. 148.

The CIJs never explained their understanding of how the various and disparate organisational tasks they refer to as being within Im Chaem's responsibilities were encompassed solely within the role of chief of the Women's Association. This flaw in the CIJs' rationale is exemplified by Chhoeng Choeun's evidence, a Southwest Zone cadre, who told the CIJs that "I met *Yeay* Chaem when she called the chairmen of all villages to attend meetings. Sometimes, in the meetings she said she had just come from this or that district, for instance Tram Kak District. So I knew she worked in various districts in the Sector".¹⁸⁸ Khoem Boeurn, chief of Cheang Tong Commune in Tram Kak District, also told the CIJs that Im Chaem talked about "issues of security, arrests, enemies, traitors [and] purges" at Sector 13 meetings.¹⁸⁹ These statements are entirely at odds with the CIJs conclusion that Im Chaem would have attended meetings on the basis of being chief of the Sector 13 Women's Association. Nowhere in the Closing Order (Reasons) do the CIJs explain how the level of authority Im Chaem wielded could arise solely from her role as chief of the Women's Association.

78. Additionally, the CIJs failed to consider clear and relevant evidence demonstrating that Im Chaem held a position on the Sector 13 Committee.¹⁹⁰ For example, witness Muol Eng, Bavel District Secretary during the DK regime, stated that "I know *Yeay* Chaem was from Takeo and that she had been a member of Sector 13".¹⁹¹ Muol Eng detailed how "[i]t was announced on the radio that *Yeay* Chaem was a people's representative in Takeo Province [and] [t]he military personnel who knew her also had said she was the Secretary of Sector 13."¹⁹² It was, Muol Eng, stated, "common knowledge at that time that *Yeay* Chaem was the Secretary of Sector 13."¹⁹³ Khoem Vai, who was a sector messenger in Takeo Province and thus in a position to know the leadership structure, stated that "*Ta* Tith and *Yeay* Chaem were on the Sector 13 Committee."¹⁹⁴ Additionally, witness Sok Rum, who worked in Koh Andet, told the CIJs that "*Yeay* Chaem was Sector 13 Committee. *Yeay* Chaem was in charge of the children, women and men's units in Sector

¹⁸⁸ **D119/156** Chhoeng Choeun WRI, 4 September 2004, A17.

¹⁸⁹ **D118/242** Khoem Boeurn WRI, 21 May 2014, A99.

¹⁹⁰ While witness interviews may have been cited in other sections of the Closing Order, they were not reviewed for the question of Im Chaem's role in the Sector 13 Committee.

¹⁹¹ **D219/294** Moul Eng WRI, 4 May 2015, A127.

¹⁹² **D219/294** Moul Eng WRI, 4 May 2015, A130.

¹⁹³ **D219/294** Moul Eng WRI, 4 May 2015, A140.

¹⁹⁴ **D219/636** Khoem Vai WRI, 21 December 2015, A38.

- 13.”¹⁹⁵ These statements clearly support the Co-Prosecutor’s submission, but were not addressed by the CIJs.
79. A number of civil party applicants also referred to Im Chaem as having a position on the Sector 13 Committee,¹⁹⁶ including Thorng Phoun, who “met *Yeay* IN Chaem, who was on Sector 13 committee, at worksites where dams and canals were built.”¹⁹⁷ The latter civil party application was not considered in the Closing Order (Reasons) despite the CIJs acknowledging that civil party applications containing personal experiences are relevant to establishing pertinent facts.¹⁹⁸
80. The CIJs conclusion that Im Chaem’s various responsibilities at the Sector 13 level can be attributed solely to her position as chief of the Women’s Association is not supported by the evidence. While some witnesses may have stated that Im Chaem was the Member, Deputy or Secretary of Sector 13 – common throughout the Written Records of Interview is that Im Chaem was on the Sector 13 Committee independent of her position as chief of the Women’s Association.
81. The CIJs failure to find that Im Chaem was Secretary of Koh Andet District and a Member of the Sector 13 Committee appears to be the reason that the Closing Order does not address the Co-Prosecutor’s allegations that Im Chaem participated in the Southwest Zone JCE. As such, reversal of these factual errors requires a fresh assessment of Im Chaem’s responsibility under JCE for crimes in the Southwest Zone.

V. RELIEF SOUGHT

82. For the foregoing reasons, the Co-Prosecutor respectfully requests that the PTC correct the legal and factual errors enumerated in this appeal and either:

¹⁹⁵ **D119/108** Sok Rum WRI, 19 March 2014, A45.

¹⁹⁶ See, **D5/1133** Tem Chrom Civil Party Application, 1 October 2012, EN 01144435; **D5/1303** Kong Samy Civil Party Application, 8 November 2013, EN 01191036; **D5/1615** Phleu Ly Civil Party Application, 13 August 2013, EN 01168228.

¹⁹⁷ **D5/1304** Thorng Phoun Civil Party Application, 8 April 2013, EN 01144492.

¹⁹⁸ **D308/3** Closing Order (Reasons), para. 107.

- (1) send the casefile back to the CIJs with instructions for them to re-evaluate whether Im Chaem falls within the personal jurisdiction of the Court; or in the alternative,
- (2) that the PTC itself re-evaluates the case in light of the legal and factual errors set out herein.

Respectfully submitted,

Date	Name	Place	Signature
9 August 2017	Nicholas KOUMJIAN International Co-Prosecutor	Phnom Penh	

