



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia

Chambres Extraordinaires au sein des Tribunaux Cambodgiens

ECCC

DRAFT INTERNAL RULES

Friday, 3 November 2006

Please forward any comments by Friday 17 November 2006,
addressed to the Secretariat of the Rules and Procedure Committee, through
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DRAFT INTERNAL RULES

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I – PROVISIONS RELATING TO THESE INTERNAL RULES (“IRs”)

Rule 1. Definitions

1. In the present document:

“Accused” (*Accusé*) refers to any person who has been indicted by the Co-Investigating Judges or the Pre-Trial Chamber.

“Agreement” (*Accord*) refers to the “Agreement between the United Nations and the Royal Government of Cambodia Concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea”, signed on 06 June 2003, and promulgated on 19 October 2004.

“Arrest and Detention Order” (*mandat d’arrêt*) refers to an order to the Judicial Police to search for, arrest and bring a Charged Person or Accused to the ECCC detention facility; and to the head of the ECCC detention facility to receive and detain that person.

“Arrest Warrant” (*mandat d’amener*) refers to an order to the Judicial Police to arrest a Charged Person or Accused and bring him or her before the Co-Investigating Judges or the Chambers.

“Bail Order” (*Contrôle judiciaire*) refers to a judicial order that a Charged Person or Accused remain at liberty or be released from detention, pending trial, on condition that he or she pay a bail bond and/or respect specific conditions set out in the order.

“Civil Party” (*Partie civile*) refers to a victim whose petition to become a Civil Party has been accepted by the Co-Investigating Judges or the Trial Chamber in accordance with these IRs.

“Chambers” (*les Chambres*) refers to the Pre-Trial Chamber, the Trial Chamber and the Supreme Court Chamber of the ECCC.

“Charged Person” (*Personne mise en examen*) refers to any person who is subject to prosecution in a particular case, during the period between the Introductory Submission and Indictment or dismissal.

“Closing Order” (*Décision de clôture*) refers to the final order made by the Co-Investigating Judges or the Pre-Trial Chamber at the end of the judicial investigation: whether Indictment or Dismissal Order.

- “Count”** (*Chef d’inculpation*) refers to a specific crime with which the Charged Person is charged or the Accused indicted.
- “Detention Order”** (*mandat de depot*) refers to an order to the head of the ECCC detention facility to receive and detain a Charged Person or Accused.
- “Dismissal Order”** (*Décision de non lieu*) refers to a Closing Order by the Co-Investigating Judges or the Pre-Trial Chamber, dismissing the charges against a Charged Person.
- “ECCC”** (*CETC*) refers to the Extraordinary Chambers within the Courts of Cambodia, established by the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea, as amended in accordance with the Agreement, promulgated by Royal Decree, No. NS/RKM/1004/006, dated 27 October 2004.
- “The ECCC Law”** (*la Loi sur les CETC*) refers to the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea, as amended in accordance with the Agreement, promulgated by Royal Decree, No. NS/RKM/1004/006, dated 27 October 2004.
- “Indictment”** (*Décision de renvoi*) refers to a Closing Order by the Co-Investigating Judges, or the Pre-Trial Chamber, committing a Charged Person for trial.
- “Initial appearance”** (*Première comparution*) refers to the hearing during which a Charged Person appears for the first time before the Co-Investigating Judges, and is notified of the charges.
- “Introductory Submission”** (*Réquisitoire introductif*) refers to the written submission by the Co-Prosecutors requesting the Co-Investigating Judges to open an investigation into a crime and proposing charges.
- “Judicial Police”** (*Police judiciaire*) refers to Judicial Police and/or Gendarmerie officers of the Kingdom of Cambodia assigned to the ECCC.
- “Lawyer”** (*avocat*) refers to any person who is admitted to the practice of law by the Bar Association of the Kingdom of Cambodia, or by the relevant authority in another United Nations Member State [and approved to appear before the ECCC in accordance with these IRs].
- “Notification”** (*signification*) refers to the action through which, in the cases laid down in these IRs, a judicial decision is brought to the knowledge of a party to the proceedings.
- “Party”** refers to the Co-Prosecutors, the Charged Person/Accused and Civil Parties.

“Plenary Session” (*Assemblée plénière*) refers to a meeting in which all Judges of the Pre-Trial Chamber, Trial Chamber and Supreme Court Chamber, and the Co-Investigating Judges, participate and vote as provided in Rule [23].

“Police Custody” (*Garde à vue*) refers to the holding of a suspect by the Judicial Police pursuant to the instructions of the Co-Prosecutors or the Co-Investigating Judges.

“Practice Direction” (*Directives pratiques*) refers to regulations covering detailed aspects of the conduct of the work of the ECCC, adopted by the Rules and Procedure Committee, in accordance with the ECCC Law, the Agreement, and these IRs.

“Provisional Detention” (*Détention provisoire*) refers to the detention of the Charged Person ordered by the Co-Investigating Judges or the Pre-Trial Chamber, or the detention of the Accused ordered by the Chambers, pending final judgment.

“Supplementary Submission” (*Réquisitoire supplétif*) refers to a written submission by the Co-Prosecutors requesting the Co-Investigating Judges to issue an order or undertake further action in an ongoing investigation.

“Suspect” refers to a person whom the Co-Prosecutors or the Co-Investigating Judges consider may have committed a crime within the jurisdiction of the ECCC, but has not yet been charged.

“Victim” refers to a natural person or legal entity (*personne morale*) that has suffered harm as a result of the commission of any crime within the jurisdiction of the ECCC.

“Victims’ Association” refers to an association made up solely of victims of crimes coming within the jurisdiction of the ECCC, that is validly registered in the country in which it is carrying on activities at the time of its intervention before the ECCC, and has been validly authorised to take action on behalf of its members.

2. In the present document, the masculine shall include the feminine and the singular the plural, and vice-versa. In particular, unless otherwise specified, a reference in these IRs to the Co-Investigating Judges includes both of them acting jointly and each of them acting individually, whether directly or through delegation; and a reference in these IRs to the Co-Prosecutors includes both of them acting jointly and each of them acting individually, whether directly or through delegation, as specified in these IRs. [NB. This provision does not have any grammatical impact on the document in Khmer.]

Rule 2. Purpose of these IRs

1. The purpose of these IRs is to consolidate applicable Cambodian procedure for proceedings before the ECCC and, pursuant to Articles 20, 23, and 33 of the ECCC Law and

Article 12.1 of the Agreement, to adopt additional rules where these existing procedures do not deal with a particular matter, or if there is uncertainty regarding their interpretation or application, or if there is a question regarding their consistency with international standards.

2. Where in the course of ECCC proceedings, a question arises which is not addressed by these IRs, the Co-Prosecutors, Co-Investigating Judges or the Chambers shall decide in accordance with Article 12.1 of the Agreement and Articles 20, 23, 33 or 37 of ECCC Law as applicable, having particular attention to the fundamental principles set out in Rule [26] and the applicable criminal procedural laws. In such a case, a proposal for amendment of these IRs shall be submitted to the Rules and Procedures Committee as soon as possible.

Rule 3. Entry into Force

These IRs shall enter into force on the date of their approval in Plenary Session.

Rule 4. Amendments

1. Requests for amendment of these IRs may be made to the Rules and Procedure Committee by a Judge, a Co-Investigating Judge, a Co-Prosecutor, the Principal Defender, [the head of the Victims Unit] and the Director or Deputy Director of the Office of Administration.

2. Proposals for amendment received from the Rules and Procedure Committee shall be submitted to the Plenary Session for adoption in accordance with the procedure for adopting these IRs.

3. An amendment shall be, unless otherwise indicated, enter into force immediately. The Office of Administration shall publish the amendment by appropriate means.

II – ORGANISATION OF THE COURT

A – General Provisions

Rule 5. Administrative Regulations

After these IRs come into force, the Office of the Co-Prosecutors, the Office of Co-Investigating judges, the Chambers, the Office of Administration, [the Defence Unit and Victims Unit] shall develop their own respective administrative regulations, which shall comply with these IRs. Any Office may request the Rules and Procedure Committee to

review the administrative regulations of another Office where there is doubt concerning their consistency with these IRs.

Rule 6. International Cooperation and Judicial Assistance

1. The ECCC may invite States not party to the Agreement to provide assistance on the basis of *ad hoc* arrangements, agreements or any other appropriate means. Where a State which has entered such arrangements with the ECCC nevertheless fails to provide such assistance, the Co-Investigating Judges or the Chambers seised of the matter may take appropriate action, through the Office of Administration, including a request for assistance from the Secretary-General of the United Nations and/or the Royal Government of Cambodia.
2. Pursuant to Article 44(4) of the ECCC Law, the ECCC may receive additional assistance for their expenses from other voluntary funds contributed by foreign governments, international institutions, non-governmental organizations, and other persons wishing to assist the proceedings.

Rule 7. Recusal and Disqualification of Judges¹

1. A judge [may/shall] recuse him/herself from conducting an investigation, or sitting on a trial or appeal, in any case in which he or she has or has had a personal association which objectively might affect his or her impartiality or objectively give rise to the appearance of bias. A Co-Investigating Judge who recuses him or herself shall notify the President of the Pre-Trial Chamber. In any other case the judge in question shall notify the Chamber in which he or she is sitting. The Judge in question shall immediately cease to participate in the judicial proceedings.
2. Any party may file a petition for disqualification of a judge conducting an investigation, or sitting on a trial or appeal, on any of the following grounds:
 - a) If the judge, or his or her current or former spouse, is one of the parties;
 - b) If the judge has a family relation with any party by up to sixth degree, or is related by marriage up to third degree;
 - c) If the judge has custody of one of the parties;
 - d) If there is or was litigation pending between the judge and one of the parties;
 - e) If the judge was called as a witness or expert in the case;
 - f) If the judge is or was a lawyer or assistant of one of the parties;

¹ Sierra Leone Special Court Rules of Procedure and Evidence, Rule 15

- g) If the judge has already participated in the case, in any capacity, including the investigation or any decision;
 - h) If the judge has expressed comments through media verbally or in writing, or has done other public actions, or has provided legal opinion in the case, which would affect his or her bias.
3. A party who files a petition for disqualification of a judge shall clearly indicate the grounds and shall provide supporting evidence. The petition shall be filed as soon as the party becomes aware of the grounds in question.
 4. No application shall be admissible if submitted after the Closing Order, or judgement in a trial or appeal, as appropriate.
 5. A petition for disqualification of a Co-Investigating judge shall be submitted to the Pre-Trial Chamber. In any other case it shall be submitted to the Chamber in which the judge in question is sitting. The judge in question may decide to step down voluntarily at any point in the following proceedings.
 6. The Judge in question shall cease to participate in the judicial proceedings pending a decision, and shall be replaced in the Chamber by a reserve judge for the purposes of the petition.
 7. The Judge shall be entitled to present written submissions to the Chamber within 10 days of receipt by him or her of the application, through its President. The application for disqualification of the Judge, along with the submissions by the Judge, shall be considered by the Chamber Judges, who shall vote on the matter, and hand down a written decision in the absence of the judge in question and the applicant.
 8. Such petitions may be heard by remote means where necessary. The order of the Chamber shall be notified to the parties and the judge in question by the clerk of the Chamber, and shall be not open to appeal.
 9. Any act done before the notification of a petition for disqualification shall be deemed to be valid.
 10. If the Chamber decides to disqualify a Judge, a reserve Judge shall be appointed to sit in his or her place. Where a petition is rejected, no further petition shall be filed on the same grounds unless such ground reoccurs after the first decision was made.

Rule 8. Resignation

1. Any ECCC Judge or Co-Prosecutor may resign from his or her functions.

2. The resignation of a national judge or co-prosecutor shall be submitted to the Supreme Council of the Magistracy and notice shall be given in writing to the Plenary, through its President.
3. The resignation of an international judge or co-prosecutor shall be submitted in writing to the Plenary, through its President. The Office of Administration shall transmit the resignation to the Secretary-General of the United Nations and the Supreme Council of the Magistracy of the Royal Government of Cambodia.
4. Articles 11 and 18 of the ECCC Law and Articles 3, 5 and 6 of the Agreement, relating to vacancies for judicial officers shall be applied.

B – The Office of Administration

Rule 9. The Director and Deputy Director of the Office of Administration

The Director and Deputy Director of the Office of Administration shall be appointed according to the ECCC Law and the Agreement. They shall direct the Office of Administration and appoint such staff as necessary.

Rule 10. Functions of the Office of Administration

1. The Office of Administration shall assist the Chambers, the Office of the Co-Prosecutors, the Office of the Co-Investigating Judges and Plenary Sessions in the performance of their functions and shall be responsible for their administration and servicing. In this respect, the above-mentioned judicial officers may make suggestions to the Office of Administration, through the Judicial Administration Committee, including the taking of appropriate disciplinary measures against staff under their authority, where warranted.
2. The Office of Administration shall be responsible for the internal security of the ECCC in accordance with the Supplementary Agreement regarding Safety and Security between the United Nations and the Royal Government of Cambodia.
3. The Office of Administration shall be responsible for provision of the equipment, facilities management, information technology, supplies, vehicles, transportation, and other physical and administrative requirements of the ECCC in accordance with the Supplementary Agreement regarding utilities, facilities and services between the United Nations and the Royal Government of Cambodia.

4. Without prejudice to the authority of the Office of the Co-Prosecutors or the Office of Co-Investigating Judges to receive, obtain and provide information and to establish channels of communication in the conduct of their judicial functions, the Office of Administration shall serve as the official channel for both internal and external communication of the ECCC.
5. The Office of Administration shall keep a database containing copies of all case files of judicial investigations, and cases before the Chambers, the originals of which shall be kept with the Office of the Co-Investigating Judge or the Chambers, as appropriate. The Office of the Administration will ensure that such copies are made available to the parties, as directed by the office of the Co-investigating Judge or the Chambers, as appropriate. Information in the database shall only be made available to the public subject to the terms of the ECCC practice directive on the matter.
6. At the direction of the Co-Investigating Judges or the Chambers, as appropriate, the Office of Administration shall be responsible for the preservation, storage and security of evidence including physical evidence, statements and documents obtained in the course of preliminary investigations, investigations, trials, and appeals.

Rule 11. Operation of the Office of Administration

1. When preparing or amending its administrative regulations, the Office of Administration shall consult with the Chambers, the Co-Prosecutors, and Co-Investigating Judges on any matters which may affect the operation of such Chambers or Office. The administrative regulations shall be approved by the Director and Deputy Director of the Office of Administration.
2. The Director and Deputy Director of the Office of Administration, in the execution of their functions, may make oral or written representations to Co-Investigating Judge or the Chambers on any issue arising in the context of a specific case which affects or may affect the discharge of such functions, including that of implementing judicial decisions, with notice to the parties where necessary.
3. The Director and Deputy Director of the Office of Administration, mindful of the need to ensure respect for human rights and fundamental freedoms shall, in consultation with the Co-Prosecutors, the Co-Investigating Judges and the Chambers, adopt administrative regulations governing the detention of any person under the ECCC's authority. They shall ensure that conditions of detention are in accordance with the *Standard Minimum Rules for the Treatment of Detainees* and the *Basic Principles for the Treatment of Prisoners* of the United Nations.

Rule 12. The Defence [Unit/Office]

1. The Office of Administration shall establish a Defence Unit/Office, which shall be autonomous on substantive defence matters. The Defence Unit/Office shall be headed by the Principal Defender together with such staff as necessary.

2. It shall fulfil its functions, *inter alia*, by:

- a) Assisting in the protection of the rights of suspects, Charged Persons and Accused, and other persons, as appropriate.
- b) Providing and maintaining representation for suspects, Charged Persons and Accused.
- c) Administering applications to be admitted to the list of approved lawyers in accordance with the criteria in the relevant Practice Direction.
- d) Providing all suspects, Charged Persons and Accused with information on how to select lawyers from the list of approved lawyers.
- e) Providing [*legal/administrative* advice and assistance to [suspects,] Charged Persons and Accused and their legal teams]
- f) Providing for training courses to allow lawyers to fulfil the criteria for admission to the list of approved lawyers together with continuing professional training.
- g) Appearing before the ECCC in respect of specific issues, [including filing applications for access to the case file].

3. [PROPOSITION 1: *Lawyers admitted to practice law in a foreign country shall register with the Bar Association of the Kingdom of Cambodia in a special list which recognises the right to represent clients before the ECCC as co-lawyers*].

[PROPOSITION 2: *The Defence Unit/Office shall create and maintain a list of lawyers approved to appear before the ECCC and other professionals approved to be members of the defence teams. The list shall include both Cambodian and foreign nationals.*

4. *The criteria and procedures for inclusion on this list shall be established in a Practice Direction, which shall be consistent with these IRs.*

5. *Any person who has been denied admission to the list or an approved person who has been removed from the list may seek review of the decision to the Judicial Administration*

Committee within fifteen days of receiving notification of the final decision of the Principal Defender.]]²

6. A suspect, Charged Person or Accused shall freely choose his or her a lawyer from this list. The remuneration of defence a lawyer shall be provided for by Practice Direction, consistent with these IRs.

7. The lawyer of a person in detention may freely communicate with his or her client in the detention centre subject to the necessary constraints of the administration of detention facility. All communications between the lawyer and the person in detention shall be confidential and shall not be listened to, recorded or copied by others. The lawyer may obtain a copy of the case file, or record of proceedings, and bring this, together with any other relevant document to discuss with his or her client.

8. In the performance of their duties lawyers shall be subject to the relevant provisions of the Agreement, the ECCC Law, these IRs, ECCC Practice Directions, as well as the Cambodian Code of Professional Conduct and the codes of practice and ethics governing their profession in their country of admission.

9. Lawyers admitted to practice outside of Cambodia shall work in conjunction with a lawyer admitted in Cambodia, as co-lawyers, with equal rights of audience.

[Rule 13. The Victims Unit - *FOR DISCUSSION*]]³

1. The Office of Administration [shall/may] establish a Victims Unit, which shall be headed by the Principal Lawyer for Victims, together with such staff as necessary.

2. It shall fulfil its functions, *inter alia*, by:

- a) Assisting in the protection of the rights of victims.
- b) Assisting the Co-Prosecutors in the receipt, verification and registering of complaints.
- c) Assisting the co-Investigating judges in the receipt, verification and registering of Civil Party petitions.
- d) Giving [legal and] administrative assistance to Civil Parties and their legal teams
- e) Facilitating the common representation of Civil Parties.

² There is disagreement concerning the extent to which the national bar association should be involved in decisions concerning admission of lawyers: a list specific to the ECCC seems to limit the rights of Cambodian lawyers to have access to any court. The national side suggests further discussions with the bar association to find a solution. If Proposition 2 (internal ECCC solution) is adopted, it would be necessary to determine how the Judicial Administration Committee makes decisions (super majority..??)

³ The establishment of such a unit is not foreseen in the current budget estimates, and is subject to the availability of additional funding. It is, however, essential if the rights recognized to civil parties under Cambodian procedures in force are to be effectively exercised.

- f) Administering applications to be admitted to the list of approved lawyers in accordance with the criteria in the relevant Practice Direction.
- g) Providing all Civil Parties with information on how to select lawyers from the list of approved lawyers.
- h) Administering applications to be admitted to the list of Victims' Associations.
- i) [Providing for training courses to allow lawyers to fulfil the criteria for admission to the list of approved lawyers together with continuing professional training.]
- j) Appearing before the ECCC in respect of specific issues, [including filing applications for access to the case file].

3. [PROPOSITION 1: *Lawyers admitted to practice law in a foreign country shall register with the Bar Association of the Kingdom of Cambodia in a special list which recognises the right to represent clients before the ECCC as co-lawyers*].

[PROPOSITION 2: *3. The Victims Unit shall create and maintain a list of lawyers approved to appear before the ECCC and other professionals approved to be members of their teams. The list shall include both Cambodian and foreign nationals.⁴ The criteria and procedures for inclusion on this list shall be established in a Practice Direction.*

4. *Any person who has been denied admission to the list or an approved person who has been removed from the list may seek review of the decision to the Judicial Administration Committee within fifteen days of receiving notification of the final decision of the Principal Lawyer for Civil Parties.*

5. *A Civil Party may freely choose a lawyer from this list. Any ECCC remuneration for such a lawyer shall be provided for by Practice Direction.*]

6. In the performance of their duties lawyers shall be subject to the relevant provisions of the Agreement, the ECCC Law, these IRs, ECCC Practice Directions, as well as the Cambodian Code of Professional Conduct and the codes of practice and ethics governing their profession in their country of admission.

7. The Victims Unit shall create and maintain a list of Victims' Associations approved to act on behalf of Civil Parties before the ECCC, drawn up under the supervision of the Co-Investigating Judges and the Trial Chamber. In order to be included in the list, such Victims'

⁴ This list could effectively be merged with the defence lawyers list, thereby reducing duplication and operational costs.

Association shall provide the [Victims Unit] with documentation showing that it is validly registered or established in the country in which it is carrying on its activities, and is authorised to act on behalf of its members.

8. Any Victims' Association that has been denied admission to the list or removed from the list may seek review of the decision to the Judicial Administration Committee within fifteen days of receiving notification of the final decision of the Principal Lawyer for Civil Parties.]

9. Lawyers admitted to practice outside of Cambodia shall work in conjunction with a lawyer admitted in Cambodia, as co-lawyers, with equal rights of audience.

[Rule 14. Complaint Registration and Case File Management Unit - FOR DISCUSSION]

[Centralised option]⁵

In order to ensure the effectiveness and quality of the complaint registration process and the management of court files within the ECCC, the Office of Administration shall establish a unit for complaint registration and the management of case files within the Court Management Section (CMS), in consultation with the Co-prosecutors and Co-investigating Judges. This unit shall be responsible for the following tasks:

- a) To receive and register any complaints [made by victims], and petitions from all parties to proceedings before the ECCC.*
- b) To maintain, manage and forward complaints or documents or case files to the Office of the Co-Prosecutors, the Office of the Co-Investigation Judges, the Office of Administration, and the Chambers pursuant to existing procedure.*
- c) To forward and notify the orders or decisions of the Office of Co-Prosecutors, the Office of Co-Investigation Judges and the Chambers to all related parties and institutions in the proceeding.*
- d) To convene trials.]*

⁵ As an alternative to this centralized approach, these IRs set out in each case which officer is legally responsible for complaints and files and designates the appropriate chain of documentation.

C – The Office of the Co-Prosecutors

Rule 15. Operation of the Office of the Co-Prosecutors

1. The Office of the Co-Prosecutors shall operate as an independent office within the ECCC. It shall be composed of the Co-Prosecutors and such other staff as necessary.
2. In preparing or amending the administrative regulations of their office, the Co-Prosecutors shall consult with the Chambers, the Co-Investigating Judges and the Director and Deputy Director of the Office of Administration on any matters that may affect their respective Chambers or Offices. These administrative regulations shall be approved by the Co-Prosecutors.
3. Except for action that must be taken jointly [under the ECCC Law and these IRs], the Co-Prosecutors may delegate power to one of them, by a joint written decision, to accomplish such action individually.
4. Except for actions that must be performed personally [under the ECCC Law and these IRs], the Co-Prosecutors may delegate the exercise of their functions verbally or in writing⁶, as follows:
 - a) During the preliminary investigation: to any of their staff/investigators, except where coercive measures are required, or to the Judicial Police;
 - b) At all other times: to the Deputy Co-Prosecutors [and their Assistant Co-Prosecutors⁷]

Rule 16. Settlement of Disagreements between the Co-Prosecutors

1. In the event of disagreement between the Co-Prosecutors [concerning an Introductory Submission, a Supplementary Submission relating to new facts, a final submission, or a decision relating to an appeal],⁸ either or both of them may record the exact nature of their disagreement in a signed, dated document which shall be placed in the case file.
2. Within 30 days, either Co-Prosecutor may bring the disagreement before the Pre-Trial Chamber by submitting a written statement of the facts and reasons for the disagreement to the Office of Administration, who shall immediately convene the Pre-Trial

⁶ This may be too cumbersome in practice

⁷ The 2004 Law only refers to co-prosecutors and deputy co-prosecutors, raising the question as to whether extending the delegation any further would infringe the Law. It can, however, be argued that this is a clear gap in the applicable Law which may be resolved by these IRs.

⁸ It may be advisable to limit the scope of this provision to certain disagreements. Widening the scope to any disagreement could bring essentially strategic matters under judicial scrutiny and decision and considerably slow proceedings. On the other hand, such limitations will require the Co-Prosecutors to resolve other disputes as “mature adults”, in the words of Judge Milart

Chamber and communicate the statements to the judges, with a copy to the other Co-Prosecutor. In such cases, the other Co-Prosecutor may submit a response within five days.

3. The Pre-Trial Chamber shall settle the disagreement forthwith, as follows.
4. The hearing shall be held and the judgment handed down *in camera*. Remote participation may be organized, as necessary.
5. The Pre-Trial Chamber may order the personal appearance of the Co-Prosecutors at its discretion, as well as the production of exhibits.
6. A decision of the Pre-Trial Chamber, against which there is no appeal, requires the affirmative vote of at least four judges.
7. The reasoned decision, signed by the President, and any dissenting opinions signed by their authors, shall be notified to the Co-Prosecutors by the [Clerks of the Pre-Trial Chamber]. The Co-Prosecutors shall immediately proceed in accordance with the decision of the Pre-Trial Chamber.
8. If the required majority is not achieved before the Pre-Trial Chamber, [*the prosecution shall proceed*].⁹
9. [Throughout this dispute settlement period, the action or decision the subject of the disagreement shall proceed, except for disagreements concerning:
 - a) an Introductory Submission,
 - b) a Supplementary Submission relating to new crimes,
 - c) a final submission, or
 - d) a decision relating to an appeal,¹⁰

in which case,] no action shall be taken with respect to the subject of the disagreement until either consensus is achieved, the 30 day period has ended, or the Pre-Trial Chamber has been seised and the dispute settlement procedure has been completed, as appropriate.

D – The Office of the Co-Investigating Judges

Rule 17. Operation of the Office of the Co-Investigating Judges

1. The Office of the Co-Investigating Judges shall be established as an independent office within the ECCC. It shall be composed of the Co-Investigating Judges and such other staff as necessary.

⁹ The Committee notes that this phrase may only be appropriate in cases where the dispute in question would lead to abandonment of the proceedings. Should a wider conception of those disputes open to such settlement be adopted, a different formulation would be more appropriate, such as “*the solution most favourable to prosecution of the case shall apply*” or “*the solution most favourable to the charged person shall apply*”. While the latter approach would seem most compatible with international standards, it would appear contrary to the 2004 law.

¹⁰ This provision would only be necessary where a wide conception of dispute resolution was adopted.

2. Each Co-Investigating Judge shall have a clerk. The clerks shall keep a record of the investigation and undertake such other activities as required by the Co-Investigating Judges under these IRs. The clerks shall liaise with the Office of Administration to ensure that copies of all case files are made and kept by the Office of Administration. The clerks shall certify that copied records are the same as the original. All original case files be kept in the clerk's office, in the investigating judge's office, or in any room of the court with sufficient security conditions.
3. In preparing or amending their administrative regulations, the Co-Investigating Judges shall consult with the Chambers, the Co-Prosecutors and the Director and Deputy Director of the Office of Administration on any matters that may affect the operation of the such Chambers or Offices. These administrative regulations shall be approved by the Co-Investigating Judges.
4. Except for action that must be taken jointly [under the ECCC Law and these IRs], the Co-Investigating Judges may delegate power to one of them, by a joint written decision, to accomplish such action individually.
5. Except for actions that must be performed personally [under the ECCC Law and these IRs], the Co-Investigating Judges may delegate the exercise of their functions by rogatory letter to their investigators [except where coercive measures are required], or to the Judicial Police.
6. In cases of absence of a Co-Investigating judge, actions that must be performed personally under these IRs may be accomplished by remote means.

Rule 18. Settlement of Disagreements between the Co-Investigating Judges

1. In the event of disagreement between the Co-Investigating Judges [concerning any decision that would be open to appeal by the Charged Person or a Civil Party under these IRs, the notification of charges, or an Arrest Warrant]¹¹, either or both of them may record the exact nature of their disagreement in a signed, dated document which shall be placed in the case file.
2. Within 30 days, either Co-Investigating Judge may bring the disagreement before the Pre-Trial Chamber by submitting a written statement of the facts and reasons for the disagreement to the Office of Administration, which shall immediately convene the Pre-Trial Chamber and communicate the statements to the judges, with a copy to the other Co-

¹¹ It may be advisable to limit the scope of this provision to certain disagreements. Widening the scope to any disagreement could bring essentially strategic matters under judicial scrutiny and decision and considerably slow proceedings. On the other hand, such limitations will require the Co-Investigating Judges to resolve other disputes as "mature adults", in the words of Judge Milart

Investigating Judge. If the disagreement relates to the provisional detention of a Charged Person, this period shall be reduced to 5 days. The other Co-Investigating Judge may submit a response within five days.

3. The Pre-Trial Chamber shall settle the disagreement forthwith, as follows.
4. The hearing shall be held and the judgment handed down *in camera*.
5. Where the disagreement relates to a decision against which a party to the proceedings would have the right to appeal to the Pre-Trial Chamber under these IRs:
 - a) The Clerks of the Pre-Trial Chambers shall immediately inform the parties in question and his or her lawyers of the date of the hearing;
 - b) The Co-Prosecutors and the lawyers for the other parties involved may consult the case file up until the date of the hearing;
 - c) The Co-Prosecutors and the lawyers for the other parties involved may make written submissions up until the date of the hearing, which shall immediately be placed on the case file by the Clerks of the Pre-Trial Chambers;
 - d) At the request of a party, the hearing may be held in public, unless the Chamber rejects the request;
 - e) During the hearing, the Co-Prosecutors and the lawyers of the other parties involved may present brief observations.
6. In all cases, the Chamber may, at its discretion, order the personal appearance of any parties or experts, as well as the production of any exhibits.
7. A decision of the Pre-Trial Chamber, against which there is no appeal, shall require the affirmative vote of at least four judges.
8. The reasoned decision, signed by the Judges, and any dissenting opinions signed by their authors, shall be notified to the Co-Investigating Judges by the Office of Administration. The Co-Investigating Judges shall immediately proceed in accordance with the decision of the Pre-Trial Chamber.
9. If the required majority is not achieved before the Pre-Trial Chamber, [*the investigation shall proceed*]¹². Where the disagreement concerns provisional detention, there shall be a presumption of freedom.
10. [Throughout this dispute settlement period, the action or decision the subject of the disagreement shall proceed, except for disagreements concerning:

¹² The Committee notes that this phrase may only be appropriate in cases where the dispute in question would lead to abandonment of the proceedings. Should a wider conception of those disputes open to such settlement be adopted, a different formulation would be more appropriate, such as "*the solution most favourable to prosecution of the case shall apply*" or "*the solution most favourable to the charged person shall apply*". While the latter approach would seem most compatible with international standards, it would appear contrary to the 2004 law.

- a) any decision that would be open to appeal by the Charged Person or a Civil Party under these IRs,
- b) notification of charges; or
- c) an Arrest Warrant,

in which case,] no action shall be taken with respect to the subject of the disagreement until either consensus is achieved, the 30 day period has ended, or the Pre-Trial Chamber has been seised and the dispute settlement procedure has been completed, as appropriate.

E – Judicial Police

Rule 19. The Judicial Police

1. The Judicial Police are auxiliary officers of the ECCC. They carry out inquiries under the sole instructions of the Co-Prosecutors and Co-Investigating Judges, and where appropriate, the Chambers, throughout the territory of Cambodia, as set out in these IRs. The Judicial Police shall neither seek nor take orders from any other person in carrying out their functions.
2. The Co-Prosecutors shall direct and coordinate the action of the Judicial Police until a judicial investigation has been initiated. Once such a judicial investigation has been initiated, the Judicial Police shall carry out their duties as instructed by the Co-Investigating Judges.
3. During any supplementary investigation ordered by the Chambers, the Judicial Police shall perform their duties as instructed by the Chambers.
4. The Co-Prosecutors shall have the authority to forward cases of Judicial Police misconduct to the competent authorities.

F – The Chambers

Rule 20. General Provisions

1. The Chambers shall be established as independent bodies within the ECCC. They shall be composed of their respective Judges and such other staff as necessary.
2. The Chambers shall be assisted by court clerks, who shall keep a record of the proceedings and undertake such other activities as directed by the Chambers under these IRs. The clerks shall liaise with the Office of Administration to ensure that copies of all records of proceedings are made and kept by the Office of Administration. The clerks shall certify that copied records are the same as the original.

3. In preparing or amending their administrative regulations, the Chambers shall consult with the Co-Prosecutors, the Co-Investigating Judges and the Director and Deputy Director of the Office of Administration on any matters that may affect the operation of such Offices. These administrative regulations shall be approved by super majority of the judges in their respective Chamber.

Rule 21. Additional Jurisdiction of the Pre-Trial Chamber

1. In addition to its power to adjudicate disputes between the Co-Prosecutors or the Co-Investigating Judges, as set out in the Agreement and the ECCC Law, the Pre-Trial Chamber shall have jurisdiction over appeals by the parties against decisions made by the Co-Investigating Judges, as provided in these IRs.
2. Remote participation may be organized, as necessary.

Rule 22. Absence of a Judge During Trial or Appeal¹³

[1. If a Judge is unable to continue during a trial or appeal for a short period and the remaining Judges are satisfied that it is in the interests of justice to do so, the remaining Judges may order that the hearing continue in the absence of that Judge for a period of no more than five consecutive sitting days.]¹⁴

2. If a Judge is unable to continue during a trial or appeal [for a period which is or is likely to be longer than ten sitting days], the remaining judges may decide to adjourn the proceedings or to designate a reserve Judge to sit in place of the absent Judge for the remainder of the trial or appeal.¹⁵

G – Judicial Organisation

Rule 23. Plenary Sessions¹⁶

1. The Co-Investigating Judges and Judges of the Chambers, as well as the reserve judges, Co-Prosecutors and their reserves, the Principal Defender, [the Head of the Victims Unit] and the Director and Deputy Director of the Office of Administration, may all participate in Plenary Sessions.

¹³ Sierra Leone Special Court Rules of Procedure and Evidence, Rule 16, 1993 SOC Criminal Procedure, Article 99

¹⁴ The Cambodian judges prefer the local procedure, whereby no absences are allowed.

¹⁵ Normally, the presence of all judges is compulsory under Cambodian law at all stages of the proceedings. The national members of the Committee wish to replace this provision as follows: 1. The reserve judges shall be present at all stages of trial and appellate proceedings but without voting rights; 2. In the case of absence of a judge, the reserve judge shall be immediately appointed as a replacement. It may, however, be a requirement for international proceedings to have some flexibility in this respect.

¹⁶ Sierra Leone Rules of Procedure, Article 24; International Criminal Court Rules of Procedure, Rule 4.

2. The President of the Supreme Court Chamber shall preside over Plenary Sessions.
3. Only the Co-Investigating Judges and Judges of the Chambers may vote on any decision at Plenary Session. Such decisions shall be made by a super majority of at least 14 out of the 19 judges entitled to vote.¹⁷ Such votes may be cast by remote means, where a judge is unable to attend. The above super majority shall be recalculated, should the total number of judges entitled to vote at Plenary Session decrease¹⁸. Other participants at Plenary participate in a consultative capacity only.
4. A Plenary Session shall be convened at least every six months, in order to exercise the following functions:
 - a) Review and amend, as necessary, the IRs;
 - b) Review and amend, as necessary, any Practice Directions adopted by the Rules and Procedure Committee,
 - c) Adopt an Annual Report to the Supreme Council of the Magistracy and to the Secretary-General of the United Nations proposed by the Director and the Deputy Director of the Office of Administration;
 - d) Decide upon matters relating to the internal functioning of the ECCC, upon proposals from the Judicial Administration Committee;
 - e) Exercise any other functions provided for in the ECCC Law, the Agreement or in these IRs.
5. Plenary Sessions shall be convened by the President of the Plenary, on his or her own motion or at the request of a super majority of all the Judges entitled to vote.
6. The quorum for a Plenary Session shall be a super majority of all the Judges entitled to vote, participating in person or by remote means.
7. The Office of the Administration shall keep written records of decisions made in Plenary Sessions.

Rule 24. Judicial Administration Committee

1. The Judicial Administration Committee shall be composed of three national Judges, one of whom shall be the President, and two international judges, all elected in Plenary Session. The Committee shall also include, [in a consultative capacity], the Director and Deputy Director of the Office of Administration. Where a member of the Committee notifies

¹⁷ This is a cumulative calculation following the supermajority principle: One investigating judge, four Pre-Trial Judges, four Trial Judges and Five Supreme Court Judges. It does not include reserve judges.

¹⁸ For example, when the investigating judges finish their work

the Plenary that he or she cannot, or no longer wishes to, sit on the Committee, a replacement member shall be elected at Plenary Session..

2. The Committee shall advise and guide the Office of Administration concerning all activities relating to the administrative and judicial support provided to the Chambers and the Office of the Co-Investigating Judges, including the preparation and implementation of the budget.
3. The Committee shall meet once a month, or more often at the initiative of the President. Remote participation may be organized, as necessary.
4. The Committee shall do such other tasks provided for in these IRs.
5. The Committee shall be serviced by a secretariat assigned by the Office of Administration.

Rule 25. Rules and Procedure Committee

1. The Rules and Procedure Committee shall be composed of three national Judges, one of whom shall be the President, and two international judges, all elected in Plenary Session. Where a member of the Committee notifies the Plenary that he or she cannot, or no longer wishes to, sit on the Committee, a replacement member shall be elected at Plenary Session..
2. The Committee shall receive and consider requests for amendments to these IRs, and draft proposals for submission at Plenary Sessions. For this purpose, it shall meet as required at the initiative of the President.
3. The Committee shall adopt Practice Directions relating to the functioning of the ECCC, subject to subsequent review in Plenary Session. For this purpose, the Committee shall meet as required at the initiative of the President, or at the request of a Judge, a Co-Investigating Judge, a Co-Prosecutor, the Principal Defender, [the head of the Victims Unit] and the Director or Deputy Director of the Office of Administration.
4. The Committee shall do such other tasks provided for in these IRs.
5. Remote participation may be organized, as necessary.
6. The Committee shall be serviced by a secretariat assigned by the Office of Administration.

III – PROCEDURE

A – General Provisions

Rule 26. Fundamental Principles

1. The applicable ECCC Law, Internal Rules, Practice Directions and Administrative Regulations shall be interpreted so as to always safeguard the interests of suspects, Charged Persons, Accused and victims and so as to ensure legal certainty and transparency of proceedings, in light of the inherent specificity of the ECCC, as set out in the ECCC Law and the Agreement. In this respect:
 - a) ECCC proceedings shall be fair and adversarial and preserve a balance between the rights of the parties. They shall guarantee separation between those authorities responsible for prosecuting and those responsible for adjudication.
 - b) Persons who find themselves in a similar situation and prosecuted for the same offences shall be treated according to the same rules.
 - c) The ECCC shall ensure that victims are kept informed and that their rights are respected throughout the proceedings.
 - d) Every person suspected or prosecuted shall be presumed innocent as long as his/her guilt has not been established. Any such person has the right to be informed of any charges brought against him/her and to be represented by a lawyer of his/her choice.
2. Any coercive measures to which such a person may be subjected shall be taken by or under the effective control of the competent ECCC judicial authorities. Such measures shall be strictly limited to the needs of the proceedings, proportionate to the gravity of the offence charged and fully respect human dignity.
3. No form of inducement, physical coercion or threats thereof, whether directed against the interviewee or others, may be used in any interview. If such inducements, coercion or threats are used, the statements recorded shall not be admissible as evidence before the Chambers, and the person responsible shall be appropriately disciplined in accordance with Rules [39 to 42].
4. Prosecution by the ECCC shall be brought to a conclusion within a reasonable time.

Rule 27. Civil Party Action by Victims

1. The purpose of Civil Party action is to participate in criminal proceedings against those responsible for crimes within the jurisdiction of the ECCC and/or to seek reparation of injury caused by such persons.¹⁹
2. The right to take civil action may be exercised by victims of a crime coming within the jurisdiction of the ECCC, without any distinction based on criteria such as current residence or nationality.
3. At any time after a judicial investigation has been initiated, a victim may petition the Co-Investigating Judges in writing to be joined as a Civil Party. Subject to the provisions in these IRs relating to the protection of victims, the Co-Investigating Judges must notify the Co-Prosecutors and the Charged Person, and seek their views.²⁰ The Co-Investigating Judges may decide by reasoned order that the Civil Party petition is inadmissible. Such order shall be open to appeal by the victim.
4. A victim may make a Civil Party petition during proceedings before the Trial Chamber, at any time before the final pleadings of the Co-Prosecutors. Such petition shall be in writing and filed with the clerk of the Trial Chamber and shall be placed on the record of proceedings. A victim who has filed a Civil Party petition during the investigation shall not be required to renew the petition before the Chambers.²¹
5. All Civil Party petitions must contain sufficient information to allow verification of their compliance with these IRs. In particular, the petition must provide details of the status as a victim, specify the alleged crime and attach any evidence of the injury suffered, or tending to show the guilt of the alleged perpetrator. With a view to service and notifications, the domicile of the victim, the registered office of the Victims' Association of which he or she is a member, or the address of the lawyer, as appropriate, must also be stated.
6. Being joined as a Civil Party shall have the following effects:
 - a) When joined as a Civil Party, the victim becomes a party to the criminal proceedings. The Civil Party can no longer be questioned as a simple witness in the same case and, subject to Rule [65] relating to rogatory letters, may only be interviewed under the same conditions as a Charged Person or Accused.²²
 - b) The Chambers shall not hand down judgment on a Civil Party action that is in contradiction with their judgment on public prosecution of the same case.

¹⁹ DCCP Art. L.111-2

²⁰ DCCP, Art. L.411-17

²¹ DCCP, Art. L.512-12

²² DCCP, Art. L.512-13

- c) The Co-Investigating Judges and the Chambers may afford to Civil Parties the protection measures set out in Rule [34].
7. Any victim participating in proceedings before the ECCC as a Civil Party has the right to choose one or more lawyers from the list held by the [Victims Unit], who may represent such party at all stages of the proceedings.
8. A group of Civil Parties may choose to be represented by one or more common lawyers drawn from the list held by the [Victims Unit]. In addition, the Co-Investigating judges or the Chambers may organize such common representation, as follows:
- a) The Co-Investigating judges or the Chambers, may request a group of Civil Parties to choose common lawyers within a set time limit.
 - b) Where a group of Civil Parties is unable to choose common lawyers within such time limit, the Civil Parties may request the [Victims Unit] to choose one or more common counsel for them. In that case the [Unit] shall take into account the wishes of the Civil Parties concerned and the particular circumstances of the case, and any conflicting interests within the group, as well as the need to respect local traditions and to assist vulnerable groups.²³
 - c) Where the interests of Justice so require, the Co-Investigating judges or the Chambers may, after consulting the [Victims Unit], designate a common lawyer or lawyers for such a group of Civil Parties.²⁴
 - d) The Co-Investigating judges or the Chambers and the [Victims Unit] shall take all reasonable steps to ensure that in the selection of common lawyers, the distinct interests of each of the Civil Parties are represented and that any conflict of interest is avoided.
 - e) At any time, the Civil Parties may, on good cause being shown by reasoned petition, request the Co-Investigating judges or the Chambers to reconsider the [Victims Unit]'s choice of common lawyers, or their designation by the the Co-Investigating judges or the Chambers.²⁵
9. A group of victims may also choose to organise their Civil Party action by becoming members of a Victims' Association. Civil parties who are members of a Victims' Association shall be represented by the association's lawyers, and summonses and notifications concerning its members shall be served via the association. In order to facilitate such collective organisation of Civil Party action, the [Victims Unit] may provide victims

²³ ICC, Regulations of the Court, Regulation 79(2), 122

²⁴ ICC, Regulations of the Court, Regulation 80

²⁵ ICC, Regulations of the Court, Regulation 79(3)

with a list of approved Victims' Associations. The fact that certain victims choose to take action through a Victims' Association shall not affect the right of other victims to be joined as Civil Parties in the same case.

10. Civil parties who lack the necessary means to pay for common lawyers chosen for them by [a Victims' Association] or the [Victims Unit], or designated by the co-Investigating judges or the Chambers, may seek assistance from the [Victims Unit], including, as appropriate, financial assistance.

11. A Civil Party may, at any time, waive the right to claim compensation or abandon a Civil Party action. The waiver of the right or abandonment of the action shall not stop or suspend the criminal action.²⁶

12. Reparation for injury suffered by Civil Parties shall be subject to the following provisions:

- a) The injury must be physical, material or psychological. To be eligible for reparation, the injury must also:
 - be the direct consequence of the offence;
 - be personal;
 - have come into being and continue to subsist at the time of the proceedings.²⁷
- b) Injury may be compensated by awarding [proportionate] damages. The Chambers may also award collective or symbolic reparation.

Rule 28. Witnesses

1. Before being interviewed by the Co-Investigating Judges or testifying before the Chambers, witnesses shall take an oath or affirmation in accordance with their religion or beliefs to state the truth.²⁸

2. The following witness may make a statement without having taken an oath:

- a) The father, mother and ascendants of the Charged Person, Accused or Civil Party;
- b) The sons, daughters and descendants of the Charged Person, Accused or Civil Party;
- c) The brothers and sisters of the Charged Person, Accused or Civil Party;
- d) The brother-in-laws and sister-in-laws of the Charged Person, Accused or Civil Party;

²⁶ DCCP Article L.131-13

²⁷ DCCP Art. L.131-1

²⁸ SOC Law on Criminal Procedure, Article 82, and DCCP Art.412-12

- e) The husband or wife of the Charged Person, Accused or Civil Party, even if they have been divorced; and
 - f) Any child who is less than 14 years old.
3. The Co-Investigating Judges or the President of the Trial Chamber shall question every witness in order to establish whether he or she is in a relationship with the Charged Person or Accused or a Civil Party, as provided in subrule 2 above.
4. The Co-Investigating Judges and the Chambers shall not call as a witness any person against whom there is evidence of criminal responsibility, except as provided in Rule [33].

Rule 29. Recording Interviews²⁹

1. Whenever possible, when the Co-Prosecutors or Co-Investigating Judges question a suspect or Charged Person, in addition to the written record of the interview (*process verbal*), it shall be audio-or video-recorded, in accordance with the following procedure:
- a) The person questioned shall be informed, in a language he or she fully understands and speaks, that the questioning is to be audio or video-recorded, any objection by the person concerned shall be noted on the case file;
 - b) Any waiver by the person of the right to be questioned in the presence of a lawyer shall be audio-or video-recorded;
 - c) In the event of an interruption in the course of questioning, the fact and the time of the interruption shall be recorded before the audio-or video-recording ends as well as the time of resumption of the questioning;
 - d) At the conclusion of the questioning, the person questioned shall be offered the opportunity to clarify anything he or she has said and to add anything he or she may wish. The time of conclusion of the questioning shall be noted;
 - e) A copy of the recorded tape or, if multiple recording apparatus was used, one of the original recorded tapes, shall be provided to the person questioned;
 - f) The original tape or one of the original tapes shall be sealed in the presence of the person questioned and his or her lawyer, if present, under the signature of the Co-Prosecutors or Co-Investigating Judges and the person questioned and the lawyer, if present;
 - g) Such tapes may be referred to in case of contestation of the veracity of the written record of interview.

²⁹ ICC Rules of Procedure and Evidence, Rule 112

2. A person may be questioned without being audio-or video-recorded where the circumstances prevent such recording taking place. In this case, the reasons for not recording the questioning shall be stated in writing and the person questioned shall be provided with a copy of his or her statement. Such a statement shall be set out in a record of interview, and wherever possible, shall be signed or thumb-printed by the witness.
3. Where the person refuses to sign a transcript or written record of the interview (*procès verbal*), such refusal shall be noted on the case file, along with any reasons for the refusal, if known.
4. The Co-Prosecutors or Co-Investigating Judges may choose to follow the procedure in this Rule when questioning other persons than those mentioned above, in particular where the use of such procedures could assist in reducing any subsequent traumatization of a victim of sexual or gender violence, a child, an elderly person or a person with disabilities in providing their evidence.
5. The Chambers may also order that the procedure in this Rule be applied to the questioning of any person appearing before them.

Rule 30. Live Testimony by means of Audio or Video-link Technology³⁰

1. The testimony of a witness or expert during a judicial investigation or at trial shall be given in person, whenever possible. However, the Co-Investigating Judges and the Chambers may allow a witness to give testimony by means of audio or video technology, provided that such technology permits the witness to be interviewed by the Co-Investigating Judges or the Chambers, and the parties, at the time the witness so testifies. Such technologies shall not be used if they would be seriously prejudicial to, or inconsistent with defence rights.³¹
2. The interview of a witness under this Rule shall otherwise be conducted in accordance with these IRs.

Rule 31. Deaf/Mute Persons

When questioning a deaf/mute person, the clerk of the Co-Investigating Judges or the Chambers shall write down the questions and ask the person being questioned to read them, and answer in writing. If the person is illiterate, the clerk may call on a person able to

³⁰ ICC Rules of Procedure and Evidence, Rule 67

³¹ Rome Statute of the International Criminal Court Article 69 (2)

properly communicate with the deaf/mute person. That person shall make an oath or affirmation in accordance with these IRs.³²

Rule 32. Compelled Testimony of Witnesses³³

A witness who appears before the Co-Investigating Judges or the Chambers shall be required to answer all questions put to them, unless otherwise provided for in the ECCC Law and these IRs.

Rule 33. Right Against Self-Incrimination of Witnesses³⁴

1. A witness may object to making any statement that might tend to incriminate him or her. The right against self-incrimination applies to all stages of the proceedings, including preliminary investigations by the Co-Prosecutor, investigations by the Co-Investigating Judges, and proceedings before the Chambers.
2. If a witness has not been notified of his or her right against self-incrimination, the Co-Prosecutors, the Co-Investigating Judges, or the Chambers shall notify a witness of this right before his or her interview or testimony.
3. Where the Co-Investigating Judges or the Chambers determine that a witness should be required to answer a question or questions, they may assure such witness, if possible in advance, that the evidence provided in response to the questions:
 - a) will be kept confidential and will not be disclosed to the public; and/or
 - b) will not be used either directly or indirectly against that person in any subsequent prosecution by the ECCC.
4. Before giving such an assurance, the Co-Investigating Judges or the Chambers shall seek the views of the Co-Prosecutors to determine whether the assurance should be given to this particular witness.
5. In determining whether to require the witness to answer, the Co-Investigating Judges or the Chambers shall consider:
 - a) The importance of the anticipated evidence;
 - b) Whether the witness would be providing unique evidence;
 - c) The nature of the possible incrimination, if known, of the person in question; and
 - d) The sufficiency of the any protection available for the witness, in the particular circumstances.

³² DCCP Article L.513-16

³³ State of Cambodia Code, Article 84; International Criminal Court Rules of Procedure and Evidence, Rule 65

³⁴ ICC Rules of Procedure 74

6. If the Co-Investigating Judges or the Chambers determine that it would not be appropriate to provide an assurance to the witness, they shall not require the witness to answer the question but may still continue the questioning of the witness on other matters.
7. In order to give effect to the assurance, the Co-Investigating Judges or the Chambers may, as appropriate:
 - a) Order that the evidence of the witness be given *in camera*;
 - b) Order that the identity of the witness and the content of the evidence given shall not be disclosed, in any manner, and provide that the breach of any such order will be subject to sanctions under Rules [39 to 42];
 - c) Specifically advise the parties present and their legal representative of the consequences of a breach of an order under this Rule;
 - d) Order the sealing of any record of the proceedings; and
 - e) Use protective measures, as foreseen in Rule [34] to ensure that the identity of the witness and the content of the evidence given are not disclosed.
8. Where a party is aware that the testimony of any witness may raise issues with respect to self-incrimination, or where the witness him or herself raises the matter, he or she shall request an *in camera* hearing and advise the Co-Investigating judges or the Chambers of this, in advance of the testimony of the witness. The Co-Investigating judges or the Chambers may impose the measures outlined in subrule 7 for all or a part of the testimony of that witness.
9. If an issue of self-incrimination arises in the course of the proceedings, the Co-Investigating Judges or the Chamber shall suspend the taking of the testimony and provide the witness with a lawyer.

Rule 34. Protective measures

1. The ECCC shall ensure the protection of victims who participate in the proceedings, whether as complainants or Civil Parties, and witnesses, as provided in the supplementary agreement on security and safety and the relevant Practice Directions.
2. When the ECCC issue an order or when other offices within the ECCC fulfil their duties, they shall take account of the needs of victims and witnesses.³⁵ In particular, whenever such offices must communicate with victims, complainants or Civil Parties, they may communicate with their lawyers or Victims' Association, as appropriate, where direct communication could place the life or well being of that person in danger.

³⁵ 2004 Law, Art. 33; ICC, RPE, Art. 86

3. The Co-Investigating Judges and the Chambers may, on their own motion or the petition of one of the parties or their lawyers, and after having consulted with the Victims Unit, order appropriate measures to protect victims and witnesses whose appearance before them is liable to place their life or health or that of their family members or close relatives in serious danger.

4. In this respect, the ECCC may make a reasoned order adopting measures to protect the identity of such persons, including:³⁶

- a) declaring their contact address to be that of their lawyers or their Victims' Association, as appropriate, or of the ECCC;
- b) using a pseudonym when referring to the protected person;
- c) authorising recording of the person's statements without his or her identity appearing in the case file. Such decisions shall only be subject to appeal, within 15 days of notice of the order, where knowledge of the person's identity is essential to the case for the defence
- d) where a Charged Person or Accused requests to be confronted with such a person, technical means may be used that allow remote participation or distortion of the person's voice and or physical features;
- e) as an exception to the principle of public hearings, the ECCC may conduct any part of the proceedings *in camera* or allow the presentation of evidence by electronic or other special means;³⁷

5. In such cases, the person's petition and identity shall be recorded in a classified register separate from the case file. Disclosure of the identity or the address of a witness who has benefited from the provisions of this Rule is punished by a fine of [10,000 U.S. dollars]. No conviction may be pronounced on the sole basis of statements recorded under the conditions set out in this Rule.

6. Where necessary, the Co-Investigating Judges and the Chambers may order appropriate judicial guarantees and/or the physical protection of a victim or witness in safe residence in Cambodia or overseas.

³⁶ See article 706-58 and 706-59 of French criminal procedure code.

³⁷ ICC Statute, Art. 68(2)

Rule 35. Interpreters³⁸

In case of need, the Co-Prosecutors, Co-Investigating Judges and Chambers shall use interpreters. Any witness or party may also request the use of an interpreter where needed. Each interpreter shall take an oath or affirmation in accordance with his or her religion or beliefs to interpret honestly, confidentially and to the best of his or her ability. Interpreters may not be selected from among Judges, Judicial Police, parties or witnesses.

Rule 36. Experts³⁹

1. Expert opinion may be sought by the Co-investigating judges or the Chambers, on any subject deemed necessary to their investigations or proceedings before the ECCC.
2. An expert who agrees to be appointed shall take an oath or affirmation in accordance with his or her religion or beliefs to assist the Co-Investigating Judge or the Chambers honestly, confidentially and to the best of his or her ability.
3. An expert shall be appointed by order of the Co-Investigating Judges or the Chambers. The order shall set out the exact assignment of the expert and the duration of the assignment. If necessary to perform his or her assignment, the Co-Investigating Judges or the Chambers shall make some or all of the evidence in the case file available to the expert, except when such access would pose a danger to victims or witnesses or be contrary to protective measures ordered under Rule [34]. Where such access is granted, the expert shall be allowed to break the seal on the evidence, if any. If the expert needs to alter or damage any evidence in order to fulfil his or her assignment, the expert shall inform the Co-Investigating Judges or the Chambers, and request permission to proceed.⁴⁰
4. An expert shall perform his or her assignment under the supervision of the Co-Investigating Judges or the Chambers, as appropriate. The expert shall keep the Co-Investigating Judges or the Chambers informed of the progress of the assignment, in particular of any difficulties that arise.
5. If the expert does not abide by any time limits set by the Co-Investigating Judges or the Chambers, they may appoint a new expert to replace him or her, or extend the time limit, as appropriate.⁴¹
6. If necessary for the completion of the assignment, the expert may participate in the interview of a witness, or of the Charged Person, Accused or Civil Party, by the Co-

³⁸ DCCP Article 412-2

³⁹ SOC Law on Criminal Procedure, Article 88; cf. DCCP Article L.412-21

⁴⁰ DCCP Article L.412-23

⁴¹ DCCP Article L.412-24

investigating judges or the Chambers. If appropriate, the Co-investigating-Judges or the Chambers may allow the expert to interview a witness, Charged Person, Accused or Civil Party directly, in the presence of his or her lawyer. Where the expert in question is a medical doctor assigned to examine the Charged Person, Accused or Civil Party, this examination may, however, take place in the absence of the his or her lawyer.⁴²

7. On completion of his or her assignment, the expert shall make a report. This report shall clearly describe the activities and the conclusions of the expert, and shall be dated and signed by him or her.⁴³ Where the expert has broken the seal on the evidence in order to complete his or her assignment, he or she shall also state this fact in the report.

8. The expert shall submit the report and return all evidence that he or she received for the purposes of the assignment to the Co-Investigating Judges or the Chambers. They shall place the report on the case file or the record of proceedings. If the seal on the evidence was broken, the Co-Investigating Judges or the Chambers shall re-seal the evidence and make a note of this on the case file. If the activities of the expert altered or damaged the evidence in any way, the expert shall describe the alteration or damage in the report.⁴⁴

9. If the circumstances so require, the Co-Investigating Judges or the Chambers may appoint a reasonable number of experts to complete an assignment. In such cases, if the experts have differing opinions in respect of the assignment, each expert shall write his or her own opinion in a separate report, stating the reasons for their disagreement with the other opinions.⁴⁵

10. The Co-Prosecutors, the Charged Person or Accused, the Civil Party, or their lawyers may request the Co-Investigating Judges or the Chambers to appoint additional experts to conduct new examinations or to re-examine a matter already the subject of an expert report (*contre-expertise*). The request must be in writing and give reasons.⁴⁶ The request shall be ruled upon by the Co-Investigating Judges or the Chambers as soon as possible and in any event before the end of the investigation or proceedings. Where the Co-Investigating Judges reject such a request, the ruling may be appealed to the Pre-Trial Chamber.⁴⁷

11. The ECCC shall provide monetary compensation to any experts appointed by the Co-Investigating judges or the Chambers. Such compensation shall be at rates set by the Office of Administration.⁴⁸

⁴² DCCP Article L.412-25

⁴³ DCCP Article L.412-26

⁴⁴ DCCP Article L.412-26

⁴⁵ DCCP Article L.412-27

⁴⁶ DCCP Article L.412-27

⁴⁷ DCCP Article L.412-28

⁴⁸ DCCP Article L.412-28

Rule 37. Medical Examination of the Charged Person or Accused

The Co-Investigating Judges or the Chambers may, for the purpose of determining whether a Charged Person or Accused is physically and mentally fit to stand trial, or for any other reasons, or at the request of a party, order that they undergo a medical, psychiatric or psychological examination by an expert. The reasons for such order, and the report of the expert, shall be recorded in the case file.

Rule 38. *Amicus curiae* briefs⁴⁹

1. At any stage of the proceedings, the Co-Investigating Judges or the Chambers may, if they consider it desirable for the proper adjudication of the case, invite or grant leave to an organization or person to submit a written *amicus curiae* brief concerning any issue. The Co-Investigating Judges and the Chambers concerned shall determine what time limits, if any, shall apply to the filing of such briefs.
2. Briefs under this Rule shall be filed with the clerk of the Co-Investigating Judges or Chamber concerned, which shall provide copies to the Co-Prosecutors and the lawyers for the other parties, who shall be afforded the opportunity to respond.

Rule 39. Interference with the Administration of Justice⁵⁰

1. The ECCC, in the exercise of its inherent power, may sanction or refer to the appropriate authorities, any person who knowingly and wilfully interferes with the administration of justice, including any person who:
 - a) [being a witness before the Co-Investigating Judges or the Chambers refuses or fails to answer a question, subject to Rule [33];]⁵¹
 - b) discloses confidential information in violation of an order of the Co-Investigating Judges or the Chambers;
 - c) without just excuse, fails to comply with an order to attend, or produce documents before the Co-Investigating Judges or the Chambers;
 - d) destroys or otherwise tampers in any way with any documents, exhibits or other evidence in a case before the ECCC;

⁴⁹ ICC Rules of Procedure 103

⁵⁰ Sierra Leone Rules of Procedure, Article 77

⁵¹ Is this a misdemeanor under Cambodian law?

- e) threatens, intimidates, causes any injury or offers a bribe to, or otherwise interferes with a witness, or potential witness, who is giving, has given, or may give evidence in proceedings before the Co-Investigating Judges or a Chamber;
 - f) threatens, intimidates, offers a bribe to, or otherwise seeks to coerce any other person, with the intention of preventing that other person from complying with an order of the Co-Investigating Judges or the Chambers;
 - g) knowingly assists a Charged Person or Accused to evade the jurisdiction of the ECCC; or
 - h) incites or attempts to commit any of the acts set out above.
2. When the Co-Investigating Judges or the Chambers have reason to believe that a person may have committed any of the acts set out in subrule 1 above, they may:
- a) deal with the matter summarily;
 - b) conduct further investigations to ascertain whether there are sufficient grounds for instigating proceedings; or
 - c) refer the matter to the appropriate authorities of the Kingdom of Cambodia.
3. Any person subject to proceedings under this Rule shall, if he or she satisfies the criteria established in the appropriate Practice Direction, be entitled to legal assistance.
- [4. The maximum penalty that may be imposed by the ECCC on a person found to have committed any act set out in subrule 1 shall be a fine not exceeding 10,000 U.S. dollars.
5. Payment of a fine shall be made to the Office of Administration [and used for the benefit of the ECCC].]⁵²
6. If a lawyer is found to have committed any act set out in subrule 1, the Co-Investigating Judges or the Chambers making such finding may also determine that the lawyer is no longer eligible to appear before the ECCC, or that such conduct amounts to misconduct of counsel pursuant to Rule [42], or both.
7. Any decision under this Rule shall be subject to appeal before the Pre-Trial Chamber or the Supreme Court Chamber as appropriate. Notice of appeal shall be filed within 15 days of notice of the decision to the person concerned.

Rule 40. False Testimony under Solemn Declaration

1. The Co-Investigating Judges or the Chambers may, on their own initiative or at the request of a party, remind a witness of their duty to tell the truth and the consequences that may result from failure to do so.

⁵² Can the ECCC impose **finer** (or any sanctions other than disciplinary) under these IRs, given the state of Cambodian Law, and if not, is there an international principle allowing it, or must the case be heard by an ordinary Cambodian Court?

2. If the Co-Investigating Judges or the Chambers have grounds for believing that a witness may have knowingly and wilfully given false testimony, they may follow the procedure, as applicable, in subrule [39(2)] above.

[3. The maximum penalty imposable by the ECCC for false testimony under solemn declaration shall be a fine of 10,000 U.S. dollars. The payment of any such fine shall be made to the Office of Administration [and used for the benefit of the ECCC].]⁵³

Rule 41. Disruption of Proceedings⁵⁴

1. Where, in the view of the Chambers, any person is disrupting the proceedings, they shall first issue a warning. In cases of continued disruption, the Chambers may order the person disrupting the proceedings to leave or be removed from the courtroom or the premises of the ECCC and, in case of repeated misconduct, may order the exclusion of that person from attending the proceedings.

2. If an Accused disrupts proceedings before the Chambers, they may order that the Accused be removed from the courtroom, and where possible, observe the trial over closed-circuit television. In such cases, the Accused may, at all times, remain in telephone contact with his or her lawyer. The Chambers may also order suspension of public broadcasts of the trial and any other measures that they consider necessary for the conduct of fair and expeditious proceedings. The Accused may appeal such orders.

3. When the disruption consists of deliberate refusal to comply with an oral or written direction of the Chambers⁵⁵, and that direction is accompanied by a warning of sanctions in case of breach, the Chamber dealing with the matter may order the exclusion of that person from the proceedings for such period as it deems appropriate [or, if the disruption is of a more serious nature, impose a fine as provided in subrule 5 below].

4. If the person disrupting the proceedings is a staff member of the ECCC, the Chamber dealing with the matter may also order the exclusion of that person from exercising his or her functions before the ECCC for such period as it deems appropriate. Such decision shall be immediately notified to the Director and Deputy-Director of the Office of Administration.

[5. A fine imposed under this Rule shall not exceed 10,000 U.S. dollars, provided that in cases of continuing disruption, a new fine may be imposed for each day that the disruption continues, and such fines shall be cumulative.]⁵⁶

⁵³ See note 52

⁵⁴ ICC Rules of Procedure and Evidence, Rule 170

⁵⁵ ICC Rules of Procedure and Evidence, Rule 171

⁵⁶ See note 52.

6. The person concerned shall be given an opportunity to be heard before the above sanctions are imposed.

Rule 42. Misconduct of a Lawyer

1. The Co-Investigating Judges or the Chambers may, after a warning, impose sanctions against or refuse audience to a lawyer if, in their opinion, his or her conduct is considered offensive or abusive, obstructs the proceedings, amounts to abuse of process, or is otherwise contrary to the interests of justice.
2. In such cases, the Co-Investigating Judges and the Chambers may decide to strike the person off the list of lawyers approved to appear before the ECCC. In such cases, the lawyer shall transmit all relevant material to the relevant unit within the Office of Administration, so that it may ensure continuity of representation. A lawyer struck off the list pursuant to this provision may request review of the decision by the Judicial Administration Committee.
3. The Co-Investigating Judges and the Chambers may also refer such misconduct to the appropriate professional body.

Rule 43. Time limits

1. All time limits set out in the applicable laws and these IRs must be respected. Subject to this rule, failure to do so shall lead to the invalidity of the act in question.
2. All of the time limits set out in these IRs expire on the last day at midnight Cambodian time. Should the time limit expire on a Saturday, Sunday or Cambodian public holiday, the time limit shall automatically be extended to the subsequent working day.
3. The Co-Investigating Judges and the Chambers may, by motion of the concerned party:
 - a) extend any time limits set by the Co-Investigating Judges or the Chambers;
 - b) recognise the validity of any act executed after the expiration of a time limit prescribed in these IRs on such terms, if any, as the Co-Investigating Judges or the Chambers see fit.
4. Where a disagreement between the Co-Prosecutors or the Co-Investigating Judges has been recorded in accordance with Rule [16 or 18], any applicable time limit shall be suspended until either consensus is achieved, the 30 day period has ended, or the Pre-Trial Chamber has been seised and has completed its consideration of the dispute, as appropriate.

Rule 44. Signatures

In all cases where the signature of a person is required by these IRs, the signature may be replaced by a fingerprint in cases where the person is not able to sign.

Rule 45. Summonses (*convocations*)

1. A summons is an order to any person to appear before the ECCC. It may be issued to a suspect, Charged Person or Accused, Civil Party or Witness and shall set out the capacity in which the person is being summonsed.⁵⁷
2. Unless otherwise provided in these IRs, the minimum period between service of the summons and the date of the appearance before the ECCC shall be 5 days. However, where the summons concerns a detained person, such period shall not apply.⁵⁸
3. All summonses shall be served at the last known address by the clerk, the Judicial Police or any other authorised officer of the ECCC, [post, administrative means], by any appropriate means. A person in detention shall be summonsed through [the head of the detention facility]. Service of a summons shall be recorded in a written report of service setting out the means used, time, date and place of service, as well as any other relevant circumstances, which shall be signed by the officer and placed on the case file.⁵⁹
4. Any persons requested to serve a summons shall comply with the request and use their best endeavours to obtain a receipt. Such receipt shall be appended to the report of service.

Rule 46. Arrest Warrants (*mandat d'amener*)

An Arrest Warrant may be issued against suspects and charged, or Accuseds, whether they are within or outside the territory of the Kingdom of Cambodia. If necessary, the Arrest Warrant may be issued internationally with the support of any effective mechanism.

Rule 47. Detention Orders (*mandat de depot*)⁶⁰

The Co-Investigating Judges or the Chambers may only issue a Detention Order to the head of the ECCC detention facility where a provisional Detention Order has been issued relating to the same person.

⁵⁷ DCCP L.413-2 & 3

⁵⁸ DCCP Article L.721-1 & 2

⁵⁹ DCCP Art. 414-2 to 4

⁶⁰ DCCP L.413-36

Rule 48. Arrest and Detention Orders (*mandat d'arret*)

1. An arrest and Detention Order may be issued against a Charged Person or Accused who is within or outside the territory of the Kingdom of Cambodia. If necessary, the order may be issued internationally with the support of any effective mechanism.
2. Before issuing an arrest and Detention Order, the Co-Investigating Judges or the Chambers shall seek the opinion of the Co-Prosecutors. Such order shall be reasoned.⁶¹

Rule 49. Formalities Relating to Summonses and Orders for Arrest and Detention

1. All summonses, Arrest Warrants, Detention Orders and arrest and Detention Orders shall be dated, signed and sealed by the issuing authority and contain the following information:
 - a) the name, date and place of birth and residential address of the person, if known, and any other information allowing identification;
 - b) a reference to any associated order and/or charge;
 - c) the ECCC issuing authority;
 - d) where appropriate, the location, date, and time of hearing; and
 - e) an indication whether the person has the right to legal assistance [and any other defence rights].
2. All Arrest Warrants, Detention Orders and arrest and Detention Orders shall be executed by the Judicial Police. [In case of emergency, they may be notified by all means to Judicial Police. The original warrant or order shall be given immediately to a Judicial Police officer who shall be under the duty to execute it.]
3. Judicial Police officers may not enter into the residence of any such person before 6 o'clock in the morning or after 6 o'clock in the evening. The Judicial Police shall notify the Co-Investigating Judges or the Chambers of any difficulty in performing their mission.
4. Where, due to the circumstances, the person cannot be brought before the issuing authority immediately after arrest, that person shall be placed in detention and presented to the Co-Investigating Judges or the Chambers as soon possible.⁶² In such cases, the provisions of Rule [55] shall apply.
5. The head of the ECCC detention facility shall keep a certified copy of all Detention Orders and arrest and Detention Orders.⁶³

⁶¹ DCCP Article L.413-13

⁶² DCCP Art. L.413-5 et s

⁶³ DCCP L.413-17

Rule 50. Notice of Orders

1. All orders of the Co-Investigating Judges or the Chambers shall be notified to the parties and their lawyers, if any, either orally or at their last known address, by the clerk, the Judicial Police or any authorised officer of the ECCC, using any appropriate means. A person in detention shall be notified either orally or through [the head of the detention facility].
2. When notice is verbal, the clerk shall record the date in the margin of the order and the notified person shall sign the order. In all other cases, notification shall be recorded in a written report setting out the means of notification used, the time, date and place of service, as well as any other relevant circumstances, which shall be signed by the officer and placed on the case file.
3. Persons requested to notify an order shall comply with the request and use their best endeavours to obtain a receipt. Such receipt shall be appended to the report of notification.

Rule 51. Form of Notice of Orders

Notice of an order shall contain at least the following information:

- a) the name, date and place of birth and residential address of the person being given notice;
- b) the reference of the associated order; and
- c) the ECCC issuing authority.

Rule 52. Procedural Defects (*nullités pour vices de procédure*)

Investigative or judicial action may only be annulled for procedural defect where the defect affects the interests of the petitioner.⁶⁴

⁶⁴ CPP Fr. 802

B – Prosecution

Rule 53. Exercising Public Action

1. Prosecution of crimes within the jurisdiction of the ECCC may only be initiated by the Co-Prosecutors, whether at their own discretion or on the basis of a complaint.
2. The Co-Prosecutors shall receive and consider all written complaints or information alleging commission of crimes within the jurisdiction of the ECCC. Such complaints or information may be lodged with the Co-Prosecutors by any person, organisation or other source who witnessed or was a victim of such alleged crimes, or who has knowledge of such alleged crimes.
3. A complaint referred to in this Rule may also be prepared and/or filed on behalf of a victim by a lawyer or Victims' Association⁶⁵. Copies of all such written complaints shall be kept with the Office of Administration and may be translated into the working languages of the ECCC, as needed.
4. Such complaints shall not automatically initiate criminal prosecution, and the Co-Prosecutors shall decide, at their discretion, whether to reject the complaint, include the complaint in an ongoing preliminary investigation, conduct a new preliminary investigation or forward the complaint directly to the Co-Investigating Judges. The Co-Prosecutors shall inform the complainant of the decision as soon as possible and in any case not more than 60 days after registration of the complaint.
5. A decision not to pursue a complaint shall not have the effect of *res judicata*. The Co-Prosecutors may change their decision at any time in which case the Complainant shall be so informed as soon as possible and in any case not more than 30 days from the decision.

Rule 54. Preliminary Investigations

1. The Co-Prosecutors may conduct preliminary investigations to determine whether evidence indicates that crimes within the jurisdiction of the Extraordinary Chambers have been committed and to identify suspects and potential witnesses.⁶⁶
2. Preliminary investigations may be carried out by the Judicial Police or by investigators of the Extraordinary Chambers only at the request of the Co-Prosecutors. The Judicial Police and investigators may search for and gather relevant evidence including documents only after obtaining an order from the Co-Prosecutors and approval from the

⁶⁵ DCCP art. L.411-8

⁶⁶ PCCP L.331-1 and following

owner or occupier of the premises. Such approval shall be hand-written, or if the owner or occupier cannot write, a Judicial Police officer or investigator shall record this fact in his or her report.⁶⁷

3. Should the owner or occupier of the premises refuse access, the Co-Prosecutors may apply to the [President of the] Pre-Trial Chamber for an order allowing appropriate coercive measures.

4. At the Co-Prosecutors' request, Judicial Police Officers or investigators may summon and interview any person who may provide relevant information on the case under investigation.

5. The Co-Prosecutors shall draw up an inventory of all materials seized during the preliminary investigation, including documents, books, papers, and other objects, and shall provide one copy of such inventory to the person from whom such materials were seized. Materials that are of no evidentiary value shall be returned without delay at the end of the preliminary investigation.

Rule 55. Police Custody (*Garde à vue*)⁶⁸

1. For the needs of the inquiry, the Co-Prosecutors may order the Judicial Police to take into police custody a person suspected of having committed or participated [*participé comme auteur ou complice*] in a crime within the jurisdiction of the ECCC.⁶⁹ Such a person shall be informed of the reasons for the custody and of his or her rights. Wherever possible, the person shall be held in the premises of the detention unit of the ECCC.

2. An order for police custody shall be made in writing, signed by the Co-Prosecutors and served on the suspect, whenever possible. If due to the urgency of the situation, this is not possible, the order may be issued orally by the Co-Prosecutors, but shall be put in writing as soon as possible thereafter.

3. Police custody may be ordered by the Co-Prosecutors for a period not exceeding 48 hours from the time of the arrest of the suspect. At the end of this period, the Co-Prosecutors may order an extension for an additional period of 24 hours, setting out the reasons in writing.⁷⁰

4. The suspect shall be brought before the Co-Prosecutors as soon as possible. Where transportation difficulties or the distance between the place of arrest and the ECCC make this

⁶⁷ DCCP Article L.331-3

⁶⁸ DCCP Article L.323-1

⁶⁹ DCCP Articles L.331-5, 323 & 324

⁷⁰ DCCP Articles L.413-25, 413-26

impracticable, the Co-Prosecutors may provide an additional time period to transport the suspect. The cause of the delay shall be recorded in the final report.⁷¹

5. The suspect may request to see a lawyer of his or her choice, who shall be informed of the request immediately, by all means available. The suspect may meet with such lawyer or, if this is not possible, a lawyer provided by the Defence Unit, for a maximum of 30 minutes before being presented to the Co-Prosecutors, who shall have the right to be present [*during any subsequent interview/during the period of police custody*], subject to the [*administrative requirements of the detention facility/ requirements of the inquiry*].⁷²

6. The Co-Prosecutors may ask a doctor to examine a suspect at any time. The doctor shall verify whether the suspect has any health conditions that make him or her unsuitable for further custody, and shall certify any such findings.⁷³

7. At the end of the period of police custody, the suspect shall be either released or brought before the Co-Investigating Judges in accordance with Rule [60].

8. The Co-Prosecutors shall make a final report for every arrest, which shall include the following information:

- a) The full name and position of the Judicial Police officer who executed the order for police custody;
- b) The identity of the suspect;
- c) The reason for the police custody;
- d) The date and time of the commencement of the police custody;
- e) The full name of the doctor who examined the suspect, if applicable;
- f) The identity of any a lawyer who visited the suspect.
- g) The duration of any interview and the duration of any breaks between interview periods;
- h) The date and time of the termination of police custody;
- i) Any incidents that occurred during the period of police custody;
- j) The decision made by the Co-Prosecutors at the expiry of the police custody period.

9. The final report of police custody shall be attached to the case file, and a register of the police custody shall be maintained by the Office of Administration.⁷⁴

⁷¹ DCCP Article L.324.2

⁷² DCCP Article L.323-3

⁷³ DCCP Article L.323-4

⁷⁴ DCCP Article L.323-6 & 7

Rule 56. Prohibition of Interception of Communications

The Co-Prosecutors shall not have the authority to eavesdrop conversations or to intercept or record any telephone or electronic correspondence, such as facsimiles or email messages.⁷⁵

Rule 57. Introductory Submissions

1. If the Co-Prosecutors have reason to believe that crimes within the jurisdiction of the Extraordinary Chambers have been committed, they shall open a judicial investigation by sending an Introductory Submission to the Co-Investigating Judges, either against one or more named persons or against unknown persons. The submission shall contain the following information:

- a) the name of any person to be charged, if applicable;
- b) a summary of the facts;
- c) the type of offences charged;
- d) the relevant provisions of the Law and a description of the crimes;
- e) the date and signature of both Co-Prosecutors.

2. The submission shall be accompanied by the case file and any other materials of evidentiary value in the possession of the Co-Prosecutors, including any exculpatory evidence.

3. The absence of any of these formalities shall render the submission void.⁷⁶

4. The Office of Administration shall organize and index a copy of this information using a computerized case file management system.

5. Where it is decided not to pursue a complaint at the end of a preliminary investigation, all associated complainants shall be notified of the decision within 30 days thereof.

6. Introductory and Supplementary Submissions filed by the Co-Prosecutors shall be confidential documents. However, mindful of the need to maintain the public duly informed of ongoing ECCC proceedings, the Co-Prosecutors may provide the public with an objective summary of the information contained in such submissions, taking into account the rights of the defence and the interests of victims, witnesses and any other persons mentioned therein, and the requirements of the investigation.

⁷⁵ DCCP Article L. 325-1

⁷⁶ DCCP Article 214-9

C – Judicial Investigations

Rule 58. General Provisions concerning Investigations

1. A judicial investigation is compulsory for crimes within the jurisdiction of the ECCC.
2. The Co-Investigating Judges shall only investigate the facts set out in an Introductory Submission or a Supplementary Submission.
3. If, during an investigation, new facts come to the knowledge of the Co-Investigating Judges, they shall inform the Co-Prosecutors, unless the new facts are limited to aggravating circumstances relating to an existing submission. Where such new facts have been referred to the Co-Prosecutors, the Co-Investigating Judges shall not investigate them unless they receive a Supplementary Submission.⁷⁷
4. The Co-Investigating Judges have the power to charge any suspects named in the Introductory Submission. They may also charge any other persons against whom there is clear and consistent evidence indicating that such person may be criminally responsible for the commission of a crime within ECCC jurisdiction, even where such persons were not named in the Introductory Submission.⁷⁸
5. In the conduct of judicial investigations, the Co-Investigating Judges may take any action necessary to further their investigations. In all cases, they shall conduct their investigation impartially, whether this may lead to Indictment or acquittal of a Charged Person. To that end, the Co-Investigating Judges may:
 - a) Summons and question suspects and Charged Persons, interview victims and witnesses and record their statements, seize physical evidence, seek expert opinions and conduct on-site investigations;
 - b) Take any appropriate measures to provide for the safety and support of potential witnesses and other sources;
 - c) Seek information and assistance from any State, the United Nations or any other intergovernmental or non-governmental organization, or other sources that they deem appropriate; and
 - d) Issue such orders as may be necessary to conduct the investigation, including summonses, Arrest Warrants, Detention Orders and arrest and Detention Orders.⁷⁹

⁷⁷ DCCP Article L.411-5

⁷⁸ DCCP Article L.411-6

⁷⁹ DCCP Article L.413-1 / L.322-5

6. The clerk of the Co-Investigating Judges shall keep a case file, including a written record of the investigation.⁸⁰ At all times, the Co-Prosecutors and the lawyers for the other parties shall have the right to examine and make copies of the case file under the supervision of the clerk of the Office of the Co-Investigating Judges, during working days and subject to the requirements of the proper functioning of the ECCC.
7. A written record shall be made of every interview. Each page of the written record shall be signed or thumb-printed after the interviewee reads it. If necessary, the clerk of the Co-Investigating Judges, with the assistance of the interpreter, shall read the record back. If the interviewee refuses to sign or thumb-print the record, the clerk of the Co-Investigating Judges shall note this on the record.⁸¹
8. The Co-Investigating Judges may make on-site visits to conduct any investigation they consider useful. They shall be accompanied by their clerks, who shall make a record for the case file. The Co-Investigating Judges may inform the parties of such visits, where their presence may be necessary. In such cases, the parties may request the Co-Investigating Judges to attend.⁸²
9. The Co-Investigating Judges may issue rogatory letters requesting the Judicial Police, ECCC investigators [or, where necessary, a competent foreign or international authority] to undertake such activities as are necessary for the conduct of their investigations, as provided in these IRs.⁸³
10. At any time during an investigation, the Co-Prosecutors, a Charged Person or a Civil Party may request the Co-Investigating Judges to make such orders or undertake such investigative activities as they consider necessary for the conduct of the investigation. If the Co-Investigating Judges do not agree with the request, they shall issue a rejection order as soon as possible, and in any event, before the end of the judicial investigation. The order, which shall set out the reasons for the rejection, shall be notified to the parties and shall be subject to appeal.⁸⁴
11. The Co-Prosecutors and the lawyers for the other parties shall have the right to consult the original case file, subject to reasonable limitations to ensure the continuity of the proceedings.

⁸⁰ DCCP Article L.411-9

⁸¹ DCCP Article L.331-4

⁸² DCCP Art. 411-10

⁸³ DCCP Art. 411-11

⁸⁴ DCCP Article L.411-12 to 14

Rule 59. Public Information during Judicial Investigations

1. In order to preserve the rights and interests of the parties, judicial investigations shall not be conducted in public. All persons participating in the judicial investigation shall maintain confidentiality.
2. However, the Co-Investigating Judges may issue such information regarding the judicial investigation as they deem necessary to keep the public abreast of the proceedings, or to rectify any public misconceptions that may have arisen in respect of the proceedings.
3. Exceptionally, on their own motion or at the request of a party, the Co-Investigating Judges may grant limited access to proceedings during the judicial investigation to the media or other non-parties, under their strict control. Before doing so, the Co-Investigating Judges shall seek observations from the parties to such proceedings. The non-respect of any conditions that the Co-Investigating Judges may impose shall be dealt with in accordance with Rules [39 to 42].

Rule 60. Notification of Charges⁸⁵

1. When a Charged Person appears before them for the first time, the Co-Investigating Judges shall record his or her identity, inform him or her of the charges, the right to a lawyer and the right to remain silent. The Charged Person has the right to consult with a lawyer prior to being interviewed and to have a lawyer present while the statement is taken. If the Charged Person agrees, the Co-Investigating Judge shall take the statement immediately. A transcript of the statement shall be placed in the case file.
2. Where the Charged Person is in detention he or she shall have the right to raise any issues relating to the execution or procedural regularity of the provisional detention.
3. Where the Charged Person is not detained after the initial appearance, he or she shall inform the Co-Investigating Judge of his or her address. The Charged Person shall be informed that:
 - a) He or she must notify the Co-Investigating Judge of any change of address;
 - b) All service or notification at the last address provided will be deemed to be valid.
4. This information shall be recorded in the case file.

⁸⁵ SOC Law on Criminal Procedure , Articles 75, 76; DCCP Article L.412-1

Rule 61. Interview of a Charged Person

1. When a Charged Person has a lawyer, the Co-Investigating Judges shall summon the lawyer to the Co-Investigating Judges' Office at least 5 days before the interview takes place. During that period, the lawyer may consult the case file.
2. A Charged Person shall only be questioned in the presence of his or her lawyer, unless the Charged Person waives the right to the presence of a lawyer, in a separate written record signed by the Charged Person, included in the case file. The waiver shall be recorded pursuant to Rule [29]. However, if the lawyer was validly summonsed, but fails to appear on the date and time set, the Co-Investigating Judges may request that the Defence Unit designate a lawyer. Once the designated lawyer has had the opportunity to review the case file for a reasonable period, the Co-Investigating Judges may question the Charged Person in the presence of the designated lawyer. The presence of the designated lawyer shall be noted in the record of the interview, along with the reason for the absence of the Charged Person's chosen lawyer, if known.⁸⁶
3. In case of emergency, [and with the consent of the Charged Person] the Co-Investigating Judges may question the Charged Person without the presence of any lawyer. An emergency situation arises when there is a high probability of irretrievable loss of evidence while awaiting the arrival of a lawyer, such as the impending death of the Charged Person. The reason for the emergency shall be clearly stated in the record of the interview.
4. When the Accused is being interviewed, the other parties shall not be present, unless the Co-Investigating Judges decide to confront the Charged Person directly with any other party or witness. Subject to any protection measures, subrules 1 to 3 of this rule shall also apply to the confrontation.
5. In the case of a confrontation, the Co-Prosecutors and the lawyers for the other parties may ask questions, with the permission of the Co-Investigating Judges. If the Co-Investigating Judges refuse to permit a question, the refusal shall be noted in the record of the interview.⁸⁷
6. At any time during an investigation, the Charged Person may request the Co-Investigating Judges to interview him or her, question a witness, go to a site, order expertise or collect other evidence on his or her behalf. The request shall be made in writing with a statement of factual reasons for the request. If the Co-Investigating Judges do not grant the request, they shall issue a rejection order as soon as possible, and in any event, before the end of investigation. The rejection order shall state the factual reasons for rejection. The

⁸⁶ Pursuant to 512-2 of the DCCP, the presence of a lawyer is only compulsory for serious crimes at trial.

⁸⁷ DCCP Article L.412-4

Charged Person shall immediately be notified of the rejection order. The Charged Person may appeal the rejection order to the Pre-Trial Chamber.

Rule 62. Interview of a Civil Party

1. When a Civil Party has a lawyer, the Co-Investigating Judges shall summon the lawyer to the Co-Investigating Judges' Office at least 5 days before the interview takes place. During that period, the lawyer may consult the case file.
2. A Civil Party shall only be questioned in the presence of his or her lawyer, unless the Civil Party waives the right to the presence of a lawyer, in a separate written record signed by the Civil Party, included in the case file and recorded pursuant to Rule [29]. However, if the lawyer was validly summonsed, but fails to appear on the date and time set, the interview may proceed.
3. When the Civil Party is being interviewed, the other parties shall not be present, unless the Co-Investigating Judges decide to confront the Civil Party directly with any other party or witness. Subject to any protection orders, subrules 1 and 2 of this rule shall also apply to such confrontation.
4. In the case of a confrontation, the Co-Prosecutors and the lawyers for the other parties may ask questions, with the permission of the Co-Investigating Judges. If the Co-Investigating Judges refuse to permit a question, the refusal shall be noted in the record of the interview.⁸⁸
5. At any time during an investigation, the Civil Party may request the Co-Investigating Judges to interview him or her, question a witness, go to a site, order expertise or collect other evidence on his or her behalf. The request shall be made in writing with a statement of factual reasons for the request. If the Co-Investigating Judges do not grant the request, they shall issue a rejection order as soon as possible, and in any event, before the end of investigation. The rejection order shall state the factual reasons for rejection. The Civil Party shall immediately be notified of the rejection order, and may appeal to the Pre-Trial Chamber.

Rule 63. Interview of Witnesses⁸⁹

1. The Co-Investigating Judges may take statements from any person whom they deem useful to the discovery of the truth, subject only to the provisions of Rule [33].

⁸⁸ DCCP Article L.412-8

⁸⁹ SOC Law on Criminal Procedure, Articles 81, 84; DCCP Article L.412-11

2. Except where a confrontation is organised, the Co-Investigating Judges or their delegates shall interview witnesses in the absence of the Charged Person, any other party, or their lawyers, in a place and manner that protects confidentiality.
3. Any person who has been summonsed by the Co-Investigating Judges as a witness must appear. In the case of refusal to appear, the Co-Investigating Judges may issue an order requesting the Judicial Police to compel the witness to appear. Such order must include the identity of the witness and shall be dated and signed by the Co-Investigating Judges.⁹⁰

Rule 64. Search and Seizure⁹¹

1. The Co-Investigating Judges or their delegates shall endeavour to conduct any search of premises in the presence of its occupant, if any, failing which they may search in the presence of two witnesses, to be selected by the Co-Investigating Judges or their delegates. Such witnesses may not be police officers.
2. A written record of every search shall be made, which shall identify the premises, any occupant or witnesses, as appropriate. The Co-Investigating Judges or their delegates, and any occupant or witnesses, shall sign the record.
3. The Co-Investigating Judges or their delegates shall show any evidence seized to the occupant or witnesses, before sealing it. A record of the evidence seized shall be made, attaching a detailed inventory thereof.
4. At any time, and after consulting the parties, the Co-Investigating Judges may order the return of any evidence to the person from whom it was seized, where this does not prejudice the proceedings. The order shall be immediately notified to the person.⁹²

Rule 65. Rogatory Letters

1. The Co-Investigating Judges may issue a rogatory letter requiring any investigator from their Office, or the Judicial Police, to conduct investigative action.⁹³ However, only the Judicial Police shall have the power to undertake any coercive action, such as search and seizure or placing a suspect in police custody.
2. A rogatory letter shall not be issued in a general form, and shall clearly specify the nature of investigative work to be done, which must relate directly to the crime or crimes under investigation. The Co-Investigating Judges shall set the time limit for compliance with

⁹⁰ SOC Law on Criminal Procedure, Article 85; DCCP Article L.412-16

⁹¹ SOC Law on Criminal Procedure, Article 87; DCCP Article L.412-17

⁹² DCCP Article L.412-19

⁹³ DCCP Article L.412-31

a rogatory letter. The rogatory letter must be signed and dated by the Co-Investigating Judges. They may withdraw a rogatory letter at any time.⁹⁴

3. The delegates shall act under the supervision of the Co-Investigating Judges and shall report only to them concerning the enforcement of the rogatory letter. When a rogatory letter has been issued to an ECCC investigator or the Judicial Police, that person shall proceed as follows:⁹⁵

- a) The Judicial Police or investigator shall draw up a record of his or her investigations and findings, which shall comply with the provisions of subrule [55(8)];⁹⁶
- b) The Judicial Police and investigators shall not question a Charged Person nor take depositions from Civil Parties;⁹⁷
- c) The Judicial Police may search for and seize evidence, as authorised by the Co-Investigating Judges.⁹⁸

4. The provisions of Rule [55] relating to police custody shall apply to the execution of a rogatory letter. In this case, the powers of the Co-Prosecutors shall be exercised by the Co-Investigating Judges.⁹⁹

Rule 66. Provisional Detention

1. The Co-Investigating Judges may order the provisional detention of a Charged Person after an adversarial hearing. If the Charged Person does not yet have the assistance of a lawyer, he or she shall be advised of the right to a lawyer as provided by these IRs. The Charged Person has the right to a reasonable period in order to prepare his or her defence. During the hearing, the Co-Investigating Judges shall hear the Co-Prosecutors, the Charged Person and his or her lawyer. If a Provisional Detention Order is not issued, the Charged Person shall be automatically released.¹⁰⁰

2. A Provisional Detention Order shall:

- a) set out the legal grounds and factual basis for detention, based on subrule (3) below¹⁰¹;
- b) specify the maximum initial period of provisional detention possible; and

⁹⁴ DCCP Article L. 412-32

⁹⁵ DCCP Article L.412-34

⁹⁶ DCCP Articles L. 412-36 & 41

⁹⁷ DCCP Article L.412-38

⁹⁸ DCCP Article L.412-39

⁹⁹ DCCP Article L.412-40

¹⁰⁰ CCP Fr Article 145.

¹⁰¹ DCCP, Article L.413-22

- c) when served on the Charged Person, shall be accompanied by a statement of his or her rights.
3. The Co-Investigating Judges may order the provisional detention of the Charged Person only where the following conditions are met:¹⁰²
- a) there is well founded reason to believe that the person may have committed the crime or crimes specified in the Introductory or Supplementary Submission, whether or not he or she is named in that submission;¹⁰³ and
 - b) The Co-Investigating Judges consider provisional detention to be a necessary measure to:
 - i) prevent the Charged Person from exerting pressure on any witnesses or victims, or prevent any collusion between the Charged Person and accomplices of crimes falling within the jurisdiction of the Extraordinary Chambers;
 - ii) preserve evidence or prevent the destruction of any evidence;
 - iii) ensure the presence of the Charged Person during the proceedings;
 - iv) *[protect the security of the Charged Person; or*
 - v) *preserve public order.]*¹⁰⁴
4. The Charged Person may appeal against a provisional Detention Order to the Pre-Trial Chamber.
5. The clerk of the Co-Investigating Judges shall immediately serve copies of the Provisional Detention Order on the Charged Person and his or her lawyer, and to the Co-Prosecutors and the Office of Administration.
6. [Pursuant to the Law on Temporary Detention Period, dated 26 August 1999,] Provisional Detention may be ordered as follows:
- a) for those crimes under Cambodian criminal law coming within ECCC jurisdiction, for a period not exceeding 120 days. However, this period may be extended to six months if this appears necessary, [based on sound judgment], for the purposes of the investigation; or
 - b) for genocide, war crimes, and crimes against humanity, *[and other crimes]* defined in United Nations Conventions to which Cambodia is a signatory, the period may be extended to one year; such detention period may be renewed, however, the total detention shall not exceed three years.

¹⁰² DCCP Article L.413-19

¹⁰³ DCCP, Article L.413-20

¹⁰⁴ DCCP Article L.413-21

7. Any decision by the Co-Investigating Judges concerning extension of detention shall be in writing and shall set out the reasons for such extension¹⁰⁵ An extension shall be made only after the Co-Investigating Judges notify the Charged Person and his or her lawyer and give them fifteen days to submit objections to the Co-Investigating Judges.¹⁰⁶ No more than two such extensions may be ordered. All such orders are open to appeal.

8. In all cases, a Charged Person in provisional detention shall be personally brought before the Co-Investigating Judges at least every 120 days. The Co-Investigating Judges shall offer the suspect an opportunity to discuss his or her treatment and conditions during detention. Where any action is required, the Co-Investigating Judges may issue appropriate orders. A record of the interview shall be placed on the case file.

Rule 67. Release of a Charged Person¹⁰⁷

1. At any time during a Charged Person's detention, either on their own motion or by motion of the Co-Prosecutors, the Co-Investigating Judges shall order a Charged Person's release where the requirements of provisional detention set out in Rule [66] above are no longer satisfied. Where the Co-Investigating Judges are considering the matter on their own motion, they shall seek the Co-Prosecutors opinion before making the order. Any such order is subject to appeal.

2. At any moment during the period of the provisional detention, the Charged Person or his or her lawyer may submit petitions for release to the Co-Investigating Judges. As soon as possible after receiving the petition, the Co-Investigating Judges shall forward it to the Co-Prosecutors, who shall provide their opinion within 5 days. Subject to the provisions of Rule [18(2)], the Co-Investigating Judges shall issue a reasoned decision within 5 days from receipt of the Co-Prosecutors' opinion. All such orders are open to appeal.

3. If his or her circumstances have changed since his or her last application, the Charged Person may file a further petition not less than 120 days after the final determination of the previous petition for release.¹⁰⁸

4. The Co-Prosecutor and the Office of the Administration¹⁰⁹ must be immediately notified of an order to release a Charged Person from detention. The Co-Prosecutor and the

¹⁰⁵ FOR DISCUSSION – this would mean provisional detention could last for 3 years, ie the duration of the ECCC mandate. Consider whether this is consistent with international standards. But see: the Law on Temporary Detention Period, 26 August 1999:

Article 1: In any circumstances the temporary detention period shall not exceed four months. However based on sound judgment, this period can be extended up to six months if necessary for the investigation.

However, for crimes of genocide, war crimes, and crimes against humanity stipulated in Conventions of the United Nations to which Cambodia is a signatory, the above temporary detention can be extended for successive periods of one year; but such extension shall not exceed three years in total.

¹⁰⁶ DCCP Articles L.413-25, 413-26

¹⁰⁷ DCCP Article L.413-31, 413-32

¹⁰⁸ cf. DCCP Article L.413-30

Charged Person must also be immediately informed of an order not to release the Charged Person from detention.¹¹⁰

Rule 68. Bail Orders¹¹¹

1. On their own motion, or on petition of the Co-Prosecutors, the Co-Investigating Judges may order that a Charged Person remain at liberty or be released from detention. The order by the Co-Investigating Judges shall specify whether a bail bond is payable, and impose such conditions as are necessary to ensure the presence of the person during the proceedings and the protection of others. Any such order is subject to appeal.
2. A Charged Person shall receive a receipt from the Clerk of the Co-Investigating Judges in return for any property or monies handed over.¹¹²
3. The Charged Person and the Co-Prosecutors shall be immediately notified of a bail order.¹¹³
4. At any time, on their own motion or on petition by the Co-Prosecutors, the Co-Investigating Judges may change, suspend, add new conditions to or terminate the bail order. The Charged Person and the Co-Prosecutors shall be immediately notified of any such orders, which shall be open to appeal.¹¹⁴
5. A Charged Person may, at any time, file a petition to change or suspend any conditions of the bail order, or to terminate it. The Co-Investigating Judges shall immediately send that request to the Co-Prosecutors for their opinion, who shall provide it within five days. Subject to the provisions of Rule [18(2)], the Co-Investigating Judges shall issue an order within ten days from the date of receipt of the Co-Prosecutors' opinion. The Charged Person and the Co-Prosecutors shall be immediately notified of the order.¹¹⁵
6. If the Charged Person violates any of the bail conditions in such an order, the Co-Investigating Judges may issue a warning or issue a Provisional Detention Order in respect of the Charged Person.¹¹⁶ Any such order is subject to appeal.

¹⁰⁹ The Committee recommends that a head of the detention center be appointed to undertake, inter alia, this function.

¹¹⁰ DCCP Article L.413-34

¹¹¹ DCCP Article L.413-39

¹¹² DCCP Article L.413-38

¹¹³ DCCP Article L.413-39

¹¹⁴ DCCP Article L.413-39

¹¹⁵ DCCP Article L.413-41

¹¹⁶ DCCP Article L.413-43

Rule 69. Final Submissions by the Co-Prosecutors¹¹⁷

1. Where the Co-Investigating Judges consider that an investigation has been concluded, they shall notify all the parties and their lawyers. The parties shall have 15 days to request further investigative action. They may waive such period.
2. Where the Co-Investigating Judges decide to reject such requests, they shall issue a reasoned order. Such order shall also reject any remaining petitions filed earlier in the investigation, that had not yet been ruled upon by the Co-Investigating Judges.
3. All the parties may, within 30 days from notice of such order, file appeals the Pre-Trial Chamber. The parties may, in the presence of their lawyer, or where the lawyer has been summoned in due form, waive their right to appeal.
4. Once this period has expired, been waived, or the abovementioned appeals heard, as the case may be, the Co-Investigating Judges shall immediately forward the case file to the Co-Prosecutors.
5. Where the Co-Prosecutors consider, like the Co-Investigating Judges, that the investigation has been concluded, they shall issue a written, reasoned final submission and return the case file to the Co-Investigating Judges, within forty-five days if a Charged Person is detained, and within 90 days in other cases, from the date the Co-Prosecutors received the case file. The Co-Prosecutors may request the Co-Investigating Judges to either indict the Charged Person and send him or her for trial, or to dismiss the case.

Rule 70. Closing Orders by the Co-Investigating Judges¹¹⁸

1. The Co-Investigating Judges shall conclude the investigation by issuing a Closing Order, either indicting a Charged Person and sending him or her for trial, or dismissing the case. The Co-Investigating Judges are not bound by the Co-Prosecutors' submissions.
2. The Indictment shall set out, and be sufficient if it contains, the identity of the Accused, a description of the material facts and their legal characterisation by the Co-Investigating Judges, including the crimes and the nature of the criminal responsibility.
3. The Co-Investigating Judges shall issue a Dismissal Order in the following circumstances:
 - a) The acts in question do not amount to crimes within the jurisdiction of the ECCC;
 - b) The perpetrators of the acts have not been identified; or

¹¹⁷ DCCP Article L.415-1 & Article 175 of French CCP

¹¹⁸ DCCP Article L.415-2

- c) There is not enough evidence to convict the Charged Person or persons of the charges.
4. The appropriate Closing Order shall state the reasons for the decision. A Closing Order may both send the case for the trial for certain acts or against certain persons and dismiss the case for others.
5. The Co-Prosecutors, the Accused and Civil Parties must be immediately notified upon issue of a Closing Order, and receive a copy thereof. The order is subject to appeal.
6. In the Closing Order, the Co-Investigating Judges shall decide whether any seized property will be returned to the owner.

Rule 71. Effects on Provisional Detention and Bail orders¹¹⁹

1. The issuance of a Closing Order puts an end to provisional detention and bail orders, once any time limit for appeals against the Closing Order have expired. However, where the Co-Investigating Judges consider that the conditions for ordering provisional detention or bail under Rules [66 and 68] are still met they may, in a specific, reasoned decision included in the Closing Order, decide to maintain the Accused in provisional detention, or maintain the bail conditions of the Accused, until he or she is brought before the Trial Chamber.
2. A decision to continue to hold the Accused in provisional detention, or to maintain bail conditions, shall cease to have any effect after 4 months unless the Accused is brought before Trial Chamber within that time.

Rule 72. Forwarding the Case File for Trial¹²⁰

1. When the Co-Investigating Judges have completed their judicial investigation, they shall seal the case file and, along with a copy of the Closing Order, place it under the authority of the Office of Administration.
2. Where the Co-Investigating Judges have issued an Indictment, the Office of Administration shall immediately forward the case file to the clerk of the Trial Chamber, to allow a date for trial to be set.

¹¹⁹ DCCP Article L.415-4

¹²⁰ DCCP Article L. 415-5

Rule 73. Re-opening Investigations¹²¹

When new evidence becomes available after the issuance of a Dismissal Order by the Co-Investigating Judges, the judicial investigation may be re-opened by the Co-Investigating Judges at the initiative of the Co-Prosecutors.

D – Pre-Trial Appeals and Petitions**Rule 74. Grounds for Pre-Trial Appeals and Petitions**

1. Appeals against decisions or orders of the Co-Investigating Judges, and petitions to annul investigative action, lie to the Pre-Trial Chamber. However, no such appeal shall lie where the matter has already been heard by the Pre-Trial Chamber pursuant to the dispute settlement provisions in Rule [18].
2. The Co-Prosecutors may appeal against all orders by the Co-Investigating Judges¹²²
3. The Charged Person may appeal against the following orders of the Co-Investigating Judges:
 - a) confirming the legality or jurisdiction of the ECCC;
 - b) refusing petitions for investigative action allowed under these IRs;
 - c) refusing petitions for the restitution of seized property;
 - d) refusing petitions for expert reports allowed under these IRs;
 - e) refusing petitions for additional expert investigation allowed under these IRs; or
 - f) relating to provisional detention or bail;
 - g) Indictments.
4. Civil Parties may appeal against the following orders by the Co-Investigating Judges:
 - a) refusing petitions for investigative action allowed under these Rules;
 - b) declaring the Civil Party petition inadmissible;
 - c) refusing petitions for the restitution of seized property;
 - d) refusing petitions for expert reports allowed under these IRs;
 - e) refusing petitions for further expert investigation allowed under these IRs;
 - f) a Dismissal Order;
5. Any non party to the investigation proceedings who has requested the return of seized items shall be entitled to appeal against any order of the Co-Investigating Judges denying such request.¹²³

¹²¹ DCCP Article L.415-6

¹²² Article L.422-1-3

¹²³ DCCP Article L.422-4

Rule 75. Notice of Appeals before the Pre-Trial Chamber¹²⁴

1. Any appeal to the Pre-Trial Chamber under these IRs must be filed within 30 days from the date that notice of the decision or order was received. The lawyers for the Charged Person and Civil Parties may file a notice of appeal on their behalf.
2. Notice of appeal shall be made in writing to the [*clerk of the Co-Investigating Judges/Office of Administration*], who shall immediately inform the Co-Investigating Judges and keep a record of all pre-trial appeals. As soon as an appeal is received, the [*clerk/President of the Pre-Trial Chamber*] shall be informed immediately.¹²⁵

Rule 76. Petitions Concerning Procedural Defects¹²⁶

1. Where the Co-Investigating Judges, at any time during the judicial investigation, consider that any part of the proceedings is null and void, they shall notify the parties of the matter. Subject to subrule 6 below, the Co-Investigating Judges shall then submit a reasoned petition to the Pre-Trial Chamber requesting annulment. The judicial investigation may continue during this period.
2. Where, at any time during the judicial investigation, the parties consider that any part of the proceedings is null and void, they may submit a reasoned petition to the Co-Investigating Judges requesting them to seise the Pre-Trial Chamber with a view to annulment. The Co-Investigating Judges shall issue an order accepting or refusing the request as soon as possible and, in any case, before the Closing Order. Such orders shall be subject to appeal in accordance with these IRs.
3. The clerk of the Co-Investigating Judges shall register the petition immediately. Where the Co-Investigating Judges accept the petition, they shall forward the case file to the Pre-Trial Chamber.
4. The Pre-Trial Chamber may declare a petition for annulment inadmissible where the petition: does not set out sufficient reasons; relates to an order that is open to appeal; or is manifestly unfounded. The decision of the Pre-Trial Chamber is not open to appeal. When the decision is made not to admit a petition, the case file shall immediately be returned to the Co-Investigating Judges.¹²⁷

¹²⁴ DCCP Article L.421

¹²⁵ DCCP Art. L.422-8

¹²⁶ DCCP Art. L.416-2 to 5

¹²⁷ DCCP Art. L.424.1

5. Where the Pre-Trial Chamber decides to annul an investigative action, it shall decide whether the annulment affects other actions or orders. Where actions or orders are annulled in part, such part shall be cancelled after making a certified copy of the original. All such annulled actions or orders, and certified copies, shall be removed from the case file and archived by the clerk of the Pre-Trial Chamber.¹²⁸ After any such annulment or cancellation, the Pre-Trial Chamber shall return the case file to the Co-Investigating Judges. It is prohibited to draw any information against the parties from such annulled actions or orders or from the cancelled parts thereof, subject to disciplinary proceedings for any lawyer, judge or Co-Prosecutors found guilty.
6. A party whose interests have been affected by an invalid investigative action may waive the right to request annulment, and thus regularise the proceedings. The Co-Investigating Judges shall record such renunciation in the case file. Where the requesting party has a lawyer, the Co-Investigating Judges shall summons such lawyer at least five days before the date of recording the renunciation, so that the lawyer may examine the case file.
7. Subject to any appeal, the Closing Order shall cure any defects in the judicial investigation. No issues concerning such procedural defects may be raised before the Trial Chamber or the Supreme Court Chamber.¹²⁹

Rule 77. Procedure for Pre-Trial Appeals and Petitions¹³⁰

1. The clerk of the Co-Investigating Judges shall keep a register of all appeals and petitions.
2. Upon receipt of notice of appeal or a petition for annulment, the clerk of the Co-Investigating Judges shall [inform the Co-Investigating Judges and] forward the case-file, or a safeguard copy, to the Pre-Trial Chamber, within 5 days. Where a safeguard copy of the case file has been made for forwarding to the Pre-Trial Chamber, the Co-Investigating Judges shall keep the original case file.
3. The President of the Pre-Trial Chamber shall verify that the case file is up to date, set a hearing date and the clerk of the Pre-Trial Chamber shall notify the Co-Investigating Judges, the parties and their lawyers.
4. The Co-Prosecutors and the lawyers for the parties may consult the case file up until the date of the hearing. The Co-Prosecutors must file their pleadings with the clerk of the Pre-Trial Chamber the day before the hearing at the latest. The other parties and their

¹²⁸ DCCP Article L.424-2

¹²⁹ DCCP Article L.416-5

¹³⁰ DCCP Article L.421

lawyers may file pleadings with the clerk of the Pre-Trial Chamber up until the date of the hearing. The clerk shall record the date of receipt on pleadings and immediately place them in the case file.

5. The hearing shall be conducted *in camera*. Remote participation of the judges may be organized, as necessary. The President of the Pre-Trial Chamber shall appoint one international and one national judge to be co-rapporteurs. The co-rapporteurs shall prepare a written report which shall set out the facts at issue and the details of the decision being appealed, which shall be attached to the case file.¹³¹ After the co-rapporteurs have read their report, the Co-Prosecutors and the lawyers for the parties may present brief observations. The Chamber may order the personal appearance of any person, as well as the production of exhibits.

6. When the hearing has ended, the Pre-Trial Chamber shall deliberate in the absence of the parties and their lawyers.

7. A decision of the Pre-Trial Chamber, against which there is no appeal, requires the affirmative vote of at least four judges.

8. The reasoned decision, signed by the judges, and any dissenting opinions signed by their authors, shall be notified to the Co-Investigating Judges, the Co-Prosecutors and the other parties by the clerk of the Pre-Trial Chamber. The Co-Investigating Judges shall immediately proceed in accordance with the decision of the Pre-Trial Chamber.

9. If the required majority is not attained concerning an appeal or a petition for annulment, [*it shall be deemed rejected*]¹³²

10. Pending the outcome of proceedings before the Pre-Trial Chamber under this Rule, [and unless the Pre-Trial Chamber orders otherwise,] the Co-Investigating Judges may continue their investigation.

11. Where the Co-Investigating Judges order the release of a Charged Person in provisional detention, or decide to dismiss a case, the person shall be kept in detention until expiry of the period for appeal by the Co-Prosecutors. The latter may, however, consent in writing to early release. Such consent shall be placed in the case file. Where the Co-Prosecutors appeal against the order in question, the person shall remain in detention until the Pre-Trial Chamber has handed down its decision. Such appeals shall be decided within

¹³¹ DCCP Article L.523-5

¹³² This is a status quo solution. The Committee notes that, since the ECCC Law is silent on Appeals to the PTC, there is no strict obligation to apply the solution in the Law "*the investigation shall proceed*", although it may appear appropriate to apply the same solution for both dispute settlement and appeals. Contra, as stated earlier, the phrase "*the investigation shall proceed*" may only be appropriate in cases where the appeal in question would lead to abandon of the proceedings. Other solutions, such as "*the solution most favourable to prosecution of the case shall apply*" or "*the solution most favourable to the charged person shall apply*" may be considered. The latter approach would seem most compatible with international standards, and in this case would not be directly contrary to the ECCC Law.

15 days of receipt of the case file by the clerk of the Pre-Trial Chamber. Beyond that period, excepting unforeseen circumstances, the Charged Person shall be released.¹³³

¹³³ DCCP Art. 423-1

E – Trial**Rule 78. General Provisions**

1. The Trial Chamber shall be seised by an Indictment from the Co-Investigating Judges or the Pre-Trial Chamber.¹³⁴
2. The date of the trial shall be determined by the President of the Trial Chamber, taking into account the time limits for notification and summons set out in these IRs.
3. The parties shall be notified in writing of the trial date by the clerk of the Trial Chamber, as soon as possible. Such notification shall be deemed valid summons.
4. The Co-Prosecutors shall submit to the Clerk of the Trial Chamber, a list of the witnesses and experts they intend to summons. The Clerk shall place the list on the case file and forward a copy of the list to the other parties.
5. Where the Accused and/or any Civil Party wishes to summon any witnesses who are not on the list provided by the Co-Prosecutors, they shall submit an additional list to the Clerk of the trial Chamber, who shall place such list on the case file and forward a copy of the list to the other parties.¹³⁵
6. When the Trial Chamber is seised of a number of related Indictments, it may issue an order consolidating all such Indictments.¹³⁶
7. As soon as the Trial Chamber is seised of a case, it shall decide whether its likely length requires the assignment of an international and national reserve judge to attend all stages of the trial, including deliberations, in order to be ready to replace any judge who may be unable to continue sitting on the trial. Where the Chamber is unable to reach a supermajority, no reserve judges shall be appointed to attend the proceedings. Where reserve judges are appointed to attend, they shall not participate in any way in the proceedings unless and until named to replace an absent judge.

Rule 79. Presence and Representation of the Accused

1. [The Accused may not be tried *in absentia*.]¹³⁷
2. If the Accused, when not in detention, does not attend a hearing set by the Trial Chamber, the Chamber may issue an order to postpone the hearing temporarily and issue an

¹³⁴ DCCP Article L. 511-5

¹³⁵ DCCP Article L.511-12 [ICTY Rules]

¹³⁶ DCCP Article L.511-13

¹³⁷ The international members of the committee believe that this reflects international standards (*cf. Art 14 ICCPR*) and the spirit of the ECCC Law. Cambodian law provides for default judgements, but in the temporal context of the ECCC, there would be little prospect for retrial once the person was arrested. The national judges disagree and propose that default judgments be allowed; see their separate draft on this point.

Arrest Warrant or an Arrest and Detention Order, as appropriate, in accordance with these IRs. The Trial Chamber shall confirm a new date for the hearing. The Accused shall be brought to the ECCC detention facility until he or she is brought before the Trial Chamber.¹³⁸

3. Where the Accused refuses to attend the proceedings, he or she shall be brought before the Trial Chamber, by force if necessary, where he or she shall be notified of the inalienable right to be assisted by a lawyer of choice, to have one assigned as provided in these IRs or to represent him or herself.

4. If the Accused continues to refuse to attend the proceedings, or is expelled from them in accordance with these IRs, the proceedings may continue in his or her absence. In such cases, the Accused may be represented during the proceedings either by his or lawyer or, where the Accused refuses representation, by a lawyer assigned to him or her by the Trial Chamber.

5. If, due to health reasons or other serious concerns, the Accused cannot be present before the Trial Chamber, it may, after consulting the lawyer for the Accused, continue the proceedings in the absence of the Accused. In such cases, the Accused shall continue to be represented in the proceedings by his or her lawyer. The Accused may also request to follow the proceedings by appropriate audiovisual means. If the questioning of the Accused is necessary, the Trial Chamber may order that the Accused be questioned from his or her current place of abode, if necessary, by appropriate audiovisual means. The Trial Chamber shall set the date for the questioning, which shall be heard by the Trial Chamber in the presence of the Co-Prosecutors, the clerk, and the lawyer of the Accused, unless the Accused has expressly waived his right to a lawyer. The interview shall be placed on the record of the proceedings.¹³⁹

Rule 80. Provisional Detention of an Accused

1. The Accused shall remain in liberty whilst appearing before the Trial Chamber, unless Provisional Detention has been ordered in accordance with these IRs. Where the Accused is in detention at the initial appearance before the Trial Chamber, he or she shall remain in detention until the Chamber's judgment is handed down, subject to subrule 2.¹⁴⁰

¹³⁸ DCCP Article L.512-11

¹³⁹ DCCP Article L.512-10

¹⁴⁰ DCCP Article L. 512-6

2. The Chamber may, at any time during the proceedings, order the release of an Accused, or detain an Accused in accordance with these IRs. The Chamber shall so decide after hearing the Co-Prosecutors, the Accused and his or her lawyers.

3. The Accused, or his or her lawyer, may request the Trial Chamber to release him or her either orally during a hearing, or by written petition submitted to the clerk of the Trial Chamber. If the request for release is made orally, the clerk of the Trial Chamber shall note it on the record of the proceedings. If the request is made in writing, the clerk shall note the date of receipt on the petition, and forward it immediately to the President of the Trial Chamber. The Chamber shall decide after hearing the Co-Prosecutors the Accused, and his or her lawyer. It shall decide as soon as possible and in any event no later than 10 days after receiving the oral request or petition.¹⁴¹

4. After a decision refusing the release of the Accused, he or she may only file a further petition where his or her circumstances have changed since the last application was finally rejected.

5. All decisions of the Trial Chamber concerning provisional detention are open to appeal by the Accused or the Co-Prosecutors, as appropriate.

6. If the Trial Chamber orders the release of the Accused, he or she shall remain in detention until the time limit for appeal by the Co-Prosecutors has expired, unless the order specifies otherwise. The latter may, however, consent in writing to early release. Such consent shall be placed in the case file. If the Co-Prosecutors appeal against an order to release the Accused, the Accused shall remain in detention until the Supreme Court Chamber decides the appeal.¹⁴²

Rule 81. Appearance by the Civil Parties

1. During the proceedings, victims may file a petition to be joined as Civil Parties as provided in Rule [27(4)]. They also have the right to be represented by a lawyer, in accordance with these IRs.

2. Any Civil Party who does not appear personally or is not validly represented at any time during the trial shall be deemed to have abandoned his or her action, unless he or she had already claimed reparation before the start of the trial.

¹⁴¹ DCCP Article L. 512-8

¹⁴² DCCP Article L.512-9

Rule 82. Appearance of Witness and Experts

1. At the opening of the trial, the Chamber shall consider the lists of potential witnesses and experts submitted by the parties in accordance with these IRs. Where the Chamber considers that the hearing of a proposed witness or expert would not be conducive to the good administration of justice, it may either reject the request that such person be summoned, or, as regards potential witnesses or experts for the Accused or the Civil Parties, order that such person be summonsed at the expense of the requesting party. Where the Chamber fails to reach a supermajority, the summons shall be issued at the cost of the ECCC.
2. In any case, the Accused shall have the absolute right to summons, at the expense of the ECCC, witnesses for the prosecution whom the Accused was not able to examine at the pre-trial stage.
3. At the issue of this preliminary hearing, the clerk of the Trial Chamber shall immediately summons all the approved witnesses and experts, who shall respond to such summons and appear during the proceedings before the Trial Chamber in accordance with these IRs.¹⁴³
4. During the trial, each party may request the Chamber to hear any witnesses present in the courtroom, but who were not properly summoned to testify. Where the Chamber consents, the clerk of the Chamber shall record the identity of the witnesses and instruct them to stay in the waiting room.¹⁴⁴
5. All decisions of the Chamber concerning the summoning of witnesses shall only be open to appeal at the same time as the Judgment of the Trial Chamber on the merits.

Rule 83. Public Nature of the Hearing and Judgment

1. Hearings of the Trial Chamber shall be conducted in public.
2. The Office of Administration shall ensure a public broadcast of the trial hearings, subject to any protective measures adopted under these IRs.
3. Where the Chamber considers that a public hearing would be prejudicial to public order, or to give effect to protective measures ordered under these IRs, it may, by reasoned decision, order that all or part of the hearing be held *in camera*. This decision is not open to appeal.

¹⁴³ DCCP Article L.512-16

¹⁴⁴ DCCP Article L.513-9

4. In any case, the Trial Chamber shall announce its judgments at a public hearing.¹⁴⁵

Rule 84. Conduct of the Hearing

1. The President of the Trial Chamber shall preside over the proceedings, and facilitate interventions by the other judges. He or she shall guarantee the free exercise of defence rights. In agreement with the other judges, the President may prevent or strike off the record any proceedings that unnecessarily delay the trial, and are not conducive to ascertaining the truth.
2. In agreement with the other judges, the President shall maintain good order during the trial, in accordance with these IRs.¹⁴⁶

Rule 85. Access to Case Files

At all times, the Co-Prosecutors and the lawyers for the other parties shall have the right to examine and obtain copies of the case file, under supervision of the clerk of the Chamber, during working days and subject to the requirements of the proper functioning of the ECCC.

Rule 86. Rules of Evidence

1. Unless provided otherwise in these IRs, all evidence is admissible. The Trial judges shall weigh all such evidence independently in deciding whether guilt has been proven beyond a reasonable doubt.¹⁴⁷
2. Any decision of the Trial Chamber shall be based only on the evidence in the case file, or that has been put before the Chamber and subjected to examination.
3. The Chamber shall give the same consideration to confessions as with other forms of evidence.
4. Any communications between the Accused and their lawyers is privileged and shall not be admissible as evidence.
5. The President of the Chamber may order that physical evidence be brought before the Chambers.¹⁴⁸

¹⁴⁵ DCCP Article L.513-2

¹⁴⁶ DCCP Article L.513-3

¹⁴⁷ In the Cambodian and French drafts, the test is “*intime conviction*”.

¹⁴⁸ DCCP Article L.513-17

Rule 87. Appearance before the Trial Chamber

1. The clerk of the Chamber shall call the Accused, Civil Parties, victims, witnesses and experts and verify their identity. Each party shall sit at their designated place in the Courtroom.
2. The Accused shall not communicate with each other. Experts and witnesses shall stay in a separate room from which they cannot see or hear the proceedings. While in such room, the witnesses shall not communicate with each other.¹⁴⁹
3. Any objection against the procedural regularity of a summons as set out in these IRs shall be raised before questioning the Accused on the merits of the case. The objection shall otherwise be declared inadmissible.¹⁵⁰

Rule 88. Questioning of the Accused

1. The President of the Chamber shall inform the Accused of the charges against him or her and conduct questioning of the Accused. All the judges may ask any questions which they consider to be conducive to ascertaining the truth. In this respect, they have a duty to raise all pertinent questions, whether these would tend to prove or disprove the guilt of the Accused.
2. After questioning by the judges, the Co-Prosecutors, the lawyers and all the parties shall have the right to question the Accused. All questions shall be asked with the permission of the [President/Chamber. *If the Chamber fails to reach a supermajority, the question shall be permitted*]. Except for questions asked by the Co-Prosecutors and the lawyers, all questions shall be asked through the President of the Chamber.¹⁵¹

Rule 89. Hearing of other Parties and Witnesses

1. The Trial Chamber shall hear the Civil Parties, victims, witnesses and experts in the order it considers useful.
2. The Co-Prosecutors, the lawyers and all the parties shall be allowed to ask questions with the permission of the [President/Chamber. *If the Chamber fails to reach a supermajority, the question shall be permitted.*] Except for questions asked by the Co-Prosecutors and the lawyers, all questions shall be asked through the President of the Chamber.¹⁵²

¹⁴⁹ DCCP Article L.513-7

¹⁵⁰ DCCP Article L.513-8

¹⁵¹ DCCP Article L.513-10

¹⁵² DCCP Article L.513-11

3. The Co-Prosecutors, lawyers and all parties may object to the continued hearing of the testimony of any witnesses, if they consider that such testimony is not conducive to ascertaining the truth. In such cases, the [President/*Chamber*] shall decide whether to take the testimony. [*If the Chamber fails to reach a supermajority, the testimony shall continue*].¹⁵³
4. After being questioned, each witness shall remain at the disposal of the Chamber until the Chamber decides that his or her presence is no longer needed.¹⁵⁴

Rule 90. Submissions

The parties may, up until the closing statements, make written submissions, and put before the Chamber any evidence that they consider useful in ascertaining the truth. The clerk of the Chamber shall sign such submissions and indicate the date of receipt, and place them on the case file.

Rule 91. Additional Investigations by the Trial Chamber

1. Where the Chamber considers that a new investigation is necessary it may, at any time, order additional investigations. Such order shall indicate which judge or judges shall conduct the new investigation.
2. Such judge(s) may, under the same conditions as the Co-Investigating Judges:
 - a) go anywhere within the territorial jurisdiction of the ECCC;
 - b) interview witnesses;
 - c) conduct searches;
 - d) seize any evidence; or
 - e) order expert opinions.
3. For the purposes of such additional investigations, the judge or judges may issue rogatory letters.¹⁵⁵

Rule 92. Closing Statements

1. After examining all the evidence, the President of the Chamber shall call successively upon the following people to make their closing statements:
 - a) the lawyers for the Civil Parties;

¹⁵³ DCCP Article L.513-12

¹⁵⁴ DCCP Article L.513-13

¹⁵⁵ DCCP Article L.513-24

- b) the Co-Prosecutors, for such submissions as they consider necessary for justice to be done;
 - c) the lawyers for the Accused;
 - d) the Accused.
2. Civil parties and the Co-Prosecutors may make rebuttal statements.
 3. In all cases, the Accused and his or her lawyers shall always be entitled to make the final statement.

Rule 93. Adjournment of Proceedings

Where the proceedings are not concluded during a hearing, the Chamber shall adjourn the case to another fixed date.¹⁵⁶

Rule 94. Deliberation of the Trial Chamber

1. The judges shall deliberate *in camera* to reach their verdict. An interpreter may be called upon to facilitate the deliberations.
2. At this stage, no further petitions may be submitted to the Chamber, and no further submissions may be made.¹⁵⁷

Rule 95. Record of the Proceedings (*notes d'audience*)

1. During the hearings, the clerk of the Chamber shall take all due care in making a record of the proceedings. The clerk of the Chamber shall sign the record of proceedings within 10 days of the pronouncement of the judgment.
2. The clerk shall also ensure that the proceedings are fully recorded using appropriate audiovisual means. A transcript of specific parts of such recordings shall be made available to the parties and the Supreme Court Chamber, upon request.

Rule 96. Interlocutory Petitions (*exceptions*)

1. The Trial Chamber has jurisdiction to hear any interlocutory petitions filed by Parties concerning matters arising after the Closing Order.¹⁵⁸
2. An interlocutory petition shall be raised before the Accused is called for questioning, failing which it shall be inadmissible.¹⁵⁹

¹⁵⁶ DCCP Article L.513-25

¹⁵⁷ DCCP Article L.513-22

¹⁵⁸ DCCP Article L.513-27

3. The Chamber shall afford the other parties the opportunity to respond to the petition.
4. The Chamber shall, as appropriate, issue its reasoned decision either immediately or at the same time as the judgement on the merits. In the latter case, the proceedings shall continue.¹⁶⁰

Rule 97. The Judgement

1. Where the judgment is not pronounced during the final hearing, the President of the Chamber shall notify the parties of the date for pronouncement of the judgement, [which shall not be later than [30 days] unless exceptional circumstances justify a greater period].¹⁶¹
2. The judgment shall be limited to the facts set out in the Indictment.¹⁶² The Chamber may, however, change the legal characterization of the crime as set out in the Indictment, as long as no new constitutive elements are introduced. The Chamber shall only pass judgment on the Accused. If another person, appearing as a witness during the trial is suspected of committing a crime or conspiring with someone to commit a crime, the Chamber shall only try such person after he or she has been charged and indicted in accordance with these IRs.¹⁶³
3. The Chamber shall examine whether the acts amount to a crime falling within the jurisdiction of the ECCC, and whether the Accused has committed those acts.
4. Pursuant to the ECCC Law, the Chamber shall attempt to achieve unanimity. If this is not possible, a conviction shall require the affirmative vote of at least four judges.
5. If the Accused is found guilty, the Chamber shall sentence him or her in accordance with the Agreement, the ECCC Law and these IRs.
6. Where the Chamber considers that the acts set out in the Indictment have not been proved, or that the Accused is not guilty of those acts, he or she shall be acquitted.
7. Where the Chamber considers that the crimes set out in the Indictment do not fall within the jurisdiction of the ECCC, it shall decide that it does not have jurisdiction in the case.

¹⁵⁹ DCCP Article L.513-29

¹⁶⁰ DCCP Article L.513-31

¹⁶¹ DCCP Article L.514-1

¹⁶² DCCP Article L.514-2

¹⁶³ DCCP Article L.514-3

Rule 98. Effect of Judgment

1. In case of acquittal, or where a sentence handed down is less than, or equal to, that of any provisional detention already served, the Accused shall be immediately released, unless he or she is in detention in relation to other charges¹⁶⁴.
2. However, a detained Accused shall remain in detention until expiry of the time limit for appeal by the Co-Prosecutors and, where an appeal is filed, until the Supreme Court Chamber has issued its decision. This shall not affect the right of the Accused to request release.¹⁶⁵ The Co-Prosecutors may consent in writing to early release. Such consent shall be placed in the case file.
3. Where the detained Accused is found guilty, the Chamber shall decide on continued detention. Where the Accused is present at judgement but not detained, the Chamber may issue a reasoned Detention Order. Where the Accused is absent, it may issue an Arrest and Detention Order. These orders shall have immediate effect.¹⁶⁶
4. When the judgement is pronounced, any bail order shall come to an end. The Chamber shall decide on the return of any seized items.¹⁶⁷

Rule 99. Judgement on Civil Party Claims

1. The Chamber shall make a decision on any Civil Party claims in the judgement. It shall rule on the admissibility and the substance of such claims against the Accused. Where appropriate, the Chamber may adjourn its decision on Civil Party claims to a new hearing.¹⁶⁸
2. Where a Civil Party has claimed reparation before the start of the trial but he or she does not appear personally or is not validly represented at any time during the trial, and where the Accused was found guilty, the Trial Chamber shall make its decision concerning reparation for the victim based on the case file.¹⁶⁹

Rule 100. Form of the Judgment

1. The judgment shall be divided into two parts:
 - a) the findings, setting out the factual and legal reasons supporting the Chamber's decision; and
 - b) the disposition by the Chamber.

¹⁶⁴ French CCP Article 367

¹⁶⁵ DCCP Article L.524-2

¹⁶⁶ DCCP Article L.514-7

¹⁶⁷ DCCP Article L.514-8

¹⁶⁸ DCCP Article L.514-9

¹⁶⁹ DCCP Article L.514-10

2. Where there is no unanimity, a judge may write a separate or dissenting opinion, in which case, it shall be attached to the judgement.
3. The Chamber shall examine all counts in the Indictment and consider all arguments raised during the trial.
4. The findings in the judgement shall respond to the written submissions filed by all of the parties.
5. The disposition by the Trial Chamber shall set out each crime committed by an Accused, the applicable law, the sentence and any civil reparations.
6. The judgment shall be signed by all the judges of Trial Chamber, as well as the court clerk. A dissenting judge shall, however, only sign his or her dissenting opinion. The judgement shall include:
 - a) the date of the hearing(s);
 - b) the date of issuance of the judgement;
 - c) the full name of the judges who conducted the trial;
 - d) the full name of the Co-Prosecutors;
 - e) the full name of the clerks;
 - f) the full name, place of residence, birth date, birthplace, and occupation of the Accused and the Civil Parties;
 - g) the full names of the lawyers.
7. The original judgment shall be signed as above not less than 10 days after the judgement was issued. In the case of appeal, the court clerk shall provide copies of the judgement.¹⁷⁰

Rule 101. Announcement of the Judgment at a Public Hearing

1. All judgements shall be issued and announced during a public hearing. A summary of the findings and the disposition shall be read aloud by the President of the Trial Chamber. Any dissenting judge may also read aloud a summary of their dissenting opinion.
2. Where, in accordance with these IRs, part of the trial proceedings were conducted in the absence of the Accused, the judgement shall be considered validly handed down and notified with respect to that Accused. The time limit for the Accused to file an appeal shall run from the date of the judgement.¹⁷¹

¹⁷⁰ DCCP Article L.514-12

¹⁷¹ DCCP Article L.514-14

Rule 102. Judgment concerning the Civil Parties

1. Where a Civil Party appears or is validly represented at the judgement hearing, the judgement shall not be notified to such party. If neither the Civil Party nor his or her lawyer were present, the Civil Party shall be notified of the judgement.
2. In any case, such a judgment is open to appeal. The time limits for appeal shall commence from the date of the judgment, or notification, as appropriate.¹⁷²

¹⁷² DCCP Article L.514-17

F – Appeals from the Trial Chamber

Rule 103. Jurisdiction of the Supreme Court Chamber

1. The Supreme Court Chamber shall decide appeals, on any issues of fact and law, against decisions of the Trial Chamber¹⁷³.
2. The Supreme Court Chamber may either confirm, annul or amend the Trial Chamber's decision in whole or in part.
3. Decisions of the Supreme Court Chamber are final, and shall not be sent back down to the Trial Chamber.

Rule 104. Admissibility

1. An appeal may be filed by:
 - a) The Co-Prosecutors;¹⁷⁴
 - b) The Accused;
 - c) The Civil Parties in respect of their civil claims, only where the Co-Prosecutors have appealed.
2. Appeals shall be filed with the clerk of the Trial Chamber, and shall be noted in the appeal register of the Trial Chamber.
3. The Accused and the Civil Parties may be represented by their lawyers, who shall have a written authorization from their clients to file an appeal.
4. The petition shall be signed by the appellant or appellant's lawyers, and initialled by the clerk of the Trial Chamber. The written authorization shall be attached to the petition.¹⁷⁵
5. Where the Accused is in detention, he or she shall file the petition for appeal with the head of the ECCC detention facility, who shall submit the petition to the Clerk of the Trial Chamber. The Clerk shall note it on the appeal register.

¹⁷³ This, effectively, gives the right of re-trial in all cases, without any limitations on the grounds for appeal. This is consistent with the two-tiered trial system in a number of countries (*double degree de juridiction*) including Cambodia, and does not breach international standards, but could prove administratively difficult, time consuming and expensive. Common law systems, as well as other international tribunals, limit the right of appeal to errors of law which invalidate the decision or errors of fact which lead to a denial of justice. The Plenary may wish to consider this alternative.

¹⁷⁴ An issue has been raised as to whether there should be an appeal from acquittal by the Co-Prosecutors. If such appeal is allowed, and a conviction on appeal follows, the accused will not have his or her right to appeal a conviction respected. International criminal Tribunals cure this by sending such a conviction back to the Trial Chamber for re-trial. This is not possible under the Agreement and the Law. Clearly, by limiting the grounds for appeal as proposed above, the extent of the problem would be limited, but not eliminated.

¹⁷⁵ DCCP Article L.522-2

Rule 105. Notice to the Parties

The Clerk of the Trial Chamber shall immediately notify all other parties and their lawyers in the case of the filing of the petition.

Rule 106. Time limits for Appeal

1. All appeals against decisions of the Trial Chamber must be filed within 30 days of the date of judgement, or of its notification, as appropriate.
2. In cases of appeal by a party, all other parties have an additional 15 days to file a cross-appeal. The additional time is counted from the expiration of the initial time limit for filing an appeal.
3. Where the Accused is in detention, any appeal by the Co-Prosecutors shall be filed within 15 days. This time period is counted from the date of notification of the Trial Chamber's decision concerning detention of the Accused.
4. If the Trial Chamber makes a decision before issuing its judgement on the merits which would have the effect of terminating the proceedings before it, such a decision is subject to immediate appeal. Any other decision shall only be appealed at the same time as the judgement on the merits.¹⁷⁶

Rule 107. Procedure for Appeal before the Supreme Court Chamber

1. The clerk of the Trial Chamber shall request the Office of the Administration to provide the Supreme Court Chamber with a copy of the case file in question, together with certified copies of the judgement and each petition for appeal.
2. Where there is an appeal against a decision on detention of the Accused, the above-mentioned documents shall be forwarded to the Supreme Court Chamber within 10 days of the filing of the appeal, unless there are extenuating circumstance. Any such circumstances shall be specified at the time of forwarding.¹⁷⁷
3. The date of the appeal hearing shall be determined by the President of the Supreme Court Chamber, after having verified that the case file is complete. The Clerk of the Supreme Court Chamber shall notify all parties of the hearing date.
4. The Supreme Court Chamber shall issue its decision within a reasonable period. Where there is an appeal against a decision on detention, the Supreme Court Chamber shall

¹⁷⁶ DCCP Article L.522-11

¹⁷⁷ DCCP Article L.522-10

make its decision as soon as possible and in any event, within 15 days of date the case file being received.¹⁷⁸

5. The President of the Supreme Court Chamber shall appoint one international and one national judge to be co-rapporteurs for the appeal. The co-rapporteurs shall prepare a written report which shall set out the facts of the case, and the details of the decision being appealed. The report must be in sufficient detail to give the Chamber full information on the appeal. Such report will be attached to the case file.¹⁷⁹

6. The Co-Prosecutors and the lawyers for the other parties may examine the case file at any time before the time of the hearing. The parties and their lawyers may submit any submission for the appeal to the clerk of the Supreme Court Chamber, who shall date these and attach them to the case file forthwith.

Rule 108. Appeal Hearings

1. Hearings of the Supreme Court Chamber shall be conducted in public.

2. The Office of Administration shall ensure a public broadcast of the appeal hearings, subject to any protective measures ordered under these IRs.

3. Where the Chamber considers that a public hearing would be prejudicial to public order, or to give effect to protective measures ordered under these IRs it may, by reasoned decision, order that all or part of the hearing be held *in camera*. This decision is not open to appeal.¹⁸⁰

4. The Co-Rapporteurs shall read their report to the Chamber. The President shall then conduct the questioning of the Accused. All the judges may ask any questions which they consider to be conducive to the determination of the appeal.

5. After questioning by the judges, the Co-Prosecutors, the lawyers and all the parties shall be allowed to question the Accused. All questions shall be asked with the permission of the [President/Chamber. *If the Chamber fails to reach a supermajority, the question shall be permitted.*] Except for questions asked by the Co-Prosecutors and the lawyers, all questions shall be asked through the President of the Chamber.

6. After hearing the Accused, the Chamber shall hear the other parties and their lawyers in the same order as at first instance. Witnesses and experts shall only be called as ordered by the Chamber. The Co-Prosecutors, the lawyers and all the parties shall be allowed to ask questions with the permission of the [President/Chamber. *If the Chamber fails to reach a*

¹⁷⁸ DCCP Article L.523-2

¹⁷⁹ DCCP Article L.523-5

¹⁸⁰ DCCP Article L.523-7

supermajority, the question shall be permitted.]. Except for questions asked by the Co-Prosecutors and the lawyers, all questions shall be asked through the President of the Chamber.

7. In all cases the Accused speaks last. The lawyers for the Accused shall be allowed to make a brief rebuttal presentation.

8. In the absence of any specific provision, the rules that apply to the Trial Chamber shall also apply to the Supreme Court Chamber.

Rule 109. Effects of the Appeal

1. The scope of the appeal shall be limited to the issues raised in the petition, and the status of the appellant.¹⁸¹

2. In all cases, the Supreme Court Chamber may change the legal characterization of the crime adopted by the Trial Chamber, but it shall not introduce new constitutive elements that were not submitted to the Trial Chamber.¹⁸²

3. Where the only appeal filed is by the Accused, the Supreme Court Chamber shall not increase the sentence, and may only amend the judgement for the benefit of the Accused. In such cases, the Supreme Court Chamber shall not increase any damages that may have been awarded to Civil Parties.¹⁸³

4. In case of appeal by the Co-Prosecutors, the Chamber may acquit or convict the Accused, or amend the sentence handed down at first instance. It may also impose any compulsory incidental sentence that the Trial Chamber failed to order.¹⁸⁴

5. An appeal by the Civil Parties shall only relate to their civil claim. The Civil Parties may not introduce new claims that were not already submitted to the Trial Chamber.

Rule 110. The Appeal Judgement

1. The rules relating to the form and signature of the judgments of the Trial Chamber shall also apply to the judgments of the Supreme Court Chamber.

2. Where the Supreme Court Chamber finds that an appeal was filed late, or was otherwise procedurally defective, it may declare the appeal inadmissible.¹⁸⁵

¹⁸¹ DCCP Article L.524-1

¹⁸² DCCP Article L.524-5

¹⁸³ DCCP Article L.524-3

¹⁸⁴ DCCP Article L.524-4

¹⁸⁵ DCCP Article L.524-8

3. Where the Supreme Court Chamber finds that the trial judgment is void for procedural irregularities, it may hear the case as if it was the Trial Chamber and decide it on the merits.¹⁸⁶
4. In case of acquittal on appeal, the Accused shall be immediately released, unless he or she is in detention in relation to other charges¹⁸⁷.
5. Where, on appeal a detained Accused either has a prison sentence confirmed, or is sentenced to prison, the Supreme Court Chamber shall rule on detention matters. Where the Accused is present at judgement but not detained, the Chamber may issue a reasoned Detention Order. Where the Accused is absent, it may issue an Arrest and Detention Order. These orders shall have immediate effect.¹⁸⁸
6. Where an appeal is rejected, the trial judgement shall become final and no further appeal against such decision shall be allowed.

Rule 111. Revision of conviction or sentence.

1. The convicted person or, after death, the spouse, children, parents, or any person alive at the time of the Accused's death who has been given express written instructions from the Accused to bring such a claim, or the Co-Prosecutors on the person's behalf, may apply to the Supreme Court Chamber to revise the final judgement of conviction or sentence on the grounds that:
 - a) new evidence has been discovered that:
 - (i) was not available at the time of trial, and such unavailability was not wholly or partially attributable to the party making the application; and
 - (ii) is sufficiently important that had it been proved at trial it would have been likely to have resulted in a different verdict;
 - b) it has been newly discovered that decisive evidence, taken into account at trial and upon which the conviction depends, was false, forged or falsified;
 - c) one or more of the judges who participated in a judicial investigation or a conviction committed, in that case, an act of serious misconduct or serious breach of duty of sufficient gravity to justify the removal of that judge or those judges from office under these IRs.

¹⁸⁶ DCCP Article L.524-10

¹⁸⁷ French CPP Article 367

¹⁸⁸ DCCP Article L.524-11

2. The applicant shall submit the petition for revision to the clerk of the Supreme Court Chamber, clearly setting out the factual and legal basis for such petition. Thereafter, the procedure for appeals before the Supreme Court Chamber as set out in the IRs, will apply.
3. The Supreme Court Chamber shall reject the application if it considers it to be unfounded. If it determines that the application is meritorious, it shall retain jurisdiction over the matter, with a view to, after following the procedure set out for appeals from the Trial Chamber in these IRs, arriving at a determination on whether the judgement should be revised.¹⁸⁹

Rule 112. Enforcement of Sentences and Civil Penalties¹⁹⁰

1. The enforcement of a sentence shall be made at the initiative of The Co-Prosecutors. The enforcement of civil penalties shall be made at the initiative of a Civil Party.
2. The Co-Prosecutors shall implement the sentence as soon as a decision of the Chambers becomes final, subject to the provisions of these IRs relating to provisional detention.
3. The Co-Prosecutors may seek the assistance of the law enforcement authorities to ensure the execution of sentences.
4. A request for concurrent sentences shall be raised before the last Chamber that has made a decision concerning the Accused, immediately after that decision. The Chamber may be seised by a petition from the Co-Prosecutors or the party involved. After having heard the Co-Prosecutors, the parties involved, and their lawyers, the Chamber shall issue its decision in public.

[Rule 113. Transitional Provision

Any action undertaken by the Co-Prosecutors or judicial officers of the ECCC pursuant to applicable Cambodian criminal law and procedure, before the entry into force of these IRs, shall be deemed to have been validly done.]

¹⁸⁹ ICC Statute Article 84 .

¹⁹⁰ DCCP Article L.811-1, 2, 4 & 6