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**ព្រះរាជាណាចក្រកម្ពុជា  
ជាតិ សាសនា ព្រះមហាក្សត្រ**

**អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា**  
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Chambres Extraordinaires au sein des Tribunaux Cambodgiens

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Nation Religion Roi

**អង្គជំនុំជម្រះសាលាដំបូង**  
Trial Chamber  
Chambre de première instance

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Case File/Dossier No. 002/19-09-2007/ECCC/TC

**Before:** Judge NIL Nonn, President  
Judge Jean-Marc LAVERGNE  
Judge YA Sokhan  
Judge Claudia FENZ  
Judge YOU Ottara

**Date:** 18 July 2017  
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**DECISION ON WITNESSES, CIVIL PARTIES AND EXPERTS PROPOSED TO BE HEARD DURING  
CASE 002/02**

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## 1. INTRODUCTION

1. In the present decision, the Trial Chamber sets out its rationale for not calling certain individuals proposed by the Parties as relevant to Case 002/02. The Chamber first sets out the procedural history for witnesses, Civil Parties and experts proposed for the entirety of Case 002/02, which provides the background to its decisions.

## 2. PROCEDURAL HISTORY

2. On 8 April 2014, further to its decision severing Case 002 and determining the scope of Case 002/02,<sup>1</sup> the Trial Chamber ordered the Parties to file updated lists and summaries of proposed witnesses, Civil Parties and experts for Case 002/02 (“Revised Lists”), as well as any objections against individuals proposed by other Parties.<sup>2</sup>

3. Revised Lists were filed on 8 May 2014 by the NUON Chea Defence,<sup>3</sup> and on 9 May 2015 by the Co-Prosecutors, Civil Party Lead Co-Lawyers (“Lead Co-Lawyers”) and the KHIEU Samphan Defence.<sup>4</sup>

4. On 30 May 2014, the National Co-Prosecutor and the KHIEU Samphan Defence filed their respective objections to witnesses, Civil Parties and experts proposed by other Parties.<sup>5</sup> The KHIEU Samphan Defence indicated that it provisionally objected to a number of proposed witnesses and Civil Parties for whom it did not have sufficient information and

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<sup>1</sup> Decision on Additional Severance of Case 002 and Scope of Case 002/02, E301/9/1, 4 April 2014.

<sup>2</sup> Order to File Updated Material in Preparation for Trial in Case 002/02, E305, 8 April 2014, paras 1-8.

<sup>3</sup> Updated Lists and Summaries of Proposed Witnesses, Civil Parties and Experts, E305/4, 8 May 2014, with Confidential Annexes E305/4.1, E305/4.2. The lists include a column headed “Summary of Proposed Testimony” in which the requesting Party seeks to substantiate the relevance of the requested person’s testimony for the “Points of Indictment” that are identified in a separate column.

<sup>4</sup> Co-Prosecutors’ Proposed Witness, Civil Party and Expert List and Summaries for the Trial in Case File 002/02 (With 5 Confidential Annexes I, II, IIA, III and IIIA), E305/6, 9 May 2014, with Confidential Annexes E305/6.1, E305/6.2, E305/6.3, E305/6.4, E305/6.5; Civil Party Lead Co-Lawyers’ Rule 80 Witness, Expert and Civil Party Lists for Case 002/02 with Confidential Annexes, E305/7, 9 May 2014, with Confidential Annexes E305/7.1, E305/7.1.1, E305/7.1.2; *Témoins et experts proposés par la Défense de M. KHIEU Samphân pour le procès 002/02*, E305/5, 9 May 2014, with Confidential Annexes E305/4.1, E305/4.2. See also Addendum to Civil Party Lead Co-Lawyers’ Rule 80 Witness, Expert and Civil Party Lists for Case 002/02 with Confidential Annex, E305/7/4, 23 July 2014 with Confidential Annex E305/7/4.1. The lists include a column headed “Summary of Proposed Testimony” in which the requesting Party seeks to substantiate the relevant of the requested person’s testimony for the “Points of Indictment” that are identified in a separate column.

<sup>5</sup> National Co-Prosecutor’s objections to the Witnesses and Experts Proposed by the Other Parties, E305/10, 30 May 2014; *Opposition de la Défense de M. KHIEU Samphân à la comparution de certaines personnes proposées aux fins d’audition au cours du procès 002/02 et demande de clarification sur la portée exacte des débats suite à la nouvelle décision de disjonction E301/9/1*, E305/9, 30 May 2014.

requested clarification on the scope of Case 002/02. It also objected to a number of proposed experts.<sup>6</sup>

5. On 11 June 2014, in response to the Parties' joint request for clarification concerning the application of Internal Rule (IR) 87(4),<sup>7</sup> the Trial Chamber clarified that Case 002 started upon the Initial Hearing for Case 002 held in June 2011. Also in June 2011, the Parties filed lists of proposed witnesses, Civil Parties and experts for the entirety of Case 002 ("Initial Lists"). The Trial Chamber therefore confirmed that any new witnesses, Civil Parties and experts proposed later than June 2011 must meet the requirements of IR 87(4).<sup>8</sup> The Trial Chamber noted that each of the Revised Lists filed by the Co-Prosecutors, Lead Co-Lawyers and the KHIEU Samphan Defence included individuals not mentioned in their Initial Lists. The Chamber accordingly invited these Parties to file applications to hear those individuals in accordance with IR 87(4).<sup>9</sup>

6. In June and July 2014, the Parties filed IR 87(4) motions regarding proposed new witnesses, Civil Parties and experts for Case 002/02.<sup>10</sup> The KHIEU Samphan Defence responded to the motions of the Co-Prosecutors and Lead Co-Lawyers on 18 August 2014,

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<sup>6</sup> *Opposition de la Défense de M. KHIEU Samphân à la comparution de certaines personnes proposées aux fins d'audition au cours du procès 002/02 et demande de clarification sur la portée exacte des débats suite à la nouvelle décision de disjonction E301/9/1, E305/9, 30 May 2014, paras 18-27. On 29 July 2014, the Supreme Court Chamber upheld the Trial Chamber's decision on the additional severance of Case 002 and on the scope of Case 002/02 and declared a provisional stay of the charges outside the scope of Cases 002/01 and 002/02 pending appropriate disposal by the Trial Chamber, Decision on KHIEU Samphan's Immediate Appeal Against the Trial Chamber's Decision on Additional Severance of Case 002 and Scope of Case 002/02 (SCC), E301/9/1/1/3, 29 July 2014, paras. 88-90.*

<sup>7</sup> Parties' Joint Request for Clarification regarding the application of Rule 87(4) in Case 002/02, E307, 30 April 2014.

<sup>8</sup> Trial Chamber Memorandum entitled "Decision on Parties' Joint Request for Clarification regarding the Application of Rule 87(4) (E307) and the NUON Chea Defence Notice of Non-Filing of Updated Lists Evidence (E305/3)", E307/1, 11 June 2014, paras 2, 5.

<sup>9</sup> Trial Chamber Memorandum entitled "Decision on Parties' Joint Request for Clarification regarding the Application of Rule 87(4) (E307) and the NUON Chea Defence Notice of Non-Filing of Updated Lists Evidence (E305/3)", E307/1, 11 June 2014, para. 5. See List of Proposed Witnesses, Experts and Civil Parties – Pseudonyms, E9/35, 12 February 2012.

<sup>10</sup> *Demande de la Défense de M. KHIEU Samphân tendant à la comparution d'un nouvel expert au cours du procès 002/02 (règle 87-4 du Règlement intérieur), E307/2, 19 June 2014; NUON Chea Defence's New witness, Civil Party and expert list for case 002/02, E307/4, 24 July 2014 with Confidential Annexes, E307/4.2, E307/4.3; Co-Prosecutors' Rule 87(4) Motion Regarding Proposed Trial Witnesses for Case 002/02, E307/3/2, 28 July 2014, with Confidential Annexes E307/3/2.2 and E307/3/2.3; Civil Party Lead Co-lawyers' Rule 87(4) Request to Admit Into Evidence Oral Testimony and Documents and Exhibits Related to Witnesses, Experts and Civil Parties Proposed to Testify in Case 002/02, E307/6, 29 July 2014.*

reiterating a number of objections to individuals proposed to be heard for whom not all the documentation was available to the Defence.<sup>11</sup>

7. The Parties made additional submissions in relation to the proposed individuals during the Further Initial Hearing held specifically for Case 002/02 on 30 July 2014.<sup>12</sup> The KHIEU Samphan Defence withdrew its previous objections to a number of witnesses in view of documentation received in the interim.<sup>13</sup> The NUON Chea Defence requested that Richard DUDMAN (2-TCW-923) and Walter HEYNOWSKI (2-TCW-946) be heard on an expedited basis, possibly by video-link, due to their advanced age.<sup>14</sup>

8. On 21 October 2014, the Trial Chamber decided upon a joint request of the Co-Prosecutors and the Lead Co-Lawyers for a *de novo* ruling on the application of IR 87(4).<sup>15</sup> After reiterating that the relevant date for the purposes of IR 87(4) was in 2011, the Trial Chamber noted that a significant amount of time had passed since the Initial Lists were filed. It therefore decided, on an exceptional basis, to consider the Revised Lists as permissible

<sup>11</sup> *Réponse de M. KHIEU Samphân aux requêtes des co-procureurs et des co-Avocats des Parties Civiles intitulées « Co-Prosecutors’ Rule 87(4) Motion Regarding Proposed Trial Witnesses for Case 002/02 » (E307/3/2) et « Civil Party Lead Co-Lawyers’ Rule 87(4) Request to Admit into Evidence Oral Testimony and Documents and Exhibits Related to Witnesses, Experts, Civil Parties Proposed to Testify in Case 002/02 » (E307/6), E307/7, 18 August 2014.*

<sup>12</sup> T. 30 July 2014 (Further Initial Hearing), pp. 46, 51, 54, 56-111.

<sup>13</sup> T. 30 July 2014 (Further Initial Hearing), p. 107; *Opposition de la Défense de M. KHIEU Samphân à la comparution de certaines personnes proposées aux fins d’audition au cours du procès 002/02 et demande de clarification sur la portée exacte des débats suite à la nouvelle décision de disjonction E301/9/1, E305/9, 30 May 2014, paras 18-27.* The Chamber however notes that in its response to the Co-Prosecutors’ and Lead Co-Lawyers’ IR 87(4) motions of July 2014, the KHIEU Samphan Defence reiterated its previous objection in relation to a number of same witnesses and on the same grounds, *see Réponse de M. KHIEU Samphân aux requêtes des co-procureurs et des co-Avocats des Parties Civiles intitulées « Co-Prosecutors’ Rule 87(4) Motion Regarding Proposed Trial Witnesses for Case 002/02 » (E307/3/2) et « Civil Party Lead Co-Lawyers’ Rule 87(4) Request to Admit into Evidence Oral Testimony and Documents and Exhibits Related to Witnesses, Experts, Civil Parties Proposed to Testify in Case 002/02 » (E307/6), E307/7, 18 August 2014, para. 17.* Having reviewed the objections, the Trial Chamber finds they are moot, as all the documents and materials relating to these witnesses have been made available to the Parties. The Chamber also notes that the KHIEU Samphan Defence requested again that the Trial Chamber clarify the exact scope of proceedings in the trial in Case 002/02, *Opposition de la Défense de M. KHIEU Samphân à la comparution de certaines personnes proposées aux fins d’audition au cours du procès 002/02 et demande de clarification sur la portée exacte des débats suite à la nouvelle décision de disjonction E301/9/1, E305/9, 30 May 2014, paras 28-34, 51; Exceptions d’irrecevabilité portant sur certains documents proposés pour le procès 002/02 et demande d’un véritable débat contradictoire sur la valeur probante, E327/3, 2 February 2015, para. 26.* On 30 June 2015, the Chamber held that, “[c]onsistent with its established practice refusing reconsideration of its decisions absent new facts or new circumstances” it would not make further general rulings on the scope of Case 002/02 but would instead rule on specific, concrete questions arising during the trial. It also held that, the KHIEU Samphan Defence presented “no such question warranting another decision on the scope of Case 002/02”, *Decision on Objections to Documents Proposed to be Put Before the Chamber in Case 002/02, E305/17, 30 June 2015, para. 42.*

<sup>14</sup> T. 30 July 2014 (Further Initial Hearing), pp. 46, 92.

<sup>15</sup> Trial Chamber Memorandum entitled “Decision on Joint Request for *de novo* Ruling on the application of Internal Rule 87(4)”, E307/1/2, 21 October 2014; Joint request for a *de novo* ruling on the application of rule 87(4) in case 002/02, and a submission regarding the non-applicability of rule 87(4) to material already on the case file, E307/1/1, 15 August 2014.

revisions to the Initial Lists to which IR 87(4) did not apply such that no such applications would be necessary.<sup>16</sup> The Trial Chamber however stressed that any future proposals to hear additional witnesses, Civil Parties or experts who are not identified on the Revised Lists, must satisfy the requirements of IR 87(4).<sup>17</sup>

### 3. LEGAL FRAMEWORK

9. As previously set out by this Chamber,<sup>18</sup> under the ECCC legal framework, the Trial Chamber shall select those individuals to testify that it determines to be most conducive to ascertaining the truth, subject to the overall requirement that ECCC proceedings “be fair and adversarial and preserve a balance between the rights of the parties” and that they are “brought to a conclusion within a reasonable time”.<sup>19</sup> The Chamber may also hear expert evidence on any subject considered necessary at trial.<sup>20</sup>

10. Pursuant to IR 87(3), the Chamber may decline to hear evidence that is (a) irrelevant or repetitious; (b) impossible to obtain within a reasonable time; (c) unsuitable to prove the facts it purports to prove; (d) not allowed under the law; or (e) intended to prolong proceedings or frivolous.<sup>21</sup>

11. Although the English version of IR 84(1) states that the Accused “shall have the absolute right to summon witnesses against him or her whom the Accused had no opportunity to examine during the pre-trial stage”, this formulation is not reflected in the other language

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<sup>16</sup> Trial Chamber Memorandum entitled “Decision on Joint Request for de novo Ruling on the application of Internal Rule 87(4)”, E307/1/2, 21 October 2014, paras 10-11.

<sup>17</sup> Trial Chamber Memorandum entitled “Decision on Joint Request for de novo Ruling on the application of Internal Rule 87(4)”, E307/1/2, 21 October 2014, para. 12.

<sup>18</sup> Final Decision on Witnesses, Experts and Civil Parties to be Heard in Case 002/01, E312, 7 August 2014.

<sup>19</sup> IRs 21(1)(a) and 21(4); *see also*, IR 85(1) (providing that the President shall guarantee the free exercise of Defence rights and may exclude any proceedings that unnecessarily delay the trial and are not conducive to ascertaining the truth). *See* Final Decision on Witnesses, Experts and Civil Parties to be Heard in Case 002/01, E312, 7 August 2014, para. 22.

<sup>20</sup> IR 31(1). *See* Final Decision on Witnesses, Experts and Civil Parties to be Heard in Case 002/01, E312, 7 August 2014, para. 22.

<sup>21</sup> IR 87(3); Case 002/01 Appeal Judgement, F36, 23 November 2016, para. 133; Decision on the Co-Prosecutors’ and KHIEU Samphan’s Internal Rule 87(4) Requests concerning US Diplomatic Cables (E282 and E282/1; E290 and E290/1), E282/2, 13 June 2013, para. 3. *See also*, *KAING Guek Eav alias Duch*, Trial Judgement, ECCC Trial Chamber (001/18-07-2007/ECCC/TC), E188, 26 July 2010, para. 41; *Prosecutor v. Karemera et al.*, Decision on Mathieu Ndirumpatse’s Appeal from the Trial Chamber Decision of 17 September 2008, ICTR Appeals Chamber (ICTR-98-44-AR73.14), 30 January 2009, para. 25 (finding that the repetitive nature of testimony is to be considered as a factor in determining whether hearing it is necessary); *see also* *KAING Guek Eav alias Duch*, Decision on Protective Measures and Witnesses and Experts and on Parties’ Request to Hear Witnesses and Experts Reasons, E40/1, 10 April 2009, para. 12. *See* Final Decision on Witnesses, Experts and Civil Parties to be Heard in Case 002/01, E312, 7 August 2014, para. 23.

versions of this Rule.<sup>22</sup> This sub-rule must be evaluated in the light of the totality of the ECCC legal framework, which emphasises a balancing of the rights of all Parties and the need for a fair and expeditious trial.<sup>23</sup> As confirmed by the Supreme Court Chamber (SCC) in its Appeal Judgement in Case 002/01, while the right to request that a witness be called in one's defence is an essential component of the right to a fair trial, it is not an absolute right.<sup>24</sup>

12. Further, as noted by the SCC, the ECtHR has held that “a conviction may not be based solely or to a decisive degree on evidence by a witness whom the defence has not had an opportunity to examine, unless there are sufficient counterbalancing factors in place, so that the accused is given an effective opportunity to challenge the evidence against him”.<sup>25</sup> In the ECtHR's view the word “decisive” should be “narrowly understood as indicating evidence of such significance or importance as it is likely to be determinative of the outcome of the case”. It has further considered that where the “untested evidence of a witness is supported by other corroborative evidence, the assessment of whether it is decisive will depend on the strength of the supportive evidence; the stronger the corroborative evidence, the less likely that the evidence of the absent witness will be treated as decisive”.<sup>26</sup>

13. In this regard, the Chamber recalls that in the context of trials of mass crimes, the Trial Chamber may admit and under certain conditions rely on evidence in the form of written statements or transcripts without requiring their authors to be present in court for examination, where these go to proof of matters other than the acts or conduct of the accused.<sup>27</sup> Where the

<sup>22</sup> Cf. IR 84(1): “*L'accusé a le droit d'exiger la comparution d'un témoin avec lequel il n'a pas eu l'occasion d'être confronté au stade de l'instruction*” and “ជនជាប់ចោទមានសិទ្ធិស្នើសុំឱ្យកោះហៅសាក្សីដាក់បន្ទុកដែលជនជាប់ចោទ មិនទាន់មានឱកាស តទល់នៅដំណាក់កាលមុនពេលជំនុំជម្រះ។” See Final Decision on Witnesses, Experts and Civil Parties to be Heard in Case 002/01, E312, 7 August 2014, para. 24.

<sup>23</sup> See IRs 21(1)(a) and 21(4); Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia, Article 33 new. See Final Decision on Witnesses, Experts and Civil Parties to be Heard in Case 002/01, E312, 7 August 2014, para. 24.

<sup>24</sup> Case 002/01 Appeal Judgement, F36, 23 November 2016, para. 133. See also *Popov v. Russia*, Judgement, ECtHR, Application No. 26853/04, 13 July 2006, paras 187-188; *Bocos-Cuesta v. The Netherlands*, Judgement, ECtHR, Application No. 54789/00, 10 February, 2006, paras 72-73; *Vidal v. Belgium*, Judgement, ECtHR, Application No. 12351/86, 22 April 1992, paras 34-35.

<sup>25</sup> Case 002/01 Appeal Judgement, 23 November 2016, para. 296, referring to *Al-Khawaja and Tahery v. United Kingdom*, Judgement, ECtHR, Application No. 26766/05 & 22228/06, 15 December 2011, paras 127, 147.

<sup>26</sup> *Al-Khawaja and Tahery v. United Kingdom*, Judgement, ECtHR, Application No. 26766/05 & 22228/06, 15 December 2011, para. 131.

<sup>27</sup> In accordance with the relevant international rules and practice, evidence in the form of written statements or transcripts may be put before the Chamber without requiring the attendance of their authors at trial notably when this evidence:

a) is of a cumulative nature, in that other witnesses will give or have given oral testimony of similar facts;

statements or transcripts go to the proof of the acts and conduct of the accused and the authors are still alive and fit to testify, the Trial Chamber is generally precluded from relying on the statements, unless the defence is afforded an opportunity of confrontation.<sup>28</sup>

14. Procedural rules developed at the international level also establish that in determining which individuals shall be heard at trial, there is a need to balance the right of the Accused to a fair and adversarial trial against the right to be tried without undue delay.<sup>29</sup> In relation to trials of international crimes, which are often complex and extensive in scope, the Trial Chamber's duty to ensure the fairness and expeditiousness of proceedings will frequently entail a delicate balancing of interests, including the Prosecutor's duty to present the available evidence to prove its case and the rights of the Accused.<sup>30</sup> At the *ad hoc* Tribunals, the parties are primarily responsible for identifying which witnesses shall be heard at trial. In contrast, before the ECCC, it is the Trial Chamber which is in charge of the conduct of the hearing and bears the primary responsibility for selecting all individuals who will be summoned to give evidence at trial.<sup>31</sup> Consequently, the notion of proportionality between the time allocated to the presentation of the Prosecution and Defence cases has limited application before the

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b) relates to relevant historical, political or military background, concerns crime-base evidence or goes to proof of threshold elements of international crimes (such as the existence of an international armed conflict or the widespread or systematic nature of an attack);

c) consists of a general or statistical analysis of the ethnic composition of the population in the places to which the indictment relates;

d) concerns the impact of crimes upon victims; or

e) is impossible to subject to confrontation because its author has subsequently died, or can no longer with reasonable diligence be traced, or is medically unable to testify orally.

Decision on Co-Prosecutors' Rule 92 Submission Regarding the Admission of Witness Statements and Other Documents Before the Trial Chamber, E96/7, 20 June 2012, paras 23-24; Case 002/01 Appeal Judgement, F36, 23 November 2016, para. 296.

<sup>28</sup> Decision on Co-Prosecutors' Rule 92 Submission Regarding the Admission of Witness Statements and Other Documents Before the Trial Chamber, E96/7, 20 June 2012, paras 21-22.

<sup>29</sup> *Prosecutor v. Ndayambaje et al.*, Decision on Joseph Kanyabashi's Motions for Modification of his Witness List, the Defence Responses to the Scheduling Order of 13 December 2006 and Ndayambaje's Request for Extension of Time within which to Respond to the Scheduling Order of 13 December 2006, ICTR Trial Chamber (ICTR-98-42-T), 21 March 2007, para. 30; *Prosecutor v. Karemera et al.*, Decision on Mathieu Ndirumpatse's Appeal from the Trial Chamber Decision of 17 September 2008, ICTR Appeals Chamber (ICTR-98-44-AR73.14), 30 January 2009, para. 29.

<sup>30</sup> *Prosecutor v. Prlić et al.*, Decision on Prosecution Appeal Concerning the Trial Chamber's Ruling Reducing Time for the Prosecution Case, ICTY Appeals Chamber (IT-04-74-AR73.4), 6 February 2007, paras 14, 16; *Prosecutor v. Gotovina et al.*, Decision on Prosecution's Motion to Add a Witness to its Rule 65ter Witness List and to Add Three Associated Documents to its Rule 65ter Exhibit List, ICTY Trial Chamber (IT-06-90-T), 16 June 2008, para. 3; *Prosecutor v. Gotovina et al.*, Decision on Čermak Defence's Second and Third Motions to Add a Witness to its Rule 65ter (G) Witness List, ICTY Trial Chamber (IT-06-90-T), 22 September 2009, para. 7; *Prosecutor v. Gotovina et al.*, Decision on Čermak Defence's Fourth Motion to Amend the Rule 65ter (G) Witness List, ICTY Trial Chamber (IT-06-90-T), 15 October 2009, para. 3.

<sup>31</sup> Trial Chamber memorandum entitled "Direction to the parties (in advance of discussion at the Initial Hearing of provisional list of witnesses, experts and Civil Parties)", E108, 29 June 2011, para. 5; Final Decision on Witnesses, Experts and Civil Parties to be Heard in Case 002/01, E312, 7 August 2014, para. 25; *see also*, IR 85(1).

ECCC.<sup>32</sup> While the Chamber has endeavoured to hear witnesses, Civil Parties and experts requested by all Parties, it has done so in order to fulfil its duty to ascertain the truth, rather than to ensure proportionality between the individuals proposed by the Parties.

15. Ascertaining the truth need not require the testimony of an unlimited number of witnesses and, provided the Trial Chamber has adequately weighed the complexities of the case and the evidence offered by the Accused, it is well-established that Trial Chambers may order the reduction of the number of witnesses the parties have requested to hear.<sup>33</sup> Other international courts and tribunals have also sought measures to ensure judicial economy and have on occasion sanctioned significant reductions to the parties' witness lists where these reductions are reasoned, follow adversarial discussion and have no adverse impact on the fairness of the trial or on the ability to present an effective defence.<sup>34</sup> The Chamber considers that where several individuals are proposed to be heard on similar facts or issues, preference shall be given to those whose proposed evidence is sought by one or more parties to the proceedings, covers multiple trial topics, or are likely to have greater relevance or probative value.<sup>35</sup>

16. A further feature of the ECCC legal framework is the need to also take account of the interests of the Civil Parties, who participate at trial in order to support the Prosecution and to seek collective and moral reparation in relation to harm suffered in consequence of the crimes for which the Accused are charged.<sup>36</sup> In this regard, the Chamber notes that it regularly schedules hearings dedicated to harm suffered by the Civil Parties, during which a number of selected Civil Parties are heard on the harm they suffered during the Democratic Kampuchea

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<sup>32</sup> See e.g., *Prosecutor v. Orić*, Interlocutory Decision on Length of Defence Case, ICTY Appeals Chamber (IT-03-68-AR73.2), 20 July 2005, para. 8.

<sup>33</sup> *Prosecutor v. Nshogoza*, Decision on Defence Motion for Reconsideration of the Chamber's Further Order for the Defence to Reduce its Witness List, ICTR Trial Chamber (ICTR-07-91-T), 26 February 2009, paras 1, 8. See IRs 21 (4), 85(1) and 87(3)(b); Final Decision on Witnesses, Experts and Civil Parties to be Heard in Case 002/01, E312, 7 August 2014, para. 27.

<sup>34</sup> *Prosecutor v. Karemera et al.*, Decision on Mathieu Ndirumpatse's Appeal from the Trial Chamber Decision of 17 September 2008, ICTR Appeals Chamber (ICTR-98-44-AR73.14), 30 January 2009, paras 17-27 (considering as permissible the reduction of an Accused's witness list from 354 witnesses to 35 as the latter adequately permitted the Accused to present his case); see also, *Prosecutor v. Nshogoza*, Decision on Defence Motion for Reconsideration of the Chamber's Further Order for the Defence to Reduce its Witness List, ICTR Trial Chamber (ICTR-07-91-T), 26 February 2009, paras 1, 8 (permitting reduction of a witness list from more than 40 to no more than 10); *Prosecutor v. Nyiramasuhuko et al.*, Decision on Joseph Kanyabashi's Appeal Against the Decision of Trial Chamber II of 21 March 2007 concerning the Dismissal of Motions to Vary his Witness List, ICTR Appeals Chamber (ICTR-98-42-AR73), 21 August 2007. See Final Decision on Witnesses, Experts and Civil Parties to be Heard in Case 002/01, E312, 7 August 2014, para. 27.

<sup>35</sup> See Final Decision on Witnesses, Experts and Civil Parties to be Heard in Case 002/01, E312, 7 August 2014, para. 133.

<sup>36</sup> IR 23(1)(a) and (b); see also, IR 21(1) (stating that the ECCC legal framework "shall be interpreted so as to always safeguard the interests of Suspects, Charged Persons, Accused and Victims").

period. While their statements are meant to focus on their sufferings, occasionally these Civil Parties give evidence on matters of fact. The Trial Chamber has therefore consistently given the Parties an opportunity to question them in relation to new facts or allegations against the Accused that emerged from their respective statements of suffering.<sup>37</sup>

17. Under the ECCC legal framework, decisions by the Trial Chamber concerning the summoning of witnesses are open to appeal only at the same time as the judgement on the merits.<sup>38</sup>

#### 4. GENERAL CONSIDERATIONS

18. At the outset, the Trial Chamber stresses that the present decision only concerns witnesses, Civil Parties and experts proposed by the Parties in their Revised Lists. It does not address requests for additional witnesses made pursuant to IR 87(4), which have been the subject of separate decisions throughout the proceedings in Case 002/02. Further, the current analysis is based on an assessment of the relevance of these proposed witnesses, Civil Parties and experts. The assessment of the evidence heard during Case 002/02 as a whole and what weight will be given to each piece of evidence will be carried out in the verdict.

19. The Chamber also notes that when listing the witnesses, Civil Parties and experts proposed by the Parties, it uses the spelling of their names as it appears in the Parties' Revised Lists, whereas in the other parts of the decision, it uses the spelling names as they appear in the Final List of witnesses, Civil Parties and experts heard in Case 002/02.<sup>39</sup>

20. The Chamber called to be questioned individuals considered to be most conducive to ascertaining the truth in relation to the Tram Kak Cooperatives and Kraing Ta Chan Security Centre, Worksites, Treatment of Targeted Groups, Security Centres and Internal Purges, Regulation of Marriage, Nature of the Armed Conflict and Role of the Accused. These individuals are identified below. The Trial Chamber has emphasised on a previous occasion that no clear lines can be drawn between topics into which Case 002/02 is divided and it is highly possible that a witness, Civil Party or expert called to testify on one particular topic

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<sup>37</sup> See Information on (1) Key Document Presentation Hearings in Case 002/02 and (2) Hearings on Harm Suffered by the Civil Parties in Case 002/02, E315/1, 17 December 2014, paras 7-9; Email from Legal Officer to the Parties, 24 July 2015; and T. 1 April 2015, p. 33.

<sup>38</sup> IR 84(4).

<sup>39</sup> Annex – Final List of Witnesses, Civil Parties and Experts for Case 002/02, E454.1, 27 December 2016.

also gave evidence in relation to one or more other topics.<sup>40</sup> Further, the Chamber notes that in relation to the implementation of some nationwide policies, such as the treatment of the targeted groups, the underlying offences with which the Accused have been charged, are limited to specific crimes sites or locations.<sup>41</sup> While the Chamber has directed the Parties to focus the evidence on underlying offences to the specific crimes sites and locations in which they are charged, it has allowed evidence on the corresponding nationwide policies even if it extended beyond those specific crimes sites or locations.

21. In total, of the 289 witnesses, Civil Parties and experts proposed by the Parties in their Revised Lists, the Chamber heard 133 individuals.<sup>42</sup>

**5. PROPOSED WITNESSES, CIVIL PARTIES AND EXPERTS FOR  
THE TRAM KAK AND KRAING TA CHAN SECURITY CENTRE  
TRIAL TOPIC**

22. The following witnesses, Civil Parties and experts were proposed by the Parties in their Revised Lists specifically in regard to the Tram Kak Cooperatives and Kraing Ta Chan Security Centre:

(a) The Co-Prosecutors:

1. BECKER Elizabeth (2-TCE-97)
2. UL Hoeun (2-TCW-822)
3. RIEL San (2-TCW-860)
4. NUT Nov (2-TCW-948)
5. CHOU Koemlan (2-TCCP-238)
6. SAO Hean (2-TCW-807)
7. CHEANG Sreimom (2-TCW-834)
8. PHNEOU Yav (2-TCW934)
9. TUON Taem (2-TCW-875)
10. EM Phoeung (2-TCW-954)
11. TOEM Hy (2-TCW-833)
12. MEAS Sokha (2-TCW-936)
13. TEP Ngoen (2-TCW-930)
14. SAO Lân (2-TCCP-290)

<sup>40</sup> Decision on Sequencing of Trial Proceedings in Case 002/02, E315, 12 September 2014, para. 7.

<sup>41</sup> Decision on Additional Severance of Case 002 Scope of Case 002/02, E301/9/1, 4 April 2014; Annex, E307/9/1.1.

<sup>42</sup> These numbers exclude individuals requested and summonsed on the basis of IR 87(4) requests for additional witnesses, Civil Parties and experts.

15. SAY Sen (2-TCCP-271)
16. VANN Soan (2-TCW-847)
17. SREI Than alias Duch (2-TCW-944)
18. IEP Duch (2-TCW-815)
19. PECH Chim (2-TCW-809)
20. TA San (2-TCW-803)
21. HARRIS Ian (2-TCE-86)
22. MEAS Sarat (reserve) (2-TCW-821)
23. SOK Soth (reserve) (2-TCW-862)
24. NEANG Dam (reserve) (2-TCW-802)
25. THANN Thim (reserve) (2-TCCP-288)
26. SAURT Saing (reserve) (2-TCCP-304)
27. SOK Sim (reserve) (2-TCW-922)
28. PHAN Chhen (reserve) (2-TCW-852)<sup>43</sup>

(b) The Lead Co-Lawyers:

1. HONG Sok (2-TCCP-282)
2. IM Vannak (2-TCCP-256)
3. ORN/ORM Em (2-TCCP-297)
4. OUM/OM Suphany (2-TCCP-296)
5. RY Pov (2-TCCP-303)
6. SAUT Saroeun (2-TCCP-217)
7. SAY Sen (2-TCCP-271)
8. SENG Sivutha (2-TCCP-218)
9. BUN Saroeun (2-TCCP-293)
10. CHHIM Chheak/Chiek (2-TCCP-239)<sup>44</sup>

(c) The NUON Chea Defence:

1. PECH Chim (2-TCW-809)
2. CHHANG Youk (2-TCW-870)<sup>45</sup>

23. The KHIEU Samphan Defence did not propose any witness or Civil Party specifically in regard to the Tram Kak Cooperatives and Kraing Ta Chan Security Centre. A number of

<sup>43</sup> On 28 July 2014, the Co-Prosecutors filed a further revised witnesses, Civil Parties and expert list. They withdrew CHAN Choeun and KAOH Lim from their Revised List, Co-Prosecutors' Rule 87(4) Motion Regarding Proposed Witnesses for Case 002/02, E307/3/2, 28 July 2014, para. 23; Annex I: Co-Prosecutors' Revised Combined Witness, Civil Party and Expert List for Case 002/02 in Recommended Order of Trial Segments and Appearance (July 2014) (confidential), E307/3/2.2, 28 July 2014. The Chamber's decision not to hear reserve Witness MEAS Sarat (2-TCW-821) was taken in a separate decision, *see* Reasons Following Decision on the NUON Chea Defence's Consolidated Rule 87(4) Request to hear Additional Witnesses for the First Case 002/02 Trial Segment on the Tram Kak Cooperatives and Kraing Ta Chan Security Centre and Decision on SANN Lorn (2-TCW-1007), SOU Phirin (2-TCW-1027) and IV Sarik (2-TCW-1026) (E346/2), E346/3, 31 March 2016.

<sup>44</sup> Confidential Annex IV: Proposed Order of Segments- Civil Parties Lead Co-Lawyers, E305/7.1.4, 9 May 2014.

<sup>45</sup> Confidential Annex B: Updated Summaries of Witnesses, Civil Parties and Experts (no protective measures sought)- Nuon Chea Defence Team, E305/4.2, 8 May 2014. PECH Chim was also proposed by the OCP, *see above*, para. 22.

individuals were proposed as relevant to a range of Case 002/02 topics, including but not limited to this one. The individuals proposed are: Roel BURGLER (2-TCE-96), Philip SHORT (2-TCE-92), Michael VICKERY (2-TCE-94), Stephen HEDER (2-TCE-87) and François PONCHAUD (2-TCE-99).<sup>46</sup>

24. In addition to the witnesses requested for this first topic, the NUON Chea Defence requested that two witnesses relevant to later topics, Richard DUDMAN (2-TCW-923) and Walter HEYNOWSKI (2-TCW-946), be heard on an expedited basis and possibly by video-link, due to their advanced age.<sup>47</sup>

### 5.1. Witnesses, Civil Parties and Experts heard by the Chamber

25. The Trial Chamber selected and heard the following witnesses, Civil Parties and expert in relation to the Tram Kak Cooperatives and Kraing Ta Chan Security Centre: Witness MEAS Sokha (alias Thlang) (2-TCW-936), Civil Party OUM Suphany (OM Suphany) (2-TCCP-296), Civil Party CHOU Koemlan (2-TCCP-238), Witness EM Phoeung (2-TCW-954), Witness CHANG Srey Mom (CHEANG Sreimom) (2-TCW-834), Witness KEO Chandara (KEV Chandara), alias KROU alias Yav (2-TCW-964),<sup>48</sup> Civil Party SORY Sen (SAY Sen) (2-TCCP-271), Civil Party RY Pov (Peou) (2-TCCP-303), Witness PHNEOU Yav (2-TCW-934), Witness SAO Han (2-TCW-807), Witness SREI Than alias DUCH (2-TCW-944), Witness PHANN Chhen (2-TCW-852), Witness VAN Soeun (VANN Soan) (2-TCW-847), Witness NEANG Ouch , alias Ta San (2-TCW-803), Witness NUT Nov (2-TCW-948), Witness RIEL Son (2-TCW-860), Civil Party SAUT Saing (SOTR Saing) (2-TCCP-304), Civil Party OEM Saroeurn (OUNG SA Reoung) (2-TCCP-980),<sup>49</sup> Witness Richard Beebe DUDMAN (2-TCW-923), Civil Party THANN Thim (2-TCCP-288), Witness PECH Chim,

<sup>46</sup> See *Annexe III: Résumés actualisés des déclarations des témoins et des experts qui ne demandent l'octroi d'aucune mesure de protection*, E305/5.2, 9 May 2014; *Demande de la Défense de M. KHIEU Samphân tendant à la comparution d'un nouvel expert au cours du procès 002/02 (règle 87-4 du Règlement intérieur)*, E307/2, 19 June 2014.

<sup>47</sup> T. 30 July 2014, (Further Initial Hearing), pp. 46, 92. Richard DUDMAN was heard via video-link, *see* Trial Chamber Memorandum – Request for Video-Link for 2-TCW-923 (Richard DUDMAN), E334, 13 January 2015. The Chamber notes that Walter HEYNOWSKI (2-TCW-946)'s testimony is relevant to the trial topic on security centres, specifically S-21, and he will therefore be addressed in the section dealing with that trial topic, *see paras* 127-130.

<sup>48</sup> The Chamber selected KEO Chandara (KEV Chandara), alias KROU alias Yav (2-TCW-964) on its own motion.

<sup>49</sup> Decision on Civil Party Lead Co-Lawyers' Rule 87(4) Request Regarding Civil Party D22/2500 with Confidential Annex A, E344/1, 31 March 2015.

alias TA Chim (2-TCW-809), Witness KHOEM Boeun, alias Yeay Boeun (2-TCW-979),<sup>50</sup> Witness EK Hoeun (UL Hoeun) (2-TCW-822), Witness VONG Sarun (VORNG Sarun) (2-TCW-986)<sup>51</sup> and expert Elizabeth BECKER (2-TCE-97).

26. The Chamber also heard the following Civil Parties on the harm they suffered during the Democratic Kampuchea era: TAK Sann (2-TCCP-982), EAM Yen (IEM Yen) (2-TCCP-985), BENG Boeun (2-TCCP-981), YEM Khonny (2-TCCP-983), BUN Saroeun (2-TCCP-293), IM Vannak (OUM Vannak) (2-TCCP-256) and LOEP Neang (2-TCCP-984). THANN Thim (2-TCCP-288) was also heard on his suffering, but was later recalled to be further questioned on matters of fact.<sup>52</sup>

27. In total, the Trial Chamber heard 17 witnesses, 14 Civil Parties and 1 expert during the trial segment allocated to the Tram Kak Cooperatives and Kraing Ta Chan Security Centre.

## 5.2. Deceased or Withdrawn

28. The following witnesses could not be considered as they are deceased:

1. Professor Ian HARRIS (2-TCE-86)<sup>53</sup>
2. SOK Soth (2-TCW-862)<sup>54</sup>
3. IEP Duch (2-TCW-815)<sup>55</sup>
4. NEANG Dam (2-TCW-802)<sup>56</sup>

The requests to summons them are therefore moot.

29. The request to hear HONG Sok (2-TCCP-282) is rejected as it was withdrawn by the Lead Co-Lawyers without objections by the other Parties.<sup>57</sup>

<sup>50</sup> Decision on International Co-Prosecutor's Request Pursuant to Rules 87(3) & 87 (4) to Admit Documents and to Hear an Additional Trial Witness Relating to the Tram Kak District/Kraing Ta Chan Segment of Case 002/02, E319/17/1, 8 April 2015, paras 6-8.

<sup>51</sup> VONG Sarun (VORNG Sarun) (2-TCW-986) was called pursuant to a NUON Chea Defence request to call additional witnesses. See Decision on the NUON Chea Defence's Consolidated Rule 87(4) Request to Hear Additional Witnesses for the First Case 002/02 Trial Segment on the Tram Kok Cooperatives and Kraing Ta Chan Security Centre (confidential), E346/2, 30 April 2015, p. 2.

<sup>52</sup> T. 2 April 2015, pp. 54-55; T. 21 April 2015, p. 3.

<sup>53</sup> <http://iabsinfo.net/2015/01/professor-ian-charles-harris/>, last accessed 1 July 2015.

<sup>54</sup> Strictly Confidential WESU Report Witness SOK Soth, E29/464, 5 October 2014; Strictly Confidential Death Certificate of SOK Soth, E29/464.1, 9 October 2014.

<sup>55</sup> Strictly Confidential WESU Report Witness IEP Duch, E29/462, 4 October 2014; Strictly Confidential Death Certificate of IEP Duch, E29/462.1, 9 October 2014.

<sup>56</sup> Strictly Confidential WESU report NEANG Dam, E29/463, 5 October 2014.

### 5.3. Repetitive and/or Irrelevant and/or Less Relevant

#### 5.3.1. *Individuals proposed by the Co-Prosecutors*

30. The Co-Prosecutors proposed Witness SOK Sim (2-TCW-922) as reserve witness for the trial topic on Tram Kak Cooperatives and Kraing Ta Chan Security Centre. According to the summary of his proposed testimony, he could testify primarily on the living conditions in the Tram Kak Cooperatives, communications structure and joint criminal enterprise factual findings in relation to cooperatives and worksites. Additionally, he is also proposed to testify on the treatment of Buddhists and the regulation of marriage.<sup>58</sup> Having reviewed the material on the Case File relevant to this witness<sup>59</sup> and noting the matters on which he is proposed to testify, the Chamber finds that his testimony in relation to the Tram Kak Cooperatives and Kraing Ta Chan Security Centre trial topic is likely to be substantially repetitive of the evidence heard on these matters in Case 002/02 from several witnesses, including RIEL Son (2-TCW-860), NUT Nov (2-TCW-948), EM Phoeung (2-TCW-954), MEAS Sokha, alias Thlang (2-TCW-936), CHOU Koemlan (2-TCCP-238), KEO Chandara (KEV Chandara), alias KROU alias Yav (2-TCW-964), VAN Soeun (VANN Soan) (2-TCW-847), PHNEOU Yav (2-TCW-934), NEANG Ouch, alias Ta San (2-TCW-803), SREI Than, alias DUCH (2-TCW-944), THANN Thim (2-TCCP-288), SORY Sen (SAY Sen) (2-TCCP-271) and SAUT Saing (SOTR Saing) (2-TCCP-304).<sup>60</sup> The Chamber also notes that the Witness's statements only marginally touch on the treatment of the Buddhists and the regulation of marriage, and that in any event, the Parties have proposed other witnesses and Civil Parties they deemed more relevant to those topics. The Chamber therefore decides not to summons this witness.

31. Witness TUON Taem (2-TCW-875)'s testimony was proposed as being potentially relevant to the treatment of specific groups at the Tram Kak Cooperatives and the treatment of Buddhists.<sup>61</sup> Having reviewed the material on the Case File relevant to this witness<sup>62</sup> and

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<sup>57</sup> *Mémoire Informant du Retrait de la Partie Civile 2-TCCP-282 de la Liste des Parties Civiles Appelées devant la Chambre de Première Instance E305/7.1.3, E2/40, 14 Octobre 2014*, informing the Chamber that 2-TCCP-282 was no longer fit to testify due to health issues and memory impairment.

<sup>58</sup> Confidential Annex IIIA: OCP Updated Witness, Civil Party and Expert Summaries [Reserves], E305/6.5, 9 May 2014, p. 4.

<sup>59</sup> Written Record of Interview of SOK Sim, E3/5519, 17 December 2009.

<sup>60</sup> See e.g., T. 8 January 2015 (MEAS Sokha, alias Thlang); T. 27 January 2015 (CHOU Koemlan); T. 17 February 2015 (PHEOU Yav); T. 3 March 2015 (VAN Soeun (VANN Soan)); T. 4 February 2015 (KEO Chandara (KEV Chandara), alias KROU alias Yav); T. 10 March 2015 (NEANG Ouch, alias Ta San); T. 12 March 2015 (NUT Nov); T. 17 March 2015 (RIEL Son).

<sup>61</sup> Annex III: OCP Updated Witness, Civil Party and Expert Summaries (confidential), E305/6.4, 9 May 2014, p. 14.

<sup>62</sup> Complaint of TUON Taem 08-VU-01750, E3/5379, 15 August 2013.

noting the matters on which he is proposed to testify, the Chamber finds that his testimony in relation to the Tram Kak Cooperatives and Kraing Ta Chan Security Centre trial topic is likely to be substantially repetitive of evidence heard on these matters in Case 002/02 from several witnesses, including RIEL Son (2-TCW-860), CHANG Srey Mom (CHEANG Sreimom) (2-TCW-834), EM Phoeung (2-TCW-954), PHNEOU Yav (2-TCW-934) and PHANN Chhen (2-TCW-852).<sup>63</sup> The Chamber therefore decides not to summons this witness.

32. Witness TOEM Hy (2-TCW-833)'s testimony was proposed as being potentially relevant to the Kraing Ta Chan Security Centre and the treatment of the detainees there, including interrogation and beatings. Having reviewed the material on the Case File relevant to this witness and noting the matters on which he is proposed to testify,<sup>64</sup> the Chamber finds that his testimony is likely to be substantially repetitive of evidence heard on these matters in Case 002/02 from several witnesses, including RIEL Son (2-TCW-860), CHANG Srey Mom (CHEANG Sreimom) (2-TCW-834), SREI Than, alias DUCH (2-TCW-944), PHANN Chhen (2-TCW-852), THANN Thim (2-TCCP-288), SORY Sen (SAY Sen) (2-TCCP-271), SAUT Saing (SOTR Saing) (2-TCCP-304), NUT Nov (2-TCW-948), EM Phoeung (2-TCW-954) and NEANG Ouch, alias Ta San (2-TCW-803).<sup>65</sup> The Chamber therefore decides not to summons this witness.

33. The Co-Prosecutors proposed TEP Ngoen's (2-TCW-930) testimony as being potentially relevant to the treatment of Buddhists, arrest and detention at Kraing Ta Chan Security Centre and living and working conditions in the Tram Kak Cooperatives.<sup>66</sup> Having reviewed the material on the Case File relevant to this witness and noting the matters on which she is

<sup>63</sup> See T. 17 March 2015 (RIEL Son); T. 29 January 2015 (CHANG Srey Mom (CHEANG Sreimom)); T. 27 January 2015 (EM Phoeung) and 16 February 2015 (EM Phoeung); T. 17 February 2015 (PHNEOU Yav); T. 25 February 2015 (PHANN Chhen).

<sup>64</sup> Complaint of TOEM Hi 08-VU-01680, E3/7073a, 18 August 2008; Written Record of Interview of TOEM Hy, E3/9605, 6 December 2013. The Chamber notes that it had initially deferred a decision on whether to call this witness until the trial topic on the Internal Purges. However, this witness was ultimately not selected for that topic as the Chamber found his evidence to be of lesser relevance than that of other individuals proposed by the Parties for that trial topic. See Reasons Following Decision on the NUON Chea Defence's Consolidated Rule 87(4) Request to hear Additional Witnesses for the First Case 002/02 Trial Segment on the Tram Kak Cooperatives and Kraing Ta Chan Security Centre and Decision on SANN Lorn (2-TCW-1007), SOU Phirin (2-TCW-1027) and IV Sarik (2-TCW-1026) (E346/2), E346/3, 31 March 2016, para. 52; *see also below*, paras 131-143.

<sup>65</sup> See T. 17-18 March 2015 (RIEL Son); T. 29 January 2015 (CHANG Srey Mom (CHEANG Sreimom)); T. 21 April 2015 (THANN Thim); T. 23-24 February 2015 (SREI Than, alias DUCH); T. 24-25 February 2015 (PHANN Chhen); T. 4 February 2015 (SORY Sen (SAY Sen)); T. 24 March 2015 (SAUT Saing (SOTR Saing)); T. 12 March 2015 (NUT Nov); T. 17 February 2015 (PHNEOU Yav); T. 10 March 2015 (NEANG Ouch, alias Ta San).

<sup>66</sup> Annex III: OCP Updated Witness, Civil Party and Expert Summaries (confidential), E305/6.4, 9 May 2014, p. 13; Confidential Co-Prosecutors' Rule 87(4) Motion Regarding Proposed Trial Witnesses for Case 002/02, E307/3/2, 28 July 2014, para. 43.

proposed to testify, the Chamber finds that her testimony in relation to the Tram Kak Cooperatives and Kraing Ta Chan Security Centre trial topic, including the treatment of the Buddhists, is likely to be substantially repetitive of evidence heard on these matters in Case 002/02 from several witnesses, including RIEL Son (2-TCW-860), CHANG Srey Mom (CHEANG Sreimom) (2-TCW-834), EM Phoeung (2-TCW-954), PHNEOU Yav (2-TCW-934), SREI Than, alias DUCH (2-TCW-944) PHANN Chhen (2-TCW-852), THANN Thim (2-TCCP-288), SORY Sen (SAY Sen) (2-TCCP-271), NUT Nov (2-TCW-948) and SAUT Saing (SOTR Saing) (2-TCCP-304).<sup>67</sup> The Chamber therefore decides not to summons this witness.

34. The Co-Prosecutors proposed Civil Party SAO Lan (2-TCCP-290) as being potentially relevant to arrests, detention, disappearances and executions at Kraing Ta Chan Security Centre, living and working conditions, security and the treatment of specific groups at the Tram Kak Cooperatives and the regulation of marriage.<sup>68</sup> Having reviewed the material on the Case File relevant to this Civil Party and noting the matters on which she is proposed to testify, the Chamber finds that her in-court statement in relation to the Tram Kak Cooperatives and Kraing Ta Chan Security Centre trial topic is likely to be substantially repetitive of evidence heard on these matters in Case 002/02 from several witnesses, including RIEL Son (2-TCW-860), PHNEOU Yav (2-TCW-934), CHANG Srey Mom (CHEANG Sreimom) (2-TCW-834), SREI Than, alias DUCH (2-TCW-944), PHANN Chhen (2-TCW-852), THANN Thim (2-TCCP-288), SORY Sen (SAY Sen) (2-TCCP-271), SAUT Saing (SOTR Saing) (2-TCCP-304), NUT Nov (2-TCW-948), EM Phoeung (2-TCW954) and NEANG Ouch, alias Ta San (2-TCW-803).<sup>69</sup> Further, while the Civil Party indicates that she attended an event at which 30 couples were allegedly forced to marry,<sup>70</sup> her examination in court on this topic is not necessary as her evidence is likely to be substantially repetitive of

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<sup>67</sup> See T. 17-18 March 2015 (RIEL Son); T. 29 January 2015 (CHANG Srey Mom (CHEANG Sreimom)); T. 27 January 2015 (EM Phoeung) and 16 February 2015 (EM Phoeung); T. 17 February 2015 (PHNEOU Yav); T. 25 February 2015 (PHANN Chhen); T. 12 March 2015 (NUT Nov); T. 4 February 2015 (SORY Sen (SAY Sen)); T. 24 March 2015 (SAUT Saing (SOTR Saing)); T. 21 April 2015 (THANN Thim).

<sup>68</sup> Annex III: OCP Updated Witness, Civil Party and Expert Summaries (confidential), E305/6.4, 9 May 2014, pp. 14, 38.

<sup>69</sup> See T. 17-18 March 2015 (RIEL Son); T. 29 January 2015 (CHANG Srey Mom (CHEANG Sreimom)); T. 21 April 2015 (THANN Thim); T. 23-24 February 2015 (SREI Than, alias DUCH); T. 24-25 February 2015 (PHANN Chhen); T. 4 February 2015 (SORY Sen (SAY Sen)); T. 24 March 2015 (SAUT Saing (SOTR Saing)); T. 12 March 2015 (NUT Nov); T. 17 February 2015 (PHNEOU Yav); T. 10 March 2015 (NEANG Ouch, alias Ta San).

<sup>70</sup> Supplementary Information of SAO Lan, E3/5904a, 3 October 2012, para. 3.

testimonies the Chamber has heard throughout Case 002/02.<sup>71</sup> The Chamber therefore decides not to summons this Civil Party.

### 5.3.2. *Individuals proposed by the Lead Co-Lawyers*

35. The Lead Co-Lawyers proposed Civil Party ORN/ORM Em (2-TCCP-297) as potentially relevant to various points of the Closing Order pertaining to the Tram Kak Cooperatives, including the alleged policy on worksites and cooperatives, the existence, structure, living and working conditions of the Tram Kak Cooperatives, the treatment of specific groups and the alleged role of the Accused in the implementation of the policy on cooperatives and worksites, without further elaboration.<sup>72</sup> Having reviewed the material on the Case File relevant to this Civil Party, the Chamber does not find her relevance in relation to the role of the Accused has been demonstrated.<sup>73</sup> As relates to the remainder of the information this Civil Party could provide to the Chamber, it is unclear whether he would be able to testify on living conditions at the Tram Kak Cooperatives.<sup>74</sup> In any event, to the extent to which he would be able to testify on the matters regarding the Tram Kak Cooperatives, the Chamber finds that this Civil Party's in-court statement is likely to be substantially repetitive of evidence heard on these matters in Case 002/02 from several witnesses and Civil Parties, including NUT Nov (2-TCW-948), RIEL Son (2-TCW-860), PHNEOU Yav (2-TCW-934), CHANG Srey Mom (CHEANG Sreimom) (2-TCW834), SREI Than, alias DUCH (2-TCW-944) PHANN Chhen (2-TCW-852), THANN Thim (2-TCCP-288), SORY Sen (SAY Sen) (2-TCCP-271), SAUT Saing (SOTR Saing) (2-TCCP-304), EM Phoeung (2-TCW-954) and NEANG Ouch, alias Ta San (2-TCW-803).<sup>75</sup> Finally, while this Civil Party's admitted application also provides an account of his own experience of forced marriage, his examination in court on this topic is not necessary as his evidence is likely to be substantially

<sup>71</sup> See e.g., T. 26-27 January 2015 (CHOU Koemlan); T. 26 January 2015 (OUM Suphany (OM Suphany)); T. 29 January 2015 (CHANG Srey Mom (CHEANG Sreimom)); T. 16 February 2015 (EM Phoeung); 17 February 2015 (PHNEOU Yav); T. 18 March 2015 (RIEL Son); T. 10-11 March 2015 (NEANG Ouch, alias Ta San). See also below, paras 145-160.

<sup>72</sup> Confidential Annex III: Confidential Updated Summaries of Witnesses, Civil Party and Experts (no protective measures sought) – Civil Party Lead Co-Lawyers, E305/7.1.3, 9 May 2014, p. 22.

<sup>73</sup> Supplementary Information of Civil Party applicant ORN Em, E3/4982, 8 February 2010, 22 April 2010, 22 June 2010.

<sup>74</sup> Civil Party Application of ORN Em, E3/6562, 25 February 2015.

<sup>75</sup> See T. 17-18 March 2015 (RIEL Son); T. 29 January 2015 (CHANG Srey Mom (CHEANG Sreimom)); T. 21 April 2015 (THANN Thim); T. 19, 23-24 February 2015 (SREI Than, alias DUCH); T. 24-25 February 2015 (PHANN Chhen); T. 4 February 2015 (SORY Sen (SAY Sen)); T. 24 March 2015 (SAUT Saing (SOTR Saing)); T. 27 January 2015 (EM Phoeung) and 16 February 2015 (EM Phoeung); T. 12 March 2015 (NUT Nov); T. 17 February 2015 (PHNEOU Yav); T. 10 March 2015 (NEANG Ouch, alias Ta San).

repetitive of testimonies the Chamber has heard throughout Case 002/02.<sup>76</sup> The Chamber therefore decides not to summons this Civil Party.

36. The Lead Co-Lawyers proposed Civil Party SENG Sivutha (2-TCCP-218) as potentially relevant to various points in the Closing Order pertaining to the Tram Kak Cooperatives, including the alleged policy on worksites and cooperatives, the existence, structure, living and working conditions, the treatment of specific groups and the alleged role of the Accused in the implementation of the policy on cooperatives and worksites.<sup>77</sup> SENG Sivutha was heard during the Case 002/01 proceedings regarding the harm she suffered during the Democratic Kampuchea.<sup>78</sup> Having reviewed the material relevant to this Civil Party and noting the matters on which she is proposed to testify, the Chamber finds that contrary to the Lead Co-Lawyers' submission that she can be relevant to the role of the Accused, the basis for this assumption has not been demonstrated.<sup>79</sup> Regarding the other matters on which she is proposed to be heard, the Chamber recalls that she has already been heard in Case 002/01 on her suffering and finds that any further in-court statement she may provide in relation to the Tram Kak Cooperatives and Kraing Ta Chan Security Centre trial topic is likely to be substantially repetitive of evidence already heard on these matters in Case 002/02 from several witnesses and Civil Parties, including NUT Nov (2-TCW-948), RIEL Son (2-TCE-860), PHNEOU Yav (2-TCW-934), CHANG Srey Mom (CHEANG Sreimom) (2-TCW-834), SREI Than, alias DUCH (2-TCW-844), PHANN Chhen (2-TCW-852), THANN Thim (2-TCCP-288), SORY Sen (SAY Seng) (2-TCCP-271), SAUT Saing (SOTR Saing) (2-TCCP-304) and EM Phoeung (2-TCW-954).<sup>80</sup> The Chamber therefore decides not to summons this Civil Party.

37. The Lead Co-Lawyers proposed SAUT Saroeun (2-TCCP-217) as potentially relevant to enslavement, detention and other crimes at the Tram Kak Cooperatives, as well as the

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<sup>76</sup> See for example T. 26-27 January 2015 (CHOU Koemlan); T. 26 January 2015 (OUM Suphany (OM Suphany)); T. 29 January 2015 (CHANG Srey Mom (CHEANG Sreimom)); T. 16 February 2015 (EM Phoeung); 17 February 2015 (PHNEOU Yav); T. 18 March 2015 (RIEL Son); T. 10-11 March 2015 (NEANG Ouch, alias Ta San). See also below, paras 145-160.

<sup>77</sup> Confidential Annex III: Confidential Updated Summaries of Witnesses, Civil Party and Experts (no protective measures sought) – Civil Party Lead Co-Lawyers, E305/7.1.3, 9 May 2014, pp. 32-33.

<sup>78</sup> T. 4 June 2013, pp. 90-117.

<sup>79</sup> Supplementary Information of SENG Sivutha, E3/4622a, 1 April 2011; Confidential Civil Party application of SENG Sivutha, E3/5745, 4 January 2010; Confidential Victim Unit's report on Civil Party Applicant, D22/3804/1, 30 April 2010.

<sup>80</sup> See T. 17-18 March 2015 (RIEL Son); T. 29 January 2015 (CHANG Srey Mom (CHEANG Sreimom)); T. 21 April 2015 (THANN Thim); T. 19, 23-24 February 2015 (SREI Than, alias DUCH); T. 24-25 February 2015 (PHANN Chhen); T. 4 February 2015 (SORY Sen (SAY Sen)); T. 24 March 2015 (SAUT Saing (SOTR Saing)); T. 3 March 2015 (VAN Soeun (VANN Soan)); T. 27 January 2015 (EM Phoeung) and 16 February 2015 (EM Phoeung); T. 12 March 2015 (NUT Nov); T. 17 February 2015 (PHNEOU Yav).

detention conditions at two prisons where he was detained.<sup>81</sup> Having reviewed the material on the Case File relevant to this Civil Party and noting the matters on which he is proposed to be heard, the Chamber notes that his in-court statement is likely to be limited to his imprisonment at Sanlong Mountain and Prey Kduoch prisons and the living conditions therein.<sup>82</sup> The Chamber notes that events in these two prisons are not mentioned in the Closing Order and his account in this regard would therefore go beyond the scope of Case 002/02.<sup>83</sup> As regards the crimes committed in the Tram Kak Cooperatives, the Trial Chamber finds that his in-court statement is likely to be substantially repetitive of evidence heard on these matters in Case 002/02 from several witnesses, including MEAS Sokha, alias Thlang (2-TCW-936), RIEL Son (2-TCW-860), EM Phoeung (2-TCW-954), PHNEOU Yav (2-TCW-934), NEACH Ouch, alias Ta San (2-TCW-803) and OUM Suphany (OM Suphany) (2-TCCP-296).<sup>84</sup> The Chamber therefore decides not to summons this Civil Party.

38. The Lead Co-Lawyers have included in their list four individuals - BUN Khen (2-TCCP-257), MOM Vanny (2-TCCP-265), CHHIM Chheak/Chiek (2-TCCP-239), PRUM Tra (2-TCCP-301) - whose proposed evidence apparently has no immediate link with the Tram Kak Cooperatives, but seems rather relevant to the treatment of Buddhists in various locations outside the Tram Kak district.<sup>85</sup> In this regard, the Chamber recalls that facts concerning the implementation of a policy targeting Buddhists should be limited to Tram Kak Cooperatives.<sup>86</sup> While the information contained in these Civil Parties' applications or related documents may be relevant to establish whether a policy to target Buddhists existed, the Chamber considers that the examination in court of these Civil Parties on such matter is of limited relevance and likely to be substantially repetitive of testimonies the Chamber has

<sup>81</sup> Confidential Annex III: Updated Summaries of Witnesses, Civil Party and Experts (no protective measures sought) – Civil Party Lead Co-Lawyers, E305/7.1.3, 9 May 2014, pp. 29-30.

<sup>82</sup> Confidential Civil Party application of SAUT Saroeun, E3/6477, 1 June 2009; Confidential Supplementary Information of SAUT Saroeun, E3/6477a, 5 December 2011.

<sup>83</sup> See Closing Order, paras 302-322. See also Decision on Sequencing of Trial Proceedings in Case 002/02, E315, 12 September 2014; Annex: List of paragraphs and portions of the Closing Order relevant to Case 002/02, E301/9/1.1.E315; 301/9/1.1.

<sup>84</sup> See T. 8 January 2015 (MEAS Sokha, alias Thlang); T. 21-22 January 2015 (MEAS Sokha, alias Thlang); T. 17-18 March 2015 (RIEL Son); T. 16 February 2015 (EM Phoeung); T. 17 February 2015 (PHNEOU Yav); T. 9-10 March 2015 (NEANG Ouch, alias Ta San); T. 22-23 January 2015 (OUM Suphany (OM Suphany)).

<sup>85</sup> In particular: AU village, Kmar commune, Pursat province (BUN Khen, 2-TCCP-257, see Civil Party Application of BUN Khen, E3/6185, 9 January 2008); Svay At Pagoda, Prey Veng district, Prey Veng province (MOM Vanny 2-TCCP-265, see Civil Party Application of MOM Vanny, E3/6668, 16 October 2009); Wat Damnak Trayoeng, Damnak village, Khcheay Khang Cheung commune, Dang Tong district, Kampot province (CHHIM Chheak/Chiek 2-TCCP-239, see Additional information of the Victim, E3/4711, 1 June 2009); Roveang district, Preah Vihear province (PRUM Tra 2-TCCP-301, see Civil Party Application of PRUM Tra, E3/6642, 7 August 2009).

<sup>86</sup> Decision on Additional Severance of Case 002 Scope of Case 002/02, E301/9/1, 4 April 2014, para. 38; Decision on Sequencing of Trial Proceedings in Case 002/02, E315, para. 14.

heard throughout Case 002/02.<sup>87</sup> The Chamber therefore decides not to summons these Civil Parties.

### 5.3.3. *Individuals proposed by the NUON Chea Defence*

39. The NUON Chea Defence proposed CHHANG Youk (2-TCW-870), Executive Director of the Documentation Center of Cambodia ('DC-CAM'), to testify on the content, authenticity and chain of custody of DC-CAM documents. The Defence asserted that his insight may assist in establishing facts including but not limited to S-21 and Kraing Ta Chan.<sup>88</sup> The Chamber recalls that CHHANG Youk (2-TCW-870) previously testified before the Chamber in the Case 002/01 proceedings and that this testimony is already admitted in Case 002.<sup>89</sup> Having reviewed CHHANG Youk (2-TCW-870)'s prior testimony, which includes evidence on the background of DC-CAM as well as DC-CAM's collection and processing of documents,<sup>90</sup> the Chamber finds that his proposed testimony in Case 002/02 is likely to be substantially repetitive of his Case 002/01 testimony. Specifically concerning evidence on the chain of custody and location of a number of original documents relevant to Kraing Ta Chan, the Chamber notes that it has denied a NUON Chea Defence request to hear two additional witnesses on this issue. The Chamber ruled that it was not convinced that the testimony of the proposed additional witnesses was suitable to prove the facts it was purported to prove and found that engaging in additional investigations at this stage to locate the original of these documents would cause an unreasonable delay to the proceedings.<sup>91</sup> For the above reasons, the Chamber decides not to summons CHHANG Youk (2-TCW-870).

<sup>87</sup> See T. 17 March 2015 (RIEL Son); T. 17 February 2015 (PHNEOU Yav); T. 29 January 2015 (CHANG Srey Mom (CHEANG Sreimom); T. 27 January 2015 (EM Phoeung); T. 16 February 2015 (EM Phoeung); T. 7-8 May 2015 (KHOEM Boeun, alias Yeay Boeun); T. 22-23 April 2015 (PECH Chim, alias TA Chim); T. 5 October 2015 (BAN Seak (BAN Siek), alias HANG Phos); T. 16 September 2015 (TAY Koemhun (TAY Kimhuon), alias Kimhuon); T. 1-2 March 2016 (UCH Sunlay).

<sup>88</sup> Confidential Annex B: Updated Summaries of Witnesses, Civil Parties and Experts (no protective measures sought), Nuon Chea Defence Team, E305/4.2, 8 May 2014, p. 3.

<sup>89</sup> Trial Chamber memorandum entitled "Clarification regarding the use of evidence and the procedure for recall of witnesses, Civil Parties and experts from Case 002/01 in Case 002/02", E302/5, 7 February 2014, para. 7. See T. 1 February 2012, 2 February 2012 and 3 February 2012.

<sup>90</sup> See T. 1 February 2012, 2 February 2012 and 3 February 2012; Written Record of Interview of CHHANG Youk, E3/188, 28 May 2009.

<sup>91</sup> Reasons Following Decision on the NUON Chea Defence's Consolidated Rule 87(4) Request to Hear Additional Witnesses for the First Case 002/02 Trial Segment on the Tram Kak Cooperatives and Kraing Ta Chan Security Centre and Decision on SANN Lorn (2-TCW-1007), SOU Phirin (2-TCW-1027) and IV Sarik (2-TCW-1026) (E346/2), 346/3, 31 March 2016, paras 55- 64. As regards the S-21 documents, see below, paras 124-126.

#### 5.4. General Witnesses

40. The Chamber also recalls that the individuals proposed by the KHIEU Samphan Defence are relevant to a range of Case 002/02 topics, including but not limited to this one. They are addressed in other sections of this decision.<sup>92</sup> The Trial Chamber has already rejected the requests to call Stephen HEDER (2-TCE-87) and François PONCHAUD (2-TCE-99)<sup>93</sup> and confirmed that Michael VICKERY (2-TCE-94) would not testify as an expert in this case.<sup>94</sup>

### 6. PROPOSED WITNESSES, CIVIL PARTIES AND EXPERTS FOR THE WORKSITES TRIAL TOPIC

41. The Co-Prosecutors and Lead Co-Lawyers proposed that the Chamber hear the following witnesses and Civil Parties on the worksites at the 1<sup>st</sup> January Dam, the Kampong Chhnang Airport and the Trapeang Thma Dam:

#### 6.1. 1<sup>st</sup> January Dam Worksite

(a) The Co-Prosecutors:

1. IENG Chham (2-TCW-912);
2. PECH Sokha (2-TCW-909);
3. Um Chi (2-TCW-926);
4. YEAN Lun (2-TCW-830);
5. UT Seng (2-TCW-804);
6. MEAS Laihuo (2-TCW-851);
7. SOU Soeun (2-TCW-887);
8. KE Un (2-TCW-896) (reserve witness);
9. KANG Ut (2-TCW-855) (reserve witness); and
10. AU Hau (2-TCW-836) (reserve witness).<sup>95</sup>

<sup>92</sup> Roel BURGLER (2-TCE-96), Philip SHORT (2-TCE-92) and Michael VICKERY (2-TCE-94) are addressed in the general section on experts, *see below*, paras 187, 190, 193-194. *See Annexe III: Résumés actualisés des déclarations des témoins et des experts qui ne demandent l'octroi d'aucune mesure de protection*, E305/5.2, 9 May 2014; *Demande de la Défense de M. KHIEU Samphân tendant à la comparaison d'un nouvel expert au cours du procès 002/02 (règle 87-4 du Règlement intérieur)*, E307/2, 19 June 2014.

<sup>93</sup> The Trial Chamber rejected the requests to call Stephen HEDER (2-TCE-87) and François PONCHAUD (2-TCE-99). *See Decision on Reiterated Request of KHIEU Samphan Defence to Hear Stephen HEDER (2-TCE-87) and François PONCHAUD (2-TCE-99)* (E408/6), E408/6/2, 3 November 2016.

<sup>94</sup> *See Outstanding issues relating to Expert Michael VICKERY (2-TCE-94)*, E408/5, 4 August 2016; *see below* paras 187-194.

<sup>95</sup> Annex I: Co-Prosecutors' Revised Combined Witness, Civil Party and Expert List for Case 002/02 in Recommended Order of Trial Segments and Appearance (July 2014)(confidential), E307/3/2.2, 28 July 2014, p. 2.

## (b) The Lead Co-Lawyers:

1. CHEA Marie (2-TCCP-294);
2. CHHOEM Rin (alias CHHIM Rin) (2-TCCP-228);
3. HUN Sethany (2-TCCP-255);
4. ROS Chay Laim (2-TCCP-278);
5. SEANG Sovida (2-TCCP-273);
6. TULOH Slai Man (2-TCCP-227);
7. TY Pho (2-TCCP-229); and
8. UN Ran (2-TCCP-230).<sup>96</sup>

6.2. **Kampong Chhnang Airport**

## (a) The Co-Prosecutors:

1. KHIN Vat (2-TCW-866);
2. KEO Leou (alias KEV Sophal) (2-TCW-932);
3. KEV Kin (2-TCW-910);
4. TES Trech (2-TCW-891);
5. CHAN Man (2-TCW-975);
6. SEM Hoeun (2-TCW-943) (reserve witness);<sup>97</sup>
7. SUM Sokhan (2-TCW-911) (reserve witness);
8. HIM Han (2-TCW-901) (reserve witness); and
9. CHE Heap (2-TCCP-275) (reserve witness).<sup>98</sup>

## (b) The Lead Co-Lawyers:

1. CHUM Samocurn (2-TCCP-247); and
2. KONG Siek (2-TCCP-261).<sup>99</sup>

<sup>96</sup> Confidential Annex IV: Proposed Order of Segments- Civil Parties Lead Co-Lawyers, E305/7.1.4, 9 May 2014, p. 3.

<sup>97</sup> SEM Hoeun (2-TCW-943) was previously proposed by the Co-Prosecutors as witness for this trial topic, but was subsequently withdrawn and listed as a reserve witness; *see* Co-Prosecutors' Rule 87(4) Motion Regarding Proposed Trial Witnesses for Case 002/02 (confidential), E307/3/2, 28 July 2014, para. 23, fn. 37.

<sup>98</sup> Annex I: Co-Prosecutors' Revised Combined Witness, Civil Party and Expert List for Case 002/02 in Recommended Order of Trial Segments and Appearance (July 2014) (confidential), E307/3/2.2, 28 July 2014, p. 2; PRAK Yoeun (2-TCW-882) and KOY Mon (2-TCW-879) were previously proposed by the Co-Prosecutors as witnesses for this trial topic, but were subsequently withdrawn; KOY Mon (2-TCW-879) was identified as deceased; *see* Co-Prosecutors' Rule 87(4) Motion Regarding Proposed Trial Witnesses for Case 002/02 (confidential), E307/3/2, 28 July 2014, para. 23; Interoffice Memorandum from Witness and Expert Support Unit to Senior Legal Officer of Trial Chamber entitled "Deceased: TCW-356, HIM Hun, also known as KOY Mon" (confidential), E236/1/3, 25 January 2013; the Chamber notes that CHE Heap (2-TCCP-275) was heard during the hearing on harm suffered by the Civil Parties during the trial topic on Security Centres and Internal Purges, *see* para. 98.

<sup>99</sup> Confidential Annex IV: Proposed Order of Segments- Civil Parties Lead Co-Lawyers, E305/7.1.4, 9 May 2014, p. 3.

### 6.3. Trapeang Thma Dam

#### 1. The Co-Prosecutors:

1. SAOM Phan (2-TCW-876);
2. LAT Suoy (2-TCW-889);
3. SOT Phal (2-TCW-845);
4. PAN Chhuong (2-TCW-918);
5. CHHIT Yoeuk (2-TCW-937);
6. CHHUM Seng (2-TCW-828);
7. CHHIT In (2-TCW-861);
8. CHHUY Huy (2-TCW-915) (reserve witness);
9. IM Chaem (2-TCW-924) (reserve witness);
10. KAN Thol (2-TCW-881) (reserve witness);
11. HENG Samuot (2-TCW-858) (reserve witness); and
12. YI Laisauv (2-TCW-841) (reserve witness).<sup>100</sup>

#### 2. The Lead Co-Lawyers:

1. TÂK Buy (2-TCW-908);
2. NHIP Horl (2-TCCP-269);
3. ORM Mâk (2-TCCP-284);
4. SEN Sophon (2-TCCP-220); and
5. THUN Hâm (2-TCCP-279).<sup>101</sup>

42. The KHIEU Samphan Defence did not propose any witness, Civil Party or expert whose testimony would relate directly to the 1<sup>st</sup> January Dam, Kampong Chhnang Airport or the Trapeang Thma Dam worksites. The KHIEU Samphan Defence proposed experts Roel BURGLER (2-TCE-96), Philip SHORT (2-TCE-92), Michael VICKERY (2-TCE-94), Stephen HEDER (2-TCE-87) and François PONCHAUD (2-TCE-99) to provide testimony on cooperatives and worksites generally, among other subjects.<sup>102</sup> Likewise, the NUON Chea Defence proposed witnesses CHEA Sim (2-TCW-878), CHHEM Neang (2-TCW-899), POL Saroeun (2-TCW-962), HENG Samrin (2-TCW-831), Richard DUDMAN (2-TCW-923),<sup>103</sup>

<sup>100</sup> Annex I: Co-Prosecutors' Revised Combined Witness, Civil Party and Expert List for Case 002/02 in Recommended Order of Trial Segments and Appearance (July 2014)(confidential), E307/3/2.2, 28 July 2014, p. 2.

<sup>101</sup> Confidential Annex IV: Proposed Order of Segments- Civil Parties Lead Co-Lawyers, E305/7.1.4, 9 May 2014, p. 3.

<sup>102</sup> *Ordonnance aux fins du dépôt de pièces actualisées dans le cadre de la préparation du procès 002/02* (confidential), E305/5.2, 9 May 2014, pp. 2-6.

<sup>103</sup> See Tram Kak Cooperatives and Kraing Ta Chan Security Centre section. The Chamber notes that the name of POL Saroeun (2-TCW-962) appears to have been misspelled in the NUON Chea Defence Revised List. The Chamber will use the correct spelling of the name. See Confidential Annex B – New Witness, Civil Party and Expert Summaries for Case 002/02 – NUON Chea Defence Team, E307/4.3, 24 July 2014, p. 2.

CHHANG Youk (2-TCW-870) and experts Laura SUMMERS (2-TCE-100), Ewa TABEAU (2-TCE-93) and Roel BURGLER (2-TCE-96) to testify generally on cooperatives and worksites.<sup>104</sup> The NUON Chea Defence also proposed Michael VICKERY (2-TCE-94) as an expert to testify specifically on the 1<sup>st</sup> January Dam, Kampong Chhnang Airport and Trapeang Thma Dam worksites.<sup>105</sup>

#### **6.4. Witnesses, Civil Parties and Experts heard by the Chamber**

##### **6.4.1. 1<sup>st</sup> January Dam**

43. The Trial Chamber selected and heard the following witnesses and Civil Parties in relation to the 1<sup>st</sup> January Dam site: Witness OR Ho (AU Hau) (2-TCW-836), Witness PECH Sokha (2-TCW-909), Witness MEAS Laihour (MEAS Laihuo) (2-TCW-851), Witness UTH Seng (UT Seng) (2-TCW-804), Witness SOU Soeurn (SOU Soeun) (2-TCW-887), Witness YEAN Lon (YEAN Lun) (2-TCW-830), Witness KONG Uth (KANG Ut) (2-TCW-855), Witness OM Chy (UM Chi) (2-TCW-926), Civil Party HUN Sethany (2-TCCP-255), Civil Party UN Rann (2-TCCP-230), Civil Party SEANG Sovida (2-TCCP-273).

44. The Chamber also heard the following Civil Parties on the harm they suffered during the Democratic Kampuchea era: NUON Narom (2-TCCP-991) and CHAO Lang (2-TCCP-992).

45. In total, the Trial Chamber heard 8 witnesses and 5 Civil Parties during the trial segment allocated to the 1<sup>st</sup> January Dam site.

##### **6.4.2. Kampong Chhnang Airport**

46. The Trial Chamber selected and heard the following witnesses and Civil Parties in relation to the Kampong Chhnang Airport worksite: CHAN Morn (Chan Man) (alias CHUP Sokhon alias KUY alias Et) (2-TCW-975), KEO Kin (KEV Kin) (2-TCW-910); HIM Han (alias Ream) (2-TCW-901); KEO Loeur (KEO Leou) (alias KEV Sophal) (2-TCW-932); SEM Hoeurn (SEM Hoeun) (2-TCW-943); KHIN Vat (2-TCW-866); KONG Siek (2-TCCP-261) and CHUM Samoeurn (2-TCCP-247). In total, the Trial Chamber heard 6 witnesses and 2 Civil Parties during this trial segment.

<sup>104</sup> Confidential Annex B: Updated Summaries of Witnesses, Civil Parties and Experts (no protective measures sought)- Nuon Chea Defence Team, E305/4.2, 8 May 2014, pp. 3, 20, 21; Confidential Annex B – New Witness, Civil Party and Expert Summaries for Case 002/02 – NUON Chea Defence Team, E307/4.3, 24 July 2014, p. 4.

<sup>105</sup> Confidential Annex B: Updated Summaries of Witnesses, Civil Parties and Experts (no protective measures sought)- Nuon Chea Defence Team, E305/4.2, 8 May 2014, pp. 22-23.

47. TES Trech (2-TCW-891) was proposed as a witness in relation to the Kampong Chhnang Airport worksite. He served as a soldier and medic and previously stated that he witnessed several unit chiefs and superiors arrested.<sup>106</sup> The Chamber notes that TES Trech (2-TCW-891) is the same person as NUON Trech (TES Ol; TES Trech) (2-TCW-1060) and that the Chamber granted the NUON Chea Defence request to hear NUON Trech (TES Ol; TES Trech) (2-TCW-1060) as a witness in relation to the topic on Internal Purges.<sup>107</sup>

#### 6.4.3. Trapeang Thma Dam

48. The Trial Chamber selected and heard the following witnesses and Civil Parties in relation to the Trapeang Thma Dam worksite: Witness MAM Soeurm (alias HENG Samuoth (Samout)) (2-TCW-858), Witness KAN Thol (KAN Thor) (2-TCW-881), Witness LAT Suoy (2-TCW-889), Witness CHHIT Yoek (2-TCW-937), Witness CHHUM Seng (2-TCW-828), Witness TÂK Boy (TÂK Buy) (2-TCW-908), Witness LING Lrysov (YI Laisauv) (2-TCW-841), Witness CHHUY Huy (2-TCW-915), Witness MUN Mot (2-TCW-996),<sup>108</sup> Witness SOT Sophal (SOT Phal) (2-TCW-845), Witness PAN Chhuong (2-TCW-918), Civil Party SEN Sophon (2-TCCP-220) and Civil Party NHIP Horl (2-TCCP-269).

49. The Trial Chamber also heard Civil Parties SAM Sak (2-TCCP-993) and MEAN Loeuy (2-TCCP-994) on the harm they suffered during the Democratic Kampuchea period. In total, the Trial Chamber heard 11 witnesses and 4 Civil Parties during this trial segment.

#### 6.5. Deceased or withdrawn

50. The following witnesses could not be considered as they were deceased:

1. KE Un (2-TCW-896)<sup>109</sup>
2. IENG Chham (2-TCW-912)<sup>110</sup>
3. CHHIT In (2-TCW-861)<sup>111</sup>

The requests to summons them are therefore moot.

<sup>106</sup> Written Record of Interview of TES Trech, E3/7877, 19 June 2009.

<sup>107</sup> Decision on NUON Chea Defence Requests to Hear Additional Witnesses Pursuant to Internal Rule 87(4) (E391, E392, E395, E412, and E426) (confidential), E443, 21 September 2016.

<sup>108</sup> Decision on NUON Chea's Rule 87(4) Request to Hear One Additional Witness for the Trial Topic on the Trapeang Thma Dam Worksite (confidential), E368/1, 22 October 2015.

<sup>109</sup> Witness Expert Support Unit (WESU) Report – Reported Deceased of KE Un (confidential), E29/471, 10 June 2015; Copy of Death Certificate of KE Un, E29/471.1, 28 February 2015.

<sup>110</sup> Witness Expert Support Unit Report – Reported Deceased of IENG Chham (confidential), E29/468, 21 February 2015; Death Certificate (confidential), E29/468.1, 18 June 2012.

<sup>111</sup> Witness Expert Support Unit (WESU) Report – CHHIT In (confidential), E29/475, 10 November 2015.

51. While initially the Trial Chamber issued a summons to hear proposed Witness SAOM Phan (2-TCW-876),<sup>112</sup> it eventually decided he would no longer be called to testify due to a serious health condition.<sup>113</sup>

#### **6.6. Proposed testimony of IM Chaem (2-TCW-924)**

52. The Co-Prosecutors proposed witness IM Chaem (2-TCW-924) to testify with respect to the Trapeang Thma Dam worksite and her involvement in the Dam's construction by sending people from her district to the site, by setting work targets and by personally visiting the site. The proposed summary of her testimony, offered to prove the relevance of her evidence, indicated that she would also describe KHIEU Samphan's frequent visits to the site to examine the progress of the project, and testify about the authority structure of the Northwest Zone, Sector 5 and Preah Net Preah District. The Co-Prosecutors further submitted that IM Chaem (2-TCW-924) could testify to the thousands of deaths in her district from execution, starvation and disease and the implementation of the upper echelon's policy to arrest enemies in the area and the arrest of several senior cadres.<sup>114</sup>

53. The Trial Chamber notes that on 18 December 2015, the Co-Investigating Judges filed a notice of conclusion of judicial investigation against IM Chaem (2-TCW-924), who had been charged in absentia by the International Co-Investigating Judge of the ECCC for crimes allegedly committed during the Democratic Kampuchea period.<sup>115</sup> On 5 February 2016, the Co-Investigating Judges severed IM Chaem (2-TCW-924) from Case 004.<sup>116</sup> From the information made public by the organs of the ECCC, the Chamber concludes that many of the allegations falling within the scope of the current trial largely overlap with those contained in the scope of the judicial investigation against IM Chaem (2-TCW-924).<sup>117</sup>

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<sup>112</sup> See Summons of Witness SAOM Phan (confidential), E202/188, 6 July 2015.

<sup>113</sup> Witness Expert Support Unit (WESU) Report – SAOM Phan 2-TCW-876 (strictly confidential), E29/483, 1 April 2016.

<sup>114</sup> Confidential Annex IIIA – OCP Updated Alternate Witness, Civil Party and Expert Summaries [Reserves] (confidential), E305/6.5, 9 May 2014, p. 10.

<sup>115</sup> Notice of Conclusion of Judicial Investigation against IM Chaem (OCIJ), D285, 18 December 2015.

<sup>116</sup> Order for Severance of IM Chaem from Case 004, D286/7, 5 February 2016.

<sup>117</sup> The Chamber notes that on 22 February 2017, the Co-Investigating Judges dismissed the case against IM Chaem (2-TCW-924): Press Release, Co-Investigating Judges Dismiss Case Against IM Chaem, 22 February 2017. See also Public Redacted Closing Order (Reasons) (OCIJ), D308/3, 10 July 2017. However, this decision is subject to appeal and thus IM Chaem (2-TCW-924) still remains a charged person. For the purposes of Case 002/02, on 11 January 2017, the Trial Chamber declared that the evidentiary hearings were closed and adjourned proceedings until the closing arguments on 5 June 2017: T. 11 January 2017 (draft), p. 35.

54. The Trial Chamber recalls that Internal Rule 24(4) stipulates that the Chamber should not call as a witness “any person against whom there is evidence of criminal responsibility, except as provided in Rule 28”. Taking into consideration the framework foreseen by Internal Rules 28(3)(b) and 28(5), the Chamber decides, given the specific context of this case not to call IM Chaem (2-TCW-924) to testify as a witness.

## 6.7. **Repetitive and/or Irrelevant and/or Less Relevant**

### 6.7.1. **1<sup>st</sup> January Dam**

55. The Lead Co-Lawyers proposed Civil Parties CHEA Marie (2-TCCP-294), CHHOEM Rin (2-TCCP-228), ROS Chay Laim (2-TCCP-278), TULOH Slai Man (2-TCCP-227) and TY Pho (2-TCCP-229) to testify on living and working conditions at the 1<sup>st</sup> January Dam worksite, including forced labour, lack of food and medical care, and the mistreatment and execution of prisoners.<sup>118</sup> Having reviewed the material on the Case File relevant to these individuals<sup>119</sup> and noting the matters on which they are proposed to testify, the Chamber finds that their in-court statements on living and working conditions at the 1<sup>st</sup> January Dam worksite are likely to be substantially repetitive of the evidence heard on these matters in Case 002/02 from several witnesses, including KONG Uth (2-TCW-855), SOU Soeurn (2-TCW-887), OR Ho (2-TCW-836), YEAN Lon (YEAN Lun) (2-TCW-830) and OM Chy (UM Chi) (2-TCW-926) and Civil Parties CHAO Lang (2-TCCP-992), SEANG Sovida (2-TCCP-273), UN Rann (2-TCCP-230) and HUN Sethany (2-TCCP-255).<sup>120</sup> Therefore, the Trial Chamber decides not to summons these Civil Parties.

56. The Chamber notes that the summary of CHEA Marie (2-TCCP-294)’s proposed evidence indicated that she could also testify about “medical experimentations” conducted on people.<sup>121</sup> However, the Chamber finds that the supplemental information to her Civil Party

<sup>118</sup> Confidential Annex III: Updated Summaries of Witnesses, Civil Party and Experts (no protective measures sought) – Civil Party Lead Co-Lawyers, E305/7.1.3, 9 May 2014, pp. 5, 6, 27-28, 37.

<sup>119</sup> See Civil Party Application of CHEA Marie (confidential), E3/5085, 31 May 2009; Supplementary Information of Civil Party CHEA Marie (confidential), E3/5085A, 28 May 2014; Civil Party Application of CHHIM Rin, E3/6324, 27 February 2008; Civil Party Application of ROS Chay Laim, E3/6849, 28 March 2008 (confidential); Supplementary Information of Civil Party Applicant TOULORS Slai Man (confidential), E3/6545A, 7 April 2010; Civil Party Application of TY Pho (confidential), E3/6899, 28 January 2010; Supplementary Information of Civil Party Application of THY Pho (confidential), E3/6899A, 9 June 2010.

<sup>120</sup> See T. 25 June 2015 (KONG Uth); T. 4-5 June 2016 (SOU Soeurn); T. 19-20 May 2015 (OR Ho); T. 16-17 June 2015 (YEAN Lon); T. 30 July 2015 (OM Chy); T. 1 September 2015 (CHAO Lang); T. 2 June 2015 (SEANG Sovida); T. 27-28 May 2015 (UN Ron); T. 26-27 May 2016 (HUN Sethany).

<sup>121</sup> Confidential Annex III: Updated Summaries of Witnesses, Civil Party and Experts (no protective measures sought) – Civil Party Lead Co-Lawyers, E305/7.1.3, 9 May 2014, p. 5.

application does not support this as she only describes the medical treatment and injections which were given to her and others and expresses her uncertainty about what they were receiving.<sup>122</sup> The Chamber finds that her in-court statement in relation to the lack of medical care received by those at the 1<sup>st</sup> January Dam worksite is likely to be substantially repetitive of the evidence heard in Case 002/02 from several witnesses and Civil Parties, including YEAN Lon (YEAN Lun) (2-TCW-830) and OM Chy (UM Chi) (2-TCW-926) and Civil Parties CHAO Lang (2-TCCP-992), SEANG Sovida (2-TCCP-273), and HUN Sethany (2-TCCP-255).<sup>123</sup> Therefore, the Trial Chamber decides not to summons CHEA Marie (2-TCCP-294).

### 6.7.2. Kampong Chhnang Airport

57. The Co-Prosecutors proposed SUM Sokhân (2-TCW-911) as a reserve witness to testify about the working and living conditions, authority structure, and the death and disappearance of workers at the Kampong Chhnang Airport site.<sup>124</sup> Having reviewed the material on the Case File relevant to SUM Sokhân (2-TCW-911)<sup>125</sup> and noting the matters on which he is proposed to testify, the Chamber finds that his testimony in relation to the Kampong Chhnang Airport site is likely to be substantially repetitive of the evidence heard on these matters in Case 002/02 from several witnesses, including CHAN Morn (2-TCW-975), KEO Kin (2-TCW-910), KEO Loeur (2-TCW-932) and HIM Han (2-TCW-901).<sup>126</sup> The Chamber therefore decides not to summons this witness.

### 6.7.3. Trapeang Thma Dam

58. The Lead Co-Lawyers proposed Civil Parties ORM Mâk (2-TCCP-284) and THUN Hâm (2-TCCP-279) to be heard on the treatment of prisoners and working conditions at the Trapeang Thma Dam worksite.<sup>127</sup> According to the summary of his proposed evidence ORM

<sup>122</sup> Supplementary Information of Civil Party CHEA Marie (confidential), E3/5085A, 28 May 2014.

<sup>123</sup> See T. 16-17 June 2015 (YEAN Lon); T. 30 July 2015 (OM Chy); T. 1 September 2015 (CHAO Lang); T. 2 June 2015 (SEANG Sovida); T. 26-27 May 2016 (HUN Sethany).

<sup>124</sup> See Annex IIIA –OCP Updated Alternate Witness, Civil Party and Expert Summaries [Reserves] (confidential), E305/6.5, 9 May 2014, p. 11.

<sup>125</sup> See Written Record of Interview of SUM Sokhân, E3/5274, 13 February 2009.

<sup>126</sup> See T. 9-10 June 2015 (CHAN Morn); T. 10-11 June 2015 (KEO Kin); T. 12, 15-16 June 2015 (KEO Loeur), T. 23-24 June 2015 (HIM Han).

<sup>127</sup> Confidential Annex III: Updated Summaries of Witnesses, Civil Party and Experts (no protective measures sought) – Civil Party Lead Co-Lawyers, E305/7.1.3, 9 May 2014, pp. 21-22, 35-36.

Mâk (2-TCCP-284) could also speak to the persecution of former Khmer Republic soldiers.<sup>128</sup> Having reviewed the material on the Case File relevant to these individuals<sup>129</sup> and noting the matters on which they are proposed to be heard, the Chamber finds that their in-court statements on the treatment of prisoners and working conditions at the Trapeang Thma Dam worksite are likely to be substantially repetitive of the evidence heard on these matters in Case 002/02 from several witnesses and Civil Parties, including YI Laisov (2-TCW-841), CHHUY Huy (2-TCW-915), SEN Sophon (2-TCCP-220), KAN Thol (2-TCW-881), CHHUM Seng (2-TCW-828) and PAN Chhuong (2-TCW-918).<sup>130</sup> In addition, the Chamber finds that ORM Mâk (2-TCCP-284)'s evidence on the targeting of former Khmer Republic soldiers is likely to be substantially repetitive of the evidence heard on these matters in Case 002/02 from several witnesses, including SEN Sophon (2-TCCP-220), KAN Thol (2-TCW-881) and CHHUM Seng (2-TCW-828).<sup>131</sup> The Chamber therefore decides not to summons these Civil Parties.

#### 6.8. General witnesses

59. The KHIEU Samphan and NUON Chea Defence proposed several witnesses to testify generally on cooperatives and worksites, among other subjects.<sup>132</sup> However, the proposed subject matter of the testimony of many of these witnesses is more closely related to other trial topics. Therefore the Chamber's analysis on whether to call these witnesses is addressed in other sections of this decision. CHHANG Youk (2-TCW-870) is addressed in the Tram Kak Cooperatives and Kraing Ta Chan Security Centre section. POL Saroeun (2-TCW-962), HENG Samrin (2-TCW-831) will be addressed in the Security Centres and Internal Purges section. Philip SHORT (2-TCE-92), Laura SUMMERS, (2-TCE-100), Ewa TABEAU (2-TCE-93), and Roel BURGLER (2-TCE-96) will be addressed in the section on proposed experts.

<sup>128</sup> Confidential Annex III: Updated Summaries of Witnesses, Civil Party and Experts (no protective measures sought) – Civil Party Lead Co-Lawyers, E305/7.1.3, 9 May 2014, pp. 21-22.

<sup>129</sup> See Civil Party Application of ORM Mâk (confidential), E3/6589, 16 August 2009; Supplementary Information of Civil Party Applicant ORM Mâk, E3/6589a, 12 June 2010; Civil Party Application of THUN Hâm, E3/6630, 6 July 2009.

<sup>130</sup> See T. 20 August 2015 (YI Laisov); T. 24 August 2015 (CHHUY Huy); T. 27-28 July 2015 (SEN Sophon); T. 10-11 August 2015 (KAN Thol); T. 17-19 August 2015 (CHHUM Seng); T. 30 November 2015, 1-2 December 2015 (PAN Chhuong).

<sup>131</sup> See T. 27-28 July 2015 (SEN Sophon); T. 11 August 2015 (KAN Thol); T. 17-19 August 2015 (CHHUM Seng).

<sup>132</sup> Confidential Annex B: Updated Summaries of Witnesses, Civil Parties and Experts (no protective measures sought)- Nuon Chea Defence Team, E305/4.2, 8 May 2014, pp. 1-6, 12, 20-22; Confidential Annex B – New Witness, Civil Party and Expert Summaries for Case 002/02 – NUON Chea Defence Team, E307/4.3, 24 July 2014, pp. 2, 4.

60. In addition, the Chamber notes that CHEA Sim (2-TCW-878), who was proposed by the NUON Chea Defence, is deceased and thus could not be considered.<sup>133</sup> The Trial Chamber has already rejected the requests to call Stephen HEDER (2-TCE-87) and François PONCHAUD (2-TCE-99)<sup>134</sup> and confirmed that Michael VICKERY (2-TCE-94) would not testify as an expert in this case.<sup>135</sup>

## **7. PROPOSED WITNESSES, CIVIL PARTIES AND EXPERTS FOR THE TREATMENT OF TARGETED GROUPS TRIAL TOPIC**

61. The Trial Chamber notes that the Treatment of Buddhists was limited to Tram Kak Cooperatives in Case 002/02 and is therefore dealt with in the section on the Tram Kak Cooperatives.<sup>136</sup>

### **7.1. The Treatment of the Vietnamese**

62. The Co-Prosecutors and Lead Co-Lawyers proposed that the Chamber hear the following witnesses, Civil Parties and experts on the Treatment of the Vietnamese:

(a) The Co-Prosecutors:

1. HINTON Alexander Laban (2-TCE-88);
2. KHUN Mon (2-TCW-958);
3. LACH Kri (2-TCCP-844);
4. CHHUON Ri (2-TCW-843);
5. DIN Oeun (2-TCCP-869);
6. LENG Samet alias Tech (2-TCW-957);
7. LANG Hel (2-TCW-927);
8. IER Pov (2-TCW-874);
9. UNG Ien (2-TCW-805);
10. BOU Van (2-TCW-939);
11. SIN Chhem (2-TCW-820);
12. IN Yoeung (2-TCW-849);
13. Y Vun (2-TCW-846);
14. SEAN Sung (2-TCW-868);

<sup>133</sup> See NUON Chea's Request to Reconsider Admitting One Extract and to Admit Two Additional Extracts from the Human Rights Watch Report '30 Years of HUN Sen', 11 December 2015, E347/2, fn. 46, referring to *CPP President CHEA Sim Dead* (SAING Soenthrith, The Cambodia Daily), 8 June 2015.

<sup>134</sup> The Trial Chamber rejected the requests to call Stephen HEDER (2-TCE-87) and François PONCHAUD (2-TCE-99). See Decision on Reiterated Request of KHIEU Samphan Defence to Hear Stephen HEDER (2-TCE-87) and François PONCHAUD (2-TCE-99) (E408/6), E408/6/2, 3 November 2016.

<sup>135</sup> See Outstanding issues relating to Expert Michael VICKERY (2-TCE-94), E408/5, 4 August 2016; see also below paras 187-194.

<sup>136</sup> See above, paras 30-38.

15. PRAK Doeun (2-TCCP-300);
16. PRUM Sarun (2-TCW-945);
17. KHOUY Muoy alias KHAUNG Muoy (2-TCCP-259);
18. CHUOP Kep (2-TCW-905);
19. PEOU Sinuon (POV Sinuon) (2-TCCP-295);
20. UK Soeum alias SAN Soeun (2-TCW-806);
21. TABEAU Ewa Maria (2-TCE-93);
22. SAO Sak (2-TCW-886) (as reserve witness);
23. KHUN Samit (2-TCW-857) (as reserve witness);
24. IENG On (2-TCW-935) (as reserve witness)
25. THENG Huy (2-TCW-848) (as reserve witness);
26. PRUM Yan (2-TCW-837) (as reserve witness);
27. UM Sun (2-TCW-949) (as reserve witness).<sup>137</sup>

(b) The Lead Co-Lawyers:

1. CHOEUNG Yaing Chaet (2-TCCP-241);
2. CHOU Koemlan (2-TCCP-238);
3. NGUYEN Thi Tyet (2-TCCP-234);
4. NGVIENG Yang Anh (2-TCCP-240);
5. UN Sovannary (2-TCCP-231).<sup>138</sup>

(c) The NUON Chea Defence proposed the following witnesses and experts to provide testimony on the Treatment of the Vietnamese, among other subjects:

1. CHHEM Neang (2-TCW-899);
2. CHUUN Phal (2-TCW-872);
3. HENG Samrin (2-TCW-831);
4. KAING Guek Eav alias Duch (2-TCW-916);
5. LACH Mean (2-TCW-898);
6. MAM Nai alias Chan (2-TCW-864);
7. NHEM En (2-TCW-919);
8. NIM Kimsreang alias NIM Oem alias NIM Im (2-TCW-854);
9. PEN Sovann (2-TCW-952);
10. PESS Matt aka PES Math alias LY Try (2-TCW-824);
11. SAOM Met (2-TCW-902);
12. CHANDA Nayan (2-TCE-83);
13. CHANDLER David Porter (2-TCE-84);
14. ETCHESON Craig (2-TCE-85);
15. MORRIS Stephen John (2-TCE-98);
16. SUMMERS Laura (2-TCE-100);
17. TABEAU Ewa Maria (2-TCE-93);
18. Michael VICKERY (2-TCE-94);
19. POL Saroeun (2-TCW-962);

<sup>137</sup> Annex I: Co-Prosecutors' Revised Combined Witness, Civil Party and Expert List for Case 002/02 in Recommended Order of Trial Segments and Appearance (July 2014) (confidential), E307/3/2.2, 28 July 2014, p. 1.

<sup>138</sup> Confidential Annex IV: Proposed Order of Segments- Civil Parties Lead Co-Lawyers, E305/7.1.4, 9 May 2014, p. 2.

20. Roel BURGLER (2-TCE-96).<sup>139</sup>

63. The KHIEU Samphan Defence did not propose any witness, Civil Party or expert whose testimony would relate directly to the Treatment of the Vietnamese. Instead, the KHIEU Samphan Defence proposed the following witness and experts to testify on numerous topics, including the treatment of specific groups, without differentiating between the Treatment of the Vietnamese, the Treatment of the Cham, or the Treatment of the former Khmer Republic officials: Witness CHUON Thi (2-TCW-859), Expert Roel BURGLER (2-TCE-96), Expert Philip SHORT (2-TCE-92), Expert Michael VICKERY (2-TCE-94), Expert Stephen HEDER (2-TCE-87) and Expert François PONCHAUD (2-TCE-99).<sup>140</sup>

### **7.2.The Treatment of the Cham**

64. The Co-Prosecutors and Lead Co-Lawyers proposed that the Chamber hear the following witnesses, Civil Parties and experts on the Treatment of the Cham:

(a) The Co-Prosecutors:

1. SOS Ponyamin (2-TCCP-244);
2. IT Sen (2-TCW-813);
3. SENG Srun (2-TCW-880);
4. SENG Khuy (2-TCW-832);
5. HIM Man (2-TCCP-252);
6. HOK Hoeun (2-TCW-955);
7. SAMRIT Muy (2-TCW-883);
8. MAN Heang (2-TCW-895);
9. AHMAD Sofiyah (2-TCW-928);
10. NO Satas (2-TCCP-270);
11. SALES Ahmat (2-TCW-893);
12. BAN Siek (2-TCW-950);
13. NHEM Kol (2-TCW-884);
14. YOU Vann (2-TCW-894);
15. PHLONG Hân (2-TCCP-285);
16. SUM Chan Thol (2-TCCP-272);
17. PRAK Yut (2-TCW-938);
18. YSA Osman (2-TCE-95);
19. RES Tort (2-TCW-818) (as reserve witness);
20. SUF Romly (2-TCW-904) (as reserve witness);

<sup>139</sup> Confidential Annex B: Updated Summaries of Witnesses, Civil Parties and Experts (no protective measures sought)- Nuon Chea Defence Team, E305/4.2, 8 May 2014, pp. 4-5, 7-8, 10-11, 13-14, 17-23; Confidential Annex B – New Witness, Civil Party and Expert Summaries for Case 002/02 – NUON Chea Defence Team, E307/4.3, 24 July 2014, pp. 2, 4.

<sup>140</sup> *Annexe III – Résumés actualisés des déclarations des témoins et des experts qui ne demandent l'octroi d'aucune mesure de protection (confidential)*, E305/5.2, 9 May 2014, pp. 1-6.

21. SOH Kamrei (2-TCW-827) (as reserve witness);
22. TAY Kimhuon (2-TCW-873) (as reserve witness);
23. KAE Noh (2-TCW-839) (as reserve witness);
24. CHEA Maly (2-TCW-947) (as reserve witness);
25. BLENGSLI Bjorn (2-TCE-91) (as reserve expert).<sup>141</sup>

(b) The Lead Co-Lawyers:

1. KHUTH Voern (2-TCCP-260);
2. LI Pat (2-TCCP-262);
3. MAN Sles (2-TCCP-263);
4. NO Sata/Sates alias Tas (2-TCCP-270);
5. SOS Min (SOS Ponyamin) (2-TCCP-244);
6. TOLORS Kârsim (2-TCCP-226).<sup>142</sup>

(c) The NUON Chea Defence proposed the following witnesses and expert to provide testimony on the Treatment of the Cham, among other subjects:

1. CHEA Sim (2-TCW-878);
2. CHHEM Neang (2-TCW-899);
3. HENG Samrin (2-TCW-831);
4. TABEAU Ewa Maria (2-TCE-93);
5. POL Saroeun (2-TCW-962).<sup>143</sup>

65. As noted above, the KHIEU Samphan Defence proposed a witness and five experts to testify on numerous topics, including the treatment of specific groups, without differentiating between the Treatment of the Vietnamese, the Treatment of the Cham, or the Treatment of the former Khmer Republic officials.<sup>144</sup>

### **7.3. The Treatment of Former Khmer Republic Officials**

66. The Co-Prosecutors, the Lead Co-Lawyers and the KHIEU Samphan Defence did not propose any witness, Civil Party or expert specifically on the Treatment of the former Khmer Republic officials.

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<sup>141</sup> Annex I: Co-Prosecutors' Revised Combined Witness, Civil Party and Expert List for Case 002/02 in Recommended Order of Trial Segments and Appearance (July 2014) (confidential), E307/3/2.2, 28 July 2014, p. 1.

<sup>142</sup> Confidential Annex IV: Proposed Order of Segments- Civil Parties Lead Co-Lawyers, E305/7.1.4, 9 May 2014, pp. 2-3.

<sup>143</sup> Confidential Annex B: Updated Summaries of Witnesses, Civil Parties and Experts (no protective measures sought)- Nuon Chea Defence Team, E305/4.2, 8 May 2014, pp. 1-2, 4-6, 21-22; Confidential Annex B – New Witness, Civil Party and Expert Summaries for Case 002/02 – NUON Chea Defence Team, E307/4.3, 24 July 2014, p. 2.

<sup>144</sup> *Annexe III – Résumés actualisés des déclarations des témoins et des experts qui ne demandent l'octroi d'aucune mesure de protection* (confidential), E305/5.2, 9 May 2014, pp. 1-6.

67. The NUON Chea Defence proposed the following witnesses and experts to provide testimony on the Treatment of the former Khmer Republic officials, among other subjects:

1. CHHEM Neang (2-TCW-899);
2. HENG Samrin (2-TCW-831);
3. HIM Huy (2-TCW-906);
4. KAING Guek Eav alias Duch (2-TCW-916);
5. MAM Nai alias Chan (2-TCW-864);
6. PECH Chim alias TA Chim (2-TCW-809);
7. CHANDLER David Porter (2-TCE-84);
8. TABEAU Ewa Maria (2-TCE-93); and
9. POL Saroeun (2-TCW-962).<sup>145</sup>

#### **7.4. Witnesses, Civil Parties and Experts heard by the Chamber**

##### **7.4.1. The Treatment of the Vietnamese**

68. The Trial Chamber selected and heard the following witnesses, Civil Parties and experts in relation to the Treatment of the Vietnamese:<sup>146</sup> Expert Alexander Laban HINTON (2-TCE-88), Civil Party LACH Kry (2-TCCP-844), Witness UNG Sam Ean (2-TCW-805), Witness SIN Chhem (2-TCW-820), Witness Y Vun (2-TCW-846), Witness SEAN Song alias Sung (2-TCW-868), Civil Party PRAK Doeun (2-TCCP-300), Witness PRUM Sarun (2-TCW-945), Witness SAO Sak (2-TCW-886), Witness THANG Phal (2-TCW-848), Witness UM Suonn (2-TCW-949), Civil Party CHOEUING Yaing Chaet (2-TCCP-241), Witness PAK Sok (2-TCW-1000),<sup>147</sup> Civil Party DOUNG Oeurn alias DAUNG Oeun (2-TCCP-869), Witness PRUM Sarat (2-TCW-1009),<sup>148</sup> Witness IN Yoeung (2-TCW-849), Witness SANN Lorn (2-TCW-1007),<sup>149</sup> Witness MEAS Voeun alias SVAY Voeun (2-TCW-1008).<sup>150</sup>

<sup>145</sup> Confidential Annex B: Updated Summaries of Witnesses, Civil Parties and Experts (no protective measures sought)- Nuon Chea Defence Team, E305/4.2, 8 May 2014, pp. 4-7, 10, 12, 18, 21; Confidential Annex B – New Witness, Civil Party and Expert Summaries for Case 002/02 – NUON Chea Defence Team, E307/4.3, 24 July 2014, p. 2.

<sup>146</sup> The Chamber heard evidence on the factual allegations concerning crime sites located in Prey Veng and Svay Rieng Provinces, and at Wat Khsach, Yeang village, Russei-Lok district, Siem Reap province. It also heard evidence concerning various other locations with the purpose of assessing whether a nation-wide policy targeting Vietnamese, including the treatment of Vietnamese at sea, existed.

<sup>147</sup> Witness PAK Sok (2-TCW-1000) was selected via oral ruling following an Internal Rule 87(4) request by the International Co-Prosecutor. See T. 7 December 2015. See also Decision on International Co-Prosecutor's Request to Admit Written Records of Interview Pursuant to Rules 87(3) & (4) and to call Four Additional Witnesses for Upcoming Case 002/02 Segments (confidential), E319/36/2, 25 May 2016, para. 2.

<sup>148</sup> Witness PRUM Sarat (2-TCW-1009) was selected pursuant to Internal Rule 87(4) following a request by the NUON Chea Defence, which was supported by the International Co-Prosecutor. See Decision on Motions to Hear Additional Witnesses on the Topic of the Treatment of Vietnamese, with Reasons to Follow (E380, E381, E382), E380/1, 12 January 2016; Decision on Motions to Hear Additional Witnesses on the Topic of the

69. The Chamber also heard the following Civil Parties on the harm they suffered in relation to the Treatment of the Vietnamese during the Democratic Kampuchea era: SIENG Chanthy (2-TCCP-1015),<sup>151</sup> KHOUY Muoy alias KHAUNG Muoy (2-TCCP-259) and UCH Sunlay (2-TCCP-1014).<sup>152</sup>

70. In total, the Trial Chamber heard 13 witnesses, 7 Civil Parties and 1 expert during the trial topic on the Treatment of the Vietnamese. Civil Party CHOU Koemlan (2-TCCP-238) was instead heard during the trial topic on the Tram Kak Cooperatives and Kraing Ta Chan Security Centre.<sup>153</sup>

#### 7.4.2. The Treatment of the Cham

71. The Trial Chamber selected and heard the following witnesses, Civil Parties and experts in relation to the Treatment of the Cham: Civil Party SOS Min (SOS Ponyamin) (2-TCCP-244), Witness IT Sen alias Sen (2-TCW-813), Witness SEN Srun (2-TCW-880), Witness SENG Khuy (2-TCW-832), Civil Party HIM Man alias Man Cheang Machine alias A-Man Sal alias A-Ch-oeng Meas (2-TCCP-252), Witness SAMRIT Muy (2-TCW-883), Witness MATH Sor (AHMAD Sofiyah, alias Ahmat Safiyal alias Sofiyah) (2-TCW-928), Civil Party NO Sates (NO Satas) alias Tas (2-TCCP-270), Witness VAN Mat alias SALES Ahmat (2-TCW-893), Witness BAN Siek alias HANG Phos (2-TCW-950), Witness TAY Kimhuon alias Kimhuon (2-TCW-873), Witness SOS Romly alias YUSUF Romly alias Ly (2-TCW-

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Treatment of Vietnamese and to Admit Related Written Records of Interview (E380, E381, E382) (Full Reasons), E380/2, 25 May 2016.

<sup>149</sup> Witness SANN Lorn (2-TCW-1007) was selected pursuant to Internal Rule 87(4) following a request by the NUON Chea Defence to hear this witness for the trial topic on Tram Kak Cooperatives and Kraing Ta Chan Security Centre. *See* Decision on the NUON Chea Defence's Consolidated Rule 87(4) Request to hear Additional Witnesses for the First Case 002/02 Trial Segment on the Tram Kok Cooperatives and Kraing Ta Chan Security Centre (confidential), E346/2, 30 April 2015; Reasons Following Decision on the NUON Chea Defence's Consolidated Rule 87(4) Request to hear Additional Witnesses for the First Case 002/02 Trial Segment on the Tram Kok Cooperatives and Kraing Ta Chan Security Centre and Decision on SANN Lorn (2-TCW-1007), SOU Phirin (2-TCW-1027) (confidential), E346/3, 31 March 2016.

<sup>150</sup> Witness MEAS Voeun alias SVAY Voeun (2-TCW-1008) was selected pursuant to Internal Rule 87(4) following a request by the NUON Chea Defence. *See* Decision on Motions to Hear Additional Witnesses on the Topic of the Treatment of Vietnamese, with Reasons to Follow (E380, E381, E382), E380/1, 12 January 2016; Decision on Motions to Hear Additional Witnesses on the Topic of the Treatment of Vietnamese and to Admit Related Written Records of Interview (E380, E381, E382) (Full Reasons), E380/2, 25 May 2016.

<sup>151</sup> Civil Party SIENG Chanthy (2-TCCP-1015) was proposed by the Lead Co-Lawyers for the hearing on the Harm Suffered by the Civil Parties in relation to the Treatment of the Vietnamese. *See* Lead Co-Lawyers' Submission on the List of Civil Parties to Testify During the Hearings on Harm Suffered (Third Segment) and Request Pursuant to Rule 87(4), E315/1/4, 10 February 2016, with Confidential Annex A, E315/1/4.1, p.1.

<sup>152</sup> Civil Party UCH Sunlay (2-TCCP-1014) was proposed by the Lead Co-Lawyers for the hearing on the Harm Suffered by the Civil Parties in relation to the Treatment of the Vietnamese. *See* Lead Co-Lawyers' Submission on the List of Civil Parties to Testify During the Hearings on Harm Suffered (Third Segment) and Request Pursuant to Rule 87(4), E315/1/4, 10 February 2016, with Confidential Annex A, E315/1/4.1, p.1.

<sup>153</sup> *See above*, para. 25; T. 26-27 January 2015 (CHOU Koemlan).

904), Witness MUY Vanny (2-TCW-987),<sup>154</sup> Witness SAY Doeun (2-TCW-988),<sup>155</sup> Witness YOU Vann (2-TCW-894), Witness PRAK Yut (2-TCW-938), Witness SOH Kamrei (2-TCW-827) and Expert YSA Osman (2-TCE-95).

72. The Chamber also heard the following Civil Parties on the harm they suffered in relation to the Treatment of the Cham during the Democratic Kampuchea era: MAN Sles (2-TCCP-263) and MEU Peou (MOEU Pov) (2-TCCP-1013).<sup>156</sup>

73. In total, the Trial Chamber heard 14 witnesses, 5 Civil Parties and 1 expert during the trial topic on the Treatment of the Cham.

### 7.4.3. The Treatment of Former Khmer Republic Officials

74. The Trial Chamber heard Witness SAO Van alias Port (2-TCW-989), proposed by the NUON Chea Defence pursuant to Internal Rule 87(4),<sup>157</sup> specifically on the trial topic on the Treatment of former Khmer Republic officials. However, the Chamber notes that it heard extensive evidence in relation to the Treatment of the former Khmer Republic officials during other trial topics throughout Case 002/02, particularly during the trial topic on the Tram Kak Cooperatives and Kraing Ta Chan Security Centre.<sup>158</sup>

<sup>154</sup> The Chamber selected MUY Vanny (2-TCW-987) on its own motion. *See* Email from the Trial Chamber Senior Legal Officer entitled 'Further Scheduling- Treatment of Targeted Groups', E364/1.1, 24 December 2015; Decision on the KHIEU Samphan Defence's opposition to the appearance of 2-TCW-987 (E364), E364/1, 18 February 2016.

<sup>155</sup> Witness SAY Doeun (2-TCW-988) was selected pursuant to Internal Rule 87(4) following a request by the International Co-Prosecutor. *See* Decision on International Co-Prosecutor's Request to Call Additional Witnesses During the Case 002/02 Trial Segment on Treatment of the Cham (confidential), E366/3, 24 December 2015.

<sup>156</sup> Civil Party MEU Peou (MOEU Pov) (2-TCCP-1013) was proposed by the Lead Co-Lawyers for the Hearing on the Harm Suffered by the Civil Parties in relation to the Treatment of the Cham. *See* Lead Co-Lawyers' Submission on the List of Civil Parties to Testify During the Hearings on Harm Suffered (Third Segment) and Request Pursuant to Rule 87(4), E315/1/4, 10 February 2016, with Confidential Annex A, E315/1/4.1, p. 1.

<sup>157</sup> NUON Chea's Consolidated Rule 87(4) Request to Hear Additional Witnesses for the First Case 002/02 Trial Segment on the Tram Kok Cooperatives and Kraing Ta Chan Security Centre (confidential), E346, 3 April 2015, paras 7-8, 29; Decision on the NUON Chea Defence's Consolidated Rule 87(4) Request to Hear Additional Witnesses for the First Case 002/02 Trial Segment on the Tram Kok Cooperatives and Kraing Ta Chan Security Centre (confidential), E346/2, 30 April 2015; Reasons Following Decision on the NUON Chea Defence's Consolidated Rule 87(4) Request to Hear Additional Witnesses for the First Case 002/02 Trial Segment on the Tram Kok Cooperatives and Kraing Ta Chan Security Centre and Decision on SANN Lorn (2-TCW-1007), SOU Phirin (2-TCW-1027) and IV Sarik (2-TCW-1026) (E346/2), E346/3, 31 March 2016.

<sup>158</sup> *See e.g.*: CHOU Koemlan (2-TCCP-238); SREI Than, alias DUCH (2-TCW-944); EM Phoeung (2-TCW-954); KEO Chandara (KEV Chandara), alias KROU alias Yav (2-TCW-964); SAO Han (2-TCW-807); NUT Nov (2-TCW-948); OEM Saroeurn (OUNG SA Reoung) (2-TCCP-980); PHANN Chhen (2-TCW-852); RIEL Son (2-TCW-860); THANN Thim (2-TCCP-288); KHOEM Boeun, alias Yeay Boeun (2-TCW-979); PECH Chim, alias TA Chim (2-TCW-809).

## **7.5.Deceased**

75. The following witnesses could not be considered as they are deceased:

1. KHUN Mon (2-TCW-958)<sup>159</sup>
2. LANG Hel (2-TCW-927)<sup>160</sup>
3. IER Pov (2-TCW-874)<sup>161</sup>
4. HOK Hoeun (2-TCW-955)<sup>162</sup>
5. CHEA Sim (2-TCW-878)<sup>163</sup>

The requests to summons them are therefore moot.

## **7.6.Repetitive and/or Irrelevant and/or Less Relevant**

### ***7.6.1. Individuals proposed by the Co-Prosecutors on the Treatment of the Vietnamese***

76. The Co-Prosecutors proposed Witness CHHUON Ri (2-TCW-843), Witness LENG Samet alias Tech (2-TCW-957), Witness BOU Van (2-TCW-939), as well as reserve witnesses KHUN Samit (2-TCW-857), IENG On (2-TCW-935) and PRUM Yan (2-TCW-837) to testify on the treatment of the Vietnamese in relation to Prey Veng and Svay Rieng Provinces.<sup>164</sup> These witnesses were requested to testify primarily on the killing, arrest and disappearances of Vietnamese members of ethnically mixed families, noting in particular that Vietnamese wives and children would be taken away to be executed.<sup>165</sup> Having reviewed the material on the Case File relevant to these six proposed witnesses and noting the matters on which they are proposed to testify,<sup>166</sup> the Chamber finds that their testimonies on the

<sup>159</sup> Letter of Confirmation of Death-KHUN Mon (confidential) (2-TCW-958), E29/506, 25 September 2015.

<sup>160</sup> Death Certificate- LANG Hel (confidential) (2-TCW-927), E29/507, 23 January 2015.

<sup>161</sup> Letter of confirmation of Death-IER Pov (confidential) (2-TCW-874), E29/505, 12 January 2017.

<sup>162</sup> Witness Expert Support Unit Report- Reported deceased of HOK Hoeun (confidential) (2-TCW-955), E29/473, 8 September 2015.

<sup>163</sup> See NUON Chea's Request to Reconsider Admitting One Extract and to Admit Two Additional Extracts from the Human Rights Watch Report '30 Years of HUN Sen', 11 December 2015, E347/2, fn. 46, referring to SAING Soenthrith, "CPP President CHEA Sim Dead", *The Cambodia Daily*, 8 June 2015.

<sup>164</sup> Annex III: OCP Updated Witness, Civil Party and Expert Summaries (confidential), E305/6.4, 9 May 2014, pp. 18, 21. Confidential Annex IIIA: OCP Updated Alternate Witness, Civil Party and Expert Summaries [Reserves], E305/6.5, 9 May 2014, pp. 5-6. See also Co-Prosecutors' Request to Summon 2-TCW-843, 2-TCW-957, 2-TCW-245, 2-TCW-939, 2-TCW-849, and 2-TCW-905 in Relation to the Vietnamese Segment of Case 002/02 (confidential), E381, 23 December 2015. The Chamber notes that the Co-Prosecutors later withdrew 2-TCW-245 as a proposed witness.

<sup>165</sup> Annex III: OCP Updated Witness, Civil Party and Expert Summaries (confidential), E305/6.4, 9 May 2014, pp. 18-19, 21. Confidential Annex IIIA: OCP Updated Alternate Witness, Civil Party and Expert Summaries [Reserves], E305/6.5, 9 May 2014, pp. 5-7.

<sup>166</sup> See Written Record of Interview of Chhuon Ri, E3/7891, 3 December 2009; Written Record of Interview of Leng Samet, E3/7810, 14 January 2009; DC-Cam Statement of Leng Samet, E3/7594, 24 February 2000; DC-Cam Statement of Bou Van, E3/7498, 29 August 2005; DC-Cam Statement of KHUN Samit, E3/7586, 9 March

treatment of the Vietnamese are likely to be substantially repetitive of evidence heard on these matters in Case 002/02 from several witnesses, including Witness SAO Sak (2-TCW-886),<sup>167</sup> Witness SIN Chhem (2-TCW-820),<sup>168</sup> Civil Party LACH Kry (2-TCCP-844),<sup>169</sup> Witness THANG Phal (2-TCW-848),<sup>170</sup> Witness UNG Sam Ean (2-TCW-805).<sup>171</sup> The Chamber therefore declines to summons them.

77. The Co-Prosecutors also propose Witness CHUOP Kep (2-TCW-905), Witness UK Soeum alias SAN Soeun (2-TCW-806) and Civil Party PEOU Sinuon (2-TCCP-295) for the trial topic on the Treatment of the Vietnamese.<sup>172</sup> The Chamber notes that Witness CHUOP Kep (2-TCW-905)'s proposed testimony relates to the Khmer Rouge search for ethnic Vietnamese and the killing of Vietnamese families.<sup>173</sup> Having reviewed the material on the Case File relevant to this witness and noting the matters on which he is proposed to testify,<sup>174</sup> the Chamber finds that his testimony on the treatment of Vietnamese is likely to be substantially repetitive of evidence heard in Case 002/02 through from several witnesses and Civil Parties including Witness SAO Sak (2-TCW-886),<sup>175</sup> Witness THANG Phal (2-TCW-848),<sup>176</sup> Witness SANN Lorn (2-TCW-1007),<sup>177</sup> Civil Party CHHOEUNG Yaing Chaet (2-TCCP-241),<sup>178</sup> Civil Party SIENG Chanthy (2-TCCP-1015),<sup>179</sup> and Civil Party CHOU Koemlan (2-TCCP-238).<sup>180</sup> The Chamber therefore declines to summons him.

78. As regards Witness UK Soeum alias SAN Soeun (2-TCW-806) and Civil Party PEOU Sinuon (2-TCCP-295),<sup>181</sup> the Chamber notes that their evidence on persecution relates to the

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2000; Written Record of Interview of IENG On, E3/9352, 16 September 2008; Written Record of Interview of PRUM Yan, E3/7816, 29 January 2009.

<sup>167</sup> See T. 3 December 2015 (SAO Sak); T. 7 December 2015 (SAO Sak).

<sup>168</sup> See T. 14 December 2015 (SIN Chhem).

<sup>169</sup> See T. 20 January 2016 (LACH Kry).

<sup>170</sup> See T. 5 January 2016 (THANG Phal).

<sup>171</sup> See T. 11 December 2015 (UNG Sam Ean).

<sup>172</sup> Annex III: OCP Updated Witness, Civil Party and Expert Summaries (confidential), E305/6.4, 9 May 2014, pp. 19, 23, 40.

<sup>173</sup> Annex III: OCP Updated Witness, Civil Party and Expert Summaries (confidential), E305/6.4, 9 May 2014, p. 19.

<sup>174</sup> See Complaint of Chuop Kep (confidential), E3/7019a, 23 May 2008.

<sup>175</sup> See T. 3 December 2015 (SAO Sak); T. 7 December 2015 (SAO Sak).

<sup>176</sup> See T. 06 January 2016 (THENG Huy).

<sup>177</sup> See T. 28 January 2016 (SANN Lorn).

<sup>178</sup> See T. 7 December 2015 (CHHOEUNG Yaing Chaet); T. 8 December 2015 (CHHOEUNG Yaing Chaet).

<sup>179</sup> See T. 29 February 2016 (SIENG Chanthy); T. 01 March 2016 (SIENG Chanthy).

<sup>180</sup> See T. 26 January 2015 (CHOU Koemlan).

<sup>181</sup> Annex III: OCP Updated Witness, Civil Party and Expert Summaries (confidential), E305/6.4, 9 May 2014, pp. 23, 40.

arrest and execution of Khmer Krom rather than Vietnamese.<sup>182</sup> The Chamber recalls that evidence relating to the Khmer Krom may be relevant to the charges in Case 002/02 only insofar as it is not exclusively related to the persecution of the Khmer Krom as a distinct group.<sup>183</sup> The Chamber therefore considers the evidence of UK Soeum alias SAN Soeun (2-TCW-806) and PEOU Sinuon (2-TCCP-295) to be irrelevant for the trial topic on the Treatment of Vietnamese and declines to summons them.

79. Finally, the Chamber recalls that the Co-Prosecutors indicated that it was no longer necessary to hear Ewa Maria TABEAU (2-TCE-93) and the Trial Chamber decided not to summons her in Case 002/02.<sup>184</sup>

### *7.6.2. Individuals proposed by the Lead Co-Lawyers on the Treatment of the Vietnamese*

80. The Lead Co-Lawyers proposed Civil Parties NGUYEN Thi Tyet (2-TCCP-234), NGVIENG Yang Anh (2-TCCP-240) and UN Sovannary (2-TCCP-231) to provide oral evidence on both a national policy of targeting the Vietnamese as a group and their forced deportation to Vietnam.<sup>185</sup> The Chamber recalls that although it initially selected NGUYEN Thi Tyet (2-TCCP-234) to be heard during this trial topic, it eventually decided to no longer seek to hear her as it was not possible to obtain her testimony within a reasonable time.<sup>186</sup> Having reviewed the material relevant to the other two proposed Civil Parties and noting the matters on which they are proposed to testify,<sup>187</sup> the Chamber finds that while the Lead Co-Lawyers claim that UN Sovannary (2-TCCP-231), a member of the Khmer Krom community, was a “direct victim” of the persecution of Vietnamese, his proposed evidence relates to the

<sup>182</sup> Written Record of Interview of UK Soeum (confidential), E3/5603, 3 March 2010; Written Record of Interview of Civil Party POV Sinuon (confidential), E3/5545, 29 September 2009.

<sup>183</sup> Decision on International Co-Prosecutor’s Requests to Admit Written Records of Interview Pursuant to Rules 87(3) and 87(4), E319/47/3, 29 June 2016, para. 25 *citing* T. 25 May 2015, pp. 60-62; *see also*, Decision on Two Requests by the International Co-Prosecutor to Admit Documents Pursuant to Rule 87(3) and 87(4) (E319/51 and E319/52) (confidential), E319/52/4, 23 November 2016, para. 18.

<sup>184</sup> T. 1 September 2016; Email from Legal Officer, 13 September 2016. The NUON Chea Defence submitted that Ewa Maria TABEAU (2-TCE-93) should no longer be called, but that the Chamber should instead summons Patrick HEUVELINE, *see* T. 1 September 2016; Decision on NUON Chea’s Request to Summons Patrick Heuveline and to Admit two related documents, E444/1, 6 December 2016. The full reasons for not calling Ewa Maria TABEAU (2-TCE-93) are addressed in the section on Experts.

<sup>185</sup> Confidential Annex III: Updated Summaries of Witnesses, Civil Party and Experts (no protective measures sought) – Civil Party Lead Co-Lawyers, E305/7.1.3, 9 May 2014, pp. 19-20, 38-39.

<sup>186</sup> *See* Decision on 2-TCW-876 and 2-TCCP-234, E403, 2 May 2016.

<sup>187</sup> *See* Civil Party Application of NGVIENG Yang Anh (confidential), E3/6696, 15 October 2009; Supplementary Statement of NGVIENG Yang Anh (confidential), E3/5633, 22 December 2010; Written Record of Interview of Civil Party UN Sovannary (confidential), E3/9798, 31 October 2013; Civil Party Application of UN Sovannary (confidential), E3/4728, 29 July 2009.

persecution of the Khmer Krom.<sup>188</sup> As noted above, evidence relating specifically to the persecution of the Khmer Krom as a distinct group is considered irrelevant to the charges in Case 002/02.<sup>189</sup> The Chamber therefore finds the proposed testimony of UN Sovannary (2-TCCP-231) to be irrelevant for the trial topic on the Treatment of the Vietnamese. While NGVIENG Yang Anh (2-TCCP-240)'s proposed testimony of personal persecution, forced deportation, and other ill-treatment as an ethnic Vietnamese is relevant to this trial topic, the Chamber finds that it is likely to be substantially repetitive of evidence heard from several witnesses,<sup>190</sup> including Civil Party CHHOEUNG Yaing Chaet (2-TCCP-241)<sup>191</sup> and Civil Party CHOU Koemlan (2-TCCP-238),<sup>192</sup> who testified during the trial topic on Tram Kak Cooperatives and Kraing Ta Chan Security Centre. The Chamber therefore declines to summons them.

### ***7.6.3. Individuals proposed by the Co-Prosecutors on the Treatment of the Cham***

81. According to the summary of proposed evidence, Witness MAN Heang (2-TCW-895)<sup>193</sup> worked in a mobile unit in Kang Meas District and witnessed the arrest of several Cham. Having reviewed the material on the Case File relevant to this witness<sup>194</sup> and noting the matters on which he is proposed to testify, the Chamber finds that his testimony is likely to be substantially repetitive of the evidence heard on these matters in Case 002/02 from other witnesses and Civil Parties, including Civil Party HIM Man alias Man Cheang Machine alias A-Man Sal alias A-Ch-oeng Meas (2-TCCP-252)<sup>195</sup> and Witness SENG Khuy (2-TCW-832).<sup>196</sup> The Chamber therefore declines to summons him.

<sup>188</sup> Confidential Annex III: Updated Summaries of Witnesses, Civil Party and Experts (no protective measures sought) – Civil Party Lead Co-Lawyers, E305/7.1.3, 9 May 2014, pp. 38-39. *See also* Civil Party Application of UN Sovannary (confidential), E3/4728, 29 July 2009.

<sup>189</sup> Decision on International Co-Prosecutor's Requests to Admit Written Records of Interview Pursuant to Rules 87(3) and 87(4), E319/47/3, 29 June 2016, para. 25 *citing* T. 25 May 2015, pp. 60-62; *see also* Decision on Two Requests by the International Co-Prosecutor to Admit Documents Pursuant to Rule 87(3) and 87(4) (E319/51 and E319/52) (confidential), E319/52/4, 23 November 2016, para. 18.

<sup>190</sup> *See above*, paras 76-78.

<sup>191</sup> *See* T. 7 December 2015 (CHHOEUNG Yaing Chaet); T. 8 December 2015 (CHHOEUNG Yaing Chaet).

<sup>192</sup> *See* T. 26 January 2015 (CHOU Koemlan).

<sup>193</sup> Annex III: OCP Updated Witness, Civil Party and Expert Summaries (confidential), E305/6.4, 9 May 2014, pp. 25-26.

<sup>194</sup> *See* Written Record of Interview of MAN Heang, E3/5529, 10 December 2009.

<sup>195</sup> *See* T. 17 September 2015; T. 28 September 2015.

<sup>196</sup> *See* T. 9 September 2015; T. 10 September 2015.

82. According to the summary of proposed evidence, Witness NHEM Kol alias Say (2-TCW-884)<sup>197</sup> worked for the Krala commune chief in Kampong Siem District and witnessed the elimination of the Cham population in that district. He is also deemed relevant because he could describe that lists of Cham were compiled in his district.<sup>198</sup> Although this witness's proposed evidence is relevant to this trial topic, amongst other topics, the Chamber finds that his testimony in relation to the treatment of the Cham is likely to be substantially repetitive of and less relevant than other evidence on the Case File on the same issues, including the testimony of Witness PRAK Yut (2-TCW-938).<sup>199</sup> The Chamber therefore declines to summons him.

83. The Co-Prosecutors further proposed Civil Parties PHLONG Hân (2-TCCP-285) and SUM Chan Thol (2-TCCP-272) as relevant for the removal of Cham in the Central Zone.<sup>200</sup> Insofar as the evidence proposed by these two Civil Parties is related to the treatment of the Cham, the Chamber finds that their in-court statements are likely to be substantially repetitive of the evidence heard from several witnesses and Civil Parties, including Witness IT Sen alias Sen (2-TCW-813),<sup>201</sup> Witness SENG Khuy (2-TCW-832),<sup>202</sup> Witness VAN Mat alias SALES Ahmat (2-TCW-893),<sup>203</sup> Witness SEN Srun (2-TCW-880),<sup>204</sup> Civil Party HIM Man alias Man Cheang Machine alias A-Man Sal alias A-Ch-oeng Meas (2-TCCP-252),<sup>205</sup> Witness BAN Seak alias HANG Phos (2-TCW-950),<sup>206</sup> and Civil Party SOS Min (SOS Ponyamin) (2-TCCP-244).<sup>207</sup> The Chamber therefore declines to summons them.

84. The Co-Prosecutors also proposed Witness RES Tort (2-TCW-818), Witness KAE Noh (2-TCW-839), and Witness CHEA Maly (2-TCW-947) as reserve witnesses to testify on the treatment of the Cham, notably on prohibiting their religious practices and on the arrest, detention and killing of the Cham.<sup>208</sup> According to the Co-Prosecutors, RES Tort (2-TCW-

<sup>197</sup> Annex III: OCP Updated Witness, Civil Party and Expert Summaries (confidential), E305/6.4, 9 May 2014, p. 26.

<sup>198</sup> Annex III: OCP Updated Witness, Civil Party and Expert Summaries (confidential), E305/6.4, 9 May 2014, p. 26.

<sup>199</sup> See T. 19 January 2016 (PRAK Yut).

<sup>200</sup> Annex III: OCP Updated Witness, Civil Party and Expert Summaries (confidential), E305/6.4, 9 May 2014, pp. 25-26, 41-42.

<sup>201</sup> See T. 7 September 2015 (IT Sen); T. 8 September 2015 (IT Sen).

<sup>202</sup> See T. 9 September 2015 (SENG Khuy); T. 10 September 2015 (SENG Khuy).

<sup>203</sup> See T. 9 March 2016 (VAN Mat alias SALES Ahmat).

<sup>204</sup> See T. 14 September 2015 (SEN Srun).

<sup>205</sup> See T. 17 September 2015 (HIM Man); T. 28 September 2015 (HIM Man).

<sup>206</sup> See T. 5 October 2015 (BAN Seak).

<sup>207</sup> See T. 8 September 2015 (SOS Min).

<sup>208</sup> Confidential Annex IIIA – OCP Updated Alternate Witness, Civil Party and Expert Summaries [Reserves], E305/6.5, 9 May 2014, p. 7.

818) and KAE Noh (2-TCW-839) were both from Koh Phal village and CHEA Maly (2-TCW-947) was a monk at Wat Au Trakuon who was disrobed.<sup>209</sup> Although relevant to the trial topic on the Treatment of the Cham, the Chamber finds that their testimonies are likely to be substantially repetitive of the evidence of other witnesses heard in Case 002/02, including Witness TAY Koemhun alias Kimhuon (2-TCW-873),<sup>210</sup> who also provides evidence on the Wat Au Trakuon Security Center; Civil Party HUN Sethany (2-TCCP-255), who testified on persecution practices such as disrobing monks;<sup>211</sup> Witness MEAS Laihour (MEAS Laihuo) (2-TCW-851),<sup>212</sup> Witness SOS Romly alias YUSUF Romly alias Ly (2-TCW-904),<sup>213</sup> and Witness SOH Kamrei (2-TCW-827).<sup>214</sup> The Chamber therefore declines to summons them.

85. As for proposed reserve Expert BLENGSLI Bjorn (2-TCE-91), having selected and heard Expert YSA Osman (2-TCE-95) on, amongst other matters, the characteristics of the Cham as a group, the DK policies against the Cham, the Cham rebellions and the number of Cham killed during the DK period,<sup>215</sup> the Chamber finds it would be substantially repetitive to hear a second expert on the same topics. The Chamber therefore declines to summons him.

#### ***7.6.4. Individuals proposed by the Lead Co-Lawyers on the Treatment of the Cham***

86. The Lead Co-Lawyers proposed Civil Parties KHUTH Voeurn (2-TCCP-260), LI Pat (2-TCCP-262) and TOLORS Karsim (2-TCCP-226) to provide oral evidence on a national policy of targeting the Cham as a group.<sup>216</sup> As ethnic Cham, all three Civil Parties would testify about being direct victims of the persecution, ill-treatment and elimination of the Cham. LI Pat (2-TCCP-262) would additionally provide evidence on the Cham rebellion against the Khmer Rouge in Svay Kleang and its aftermath.<sup>217</sup> Having reviewed the material on the Case File relevant to these Civil Parties<sup>218</sup> and noting the matters on which they are

<sup>209</sup> Confidential Annex IIIA – OCP Updated Alternate Witness, Civil Party and Expert Summaries [Reserves], E305/6.5, 9 May 2014, p. 7. *See also*, WRI of RES Tort, E3/7766, 19 May 2009; WRI of KAE Noh: E3/5289, 20 May 2009; Interview of Witness Chea Maly, E3/7827, 6 August 2008.

<sup>210</sup> *See* T. 16 September 2015 (TAY Kimhuon).

<sup>211</sup> *See* T. 27 May 2015 (HUN Sethany).

<sup>212</sup> *See* T. 25 May 2015 (MEAS Mayhuor); T. 27 May 2015 (MEAS Mayhuor).

<sup>213</sup> *See* T. 6 January 2016 (SOS Romly); T. 8 January 2016 (SOS Romly).

<sup>214</sup> *See* T. 6 April 2016 (SOH Kamrei).

<sup>215</sup> *See* T. 9 February 2016 (YSA Osman); T. 24 March 2016 (YSA Osman).

<sup>216</sup> Confidential Annex III: Updated Summaries of Witnesses, Civil Party and Experts (no protective measures sought) – Civil Party Lead Co-Lawyers, E305/7.1.3, 9 May 2014, pp. 14-15, 36.

<sup>217</sup> Confidential Annex III: Updated Summaries of Witnesses, Civil Party and Experts (no protective measures sought) – Civil Party Lead Co-Lawyers, E305/7.1.3, 9 May 2014, pp. 14-15, 36.

<sup>218</sup> *See* Civil Party Application of KHUTH Voeurn, E3/5078, 18 December 2009 (confidential); Civil Party Application of LI Pat, E3/6719, 22 October 2009; Civil Party Application of TOLORS Karsim, E3/4776, 25 October 2007.

proposed to testify, the Chamber finds that their in-court statements on the treatment of the Cham are likely to be substantially repetitive of the evidence heard on these matters in Case 002/02 from several witnesses, including Civil Party NO Sates (NO Satas) alias Tas (2-TCCP-270),<sup>219</sup> Civil Party SOS Min (SOS Ponyamin) (2-TCCP-244)<sup>220</sup> and Civil Party MAN Sles (2-TCCP-263),<sup>221</sup> who was heard during hearing on the harm suffered by the Civil Parties. The Chamber also notes that it heard evidence in relation to the rebellion in Svay Kleang from other witnesses and Civil Parties, including SOS Min (SOS Ponyamin) (2-TCCP-244).<sup>222</sup> The Chamber therefore declines to summons them.

### **7.7. General witnesses**

87. As noted above,<sup>223</sup> the KHIEU Samphan Defence proposed one witness and five experts to testify on numerous topics, including the treatment of specific groups, without differentiating between the Treatment of the Vietnamese and the Treatment of the Cham. The Chamber notes that the proposed Witness CHUON Thy (CHUON Thi), alias THI Ov (2-TCW-859) was heard during the trial topic on the Nature of the Armed Conflict. Meanwhile, the Chamber's analysis on the experts proposed by the KHIEU Samphan Defence is addressed in other sections of this decision.<sup>224</sup>

88. The NUON Chea Defence proposed several witnesses and experts to provide testimony on the Treatment of the Vietnamese, the Treatment of the Cham and the Treatment of the former Khmer Republic officials, among other subjects. However, having reviewed the material on the Case File relevant to these witnesses, the Chamber finds that the subject matter of these witnesses' testimony is more closely related to other trial topics. For instance, proposed Expert Stephen John MORRIS (2-TCE-98) testified during the trial topic on Armed Conflict, proposed Witness PECH Chim alias TA Chim (2-TCW-809) testified during the trial topic on Tram Kak Cooperatives and Kraing Ta Chan Security Centre, Witnesses KAING Guek Eav alias Duch (2-TCW-916), LACH Mean (2-TCW-898), NHEM En (2-TCW-919), and NIM Kimsreang alias NOEM Oem alias NIM Im (2-TCW-854) testified during the trial topic on S-21, while Witness MAM Nai alias Chan (2-TCW-864) could not be

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<sup>219</sup> See T. 29 September 2015 (NO Sates).

<sup>220</sup> See T. 8 September 2015 (SOS Min); T. 9 September 2015 (SOS Min).

<sup>221</sup> See T. 29 February 2016 (MAN Sles).

<sup>222</sup> See T. 8 September 2015 (SOS Min); T. 9 September 2015 (SOS Min).

<sup>223</sup> See *above*, para. 63.

<sup>224</sup> Experts Roel BURGLER (2-TCE-96) and Philip SHORT (2-TCE-92) are addressed in the section on Experts. See *below* paras 193-194.

summonsed as he is deceased.<sup>225</sup> Therefore, the Chamber's analysis on whether to call the witnesses and experts proposed by the NUON Chea Defence is addressed in other sections of this decision.<sup>226</sup>

89. The Chamber recalls that it has already rejected the requests to call Stephen HEDER (2-TCE-87) and François PONCHAUD (2-TCE-99)<sup>227</sup> and confirmed that Michael VICKERY (2-TCE-94) would not testify as an expert in this case.<sup>228</sup>

## **8. PROPOSED WITNESSES, CIVIL PARTIES AND EXPERTS FOR THE SECURITY CENTRES AND INTERNAL PURGES TRIAL TOPIC**

90. The following witnesses, Civil Parties and experts were proposed by the Parties in their Revised Lists in relation to the Security Centres and Internal Purges trial topic.

### **8.1. Au Kanseng Security Centre**

(a) The Co-Prosecutors:

1. CHHAOM Se (2-TCW-840);
2. CHIN Kimthong (2-TCW-900);
3. PHAN Thol (2-TCW-933);
4. MAO Phat (2-TCW-825);
5. MOEUNG Chandy (2-TCW-867);
6. KHOEM Peou (reserve witness) (2-TCW-835);
7. UM Keo (reserve witness) (2-TCW-892);<sup>229</sup>

(b) The Lead Co-Lawyers

1. NAI Seak (2-TCCP-266);
2. ROCHAM Blek (2-TCCP-302);
3. SEV Liem (2-TCCP-221);<sup>230</sup>

<sup>225</sup> See paras 25, 97, 103, 167.

<sup>226</sup> Witnesses CHHEM Neang (2-TCW-899), CHUUN Phal aka CHHUN Phal (2-TCW-872), PESS Matt aka PES Math alias LY Try (2-TCW-824), SAOM Met (2-TCW-902), and Expert David Porter CHANDLER (2-TCE-84) are addressed in the section on the S-21 Security Centre. Witnesses HENG Samrin (2-TCW-831), PEN Sovann aka PEN Sovan (2-TCW-952), POL Saroeun (2-TCW-962), and Expert Laura SUMMERS (2-TCE-100) are addressed in the section on Internal Purges. Expert Nayan CHANDA (2-TCE-83) is addressed in the section on Armed Conflict. Meanwhile Experts Craig ETCHESON (2-TCE-85) and Roel A. BURGLER (2-TCE-96) are addressed in the section on Experts.

<sup>227</sup> The Trial Chamber rejected the requests to call Stephen HEDER (2-TCE-87) and François PONCHAUD (2-TCE-99). See Decision on Reiterated Request of KHIEU Samphan Defence to Hear Stephen HEDER (2-TCE-87) and François PONCHAUD (2-TCE-99) (E408/6), E408/6/2, 3 November 2016.

<sup>228</sup> See Outstanding issues relating to Expert Michael VICKERY (2-TCE-94), E408/5, 4 August 2016.

<sup>229</sup> Annex I: Co-Prosecutors' Revised Combined Witness, Civil Party and Expert List for Case 002/02 in Recommended Order of Trial Segments and Appearance (July 2014) (confidential), E307/3/2.2, 28 July 2014.

**8.2. Phnom Kraol Security Centre**

## Co-Prosecutors

1. BUN Loeng Chauy (2-TCW-838);
2. NET Savat (2-TCW-817);
3. CHAN Tauch (2-TCW-921);
4. SAN Lan (2-TCW-853);
5. SOK Ei (2-TCCP-222);
6. AUM Mol (2-TCW-863),<sup>231</sup>

**8.3.S-21 Security Centre**

## (a) The Co-Prosecutors:

1. KAING Guek Eav, alias Duch (2-TCW-916);
2. SUOS Thy (2-TCW-816);
3. PRAK Khan (2-TCW-931);
4. CHUM Mey (2-TCCP-243);
5. HIM Huy (2-TCW-906);
6. TAY Teng (2-TCW-865);
7. LACH Mean (reserve witness) (2-TCW-898);
8. SAOM Met (reserve witness) (2-TCW-902);
9. MAKK Sithim (reserve witness) (2-TCW-808);
10. NHEP Hau (reserve witness) (2-TCW-811),<sup>232</sup>

## (b) The Lead Co-Lawyers

1. CHIN Met (2-TCCP-242);
2. CHUM Mey (2-TCCP-243);
3. NAM Mon (2-TCCP-267);
4. PHOAK Khan (2-TCCP-291),<sup>233</sup>

## (c) The NUON Chea Defence:

1. CHEAM Sour (2-TCW-826);
2. CHEY Sopheara (2-TCW-814);
3. CHHANG Youk (2-TCW-870);
4. CHHEM Neang (2-TCW-899);
5. CHUUN Phal (2-TCW-872);
6. HEYNOWSKI Walter (2-TCW-946);

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<sup>230</sup> Confidential Annex IV: Proposed Order of Segments- Civil Parties Lead Co-Lawyers, E305/7.1.4, 9 May 2014.

<sup>231</sup> Annex I: Co-Prosecutors' Revised Combined Witness, Civil Party and Expert List for Case 002/02 in Recommended Order of Trial Segments and Appearance (July 2014) (confidential), E307/3/2.2, 28 July 2014.

<sup>232</sup> Annex I: Co-Prosecutors' Revised Combined Witness, Civil Party and Expert List for Case 002/02 in Recommended Order of Trial Segments and Appearance (July 2014) (confidential), E307/3/2.2, 28 July 2014.

<sup>233</sup> Confidential Annex IV: Proposed Order of Segments- Civil Parties Lead Co-Lawyers, E305/7.1.4, 9 May 2014.

7. HIM Huy (2-TCW-906);
8. KAING Guek Eav, alias Duch (2-TCW-916);
9. KHIEU Ches (2-TCW-907);
10. KOK Sros (2-TCW-941);
11. LACH Mean (2-TCW-898);
12. LY Hor (2-TCW-956);
13. MAM Nai (2-TCW-864);
14. NHEM EN (2-TCW-919);
15. NIM Kimsreang (2-TCW-854);
16. PES Math aka PESS Matt alias LY Try (2-TCW-824);
17. SAOM Met (2-TCW-902);
18. CHIN Met (2-TCCP-242);
19. CHUM Neou (2-TCCP-246);<sup>234</sup>
20. YIN Nean (2-TCW-963);<sup>235</sup>

#### **8.4. Internal Purges**

(a) The Co-Prosecutors:

1. MEAS Soeun (2-TCW-917);
2. TEP Poch (2-TCW-850);
3. TOAT Thoeun (2-TCW-829);
4. NHOEK LY (2-TCW-920);
5. HEM Moeun (2-TCW-976);
6. THUCH Sithan (2-TCW-842);
7. KAO Son (2-TCW-940);
8. LOCARD Henri (2-TCE-90);<sup>236</sup>

(b) The Lead Co-Lawyers:

1. CHHUN Samân (2-TCCP-236);
2. HEL Oun (2-TCCP-249);
3. LOEM/LIM Korn (2-TCCP-277);
4. PIN Phorn (2-TCCP-299);
5. YUN Bin (2-TCCP-233);<sup>237</sup>

(c) NUON Chea Defence:

1. CHEA Sim (2-TCW-878);
2. CHEA Choeum (2-TCW-812);

<sup>234</sup> Confidential Annex B: Updated Summaries of Witnesses, Civil Parties and Experts (no protective measures sought)- Nuon Chea Defence Team, E305/4.2, 8 May 2014.

<sup>235</sup> Confidential Annex B – New Witness, Civil Party and Expert Summaries for Case 002/02 – NUON Chea Defence Team, E307/4.3, 24 July 2014.

<sup>236</sup> Annex I: Co-Prosecutors' Revised Combined Witness, Civil Party and Expert List for Case 002/02 in Recommended Order of Trial Segments and Appearance (July 2014) (confidential), E307/3/2.2, 28 July 2014. Witness TOAT Thoeun (2-TCW-829) is referred to as OCP-01 in the Revised List.

<sup>237</sup> Confidential Annex IV: Proposed Order of Segments- Civil Parties Lead Co-Lawyers, E305/7.1.4, 9 May 2014.

3. HENG Samrin (2-TCW-831);
4. LEMKIN Robert (2-TCW-877);
5. MEAS Muth (2-TCW-903);
6. THIOUNN Mumm (2-TCW-890);
7. OUK Bunchhoeun (2-TCW-951);
8. PEN Sovan (2-TCW-952);
9. THETH Sambath (2-TCW-885);<sup>238</sup>
10. CHAN Savuth (2-TCW-959);
11. CHIEL Chhoeun (2-TCW-960);
12. IN Thoeun (2-TCW-961);
13. POL Saroeun (2-TCW-962).<sup>239</sup>

91. The NUON Chea Defence also proposed Michael VICKERY (2-TCE-94), David CHANDLER (2-TCE-84), and Laura J. SUMMERS (2-TCE-100) to testify on the internal factions, internal purges and the nature of the armed conflict. David CHANDLER (2-TCE-84) is also proposed for S-21 Security Centre.<sup>240</sup>

92. The KHIEU Samphan Defence did not propose any witness, Civil Party or expert whose testimony would relate directly to the Security Centres and Internal Purges trial topic. The KHIEU Samphan Defence proposed experts Philip SHORT (2-TCE-92), Michael VICKERY (2-TCE-94) and Stephen HEDER (2-TCE-87) to provide testimony on security centres and execution sites generally, among other subjects.<sup>241</sup>

## **8.5. Witnesses, Civil Parties and Experts heard by the Chamber**

### ***8.5.1. Au Kanseng Security Centre***

93. The Trial Chamber selected and heard the following witnesses in relation to the Au Kanseng Security Centre: Witness PHON Thol (2-TCW-933), Witness MOEURNG Chandy (2-TCW-867) and Witness CHIN Kimthong, alias Chhang (2-TCW-900).

94. In total, the Trial Chamber heard 3 witnesses during the Au Kanseng Security Centre trial topic.

<sup>238</sup> Confidential Annex B: Updated Summaries of Witnesses, Civil Parties and Experts (no protective measures sought)- Nuon Chea Defence Team, E305/4.2, 8 May 2014.

<sup>239</sup> Confidential Annex B – New Witness, Civil Party and Expert Summaries for Case 002/02 – NUON Chea Defence Team, E307/4.3, 24 July 2014.

<sup>240</sup> Confidential Annex B: Updated Summaries of Witnesses, Civil Parties and Experts (no protective measures sought)- Nuon Chea Defence Team, E305/4.2, 8 May 2014.

<sup>241</sup> *Ordonnance aux fins du dépôt de pièces actualisées dans le cadre de la préparation du procès 002/02*, E305/5.2 (confidential), 9 May 2014, pp. 3-5.

### 8.5.2. *Phnom Kraol Security Centre*

95. The Trial Chamber selected and heard the following witnesses and Civil Parties in relation to the Phnom Kraol Security Centre: Witness CHAN Toi, alias CHAN Taury (2-TCW-921), Witness NETH Savat, alias NET Tha (2-TCW-817), Witness BUN Loeng Chauy (CHAN Bunleath) (2-TCW-838), Witness PHAN Van, alias KHAM Phan (2-TCW-1011),<sup>242</sup> Witness SAO Sarun (2-TCW-1012)<sup>243</sup> and Civil Party SUN Vuth (2-TCCP-1016).<sup>244</sup>

96. In total, the Trial Chamber heard 5 witnesses and 1 Civil Party during the Phnom Kraol Security Centre trial topic.

### 8.5.3. *S-21 Security Centre*

97. The Trial Chamber selected and heard the following witnesses, Civil Parties and expert in relation to the S-21 Security Centre: Civil Party CHUM Mey alias Mei (2-TCCP-243), Witness NHEM En (2-TCW-919), Witness TAY Teng (2-TCW-865), Witness LACH Mean (2-TCW-898), Witness PRAK Khorn (PRAK Khan) (2-TCW-931), Witness MAK Thim (MAKK Sithim) (2-TCW-808), Witness HIM Huy (2-TCW-906), Witness SUOS Thy (2-TCW-816), Witness KAING Guek Eav, alias Duch (2-TCW-916), Witness NOEM Oem (NIM Kimsreang, NIM Im) (2-TCW-854), Witness HIN Sotheany (2-TCW-1042)<sup>245</sup> and expert VOEUN Vuthy (2-TCE-1062).<sup>246</sup>

98. The Chamber also heard the following Civil Parties on the harm they suffered during the Democratic Kampuchea era in relation to S-21 Security Centre: CHHAE Heap (CHE Heap) (2-TCCP-275), PHOUNG Yat (2-TCCP-1047),<sup>247</sup> ROS CHUOR Siy (2-TCCP-1049)<sup>248</sup> CHAU Kim (CHAU Khim) (2-TCCP-1050),<sup>249</sup> and KAU Sunthara (2-TCCP-1051).<sup>250</sup>

<sup>242</sup> Witness PHAN Van, alias KHAM Phan (2-TCW-1011), who already testified in Case 002/01 (TCW-307), was selected *proprio motu* by the Trial Chamber, *see* Email from the Senior Legal Officer of 5 February 2016.

<sup>243</sup> Witness SAO Sarun (2-TCW-1012), who already testified in Case 002/01 (TCW-604), was selected *proprio motu* by the Trial Chamber, *see* Email from the Senior Legal Officer of 5 February 2016 (confidential).

<sup>244</sup> Decision on Co-Prosecutors' Rule 87(4) Request to Call an Additional Witness and an Additional Civil Party During the Phnom Kraol Security Centre Trial Segment, E390/3, 11 July 2016; Co-Prosecutors' Request to Call Additional Witnesses during the Phnom Kraol Security Centre Trial Segment, E390, 16 March 2016.

<sup>245</sup> Decision on NUON Chea Defence Requests to Hear Additional Witnesses Pursuant to Internal Rule 87(4) (E391, E392, E395, E412, and E426) (confidential), E443, 21 September 2016; Email from the Senior Legal Officer, 8 December 2016.

<sup>246</sup> Decision on the Admission into Evidence of the Choeung Ek Study Documents (confidential), E404/4, 23 May 2016, para. 7; Decision on the Designation of 2-TCE-1062, E404/8, 4 November 2016.

<sup>247</sup> Confidential Annex A: Provisional and Proposed Schedule for Hearing on Harm Suffered: Fourth Segment, E315/1/6.1, 1 August 2016.

99. In total, the Trial Chamber heard 10 witnesses, 6 Civil Parties and 1 expert during the S-21 Security Centre trial topic.

#### **8.5.4. Internal Purges**

100. The Trial Chamber selected and heard the following witnesses, Civil Parties and expert in relation to Internal Purges: Civil Party CHHUN Samorn (2-TCCP-236), Witness MEAS Soeun (MEAS Soeun) (2-TCW-917), Witness MOENG Vet (2-TCW-1005),<sup>251</sup> expert LOCARD Henri (2-TCE-90), Witness HEM Moeun (2-TCW-976), Witness CHIN Saroeun (2-TCW-1028),<sup>252</sup> Civil Party MY Savoeun (MEY Savoeun) (2-TCCP-1040),<sup>253</sup> Witness SOY Sao (SUOY Sav) (2-TCW-1029),<sup>254</sup> Witness TEP Poch (2-TCW-850), Witness SEM Om (SEM Am) (2-TCW-1031),<sup>255</sup> Witness CHHORN Vorn (2-TCW-1036),<sup>256</sup> Witness CHEAL Choeun (CHIEL Chhoeun) (2-TCW-960), Witness HUON Choeurm (HUON Choeum) (2-TCW-1037),<sup>257</sup> Witness LONG Vonn (LONG Vun) (2-TCW-971),<sup>258</sup> and Witness NUON Trech (TES Ol; TES Trech) (2-TCW-1060).<sup>259</sup>

101. The Chamber also heard the Civil Party YUN Bin (2-TCCP-233) on the harm suffered during the Democratic Kampuchea era in relation to Internal Purges.<sup>260</sup>

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<sup>248</sup> Confidential Annex A: Provisional and Proposed Schedule for Hearing on Harm Suffered: Fourth Segment, E315/1/6.1, 1 August 2016.

<sup>249</sup> Confidential Annex A: Provisional and Proposed Schedule for Hearing on Harm Suffered: Fourth Segment, E315/1/6.1, 1 August 2016.

<sup>250</sup> Confidential Annex A: Provisional and Proposed Schedule for Hearing on Harm Suffered: Fourth Segment, E315/1/6.1, 1 August 2016; Email Correspondence between Senior Legal Officer and the Lead Co-Lawyers Regarding Civil Party S33/2732 (SORY Sokhorn) (confidential), E315/1/6/3, 23 August 2016.

<sup>251</sup> Decision on International Co-Prosecutors' Request to Admit Written Records of Interview Pursuant to Rules 87(3) & (4) and to Call Four Additional Witnesses for Upcoming Case 002/02 Segments (confidential), E319/36/2, 25 May 2016.

<sup>252</sup> Decision on NUON Chea's First Rule 87(4) Request to Call One Additional Witness and to Admit One Interview for the Case 002/02 Trial Segment on the Phnom Kraol Security Centre, E390/2, 4 May 2016.

<sup>253</sup> Decision on NUON Chea Defence Request to Hear Additional Witnesses Pursuant to Internal Rule 87(4) (E391, E392, E395, E412, and E426) (confidential), E443, 21 September 2016.

<sup>254</sup> Decision on NUON Chea Defence Request to Hear Additional Witnesses Pursuant to Internal Rule 87(4) (E391, E392, E395, E412, and E426) (confidential), E443, 21 September 2016.

<sup>255</sup> Decision on NUON Chea Defence Request to Hear Additional Witnesses Pursuant to Internal Rule 87(4) (E391, E392, E395, E412, and E426) (confidential), E443, 21 September 2016.

<sup>256</sup> Decision on NUON Chea Defence Request to Hear Additional Witnesses Pursuant to Internal Rule 87(4) (E391, E392, E395, E412, and E426) (confidential), E443, 21 September 2016.

<sup>257</sup> Decision on NUON Chea Defence Request to Hear Additional Witnesses Pursuant to Internal Rule 87(4) (E391, E392, E395, E412, and E426) (confidential), E443, 21 September 2016.

<sup>258</sup> Decision on NUON Chea Defence Request to Hear Additional Witnesses Pursuant to Internal Rule 87(4) (E391, E392, E395, E412, and E426) (confidential), E443, 21 September 2016.

<sup>259</sup> Decision on NUON Chea Defence Request to Hear Additional Witnesses Pursuant to Internal Rule 87(4) (E391, E392, E395, E412, and E426) (confidential), E443, 21 September 2016.

<sup>260</sup> Confidential Annex A: Provisional and Proposed Schedule for Hearing on Harm Suffered: Fourth Segment, E315/1/6.1, 1 August 2016.

102. In total, the Trial Chamber heard 12 witnesses, 3 Civil Parties and 1 expert during the Internal Purges trial topic.

### **8.6. Deceased, withdrawn or no longer available to testify**

103. The following witnesses and Civil Parties could not be considered as they are deceased:

1. KHOEM Peou (reserve witness) (2-TCW-835);
2. SAN Lan (2-TCW-853);
3. SOK Ei (2-TCCP-222);
4. AUM Mol (2-TCW-863);
5. CHEA Sim (2-TCW-878);
6. MAM Nai (2-TCW-864);
7. LY Hor (2-TCW-956).<sup>261</sup>

The requests to summons them are therefore moot.

104. While the NUON Chea Defence proposed Witness PEN Sovan (2-TCW-952), the Chamber was aware of his serious health condition and decided not to summons him on that basis. The Witness eventually passed away in October 2016.<sup>262</sup> The Chamber selected CHEA Choeum (2-TCW-812) to testify during the Internal Purges trial topic, but the NUON Chea Defence did not provide any contact details and after several unsuccessful attempts to locate the witness and receiving information that there is a very high likelihood that the witness had died, the Chamber decided to cease its efforts to summons this witness.<sup>263</sup> The Chamber selected and summonsed Witnesses CHHAOM Se (2-TCW-840) and TOAT Theoun (2-TCW-829), however these witnesses passed away before they could testify.<sup>264</sup> The Chamber took steps to identify and locate Witness CHAN Savuth (2-TCW-959), but was unsuccessful, notably because of Robert LEMKIN's reluctance to provide any contact information.<sup>265</sup> The Chamber also initially selected and summonsed Witness THIOUNN Mumm (2-TCW-890), but subsequently decided to no longer seek to hear him due to the difficulties in securing his testimony via video link from France. In particular the Chamber took into consideration the advanced age and frail health conditions of the witness as well as the serious practical

<sup>261</sup> See Lead Co-Lawyers' Response to NUON Chea's Fourth Request Re Security Centres and Internal Purges, E412/1, 20 June 2016, para. 10.

<sup>262</sup> See <https://www.cambodiadaily.com/news/pen-sovann-former-prime-minister-dead-80-119936/>.

<sup>263</sup> Decision on 2-TCW-812, E29/486/1, 18 May 2016; IR 87(3)(b).

<sup>264</sup> Certificate of Death of CHHAOM Se (confidential), E29/485, 10 May 2016; Email from Senior Legal Officer, 26 July 2016.

<sup>265</sup> Decision on NUON Chea Defence Requests to Hear Additional Witnesses Pursuant to Internal Rule 87(4) (E391, E392, E395, E412 and E426) (Full Reasons) (confidential), E443/10, 30 March 2017; Decision on the NUON Chea Internal Rules 87(4) Request to Admit Documents Related to Robert Lemkin (2-TCW-877) and on Two Related Internal Rule 93 Requests, E416/4, 28 December 2016.

difficulties that would arise in attempting to implement a medical assessment or coercive measures internationally.<sup>266</sup>

## **8.7.Repetitive and/or Irrelevant and/or Less Relevant**

### ***8.7.1. Au Kanseng Security Centre***

#### *8.7.1.1. Individuals proposed by the Co-Prosecutors*

105. The Co-Prosecutors proposed Witness MAO Phat (2-TCW-825) and reserve Witness UM Keo (2-TCW-892) to testify in relation to the Au Kanseng Security Centre.

106. According the summary of proposed evidence, Witness MAO Phat (2-TCW-825) was imprisoned at Au Kanseng Security Centre in 1977 and could testify as to the location, layout and authority structure of the prison, detention conditions, as well as the killing of Jarai and women accused of moral offences.<sup>267</sup> Having reviewed the material on the Case File relevant to this witness and noting the matters on which he is proposed to testify, the Chamber notes that the witness describes the detention conditions, the location and the layout of the prison and states that he never saw anyone killed, although he saw a member of an ethnic minority being taken away to be killed.<sup>268</sup> The Chamber finds that MAO Phat (2-TCW-825)'s testimony is likely to be substantially repetitive of the evidence heard on these matters in Case 002/02 from other witnesses, namely Witness PHON Thol (2-TCW-933),<sup>269</sup> Witness MOEURNG Chandy (2-TCW-967)<sup>270</sup> and Witness CHIN Kimthong, alias Chhang (2-TCW-900).<sup>271</sup> The Chamber also recalls that it heard evidence on the structure of the Au Kanseng Security Centre in Case 002/01 from Witness CHHAOM Se (2-TCW-840).<sup>272</sup> The Chamber therefore decides not to summons this witness.

107. Reserve Witness UM Keo (2-TCW-892)'s summary of proposed evidence suggests that he was a medic who was detained at the Au Kanseng Security Centre in September 1977 and

<sup>266</sup> Decision Withdrawing Witness 2-TCW-890 from the List of Witnesses, Civil Parties and Experts for Case 002/02 (confidential), E202/322/3, 9 December 2016; IR 87(3)(b).

<sup>267</sup> Annex III: OCP Updated Witness, Civil Party and Expert Summaries (confidential), E305/6.4, 9 May 2014, pp. 15-16.

<sup>268</sup> See Written Record of Interview of MAO Phat, E3/9326, 6 May 2008; Written Record of Interview of MAO Phat, E3/8748, 29 September 2010.

<sup>269</sup> T. 2 March 2016 (PHON Thol); T. 3 March 2016 (PHON Thol).

<sup>270</sup> T. 3 March 2016 (MOEURNG Chandy).

<sup>271</sup> T. 21 March 2016 (CHIN Kimthong, alias Chhang (2-TCW-900)); T. 22 March 2016 (CHIN Kimthong, alias Chhang (2-TCW-900)).

<sup>272</sup> See T. 11 January 2013 and 8 April 2013; see also Written Record of Interview of CHHAOM Se, E3/405, 31 October 2009.

later moved to Re-education School 809. His proposed testimony relates to the detention condition, torture, and types of prisoners detained at the Au Kanseng Security Centre.<sup>273</sup> Having reviewed the material on the Case File relevant to this witness<sup>274</sup> and noting the matters on which he is proposed to testify, the Chamber finds that UM Keo (2-TCW-892)'s testimony is likely to be substantially repetitive of the evidence heard on these matters in Case 002/02 from other witnesses, namely Witness PHON Thol (2-TCW-933),<sup>275</sup> Witness MOEURNG Chandy (2-TCW-967)<sup>276</sup> and Witness CHIN Kimthong, alias Chhang (2-TCW-900).<sup>277</sup> The Chamber therefore decides not to summons this witness.

#### 8.7.1.2. *Individuals proposed by the Lead Co-Lawyers*

108. The Lead Co-Lawyers proposed Civil Parties ROCHAM Blek (2-TCCP-302), NAI Seak (2-TCCP-266) and SEV Liem (2-TCCP-221) as relevant to the Au Kanseng Security Centre.

109. According to the summary of proposed evidence, the Civil Party ROCHAM Blek (2-TCCP-302), an ethnic Jarai, could testify on the detention conditions, interrogation methods and torture at Au Kanseng.<sup>278</sup> Civil Party NAI Seak (2-TCCP-266) is proposed to be heard on his experience as a doctor during the regime, as well as on the detention conditions, methods of interrogation and torture at Au Kanseng.<sup>279</sup> Having reviewed the material on the Case File relevant to these two Civil Parties, the Chamber notes that the information contained therein relating to their time in Au Kanseng is limited.<sup>280</sup> In any event, noting the matters on which they are proposed to testify, the Chamber finds that their in-court statements in relation to Au Kanseng are likely to be substantially repetitive of the evidence heard on these matters in Case 002/02 from other witnesses, namely Witness PHON Thol (2-TCW-933),<sup>281</sup> Witness

<sup>273</sup> Annex IIIA – OCP Updated Alternate Witness, Civil Party and Expert Summaries [Reserves] (confidential), E305/6.5, 9 May 2014, p. 5.

<sup>274</sup> See Written Record of Interview of UM Keo, E3/5173, 8 May 2008; Written Record of Interview of UM Kev (confidential), E3/8740, 28 September 2010.

<sup>275</sup> T. 2 March 2016 (PHON Thol); T. 3 March 2016 (PHON Thol).

<sup>276</sup> T. 3 March 2016 (MOEURNG Chandy).

<sup>277</sup> T. 21 March 2016 (CHIN Kimthong, alias Chhang (2-TCW-900)); T. 22 March 2016 (CHIN Kimthong, alias Chhang (2-TCW-900)).

<sup>278</sup> Confidential Annex III: Updated Summaries of Witnesses, Civil Party and Experts (no protective measures sought) – Civil Party Lead Co-Lawyers, E305/7.1.3, 9 May 2014, p. 27.

<sup>279</sup> Confidential Annex III: Updated Summaries of Witnesses, Civil Party and Experts (no protective measures sought) – Civil Party Lead Co-Lawyers, E305/7.1.3, 9 May 2014, pp. 17-18.

<sup>280</sup> Civil Party Application of ROCHAN Blek (09-VU-00041) (confidential), E3/4766, 22 November 2008; Supplementary Information, E3/4767, 23 June 2010; Civil Party Application of NAI Seak (09-VU-02027) (confidential), E3/6461, 17 October 2009; Supplementary Information of Civil Party Applicant NAI Seak (09-VU-02027) (confidential), E3/6461a, 30 June 2010.

<sup>281</sup> T. 2 March 2016 (PHON Thol); T. 3 March 2016 (PHON Thol).

MOEURNG Chandy (2-TCW-967)<sup>282</sup> and Witness CHIN Kimthong, alias Chhang (2-TCW-900).<sup>283</sup> The Chamber therefore declines to summons these individuals.

110. As regards Civil Party SEV Liem (2-TCCP-221), the Chamber notes that in addition to the detention conditions, interrogation and torture at Au Kanseng, this Civil Party is also proposed to testify on the alleged execution of hundreds prisoners on 6 January 1979 prior the arrival of the Vietnamese troops.<sup>284</sup> Having reviewed the material on the Case File relevant to this Civil Party<sup>285</sup> and noting the matters on which he is proposed to testify, the Chamber finds that his in-court statement on the detention conditions, interrogations and torture at the Au Kanseng Security Centre is likely to be substantially repetitive of the evidence heard on these matters in Case 002/02 from other witnesses, namely Witness PHON Thol (2-TCW-933),<sup>286</sup> Witness MOEURNG Chandy (2-TCW-967)<sup>287</sup> and Witness CHIN Kimthong, alias Chhang (2-TCW-900).<sup>288</sup> As regards the alleged executions of 6 January 1979, the Chamber notes that the Closing Order in Case 002 does not contain any reference to the killings of the prisoners still detained on that day or just prior to the arrival of Vietnamese troops. The only mass killing at the Au Kanseng Security Centre mentioned in the factual allegations in the Closing Order in Case 002 concerns the killing of numerous Jarai in one instance which apparently was the matter of telegrams exchanged with the Office 870, and about which the Chamber has heard evidence.<sup>289</sup> The Chamber therefore declines to summons this Civil Party.

### ***8.7.2. Phnom Kraol Security Centre***

111. The Chamber notes that among the six individuals proposed by the Co-Prosecutors in their Revised Lists, the Trial Chamber heard three, while the other three were reported as

<sup>282</sup> T. 3 March 2016 (MOEURNG Chandy).

<sup>283</sup> T. 21 March 2016 (CHIN Kimthong, alias Chhang (2-TCW-900)); T. 22 March 2016 (CHIN Kimthong, alias Chhang (2-TCW-900)).

<sup>284</sup> Confidential Annex III: Updated Summaries of Witnesses, Civil Party and Experts (no protective measures sought) – Civil Party Lead Co-Lawyers, E305/7.1.3, 9 May 2014, p. 34.

<sup>285</sup> See Civil Party Application of SEV Liem (08-VU-02339), E3/6004, 5 December 2008; Supplementary Information, E3/6004a, 24 April 2015.

<sup>286</sup> T. 2 March 2016 (PHON Thol); T. 3 March 2016 (PHON Thol).

<sup>287</sup> T. 3 March 2016 (MOEURNG Chandy).

<sup>288</sup> T. 21 March 2016 (CHIN Kimthong, alias Chhang (2-TCW-900)); T. 22 March 2016 (CHIN Kimthong, alias Chhang (2-TCW-900)).

<sup>289</sup> Closing Order, para. 621-624, 1494.

deceased.<sup>290</sup> The other Parties did not propose any witness or Civil Party for this security centre in their Revised Lists.<sup>291</sup>

### 8.7.3. S-21 Security Centre

#### 8.7.3.1. Individuals proposed by the Co-Prosecutors

112. The Co-Prosecutors proposed SAOM Met (2-TCW-902) and NHEP Hau (2-TCW-811), former guards at S-21, as reserve witnesses in relation to S-21 Security Centre trial topic.

113. Witness SAOM Met (2-TCW-902)'s summary of proposed testimony suggests that he could testify on his role in the special unit tasked with guarding 'important prisoners' under KAING Guek Eav alias Duch's supervision, the composition of prisoners at S-21, their detention conditions, methods of torture and disappearances.<sup>292</sup> The summary of proposed testimony suggests that Witness NHEP Hau (2-TCW-811) could testify about receiving instructions from Duch on CPK policy and on guards' duties, as well as about the detention conditions of the prisoners, interrogation, torture and the execution of the last prisoners upon the fall of Phnom Penh in January 1979.<sup>293</sup> Having reviewed the material on the Case File relevant to these proposed witnesses and noting the matters on which they are proposed to testify,<sup>294</sup> the Chamber finds that their testimonies on S-21 are likely to be substantially repetitive of and less relevant than the testimony of other witnesses heard by the Chamber on these matters in Case 002/02, including Witness PRAK Khorn (PRAK Khan) (2-TCW-931),<sup>295</sup> Witness HIM Huy (2-TCW-906),<sup>296</sup> Witness KAING Guek Eav, alias Duch (2-TCW-916),<sup>297</sup> Witness SUOS Thy (2-TCW-816),<sup>298</sup> Witness LACH Mean (2-TCW-898),<sup>299</sup> Witness

<sup>290</sup> See paras 95, 103-104.

<sup>291</sup> The Chamber heard two additional witnesses selected *proprio motu* by the Chamber and one additional Civil Party proposed by the Co-Prosecutors pursuant to Internal Rule 87(4). See para.95.

<sup>292</sup> Annex IIIA – OCP Updated Alternate Witness, Civil Party and Expert Summaries [Reserves] (confidential), E305/6.5, 9 May 2014, p. 2.

<sup>293</sup> Annex IIIA – OCP Updated Alternate Witness, Civil Party and Expert Summaries [Reserves] (confidential), E305/6.5, 9 May 2014, pp. 1-2.

<sup>294</sup> Written Record of Interview of SAOM Met (confidential), E3/7669, 28 November 2007; DC-Cam Statement of SAOM Met (confidential), E3/7520, 25 January 2003; Written Record of Interview of NHEP Hau (confidential), E3/7638, 19 October 2007.

<sup>295</sup> T. 27 April 2016 (PRAK Khorn (PRAK Khan) (2-TCW-931)).

<sup>296</sup> T. 5 May 2016 (HIM Huy).

<sup>297</sup> For example, T. 8 June 2016 (KAING Guek Eav); T. 9 June 2016 (KAING Guek Eav); T. 16 June 2016 (KAING Guek Eav); T. 21 June 2016 (KAING Guek Eav).

<sup>298</sup> T. 2 June 2016 (SUOS Thy); T. 3 June 2016 (SUOS Thy); T. 6 June 2016 (SUOS Thy); T. 7 June 2016 (SUOS Thy).

<sup>299</sup> T. 25 April 2016 (LACH Mean); T. 26 April 2016 (LACH Mean).

MAK Thim (MAKK Sithim) (2-TCW-808),<sup>300</sup> Civil Party CHUM Mey, alias Mei (2-TCCP-243)<sup>301</sup> and to the extent lesser extent, NOEM Oem (NIM Kimsreang, NIM Im) (2-TCW-854).<sup>302</sup> The Chamber therefore declines to summons these individuals.

8.7.3.2. *Individuals proposed by the Lead Co-Lawyers*

114. The Lead Co-Lawyers proposed Civil Parties CHIN Met (2-TCCP-242), PHOAK Khan (2-TCCP-291) and NAM Mon (2-TCCP-267), who all previously testified in Case 001, as potentially relevant to the S-21 Security Centre trial topic.

115. According to the summary of proposed evidence, Civil Party CHIN Met (2-TCCP-242) could describe her arrest and detention at S-21, where she was detained for 15 days before being sent to S-24, including the conditions of detention and interrogations.<sup>303</sup> Civil Party PHOAK Khan (2-TCCP-291)'s summary of proposed evidence suggests that the Civil Party is a direct victim of torture, detention and other crimes at S-21, as he and his wife were sent to S-21 to be tortured and interrogated. In October 1978, the Civil Party was allegedly tortured and interrogated by "Duch", and, while there was an order for his execution, he managed to survive.<sup>304</sup> Civil Party NAM Mon (2-TCCP-267)'s summary of proposed evidence suggests that the Civil Party, a former doctor in S-21, is a direct victim of detention, torture, rape and other crimes at S-21 Security Centre, and could describe the conditions and the functioning of S-21 as well as the detention and interrogation methods.<sup>305</sup>

116. Having reviewed CHIN Met's (2-TCCP-242) Civil Party Application in Case 002 and anew the transcript of her in-court statement during the Case 001 proceedings which has been admitted in Case 002,<sup>306</sup> the Chamber notes that her evidence mostly deals with her experience at S-24,<sup>307</sup> which does not fall within the scope of Case 002/02.<sup>308</sup> In this regard this Civil Party's proposed evidence is irrelevant. As regards the 15 days that the Civil Party allegedly spent at S-21 before being transferred to S-24, the Chamber notes that, she has

<sup>300</sup> T. 2 May 2016 (MAK Thim (MAKK Sithim)).

<sup>301</sup> T. 18 April 2016 (CHUM Mey, alias Mei).

<sup>302</sup> T. 15 September 2016 (NOEM Oem (NIM Kimsreang, NIM Im) (2-TCW-854)).

<sup>303</sup> Confidential Annex III: Updated Summaries of Witnesses, Civil Party and Experts (no protective measures sought) – Civil Party Lead Co-Lawyers, E305/7.1.3, 9 May 2014, p. 7.

<sup>304</sup> Confidential Annex III: Updated Summaries of Witnesses, Civil Party and Experts (no protective measures sought) – Civil Party Lead Co-Lawyers, E305/7.1.3, 9 May 2014, p. 25.

<sup>305</sup> Confidential Annex III: Updated Summaries of Witnesses, Civil Party and Experts (no protective measures sought) – Civil Party Lead Co-Lawyers, E305/7.1.3, 9 May 2014, p. 18.

<sup>306</sup> Transcript of Proceedings – "Duch" Trial – 8 July 2009, E3/7456.

<sup>307</sup> Civil Party Application of CHIN Mat (confidential), E3/4717, 15 December 2008.

<sup>308</sup> Decision on Additional Severance of Case 002 and Scope of Case 002/02, E301/9/1, 4 April 2014; Annex: List of Paragraphs and Portions of the Closing Order relevant to Case 002/02, E301/9/1.1, 4 April 2014.

already been heard extensively in previous proceedings on this matter and it is unlikely that hearing her again will assist clarifying whether she was indeed detained in S-21 rather than at the detention facility of Division 450.<sup>309</sup> The Chamber therefore declines to summons this Civil Party.

117. Having reviewed the available evidence admitted in Case 002 concerning PHOAK Khan (2-TCCP-291), in particular his Civil Party application,<sup>310</sup> and the transcript of his in-court statement during the Case 001 proceedings,<sup>311</sup> the Chamber notes that the description provided of his place of detention does not match that of S-21 and, that, contrary to standard S-21 procedures, the Civil Party stated that he was neither photographed nor compelled to provide a biography. In addition, the Civil Party's account of his escape from the place of execution and the geographical indicia provided appear to be inconsistent with Choeung Ek, where he claims to have been left for dead.<sup>312</sup> The Chamber also observes that great discrepancies were noted during Case 001 in relation to the Civil Party's account of his escape from execution.<sup>313</sup> The Trial Chamber is not convinced that a further appearance in the current case will assist to clarify these matters and therefore declines to summons this Civil Party.

118. As regards the Civil Party NAM Mon (2-TCCP-267), the Chamber finds that there were inconsistencies between her in-court statement during the Case 001 proceedings, her Civil Party Application and other related pieces of evidence admitted in Case 002.<sup>314</sup> Concerning the allegation of rape she suffered at S-21, the Chamber has clarified on several occasions,

<sup>309</sup> Transcript of Proceedings – “Duch” Trial – 8 July 2009, E3/7456, pp. 97-98.

<sup>310</sup> Civil Party Application of Mr. PHOAK Khan (confidential), E3/5891, 12 May 2009.

<sup>311</sup> Transcript of Proceedings – “Duch” Trial – 7 July 2009, E3/7455.

<sup>312</sup> *KAING Guek Eav* Trial Judgement, para. 647. The SCC subsequently found that the Civil Party was an indirect victim due to the loss of his wife at S-21 and reversed the Trial Chamber's decision in this regard. The SCC however found that there was “no ground to intervene with the Trial Chamber's assessment of his evidence in [Case 001]” and concluded that the Civil Party did not demonstrate his direct victim status, *KAING Guek Eav* Appeal Judgement, paras 597-598.

<sup>313</sup> See Civil Party Application of PHOAK Khan (confidential), E3/5891, 18 May 2009, where the Civil Party states that when Duch started executing people one evening in November 1978, the Civil Party was at the end of the queue and managed to hide in a nearby pond, without drawing anyone's attention, then escape to Prey Khmer where a person named Chu hid him until 7 January 1979. During the *KAING Guek Eav* Trial instead, the Civil Party stated that his attempted execution was on 6 January 1979, that he was the third in line and made to kneel on the edge of the pit where he received two blows that caused him to fall into the pit unconscious. Other people were killed and fell on him and he was left for dead. He woke up after several hours and managed to escape, Transcript of Proceedings – “Duch” Trial – 7 July 2009, E3/7455, pp. 67-68, 79-80.

<sup>314</sup> Civil Party Application of NAM Mon (confidential), E3/5890, 23 November 2007; Annex 3: Description of Crime by NAM Mon (confidential), E3/6947, 9 July 2008; Summary of Complaint of NAM Mon, 23 February 2008, D230/2/4.2.133b; Letter to the President of the Trial Chamber, D348.1.2, 26 August 2009; Authority 10: Supplementary Information Form of Civil Party NAM Mon (09-VU-02078), E3/5890c, 17 April 2014 (confidential); Transcript of Proceedings – “Duch” Trial – 9 July 2009, E3/7457; Transcript of Proceedings – “Duch” Trial – 13 July 2009, E3/7458; Written Record of Interview of Civil party NAM Mon, E3/5602, 17 March 2010.

and more recently on 30 August 2016, that the scope of the trial in Case 002/02 does not encompass factual allegations of rape relating to incidents which occurred outside the context of forced marriage and in particular in security centres.<sup>315</sup> The immediate appeal against this latest Trial Chamber decision was dismissed by the Supreme Court Chamber.<sup>316</sup> Insofar as it concerns allegations of rape she suffered while detained at S-21, NAM Mon (2-TCCP-267)'s proposed evidence is therefore of limited relevance.

119. The Chamber further considers that the remaining proposed evidence of NAM Mon (2-TCCP-267) concerning the conditions of detention she experienced at S-21 is likely to be substantially repetitive of and less relevant than the testimony of other witnesses heard by the Chamber on these matters in Case 002/02, including Witness PRAK Khorn (PRAK Khan) (2-TCW-931),<sup>317</sup> Witness HIM Huy (2-TCW-906),<sup>318</sup> Witness KAING Guek Eav, alias Duch (2-TCW-916),<sup>319</sup> Witness SUOS Thy (2-TCW-816),<sup>320</sup> Witness LACH Mean (2-TCW-898),<sup>321</sup> Witness MAK Thim (MAKK Sithim) (2-TCW-808),<sup>322</sup> Civil Party CHUM Mey, alias Mei (2-TCCP-243)<sup>323</sup> and to the extent lesser extent, NOEM Oem (NIM Kimsreang, NIM Im) (2-TCW-854).<sup>324</sup> The Chamber therefore declines to summons this Civil Party.

#### 8.7.3.3. *Individuals Proposed by the NUON Chea Defence*

##### 1 S-21 Security Guards

120. The NUON Chea Defence proposed the following S-21 security guards who in its view may assist in establishing facts and verifying the reliability and accuracy of the other testimony concerning this crime site: Witness CHEAM Sour (2-TCW-826), Witness CHUUN Phal (2-TCW-872), Witness KHIEU Ches (2-TCW-907), Witness KOK Sros (2-TCW-941),

<sup>315</sup> Decision on Lead Co-Lawyers' Rule 92 Submission on the Confirmation of the Scope of Case 002/02 Concerning the Charges of Rape Outside the Context of Forced Marriage, E306/7/3, 30 August 2016, paras 15-19. *See also*, Trial Chamber Memorandum entitled "Further Information Regarding Remaining Preliminary Objections", E306, 25 April 2014, para. 3; and Decision on KHIEU Samphan's Request for Confrontation among Witness SREY Than and Civil Parties SAY Sen and SAUT Saing and Disclosure of Audio Recordings of Interviews of SAY Sen, E348/4, 12 June 2015, para. 11.

<sup>316</sup> Decision on Civil Parties' Immediate Appeal against the Trial Chamber's Decision on the Scope of Case 002/02 in Relation to the Charges of Rape (SCC), E306/7/3/1/4, 12 January 2017.

<sup>317</sup> T. 27 April 2016 (PRAK Khorn (PRAK Khan) (2-TCW-931)).

<sup>318</sup> T. 5 May 2016 (HIM Huy).

<sup>319</sup> For example, T. 8 June 2016 (KAING Guek Eav); T. 9 June 2016 (KAING Guek Eav); T. 16 June 2016 (KAING Guek Eav); T. 21 June 2016 (KAING Guek Eav).

<sup>320</sup> T. 2 June 2016 (SUOS Thy); T. 3 June 2016 (SUOS Thy); T. 6 June 2016 (SUOS Thy); T. 7 June 2016 (SUOS Thy).

<sup>321</sup> T. 25 April 2016 (LACH Mean); T. 26 April 2016 (LACH Mean).

<sup>322</sup> T. 2 May 2016 (MAK Thim (MAKK Sithim)).

<sup>323</sup> T. 18 April 2016 (CHUM Mey, alias Mei).

<sup>324</sup> T. 15 September 2016 (NOEM Oem (NIM Kimsreang, NIM Im) (2-TCW-854)).

Witness SAOM Met (2-TCW-902) and Witness PESS Matt aka PES Math alias LY Try (2-TCW-824).<sup>325</sup> The Chamber recalls that SAOM Met (2-TCW-902) was also proposed by the Co-Prosecutors as a reserve witness and is addressed above.<sup>326</sup>

121. The summary of proposed testimony suggests that Witness CHEAM Sour (2-TCW-826), who previously testified in Case 001, could describe his experience as a guard at S-21 and testify on the conditions of detention, the structure of S-21 as well as on the allegations of torture and murder.<sup>327</sup> According to the summary of proposed testimony of Witness CHUUN Phal (2-TCW-872), who also testified in Case 001, the proposed witness could testify on the general detention conditions in S-21 and allegations of rape and executions.<sup>328</sup> Witness KHIEU Ches (2-TCW-907)'s summary of proposed testimony suggests he could describe his experience as an S-21 guard and the arrests of prisoners.<sup>329</sup> Witnesses KOK Sros (2-TCW-941) and SAOM Met (2-TCW-902), both of whom testified in Case 001, and PESS Matt aka PES Math alias LY Try (2-TCW-824) are proposed to describe their experience as S-21 guards.<sup>330</sup>

122. The Chamber has reviewed the material on the Case File relevant to these individuals taking into account the matters on which they are proposed to testify.<sup>331</sup> According to this material, Witness CHEAM Sour (2-TCW-826) was a guard outside the perimeter of the compound of S-21. He allegedly did not participate in the arrests or transfer of prisoners, did not hear of people being interrogated and tortured, but may have witnessed the killing of a foreign person.<sup>332</sup> Witnesses CHUUN Phal (2-TCW-872) and KOK Sros (2-TCW-941) recount their experience as S-21 guards, describe the detention conditions, the arrival of

<sup>325</sup> Confidential Annex B: Updated Summaries of Witnesses, Civil Parties and Experts (no protective measures sought)- Nuon Chea Defence Team, E305/4.2, 8 May 2014, pp. 2, 4, 8, 13-14, 16.

<sup>326</sup> See para. 113.

<sup>327</sup> Confidential Annex B: Updated Summaries of Witnesses, Civil Parties and Experts (no protective measures sought)- Nuon Chea Defence Team, E305/4.2, 8 May 2014, p. 2.

<sup>328</sup> Confidential Annex B: Updated Summaries of Witnesses, Civil Parties and Experts (no protective measures sought)- Nuon Chea Defence Team, E305/4.2, 8 May 2014, p. 4.

<sup>329</sup> Confidential Annex B: Updated Summaries of Witnesses, Civil Parties and Experts (no protective measures sought)- Nuon Chea Defence Team, E305/4.2, 8 May 2014, p. 8.

<sup>330</sup> Confidential Annex B: Updated Summaries of Witnesses, Civil Parties and Experts (no protective measures sought)- Nuon Chea Defence Team, E305/4.2, 8 May 2014, pp. 8, 13-14.

<sup>331</sup> Transcript of Proceedings – “Duch” Trial – 5 August 2009 (CHEAM Sour), E3/7469; Annex 00023: POW/MIA Interview of CHEAM Soeur (confidential), E3/7836, 6 October 2001; Transcript of Proceedings – “Duch” Trial – 10 August 2009 (CHUUN Phal), E3/7470; Magazine of DC-CAM Searching for Truth Number 31 July 2002 “Criticism and Self-Criticism”, ERN (En) 00081255; Transcript of Proceedings – “Duch” Trial ‘ 22 July 2009 (KOK Sros), E3/7464; Transcript of Proceedings – “Duch” Trial – 27 July 2009 (KOK Sros), E3/7465.

<sup>332</sup> Transcript of Proceedings – “Duch” Trial – 5 August 2009 (CHEAM Sour), E3/7469. The Trial Chamber in Case 001 found that although there were some allegations that some foreigners were burnt alive, it was not satisfied that this had been proven beyond reasonable doubt, KAING Guek Eav Trial Judgement, para. 209.

prisoners and noticing signs of torture on the prisoners.<sup>333</sup> While Witness CHUUN Phal (2-TCW-872) discusses being assigned on one occasion to bury bodies at Choeung Ek, the Chamber notes that his evidence relating to rapes in S-21 is limited to the fact that he heard “people talking about it”.<sup>334</sup> Further this matter is of limited relevance given that the scope of the trial in Case 002/02 doesn’t encompass the factual allegations of rape relating to incidents which occurred outside the context of forced marriage. According to the material relevant to KHIEU Ches (2-TCW-907), the witness was about 13-14 years old when he became a guard on the upper floor at S-21, where the light prisoners were held, and remained in that position for about three months. He describes the detention condition of the prisoners and that prisoners had bruises and injuries on their bodies when they returned from interrogations.<sup>335</sup> Witness PESS Matt aka PES Math alias LY Try (2-TCW-824)’s statement discusses a training session at the political school and, briefly, his experience as a guard.<sup>336</sup> The Chamber finds that the testimonies of these proposed witnesses are likely to be substantially repetitive of and less relevant than the evidence heard by the Chamber on these matters in Case 002/02 from other individuals, including Witness PRAK Khorn (PRAK Khan) (2-TCW-931),<sup>337</sup> Witness HIM Huy (2-TCW-906),<sup>338</sup> Witness TAY Teng (2-TCW-865),<sup>339</sup> Witness KAING Guek Eav, alias Duch (2-TCW-916),<sup>340</sup> Witness SUOS Thy (2-TCW-816),<sup>341</sup> Civil Party CHUM Mey, alias Mei (2-TCCP-243)<sup>342</sup> and to a lesser extent, Witness NOEM Oem (NIM Kimsreang, NIM Im) (2-TCW-854).<sup>343</sup> The Chamber therefore declines to summons these witnesses.

## 2 S-21 Detainees

<sup>333</sup> Transcript of Proceedings – “Duch” Trial – 10 August 2009, E3/7470; Transcript of Proceedings – “Duch” Trial – 22 July 2009 (KOK Sros), E3/7464; Transcript of Proceedings – “Duch” Trial – 27 July 2009 (KOK Sros), E3/7465.

<sup>334</sup> Transcript of Proceedings – “Duch” Trial – 10 August 2009, E3/7470, ERN (En) 00361888-00361889.

<sup>335</sup> Written Record of Interview of KHIEU Chas (confidential), E3/7668, 28 November 2007; Annex 00021: Debriefing of KHIEU Peou alias KHIEU Ches, Former Guard at Tuol Sleng Prison (confidential), E3/7834, 28 September 2011; Magazine of DC-CAM Searching for truth Number 31 July 2002 “Criticism and Self-Criticism”, E3/1918, ERN (En) 00081255.

<sup>336</sup> Written Record of Interview of PES Math, E3/352, 18 March 2008.

<sup>337</sup> T. 27 April 2016 (PRAK Khorn (PRAK Khan) (2-TCW-931)).

<sup>338</sup> T. 5 May 2016 (HIM Huy).

<sup>339</sup> T. 21 April 2016 (TAY Teng).

<sup>340</sup> For example, T. 8 June 2016 (KAING Guek Eav); T. 9 June 2016 (KAING Guek Eav); T. 14 June 2016 (KAING Guek Eav); T. 15 June 2016 (KAING Guek Eav); T. 16 June 2016 (KAING Guek Eav); T. 21 June 2016 (KAING Guek Eav); T. 22 June 2016, (KAING Guek Eav).

<sup>341</sup> T. 2 June 2016 (SUOS Thy); T. 3 June 2016 (SUOS Thy); T. 6 June 2016 (SUOS Thy); T. 7 June 2016 (SUOS Thy).

<sup>342</sup> T. 18 April 2016 (CHUM Mey, alias Mei).

<sup>343</sup> T. 15 September 2016 (NOEM Oem (NIM Kimsreang, NIM Im) (2-TCW-854)).

123. The NUON Chea Defence proposed Civil Party CHIN Met (2-TCCP-242) and Civil Party CHUM Neou (2-TCCP-246), who were heard in Case 001, to describe their experience as S-21 detainees.<sup>344</sup> The Chamber recalls that Civil Party CHIN Met (2-TCCP-242) was also proposed by the Lead Co-Lawyers and that reasons for not hearing this Civil Party were given above.<sup>345</sup> As regards Civil Party CHUM Neou (2-TCCP-246), the Chamber notes that while she lost her husband at S-21, the Civil Party does not claim to have been detained at S-21 but was sent to work at S-24 where she gave birth to a child that died shortly after.<sup>346</sup> As noted above, allegations relevant to S-24 do not fall within the scope of Case 002/02. The Trial Chamber is therefore not satisfied that Civil Party CHUM Neou (2-TCCP-246)'s proposed evidence is relevant and declines to summons her.

### 3 Authenticity and Chain of Custody Witnesses

124. The NUON Chea Defence proposed the following witnesses who would testify on the authenticity and chain of custody of documents, which may assist in establishing the facts relating to S-21 and verifying the reliability and accuracy of other testimonies concerning this crime site: Witness YIN Nean (2-TCW-963), Witness CHEY Sopheara (2-TCW-814) and Witness CHHEM Neang (2-TCW-899).<sup>347</sup> Proposed Witness CHHANG Youk (2-TCW-870) is addressed in the Tram Kak and Kraing Ta Chan Security Centre trial topic.<sup>348</sup>

125. Witness YIN Nean (2-TCW-963) is a senior archivist and the director of the Tuol Sleng Genocide Museum, Witness CHEY Sopheara (2-TCW-814) worked in the archives of the Tuol Sleng Genocide Museum from 1979 until recently, and Witness CHHEM Neang (2-TCW-899) is the director of the National Archives of Cambodia. The summaries of their proposed testimonies suggest that they can describe the contents, authenticate and explain the chain of custody of the documents contained at the Tuol Sleng Genocide Museum, including

<sup>344</sup> Confidential Annex B: Updated Summaries of Witnesses, Civil Parties and Experts (no protective measures sought)- Nuon Chea Defence Team, E305/4.2, 8 May 2014, pp. 4, 16.

<sup>345</sup> See above, para. 116.

<sup>346</sup> Civil Party Application of CHUN Noeu, E3/4670, 27 March 2008; see also, *KAING Guek Eav* Trial Judgement, paras 645-646, fn. 1080.

<sup>347</sup> Confidential Annex B – New Witness, Civil Party and Expert Summaries for Case 002/02 – NUON Chea Defence Team, E307/4.3, 24 July 2014, pp. 2-4. See also, NUON Chea's Fourth Witness Request for the Case 002/02 Security Centre and "Internal Purges" Segment (S-21 Operations and Documentary Evidence) (confidential), E412, 7 June 2016.

<sup>348</sup> See above, para. 39.

S-21 photos and confessions, and at the National Archives of Cambodia with a view to assisting the Chamber in establishing facts relevant to Case 002/02.<sup>349</sup>

126. The Chamber recalls that there is no procedural requirement before the ECCC to call witnesses with personal knowledge to authenticate documents on the Case File, including by establishing their chain of custody. Nonetheless, testimony as to the chain of custody and provenance of documents can assist the Chamber, amongst other matter, in establishing the authenticity of documents, specifically where it is doubtful.<sup>350</sup> The Chamber also notes that the NUON Chea Defence does not identify specific documents, photos or confessions, the authenticity of which is allegedly doubtful, but rather refers to general categories of documents identified as pertaining to S-21, S-21 photos and S-21 confessions without providing convincing reasons why these documents would not be authentic.<sup>351</sup> The Chamber notes that throughout the Security Centre and Internal Purges trial topic, S-21 photos, confessions and other documentation relevant to S-21 have been put to witnesses who, because of their position at S-21, have direct knowledge of these documents, including as regards their creation, and have been able to authenticate such documents. These witnesses include Witness KAING Guek Eav, alias Duch (2-TCW-916),<sup>352</sup> Witness HIM Huy (2-TCW-906),<sup>353</sup> Witness SUOS Thy (2-TCW-816),<sup>354</sup> and, as regards the S-21 photos specifically, Witness NOEM Oem (NIM Kimsreang, NIM Im) (2-TCW-854).<sup>355</sup> The Chamber therefore finds that Witness YIN Nean (2-TCW-963), Witness CHEY Sopheara (2-TCW-814) and

<sup>349</sup> Confidential Annex B: Updated Summaries of Witnesses, Civil Parties and Experts (no protective measures sought)- Nuon Chea Defence Team, E305/4.2, 8 May 2014, pp. 2-4.

<sup>350</sup> See Reasons following Decision on the NUON Chea Defence's Consolidated Rule 87(4) Request to hear Additional Witnesses for the First Case 002/02 Trial Segment on the Tram Kak Cooperatives and Kraing Ta Chan Security Centre and Decision on SANN Lorn (2-TCW-1007), SOU Phirin (2-TCW-1027) and IV Sarik (2-TCW-1026) (E346/2), E346/3, 31 March 2016, para. 59; Decision on Objections to Documents Proposed to be put Before the Chamber on the Co-Prosecutors' Annexes A1-A5 and to Documents cited in Paragraphs of the Closing Order Relevant to the First Two Trial Segments of Case 002/01, E185, 9 April 2012. See also, Appeal Judgement, F36, 23 November 2016, paras 371-372, 376.

<sup>351</sup> Confidential Annex B: Updated Summaries of Witnesses, Civil Parties and Experts (no protective measures sought)- Nuon Chea Defence Team, E305/4.2, 8 May 2014, pp. 2-4; Confidential Annex B – New Witness, Civil Party and Expert Summaries for Case 002/02 – NUON Chea Defence Team, E307/4.3, 24 July 2014, p. 3; see also, NUON Chea's Fourth Witness Request for the Case 002/02 Security Centre and "Internal Purges" Segment (S-21 Operations and Documentary Evidence) (confidential), E412, 7 June 2016.

<sup>352</sup> See e.g., T. 15 June 2016 (KAING Guek Eav, alias Duch); T. 21 June 2016 (KAING Guek Eav, alias Duch).

<sup>353</sup> T. 5 May 2016 (HIM Huy).

<sup>354</sup> T. 6 June 2016 (SUOS Thy).

<sup>355</sup> T. 15-16 September 2016 (NOEM Oem (NIM Kimsreang, NIM Im)).

Witness CHHEM Neang (2-TCW-899)<sup>356</sup> are of lesser relevance than witnesses selected and heard by the Trial Chamber on these matters and therefore declines to summons them.

4 Prof. Walter HEYNOWSKI (2-TCW-946)

127. The NUON Chea defence also proposed Prof. Walter HEYNOWSKI (2-TCW-946) as he could describe his experience filming three documentaries focusing on the DK period, including “*Die Angkar*”, filmed in 1981, which includes extensive footage of S-21 and documentation allegedly discovered there. In addition, according to the summary of proposed evidence, the witness may assist in authenticating and ascertaining the chain of custody of documents shown in the documentary pertaining to S-21, establishing facts related to S-21, verifying reliability and accuracy of other testimony concerning S-21, as well as establishing facts concerning CPK history and structure and the armed conflict with Vietnam.<sup>357</sup>

128. In May and July 2014, the NUON Chea Defence requested to expedite the hearing of Prof. Walter HEYNOWSKI (2-TCW-946), if necessary via video-link, due to the advanced age of the witness.<sup>358</sup> On 7 June 2016, the NUON Chea defence, who never provided the contact details of Prof. Walter HEYNOWSKI (2-TCW-946), renewed its request, particularly with regards to original documentation found at S-21 a few months after the fall of the regime.<sup>359</sup> Meanwhile the Chamber located and contacted this witness in Berlin and on 21 September 2016, the Chamber indicated that in lieu of hearing the testimony of Prof. HEYNOWSKI (2-TCW-946), it had requested information from him regarding certain documents.<sup>360</sup> On 2 December 2016, the Chamber received from Prof. HEYNOWSKI (2-TCW-946) one orange S-21 logbook, with about 246 pages containing entries, and several loose pages in German and Khmer which were badly deteriorated.<sup>361</sup> On 16 December 2016, the Chamber informed the Parties that it was still considering whether to hear Prof.

<sup>356</sup> Insofar as Witness CHHEM Neang (2-TCW-899) is also proposed in relation to the Regulation of Marriage trial topic, the Chamber finds that his testimony in that regard is likely to be substantially repetitive of evidence heard on those matters in Case 002/02, *see below*, paras 148-158.

<sup>357</sup> Confidential Annex B: Updated Summaries of Witnesses, Civil Parties and Experts (no protective measures sought)- Nuon Chea Defence Team, E305/4.2, 8 May 2014, p. 6.

<sup>358</sup> Confidential Annex B: Updated Summaries of Witnesses, Civil Parties and Experts (no protective measures sought)- Nuon Chea Defence Team, E305/4.2, 8 May 2014, p. 6; T. 30 July 2014, p. 46.

<sup>359</sup> NUON Chea’s Fourth Witness Request for the Case 002/02 Security Centres and “Internal Purges” Segment (S-21 Operations and Documentary Evidence) (confidential), E412, 7 June 2016.

<sup>360</sup> Decision on NUON Chea Defence Requests to Hear Additional Witnesses Pursuant to Internal Rule 87(4) (E391, E392, E395, E412 and E426) (confidential), E443, 21 September 2016.

<sup>361</sup> Documents Obtained from Professor Walter Heynowski (interim confidential), E443/2, 7 December 2016. *See also*, Order to Initiate Investigation to Examine Documents Received from Prof. Walter Heynowski (confidential), E443/5, 28 December 2016; Order Closing Investigation Related to Documents Received from Prof. Walter Heynowski, E443/9, 26 January 2017.

HEYNOWSKI (2-TCW-946) as a witness.<sup>362</sup> On 27 December, the Chamber admitted into evidence the orange S-21 logbook.<sup>363</sup> In the same decision, the Chamber denied the KHIEU Samphan Defence's request to re-call SUOS Thy (2-TCW-816) and KAING Guek Eav, alias Duch (2-TCW-916) to testify on the content of the orange S-21 logbook on the basis that both witnesses had been shown excerpts of the documentary "*Die Angkar*" where pictures of the orange S-21 logbook are displayed and that while SUOS Thy (2-TCW-816) recognised the logbook and testified that he was responsible for keeping it, KAING Guek Eav, alias Duch (2-TCW-916) stated that he never had access to such type of logbook at S-21 as he was focused on confessions.<sup>364</sup> On 26 December 2016, the Chamber also received from Prof. HEYNOWSKI (2-TCW-946) a large box full of photographs from S-21,<sup>365</sup> which were admitted into evidence on 12 January 2017.<sup>366</sup> On 11 January 2017, the Chamber announced the close of the evidentiary hearings and informed the Parties that it might re-open the proceedings to hear Prof. HEYNOWSKI (2-TCW-946) via video link, if this could be arranged to take place no later than 31 January 2017. On 18 January 2017, however, the Chamber informed the Parties it would not re-open the proceedings to hear Prof. HEYNOWSKI (2-TCW-946) and that full reasons for the decision would be provided in due course and are as follows.<sup>367</sup>

129. At the outset, the Chamber notes that the hearing of Prof. HEYNOWSKI (2-TCW-946) presented challenges of a logistical nature. In light of his advanced age (the witness is 89 years old), which would prevent him to travel to Phnom Penh, the Chamber contacted the authorities of the Federal Republic of Germany to explore the possibility of hearing Prof. HEYNOWSKI (2-TCW-946) via video link from Berlin. The German authorities first informally indicated that on average the procedure would take 2 to 3 months and subsequently clarified that the hearing would have to take place on the premises of a District Court, under the supervision of the German judicial authorities and with the application of the German law

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<sup>362</sup> Email from the Senior Legal Officer, 16 December 2016.

<sup>363</sup> Decision on Request to Admit Logbook and to Recall two Witnesses regarding S-21 (confidential), E443/3, 27 December 2016, paras 2-3; S-21 Prisoner List Daily Report, E3/10770 ("orange S-21 logbook").

<sup>364</sup> Decision on Request to Admit Logbook and to Recall two Witnesses regarding S-21 (confidential), E443/3, 27 December 2016, para. 4.

<sup>365</sup> Further Documents Obtained from Professor Walter Heynowski, E443/2/1, 5 January 2017.

<sup>366</sup> Decision on the Requests by the Co-Prosecutors and the KHIEU Samphan Defence to Admit Photographs related to the Documentation provided by Professor Walter Heynowski (2-TCW-946), E443/6, 12 January 2017; for the photographs see E3/10785, E3/10786, E3/10787, E3/10788, E3/10789.

<sup>367</sup> Notice of Trial Chamber's Decision not to Hear 2-TCW-946 (Walter HEYNOWSKI), E443/7, 18 January 2017.

during the hearing.<sup>368</sup> As a consequence, the hearing would require the participation of a German judge who would communicate the questions of the judges and the Parties from the ECCC to the witness.<sup>369</sup> In the circumstances, the provision of interpretation into German was also necessary. This proved to be particularly challenging, as it would have required either consecutive interpretation by an English-German interpreter on the premises of the District Court in Berlin, with a higher risk of misinterpretation, or, for simultaneous interpretation, the construction of an additional interpreter's booth on the premises of the ECCC, which would not have been possible within a reasonable time.<sup>370</sup>

130. As regards the possibility for Prof. HEYNOWSKI (2-TCW-946) to authenticate and ascertain the chain of custody of S-21 documents, the Chamber notes that SUOS Thy (2-TCW-816) recognised the orange S-21 logbook shown in the documentary “*Die Angkar*” and testified that he was responsible for maintaining it.<sup>371</sup> The Chamber also notes that orange S-21 logbook (E3/10770) consists of 246 sheets providing daily records of persons in and out of S-21 over a period of eight months in 1977 and recalls that dozens of other such log sheets for 1977 from S-21 were on the Case File before the orange S-21 logbook was obtained (see E1/438.5), and that some of these, which are mere duplicates of the sheets contained in the orange S-21 logbook, were put to both SUOS Thy (2-TCW-816) and KAING Guek Eav, alias Duch (2-TCW-916) during their testimonies.<sup>372</sup> Finally, as regards the possible evidence in relation to “facts concerning CPK history and structure and the armed conflict with Vietnam”, the Defence did not demonstrate the basis for the assumption that the witness had any relevant knowledge about this. Furthermore, the Chamber notes it has heard other witnesses, Civil Parties and experts on those matters and finds that Prof. HEYNOWSKI (2-TCW-946)'s testimony on these matters is likely to be substantially repetitive of the evidence before the Chamber.<sup>373</sup> The Chamber therefore declines to summons him.

<sup>368</sup> See Request for Information and Assistance Regarding Remote Testimony, E443/7/1, 14 December 2016; Note Verbale from the Embassy of the Federal Republic of Germany in Phnom Penh, E443/8/1, 10 January 2017.

<sup>369</sup> See Note Verbale from the Embassy of the Federal Republic of Germany in Phnom Penh, E443/8/1, 10 January 2017.

<sup>370</sup> See IR 87(3)(b).

<sup>371</sup> T. 6 June 2016 (SUOS Thy), pp. 73-78.

<sup>372</sup> T. 6 June 2016 (SUOS Thy); T. 15 June 2016 (KAING Guek Eav, alias Duch); Decision on Request to Admit Logbook and to Recall two Witnesses regarding S-21 (confidential), E443/3, 27 December 2016. The OCIJ analyst HIN Sotheany, recognized the orange S-21 logbook as a master list of prisoners, see T. 9 January 2017 (HIN Sotheany), pp. 80-81.

<sup>373</sup> See paras 162-169. See also, for example the testimonies of Witnesses KHOEM Boeun, alias Yeay Boeun (2-TCW-979), PECH Chim, alias TA Chim (2-TCW-809), Richard Beebe DUDMAN (2-TCW-923), SANN Lorn (2-TCW-1007) and expert Elizabeth BECKER (2-TCE-97).

#### 8.7.4. *Internal Purges*

##### 8.7.4.1. *Individuals Proposed by the Co-Prosecutors*

131. The Chamber recalls that Witnesses THUCH Sithan (2-TCW-842) and NHOEK LY (2-TCW-920), who were proposed for the Internal Purges trial topic, were heard during the trial topic on the Role of the Accused.<sup>374</sup>

132. The summary of Witness KAO Son (2-TCW-940)'s proposed evidence suggests that the witness, who was the chief of a company within military Division 920, could testify that in 1977, Division 920 cadres were accused of treason and that he was ordered by the commanders of Division 801 in Ratanakiri province to arrest his former commanders in Division 920.<sup>375</sup>

133. The Chamber notes that according to the witness's statement to DC-Cam, from 1977-1978 onward soldiers and cadres within the witness's Division started being accused of being traitors, were arrested and questioned. Witness KAO Son (2-TCW-940) also states that the former heads of Division 920, Ta Chhin and Ta Say, were arrested "later on" and that new leaders from Division 801 were introduced, indicating that Ta San became chief of Division 920.<sup>376</sup> Having reviewed the material on the Case File relevant to this witness and noting the matters on which they are proposed to testify, the Chamber considers that his testimony is likely to be substantially repetitive of the evidence heard on these matters in Case 002/02 from other witnesses, including CHIN Kimthong, alias Chhang (2-TCW-900),<sup>377</sup> KAING Guek Eav, alias Duch (2-TCW-916),<sup>378</sup> and Civil Party PHAN Van, alias KHAM Phan (2-TCW-1011).<sup>379</sup> The Chamber will therefore not summons this witness.

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<sup>374</sup> See para. 172.

<sup>375</sup> Annex III: OCP Updated Witness, Civil Party and Expert Summaries (confidential), E305/6.4, 9 May 2014, p. 4.

<sup>376</sup> Statement of KAO Son (DC-Cam) (confidential), E3/9042, 19 March 2011, pp. 26-29, 30-31, 33.

<sup>377</sup> T. 22 March 2016 (CHIN Kimthong).

<sup>378</sup> T. 15 June 2016 (KAING Guek Eav).

<sup>379</sup> T. 7 April 2016 (PHAN Van); Written Record of Interview of PHAN Van alias KHAM Phan, E3/58, 21 November 2008, ERN (En) 00250088-00250089.

8.7.4.2. *Individuals proposed by the Lead Co-Lawyers*

134. The Lead Co-Lawyers proposed Civil Parties LOEM/LIM Korn (2-TCCP-277), HEL Oun (2-TCCP-249) and PIN Phorn (2-TCCP-299) as relevant to the Internal Purges in the East Zone.<sup>380</sup>

135. According to the summary of proposed evidence, LOEM/LIM Korn (2-TCCP-277) could describe the internal purges in the East Zone and the purges upon arrival in Pursat following the forced movement of population.<sup>381</sup> Civil Parties HEL Oun (2-TCCP-249)'s and PIN Phorn (2-TCCP-299)'s summaries of proposed evidence indicate that they could describe the purges in the East Zone and their experience as direct victims of the purges.<sup>382</sup> Having reviewed the material on the Case File relevant to these Civil Parties and noting the matters on which they are proposed to testify, the Chamber finds that the in-court statement of Civil Party PIN Phorn (2-TCCP-299)<sup>383</sup> is likely to be substantially repetitive of the evidence heard on these matters in Case 002/02 from other witnesses and Civil Parties, including, Civil Party CHHUN Samorn (2-TCCP-236),<sup>384</sup> Witness KEO Kin (2-TCW-910)<sup>385</sup> and Civil Party MY Savoeun (MEY Savoeun) (2-TCCP-1040).<sup>386</sup> As regards the proposed evidence of Civil Parties HEL Oun (2-TCCP-249) and LOEM/LIM Korn (2-TCCP-277), the Chamber notes that their evidence relates mostly to the movement of population phase 3,<sup>387</sup> which does not fall within the scope of Case 002/02.<sup>388</sup> The Chamber therefore decides not to summons these Civil Parties.

<sup>380</sup> Confidential Annex III: Updated Summaries of Witnesses, Civil Party and Experts (no protective measures sought) – Civil Party Lead Co-Lawyers, E305/7.1.3, 9 May 2014, pp. 9-10, 15-16, 25.

<sup>381</sup> Confidential Annex III: Updated Summaries of Witnesses, Civil Party and Experts (no protective measures sought) – Civil Party Lead Co-Lawyers, E305/7.1.3, 9 May 2014, pp. 15-16.

<sup>382</sup> Confidential Annex III: Updated Summaries of Witnesses, Civil Party and Experts (no protective measures sought) – Civil Party Lead Co-Lawyers, E305/7.1.3, 9 May 2014, pp. 9-10, 25.

<sup>383</sup> Civil Party Application of PIN Phorn (09-VU-01850) (confidential), E3/6603, 9 July 2009; Authority 12: Supplementary Information Form of Civil Party PIN Phorn (09-VU-01850) (confidential), E3/6603a, 3 July 2014.

<sup>384</sup> T. 28 June 2016 (CHHUN Samorn).

<sup>385</sup> T. 11 June 2015 (KEO Kin).

<sup>386</sup> T. 17 August 2016 (MY Savoeun (MEY Savoeun)).

<sup>387</sup> Civil Party Application of HEL Oun 09-VU-04235 (confidential), E3/6800, 30 June 2009; Supplementary Information of Civil Party Applicant (confidential), E3/6800a, 23 June 2010; Civil Party Application of LIM Korn 09-VU-01109, E3/6055, 23 June 2010; Supplementary Information of Civil Party LIM Korn, E3/6055a, 24 April 2015; Closing Order, para. 284.

<sup>388</sup> See Decision on Additional Severance of Case 002 and Scope of Case 002/02, E301/9/1, 4 April 2014, para. 37.

8.7.4.3. *Individuals proposed by the NUON Chea Defence*

136. The NUON Chea Defence proposes Witnesses HENG Samrin (2-TCW-831), POL Saroeun (2-TCW-962), OUK Bunchhoeun (2-TCW-951), and MEAS Muth (2-TCW-903) as relevant to the Internal Purges.

137. According to the summary of proposed evidence, MEAS Muth (2-TCW-903) can describe his experience as CPK military divisional and naval commander, and assist in establishing facts concerning the “CPK military command structure, strategies, operations and the roles of individuals within the military, internal divisions within the CPK, CPK policies concerning internal and external enemies, top ranking CPK factional support for Vietnamese aggression against DK including but not limited to Sao Phim, Heng Samrin and others, and designation of traitors and internal purges”.<sup>389</sup>

138. The Trial Chamber notes that on 3 March 2015, MEAS Muth (2-TCW-903) was charged in absentia in Case 003 with violations of Articles 501 and 506 of the 1956 Penal Code, grave breaches of the Geneva Conventions and the crimes against humanity of murder, extermination, enslavement, imprisonment, persecution and other inhumane acts.<sup>390</sup> On 14 December 2015, MEAS Muth (2-TCW-903) appeared before the International Co-Investigating Judge who rescinded some of these charges and charged him with the crime of genocide and additional counts of crimes against humanity, grave breaches of the Geneva Conventions and violations of Articles 501 and 506 of the 1956 Penal Code.<sup>391</sup> On 10 January 2017, the International Co-Investigating Judges notified the Parties in Case 003 of the conclusion of the judicial investigations against MEAS Muth (2-TCW-903).<sup>392</sup> Given that the outcome of this judicial investigation is still pending, MEAS Muth (2-TCW-903) remains a charged person. The Trial Chamber recalls that Internal Rule 24(4) stipulates that the Chamber should not call as a witness “any person against whom there is evidence of criminal responsibility, except as provided in Rule 28”. Taking into consideration the framework foreseen by Internal Rules 28(3)(b) and 28(5), the Chamber decides, given the specific context of this case not to summons MEAS Muth (2-TCW-903) to testify as a witness.

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<sup>389</sup> Confidential Annex B: Updated Summaries of Witnesses, Civil Parties and Experts (no protective measures sought)- Nuon Chea Defence Team, E305/4.2, 8 May 2014, p. 10.

<sup>390</sup> Case 003, Decision to Charge Meas Muth in Absentia, D128, 3 March 2015.

<sup>391</sup> Case 003, Written Record of Initial Appearance of Meas Muth, D174, 14 December 2015.

<sup>392</sup> Case 003, Notice of Conclusion of Judicial Investigation against Meas Muth, D225, 10 January 2017.

139. The Chamber recalls that it already decided not to summons Robert LEMKIN (2-TCW-877) and addressed IN Thoeun (2-TCW-961) in a separate decision.<sup>393</sup> THETH Sambath (2-TCW-885) is addressed in the section of this decision on the Role of the Accused.<sup>394</sup>

140. Finally, the Chamber recalls that it could not reach a consensus on whether to summons Witnesses HENG Samrin (2-TCW-831), POL Saroeun (2-TCW-962) and OUK Bunchhoeun (2-TCW-951),<sup>395</sup> and will address them separately below.<sup>396</sup>

#### **8.7.5. Experts on S-21 and Internal Purges**

141. The NUON Chea Defence proposed experts Laura J. SUMMERS (2-TCE-100), Michael VICKERY (2-TCE-94) and David CHANDLER (2-TCE-84) as relevant to the nature of the armed conflict and internal purges.<sup>397</sup> It further proposed expert David CHANDLER (2-TCE-84) to provide expertise on S-21, including structure, conditions, operations and roles of individuals.<sup>398</sup> The Chamber recalls that it confirmed that Michael VICKERY (2-TCE-94), who was also proposed by the KHIEU Samphan Defence, would not testify as an expert in this case.<sup>399</sup> According to the summary of proposed evidence, both David CHANDLER (2-TCE-84) and Laura J. SUMMERS (2-TCE-100) would provide evidence on “the armed conflict with Vietnam, alternative power structures during the DK period, Vietnamese aggression against DK and top ranking CPK factional support including, but not limited to, Sao Phim, Rhos Nhim, Keo Meas, Ya, Koy Thuon, Heng Samrin and others, internal divisions within the CPK [...], and designation of traitors and internal purges”.<sup>400</sup>

142. The Chamber notes that David CHANDLER (2-TCE-84) previously testified in both Case 001 and Case 002. In its decision on the assignment of experts in Case 002/01, which also addressed David CHANDLER (2-TCE-84), the Chamber expressly noted that those experts had been proposed prior to the severance of Case 002 and that in order to avoid “unnecessary recall” they could be questioned on all matters within their knowledge or

<sup>393</sup> Decision on NUON Chea Defence Requests to Hear Additional Witnesses Pursuant to Internal Rule 87(4) (E391, E392, E395, E412 and E426) (Full Reasons) (confidential), E443/10, 30 March 2017.

<sup>394</sup> See below, para. 176.

<sup>395</sup> Final List of Witnesses, Civil Parties and Experts for Case 002/02, E454, 27 December 2016, para. 4.

<sup>396</sup> See paras 195 *et seq.*

<sup>397</sup> Confidential Annex B: Updated Summaries of Witnesses, Civil Parties and Experts (no protective measures sought)- Nuon Chea Defence Team, E305/4.2, 8 May 2014, pp. 18, 20, 22.

<sup>398</sup> Confidential Annex B: Updated Summaries of Witnesses, Civil Parties and Experts (no protective measures sought)- Nuon Chea Defence Team, E305/4.2, 8 May 2014, p. 18.

<sup>399</sup> See Outstanding Issues Relating to Expert Michael Vickery (2-TCE-94), E408/5, 4 August 2016.

<sup>400</sup> Confidential Annex B: Updated Summaries of Witnesses, Civil Parties and Experts (no protective measures sought)- Nuon Chea Defence Team, E305/4.2, 8 May 2014, pp. 18, 20.

expertise relevant to the entirety of the Closing Order in Case 002. The Parties were reminded that the principal focus of their examination should remain the subject matter of Case 002/01 and that matters going beyond such scope should be limited to the areas in which the parties considered any of those individuals to be uniquely qualified to answer.<sup>401</sup> As regards David CHANDLER (2-TCE-84), the Co-Prosecutors in Case 002/01 indicated that they would examine him on, amongst other things, the operation and authority structure of S-21, whereas the NUON Chea Defence indicated that he could offer insight on alternative command structure in the Khmer Rouge.<sup>402</sup> The Chamber notes that David CHANDLER (2-TCE-84) was heard over six days in 2012 in Case 002/01 and testified extensively on the functioning of S-21, confessions, internal purges, explicitly referring to the purges in the North and East Zones, as well as on the conflictual relationship with Vietnam, including possible evidence of a relationship between Ya, the secretary of the Northeast Zone, and Vietnam.<sup>403</sup> Having regard to the above, and noting the evidence heard by the Trial Chamber in Cases 002/01 and 002/02 on the Nature of the Armed Conflict and S-21 Security Centre and Internal Purges, including from eight witnesses and one Civil party requested by the NUON Chea Defence,<sup>404</sup> the Chamber finds that, if recalled, another testimony David CHANDLER (2-TCE-84) is likely to be substantially repetitive. Further, the proposing Party has not provided any indication that the expert may have acquired additional expertise since his testimony in Case 002/01.<sup>405</sup> The Chamber therefore decides not to summons David CHANDLER (2-TCE-84) to give testimony in Case 002/02.

143. As regards Laura J. SUMMERS (2-TCE-100), the Chamber notes that the material on the Case File authored by the proposed expert focusses to a great extent on the Cambodian historical background from the late 1940s up to the 1980s, the evolution of the CPK, the development of its policies and of the agricultural reform, as well as an analysis of a speech

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<sup>401</sup> Decision on Assignment of Experts, E215, 5 July 2012, para. 4.

<sup>402</sup> Decision on Assignment of Experts, E215, 5 July 2012, paras 5-6.

<sup>403</sup> See e.g., Case 002/01, T. 19 July 2012; T. 20 July 2012; T. 23 July 2012; T. (25 July 2012).

<sup>404</sup> The Chamber heard the following witnesses proposed by the NUON Chea Defence on the internal factions during the Internal Purges trial topic: CHIN Saroeun (2-TCW-1028), MY Savoeun (MEY Savoeun) (2-TCCP-1040), SOY Sao (SUOY Sav) (2-TCW-1029), SEM Om (SEM Am) (2-TCW-1031), CHHORN Vorn (2-TCW-1036), CHEAL Choeun (CHIEL Chhoeun) (2-TCW-960), HUON Choeurm (HUON Choeum) (2-TCW-1037), LONG Vonn (LONG Vun) (2-TCW-971), NUON Trech (TES Ol; TES Trech) (2-TCW-1060). The Chamber heard the following witnesses proposed by the NUON Chea Defence on the Nature of the Armed Conflict: Stephen John MORRIS (2-TCE-98), SIN Oeng (SIN Ung) (2-TCW-1069); NONG Nim (2-TCW-1070). See *also*, paras 97-101.

<sup>405</sup> The Chamber is unaware of any new main publication by the expert on the topics relevant to Case 002/02.

given by NUON Chea to the delegation of Danish Communists Workers' Party in 1978.<sup>406</sup> While one of the articles refers to internal purges at the end of 1978 and to pressure from Vietnam that "exacerbated very long-standing organizational and ideological weaknesses and failing" in Cambodia,<sup>407</sup> the Chamber finds these references to be marginal. Having considered the material relevant to this proposed expert and noting the matters on which the expert is proposed to testify, the Trial Chamber considers that her testimony is likely to be substantially repetitive of the evidence heard on these matters in Case 002/02 during the Nature of the Armed Conflict and Security Centres and Internal Purges trial topics, as noted above.<sup>408</sup> The Chamber therefore decides not to summons Laura J. SUMMERS (2-TCE-100) to give testimony in Case 002/02.

### 8.8. General Witnesses

144. As noted above, the KHIEU Samphan Defence proposed experts Philip SHORT (2-TCE-92) and Stephen HEDER (2-TCE-87) to provide testimony on security centres and execution sites generally, among other subjects.<sup>409</sup> The Trial Chamber recalls that it has already rejected the request to call Stephen HEDER (2-TCE-87).<sup>410</sup> Proposed expert Philip SHORT (2-TCE-92) will be addressed below in the general section on experts.<sup>411</sup>

## 9. PROPOSED WITNESSES, CIVIL PARTIES AND EXPERTS FOR THE REGULATION OF MARRIAGE TRIAL TOPIC

145. The following witnesses, Civil Parties and experts were proposed by the Parties in their Revised Lists specifically with regard to the trial topic on the Regulation of Marriage:

<sup>406</sup> See *THE CPK: Secret Vanguard of Pol Pot's Revolution – A Comment on Nuon Chea's Statement* (Laura Summers, *The Journal of Communist Studies*, Volume 3, March 1987, Number 1), E3/53, 5 December 2011; *Statement of the Communist Party of Kampuchea to the Communist Worker's Party of Denmark*, July 1978, E3/196, 9 February 2012; *Indochina Chronicle "The Cambodian liberation Forces"*, E3/3423, 1 July 1972; *Who's who now in Phnom Penh* (Laura Summers, *THE GUARDIAN*), E3/31, 26 April 1975.

<sup>407</sup> *THE CPK: Secret Vanguard of Pol Pot's Revolution – A Comment on Nuon Chea's Statement* (Laura Summers, *The Journal of Communist Studies*, Volume 3, March 1987, Number 1), E3/53, ERN (En) S 00045875.

<sup>408</sup> See above, para. 142.

<sup>409</sup> Ordonnance aux fins du dépôt de pièces actualisées dans le cadre de la préparation du procès 002/02, E305/5.2, 9 May 2014, pp. 3-5. See, para. 92.

<sup>410</sup> The Trial Chamber rejected the requests to call Stephen HEDER (2-TCE-87) and François PONCHAUD (2-TCE-99). See *Decision on Reiterated Request of KHIEU Samphan Defence to Hear Stephen HEDER (2-TCE-87) and François PONCHAUD (2-TCE-99)* (E408/6), E408/6/2, 3 November 2016.

<sup>411</sup> See paras 190-194.

## (a) The Co-Prosecutors:

1. NAKAGAWA Kasumi (2-TCE-82);
2. SENG Soeun (2-TCCP-219);
3. PHAN Him alias Thy (THI) (2-TCW-914);
4. HENG Lai Heang, alias SA Lai Heang (2-TCCP-251);
5. MAO Kroern (2-TCCP-264);
6. YUOS Phal (2-TCCP-232);
7. HORNG Orn (2-TCCP-254);
8. YIM Saroeum (2-TCCP-929);
9. OEM Pum (2-TCCP-289) (reserve witness);
10. CHECH Sopha (2-TCCP-281) (reserve witness); and
11. SOEU Ry (2-TCCP-287) (reserve witness).<sup>412</sup>

## (b) The Lead Co-Lawyers:

1. CHEA Dieb (2-TCCP-286);
2. HENG Kuylang (2-TCCP-276);
3. DORK Sokin (2-TCCP-248);
4. HENG Mach (2-TCCP-280);
5. MOM Vun (2-TCCP-283);
6. OM Yoeurn (2-TCCP-274);
7. PEN Sochan (2-TCCP-298);
8. PRAK Doeun (2-TCCP-300);
9. PHAN Him alias Thy (THI) (2-TCW-914);
10. SENG Thâng (2-TCCP-292);
11. SOU Sotheavy (2-TCCP-224);
12. TEU Ry (2-TCCP-225);
13. YUOS Phal (2-TCCP-232); and
14. NAKAGAWA Kasumi (2-TCE-82).<sup>413</sup>

## (c) The KHIEU Samphan Defence:

1. LEVINE Peg (2-TCE-81).<sup>414</sup>

146. The KHIEU Samphan Defence also proposed expert Roel BURGLER (2-TCE-96) to testify on the Regulation of Marriage, amongst other topics.<sup>415</sup>

<sup>412</sup> Annex I: Co-Prosecutors' Revised Combined Witness, Civil Party and Expert List for Case 002/02 in Recommended Order of Trial Segments and Appearance (July 2014) (confidential), E307/3/2.2, 28 July 2014, p. 2.

<sup>413</sup> Confidential Annex IV: Proposed Order of Segments- Civil Parties Lead Co-Lawyers, E305/7.1.4, 9 May 2014, p. 4.

<sup>414</sup> Annexe III: *Résumés actualisés des déclarations des témoins et des experts qui ne demandent l'octroi d'aucune mesure de protection*, E305/5.2, 9 May 2014, p. 2.

147. The NUON Chea Defence did not propose any witness, Civil Party or expert specifically with regard to the trial topic on the Regulation of Marriage. It proposed experts Roel BURGLER (2-TCE-96), Ewa TABEAU (2-TCE-93) and Michael VICKERY (2-TCE-94), as well as witnesses CHHEM Neang (2-TCW-899) and PECH Chim (TA Chim) (2-TCW-809), to testify generally on the Regulation of Marriage, amongst other topics.<sup>416</sup>

### **9.1. Witnesses, Civil Parties and Experts heard by the Chamber**

148. The Trial Chamber selected and heard during the trial topic on the Regulation of Marriage the following witnesses, Civil Parties and experts: Witness NOP Ngim (2-TCW-1002),<sup>417</sup> Witness PHAN Him alias Thy (THI) (2-TCW-914), Civil Party HENG Lai Heang alias SA Lai Heang (2-TCCP-251), Civil Party SENG Soeun (2-TCCP-219), Civil Party YOS Phal (YUOS Phal) (2-TCCP-232), Civil Party CHEA Deap (CHEA Dieb) (2-TCCP-286), Civil Party MOM Vun (2-TCCP-283), Civil Party OM Yoeurn (2-TCCP-274), Civil Party PEN Sochan (2-TCCP-298), Civil Party SOU Sotheavy (2-TCCP-224), Civil Party PREAP Sokhoeurn (2-TCCP-1064),<sup>418</sup> Expert Kasumi NAKAGAWA (2-TCE-82) and Expert Peggy LEVINE (2-TCE-81).

149. The Chamber also heard the following Civil Parties on the harm they suffered during the Democratic Kampuchea era: KUL Nem (2-TCCP-1066), NGET Chat (2-TCCP-1067) and SAY Naroeun (2-TCCP-1068).

150. In total, the Trial Chamber heard 2 witnesses, 12 Civil Parties and 2 experts during the trial topic on the Regulation of Marriage. Civil Party PRAK Doeun (2-TCCP-300) was instead heard during the trial topic regarding the Treatment of the Vietnamese.<sup>419</sup> In addition,

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<sup>415</sup> Annexe III: *Résumés actualisés des déclarations des témoins et des experts qui ne demandent l'octroi d'aucune mesure de protection*, E305/5.2, 9 May 2014, p. 2.

<sup>416</sup> Confidential Annex B: Updated Summaries of Witnesses, Civil Parties and Experts (no protective measures sought)- Nuon Chea Defence Team, E305/4.2, 8 May 2014; Confidential Annex B – New Witness, Civil Party and Expert Summaries for Case 002/02 – NUON Chea Defence Team, E307/4.3, 24 July 2014.

<sup>417</sup> Witness NOP Ngim (2-TCW-1002) was selected pursuant to Internal Rule 87(4), following a request by the International Co-Prosecutor. *See* Decision on International Co-Prosecutor's Request for Clarification Regarding Proposed Witnesses for the Regulation of Marriage Segment, E425/2, 7 September 2016; Decision on International Co-Prosecutor's Request to Admit Written Records of Interview Pursuant to Rules 87(3) & (4) and to call Four Additional Witnesses for Upcoming Case 002/02 Segments, E319/36/2, 25 May 2016.

<sup>418</sup> The Trial Chamber selected PREAP Sokhoeurn (2-TCCP-1064) on its own motion and heard oral submissions from the parties on 8 September 2016. *See* Email from Legal Officer to the Parties, 8 September 2016 and T. (Draft) 8 September 2016, pp. 60-64.

<sup>419</sup> *See* T. 2-3 December 2015 (PRAK Doeun).

the Chamber also received evidence on the regulation of marriage from several individuals heard during other trial topics throughout Case 002/02.<sup>420</sup>

## **9.2. Withdrawn**

151. On 3 June 2016, the Chamber informed the parties that it would hear Civil Party MAO Kroeurm (2-TCCP-264) during this trial topic. However, the Chamber subsequently found that MAO Kroeurm (2-TCCP-264) was unfit to testify due to health problems and decided that eventually she should no longer be summonsed.<sup>421</sup>

## **9.3. Repetitive and/or Irrelevant and/or Less Relevant**

### ***9.3.1. Individuals proposed by the Co-Prosecutors***

152. The summary of YIM Saroeum's (2-TCCP-929) proposed evidence indicates that she could testify about being forced to marry in a group ceremony of 48 couples in Siem Reap Province. HORNG Orn's (2-TCCP-254) statements describe a marriage ceremony in Takeo Province in 1977 during which she was forced to marry a man alongside 23 other couples and further describe how she was forced to consummate her marriage under the supervision of her unit chief.<sup>422</sup> Having reviewed the material on the Case File relevant to YIM Saroeum's (2-TCCP-929) and HORNG Orn's (2-TCCP-254)<sup>423</sup> and noting the matters on which they are proposed to testify, the Chamber finds that their in-court statements are likely to be substantially repetitive of evidence heard on these matters in Case 002/02 from several witnesses and Civil Parties, including Civil Party MOM Vun (2-TCCP-283), Civil Party OM Yoeurn (2-TCCP-274), and Civil Party PEN Sochan (2-TCCP-298), Civil Party CHOU Koemlan (2-TCCP-238), Witness CHANG Srey Mom (CHEANG Sreimom) (2-TCW-834),

<sup>420</sup> See for example CHOU Koemlan (2-TCCP-238), OUM Suphany (2-TCCP-296), PHNEU Yav (2-TCW-934), CHANG Srey Mom (CHEANG Sreimom) (2-TCW-834), KHOEM Boeun (2-TCW-979), PECH Chim (2-TCW-809), EK Hoeun (2-TCW-822), who were heard during the trial topic on Tram Kak Cooperatives and Kraing Ta Chan Security Centre; KONG Uth (KANG Ut) (2-TCW-855), CHAO Lang (2-TCCP-992), KHIN Vat (2-TCW-866), CHHUM Seng (2-TCW-828) and YI Laisov (2-TCW-841), who were heard during the trial topic on the Worksites.

<sup>421</sup> Decision on Withdrawal of the Testimony of Civil Party 2-TCCP-264, E29/493/2, 11 October 2016. See also Strictly Confidential Medical Assessment Report, E29/493/1, 25 September 2016.

<sup>422</sup> Annex III: OCP Updated Witness, Civil Party and Expert Summaries (confidential), E305/6.4, 9 May 2014, pp. 36, 42-43.

<sup>423</sup> See Written Record of Interview of YIM Saroeum, E3/7688, 20 January 2009; Civil Party Application of HORNG Orn, E3/5897, 30 September 2008; Written Record of Interview of Civil Party HORNG Orn, E3/5558, 9 September 2009.

Witness PHNEOU Yav (2-TCW-934) and Witness EK Hoeun (UL Hoeun) (2-TCW-822).<sup>424</sup> The Chamber therefore decides not to summons them.

153. The Co-Prosecutors proposed Civil Parties CHECH Sopha (2-TCCP-281) and SOEU Ry (2-TCCP-287) as reserve Civil Parties for the trial topic on the Regulation of Marriage.<sup>425</sup> The summary of CHECH Sopha's (2-TCCP-281) proposed evidence describes how she was forced to get married together with other 82 couples in a ceremony at the Phum Reang Kessei pagoda in December 1978.<sup>426</sup> The summary of SOEU Ry's (2-TCCP-287) proposed evidence suggests that she will describe a ceremony in which she and other 83 couples were forcibly married in Pungro village, Battambang Province, in 1976 and also give evidence on the supervision and monitoring of the consummation of marriages by the Khmer Rouge.<sup>427</sup> Having reviewed the material on the Case File relevant to these individuals<sup>428</sup> and noting the matters on which they are proposed to testify, the Chamber finds that their in-court statements are likely to be substantially repetitive of the evidence heard on these matters in Case 002/02 from several witnesses and Civil Parties, including Civil Party MOM Vun (2-TCCP-283), Civil Party OM Yoeurn (2-TCCP-274), Civil Party PEN Sochan (2-TCCP-298), Civil Party CHOU Koemlan (2-TCCP-238), Witness CHANG Srey Mom (CHEANG Sreimom) (2-TCW-834), Witness PHNEOU Yav (2-TCW-934), Witness EK Hoeun (UL Hoeun) (2-TCW-822) and Witness KONG Uth (KANG Ut) (2-TCW-855).<sup>429</sup> The Chamber therefore decides not to summons these individuals.

<sup>424</sup> See for example T. 16, 20 September 2016 (MOM Vun); T. 22-23 August 2016 (OM Yoeurn); T. 12-13 October 2016 (PEN Sochan); T. 26-27 January 2015 (CHOU Koemlan); T. 29 January, 2 February 2015 (CHANG Srey Mom (CHEANG Sreimom)); T. 16-17 February 2015 (PHNEOU Yav); T. 7-8 May 2015 (EK Hoeun (UL Hoeun)).

<sup>425</sup> Annex I: Co-Prosecutors' Revised Combined Witness, Civil Party and Expert List for Case 002/02 in Recommended Order of Trial Segments and Appearance (July 2014) (confidential), E307/3/2.2, 28 July 2014, p. 2; See also Confidential Annex IIIA: OCP Updated Alternate Witness, Civil Party and Expert Summaries [Reserves], E305/6.5, 9 May 2014, p.13.

<sup>426</sup> Confidential Annex IIIA: OCP Updated Alternate Witness, Civil Party and Expert Summaries [Reserves], E305/6.5, 9 May 2014, p. 13.

<sup>427</sup> Confidential Annex IIIA: OCP Updated Alternate Witness, Civil Party and Expert Summaries [Reserves], E305/6.5, 9 May 2014, p. 13.

<sup>428</sup> See Victim's Unit Report on Civil Party Applicant OEM Pum, D22/2063/1, 26 March 2010; Civil Party Application of CHECH Sopha, E3/6572, 7 August 2005; See also Victim's Unit Report on Civil Party Applicant CHECH Sopha, E3/9264, 12 May 2010; Civil Party Application of SOEU Ry, E3/6780, 10 November 2009; Supplementary Information Form of Civil Party Applicant SOEU Ry, E3/6780a, 23 June 2010; Summary of Supplementary Information of Civil Party Applicant SOEU Ry, E3/6780b, 12 August 2010.

<sup>429</sup> See e.g., T. (Draft) 16, 20 September 2016 (MOM Vun); T. 22-23 August 2016 (OM Yoeurn); T. 12-13 October 2016 (PEN Sochan); T. 26-27 January 2015 (CHOU Koemlan); T. 29 January, 2 February 2015 (CHANG Srey Mom (CHEANG Sreimom)); T. 16-17 February 2015 (PHNEOU Yav); T. 7-8 May 2015 (EK Hoeun (UL Hoeun)); T. 25 June 2015 (KONG Uth (KANG Ut)).

154. The Co-Prosecutors also proposed Civil Party OEM Pum (2-TCCP-289) as a reserve Civil Party, as she could provide evidence in relation to the consequences for refusing to enter into a marriage arranged for her by Angkar.<sup>430</sup> Having reviewed the material on the Case File relevant to this Civil Party<sup>431</sup> and noting the matters on which she is proposed to testify, the Chamber finds that this Civil Party's in-court statement is likely to be substantially repetitive of the evidence heard on these matters in Case 002/02 from several witnesses and Civil Parties, including, Civil Party MOM Vun (2-TCCP-283), Civil Party SOU Sotheavy (2-TCCP-224), Civil Party YOS Phal (YUOS Phal) (2-TCCP-232), Civil Party OM Yoeurn (2-TCCP-274), Witness CHANG Srey Mom (CHEANG Sreimom) (2-TCW-834) and Witness KONG Uth (KANG Ut) (2-TCW-855).<sup>432</sup> The Chamber therefore decides not to summons this Civil Party.

### 9.3.2. *Individuals proposed by the Lead Co-Lawyers*

155. The Lead Co-Lawyers proposed Civil Party HENG Kuylang (2-TCCP-276) to testify on her forced marriage in Battambang Province of the Northwest Zone, on the climate of fear that led to her acquiescing to a forced marriage after an initial refusal, on the marriage vows and ceremony, surveillance by Khmer Rouge militia and the policy of the Khmer Rouge concerning contact with her husband.<sup>433</sup> Having reviewed the material on the Case File relevant to this Civil Party<sup>434</sup> and noting the matters on which she is proposed to testify, the Chamber finds that her in-court statement is likely to be substantially repetitive of the evidence heard on these matters in Case 002/02 from several Civil Parties, including Civil Party MOM Vun (2-TCCP-283), Civil Party YOS Phal (YUOS Phal) (2-TCCP-232), Civil Party OM Yoeurn (2-TCCP-274), Civil Party CHOU Koemlan (2-TCCP-238) and Witness

<sup>430</sup> Confidential Annex IIIA: OCP Updated Alternate Witness, Civil Party and Expert Summaries [Reserves], E305/6.5, 9 May 2014, p. 13; *see also* Annex I: Co-Prosecutors' Revised Combined Witness, Civil Party and Expert List for Case 002/02 in Recommended Order of Trial Segments and Appearance (July 2014) (confidential), E307/3/2.2, 28 July 2014, p. 2.

<sup>431</sup> *See* Victim's Unit Report on Civil Party Applicant OEM Pum, D22/2063/1, 26 March 2010; Civil Party Application of OEM Pum, E3/6433, 8 January 2008; Written Record of Interview of OEM Pum, E3/9510, 4 February 2014.

<sup>432</sup> *See e.g.*, T. 16, 20 September 2016 (MOM Vun); T. 23-24 August 2016 (SOU Sotheavy); T. 25 August 2016 (YOS Phal (YUOS Phal)), pp. 17-18; T 22-23 August 2016 (OM Yoeurn); T. 29 January, 2 February 2015 (CHANG Srey Mom (CHEANG Sreimom)); T. 25 June 2015 (KONG Uth (KANG Ut)).

<sup>433</sup> Confidential Annex III: Updated Summaries of Witnesses, Civil Party and Experts (no protective measures sought) – Civil Party Lead Co-Lawyers, E305/7.1.3, 9 May 2014, p. 11.

<sup>434</sup> *See* Victim's Unit Report on Civil Party Applicant HENG Kuylang, D22/3222/1, 30 April 2010; Supplementary Information Form of Civil Party Applicant HENG Kuylang, E3/6711a, 29 June 2010; Supplementary Information Form of Civil Party Applicant HENG Kuylang, E3/5036, 15 December 2009.

CHANG Srey Mom (CHEANG Sreimom) (2-TCW-834).<sup>435</sup> The Chamber therefore decides not to summons this individual.

156. The summary of DORK Sokin's (2-TCCP-248) proposed evidence describes the Civil Party as a direct victim of forced marriage in Takeo Province, in the Southwest Zone, that could provide evidence on monitoring by the militia of consummation of marriage and the severe mistreatment she experienced for refusing to consummate her marriage.<sup>436</sup> Having reviewed the material on the Case File relevant to this Civil Party<sup>437</sup> and noting the matters on which she is proposed to testify, the Chamber finds that her in-court statement is likely to be substantially repetitive of the evidence heard on these matters in Case 002/02 from several Civil Parties, including SOU Sotheavy (2-TCCP-224), YOS Phal (YUOS Phal) (2-TCCP-232), OM Yoeurn (2-TCCP-274) and PREAP Sokhoeurn (2-TCCP-1064) and witnesses CHANG Srey Mom (CHEANG Sreimom) (2-TCW-834) and PHNEOU Yav (2-TCW-934).<sup>438</sup> The Chamber therefore decides not to summons this individual.

157. The summary of SENG Thang's (2-TCCP-292) proposed evidence indicates that he could provide evidence on being forcibly married with 21 other couples in a ceremony that took place in Ratanakiri Province, in the Northeast Zone.<sup>439</sup> Having reviewed the material on the Case File relevant to this Civil Party<sup>440</sup> and noting the matters on which he is proposed to testify, the Chamber finds that his in-court statement is likely to be substantially repetitive of the evidence heard on these matters in Case 002/02 from several witnesses and Civil Parties, including Civil Party OM Yoeurn (2-TCCP-274), Civil Party MOM Vun (2-TCCP-283), Civil Party CHOU Koemlan (2-TCCP-238), Civil Party SUN Vuth (2-TCCP-1016), Witness CHANG Srey Mom (CHEANG Sreimom) (2-TCW-834), Witness PHNEOU Yav (2-TCW-

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<sup>435</sup> See e.g., T. 16, 20 September 2016 (MOM Vun); T. 25 August 2016 (YOS Phal (YUOS Phal)); T 22-23 August 2016 (OM Yoeurn); T. 26-27 January 2015 (CHOU Koemlan); T. 29 January, 2 February 2015 (CHEANG Srey Mom).

<sup>436</sup> Confidential Annex III: Updated Summaries of Witnesses, Civil Party and Experts (no protective measures sought) – Civil Party Lead Co-Lawyers, E305/7.1.3, 9 May 2014, p. 9.

<sup>437</sup> See Civil Party Application of DORK Sokin, E3/6106, 9 July 2009; Summary of Supplementary Information of Civil Party Applicant DORK Sokin, D22/864b, 19 August 2010.

<sup>438</sup> See for example T. 23-24 August 2016 (SOU Sotheavy); T. 25 August 2016 (YOS Phal (YUOS Phal)); T 22-23 August 2016 (OM Yoeurn); T. 20, 24 October 2016 (PREAP Sokhoeurn); T. 29 January, 2 February 2015 (CHANG Srey Mom (CHEANG Sreimom)); T. 16-17 February 2015 (PHNEOU Yav).

<sup>439</sup> Confidential Annex III: Updated Summaries of Witnesses, Civil Party and Experts (no protective measures sought) – Civil Party Lead Co-Lawyers, E305/7.1.3, 9 May 2014, p. 34.

<sup>440</sup> See Civil Party Application of SENG Thang, E3/6127, 8 May 2008; Supplementary Information Form of Civil Party Applicant SENG Thang, E3/4795, 22 June 2010.

934) and Witness EK Hoeun (UL Hoeun) (2-TCW-822).<sup>441</sup> The Chamber therefore decides not to summons this individual.

158. The Lead Co-Lawyers also proposed Civil Party TEU Ry (2-TCCP-225), as being a Khmer Muslim direct victim of forced marriage in Kampot Province who could provide evidence on her transfer to a security centre where she was detained and tortured as punishment for refusing to get married.<sup>442</sup> Having reviewed the material on the Case File relevant to this Civil Party and noting the matters on which she is proposed to testify, the Chamber notes that her in-court statement is mostly relevant to the living conditions and forced labour in Kampot Province after 17 April 1975. She describes her detention conditions at Koh Kyang Prison and being beaten under accusation of having stolen chicken and potatoes, and being forced, as a Muslim, to eat pork. She also describes the killing of 16 other Muslim girls. The Chamber finds that while the Civil Party's supplementary information form briefly mentions that she was arrested after she refused to marry a Khmer Rouge soldier, it is not clear that whether she was arrested for that reason.<sup>443</sup> In any event, the Chamber finds that as regards the consequences of refusing to enter into marriage arranged by the Khmer Rouge, her in-court statement is likely to be substantially repetitive of evidence heard on these matters in Case 002/02 from several Civil Parties, including MOM Vun (2-TCCP-283), SOU Sotheavy (2-TCCP-224), YOS (YUOS) Phal (2-TCCP-232), OM Yoeurn (2-TCCP-274), and witnesses, including CHANG Srey Mom (CHEANG Sreimom) (2-TCW-834) and VONG Sarun (VORNG Sarun) (2-TCW-986).<sup>444</sup> The Chamber therefore decides not to summons this individual.

159. Furthermore, the summary of HENG Mach's (2-TCCP-280) proposed evidence describes her forced marriage in Monduliri Province in 1973.<sup>445</sup> Having reviewed the

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<sup>441</sup> See for example T. 22-23 August 2016 (OM Yoeurn); T. 16, 20 September 2016 (MOM Vun); T. 26-27 January 2015 (CHOU Koemlan); T. 30-31 March 2016 (SUN Vuth); T. 29 January, 2 February 2015 (CHANG Srey Mom (CHEANG Sreimom)); T. 16, 17 February 2015 (PHNEOU Yav); T. 7-8 May 2015 (EK Hoeun).

<sup>442</sup> Confidential Annex III: Updated Summaries of Witnesses, Civil Party and Experts (no protective measures sought) – Civil Party Lead Co-Lawyers, E305/7.1.3, 9 May 2014, p. 35.

<sup>443</sup> See Supplementary Information Form of Civil Party Applicant TEU Ry, E3/4875, 23 June 2010; Civil Party Application of TEU Ry, E3/6336, 16 June 2008; Victim Unit's Report on Civil Party Applicant TEU Ry, D22/1721/1, 22 January 2010.

<sup>444</sup> See for example T. 16, 20 September 2016 (MOM Vun); T. 23-24 August 2016 (SOU Sotheavy); T. 25 August 2016 (YOS Phal (YUOS Phal)); T. 22-23 August 2016 (OM Yoeurn); T. 29 January, 2 February 2015 (CHANG Srey Mom (CHEANG Sreimom)); T. 18 May 2015 (VONG Sarun (VORNG Sarun)).

<sup>445</sup> Confidential Annex III: Updated Summaries of Witnesses, Civil Party and Experts (no protective measures sought) – Civil Party Lead Co-Lawyers, E305/7.1.3, 9 May 2014, p. 11.

material on the Case File relevant to the Civil Party<sup>446</sup> and noting the matters on which she is proposed to testify, the Chamber notes that the facts to which her evidence relate to concern a period outside the temporal scope of the ECCC's jurisdiction. The Chamber therefore decides not to summons this Civil Party.

#### **9.4. General Witnesses**

160. As noted above, the KHIEU Samphan Defence and the NUON Chea Defence proposed a number of witnesses and experts to testify generally on the trial topic on the Regulation of Marriage amongst other topics. As their proposed testimonies are more closely related to other topics, the Chamber will address them in other sections of this decision.<sup>447</sup> The Chamber notes that PECH Chim, alias Ta Chim (2-TCW-809) testified during the Tram Kak Cooperatives and Kraing Ta Chan Security Centre trial topic.<sup>448</sup>

161. The NUON Chea Defence also proposed Witness TRI Touch (2-TCW-1024),<sup>449</sup> to whom Witness CHEANG Sreymom (2-TCW-834) was allegedly forced to marry.<sup>450</sup> According to the NUON Chea Defence, given the attention given to the forced marriage of CHEANG Sreymom and the conflicting evidence heard on the regulation of marriage during the Tram Kak Cooperatives and Kraing Ta Chan Security Centre trial topic, it was essential to hear this person. The Chamber notes that there is no documentation, statement or interview for this witness. In any event, in as far as he was proposed to testify on the regulation of marriage, the Chamber notes that it has heard numerous individuals on this trial topic throughout Case002/02,<sup>451</sup> and therefore finds that TRI Touch (2-TCW-1024)'s testimony is likely to be substantially repetitive of the evidence heard on these matters by other witnesses

<sup>446</sup> See Civil Party Application of HENG Mach, E3/4818, 18 January 2008; Victim's Unit Report on Civil Party Applicant HENG Mach, D22/1181/1, 20 January 2010.

<sup>447</sup> For the list of individuals proposed by the KHIEU Samphan Defence and the NUON Chea Defence, see above paras 146-147. For the relevant analysis see paras 124-126, 190-191, 194.

<sup>448</sup> See above, para. 25.

<sup>449</sup> Witness TRI Touch (2-TCW-1024) was proposed by the NUON Chea Defence as additional witness pursuant to Internal Rule 87(4), during the Tram Kak and Kraing Ta Chan trial topic. At that time, the Chamber found it was premature to decide on the request and deferred its decision until such time as considered the witnesses, Civil Parties and experts proposed by the Parties for the Regulation of Marriage trial topic. See Reasons Following Decision on the NUON Chea Defence's Consolidated Rule 87(4) Request to hear Additional Witnesses for the First Case 002/02 Trial Segment on the Tram Kak Cooperatives and Kraing Ta Chan Security Centre and Decision on SANN Lorn (2-TCW-1007), SOU Phirin (2-TCW-1027) and IV Sarik (2-TCW-1026) (E346/2), E346/3, 31 March 2016, para. 53; NUON Chea's Consolidated Rule 87(4) Request to Hear Additional Witnesses for the First Case 002/02 Trial Segment on the Tram Kok Cooperatives and Kraing Ta Chan Security Centre, E346, 3 April 2015. As a final decision on Internal Rule 87(4) request to hear Witness TRI Touch was not issued, the Chamber addresses such request in this decision.

<sup>450</sup> Witness CHEANG Sreimom (2-TCW-834) was heard during the trial topic on the Trak Kak Cooperatives and Kraing Ta Chan Security Centre, see above, para. 25.

<sup>451</sup> See above, paras 148-150.

and Civil Parties heard on this topic. The Trial Chamber therefore decides not to summons him.

## **10. PROPOSED WITNESSES, CIVIL PARTIES AND EXPERTS FOR THE NATURE OF THE ARMED CONFLICT TRIAL TOPIC**

162. The Co-Prosecutors and Lead Co-Lawyers did not specifically propose any witnesses, Civil Parties or experts on the Nature of the Armed Conflict.<sup>452</sup>

163. In their initial lists the KHIEU Samphan Defence and NUON Chea Defence proposed that the Chamber hear the following experts and witnesses on a number of topics including the Nature of the Armed Conflict:

### **10.1. Nature of the Armed Conflict**

#### **1. The KHIEU Samphan Defence:**

1. CHUON Thi (2-TCW-859);
2. Philip SHORT (2-TCE-92);
3. Michael VICKERY (2-TCE-94); and
4. François PONCHAUD (2-TCE-99).<sup>453</sup>

#### **2. The NUON Chea Defence:**

1. CHEA Choeum (aka CHEA Chhoem) (2-TCW-812);
2. CHEA Sim (2-TCW-878);<sup>454</sup>
3. CHHEM Neang (2-TCW-899);
4. Richard DUDMAN (2-TCW-923);<sup>455</sup>
5. HENG Samrin (2-TCW-831);
6. Walter HEYNOWSKI (2-TCW-946);
7. Robert LEMKIN (2-TCW-877);
8. MEAS Muth (2-TCW-903);
9. OUK Bunchhoeun (2-TCW-951);
10. PEN Sovann (2-TCW-952);
11. THET Sambath (2-TCW-885);
12. Nayan CHANDA (2-TCE-83);
13. David CHANDLER (2-TCE-84);
14. Stephen MORRIS (2-TCE-98);

<sup>452</sup> Annex I: Co-Prosecutors' Revised Combined Witness, Civil Party and Expert List for Case 002/02 in Recommended Order of Trial Segments and Appearance (July 2014) (confidential), E307/3/2.2, 28 July 2014; Confidential Annex IV: Proposed Order of Segments- Civil Parties Lead Co-Lawyers, E305/7.1.4, 9 May 2014.

<sup>453</sup> Ordonnance aux fins du dépôt de pièces actualisées dans le cadre de la préparation du procès 002/02 (confidential), E305/5.2, 9 May 2014, pp. 1, 3-4, 6.

<sup>454</sup> See paras 42, 60.

<sup>455</sup> See para. 25.

15. Laura SUMMERS (2-TCW-100);
16. Michael VICKERY (2-TCE-94);
17. POL Saroeun (2-TCW-962); and
18. Roel BURGLER (2-TCE-96).<sup>456</sup>

## 10.2. Findings

164. As noted above, the KHIEU Samphan and NUON Chea Defence proposed several witnesses to testify generally on the Nature of the Armed Conflict among other subjects. However, the proposed subject matter of the testimony of many of these witnesses is more closely related to other trial topics. Therefore the Chamber's analysis on whether to call these witnesses is addressed in other sections of this decision. Philip SHORT (2-TCE-92), Roel BURGLER (2-TCE-96) and David CHANDLER (2-TCE-84) are addressed in the section on proposed experts.<sup>457</sup> THET Sambath (2-TCW-885) is addressed in the section on the Role of the Accused.<sup>458</sup> MEAS Muth (2-TCW-903), Laura SUMMERS, (2-TCE-100), Walter HEYNOWSKI (2-TCW-946), PEN Sovann (2-TCW-952), HENG Samrin (2-TCW-831), OUK Bunchhoeun (2-TCW-951), POL Saroeun (2-TCW-962) and CHHEM Neang (2-TCW-899) are addressed in the section on Security Centres and Internal Purges.<sup>459</sup>

165. The Trial Chamber has already rejected the requests to call François PONCHAUD (2-TCE-99)<sup>460</sup> and Robert LEMKIN (2-TCW-877)<sup>461</sup> and confirmed that Michael VICKERY (2-TCE-94) would not testify as an expert in this case.<sup>462</sup>

166. The Chamber could not consider summoning Witness CHEA Choeum (aka CHEA Chhoem) (2-TCW-812) as he could not be located and is presumed to be deceased.<sup>463</sup>

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<sup>456</sup> Confidential Annex B: Updated Summaries of Witnesses, Civil Parties and Experts (no protective measures sought)- Nuon Chea Defence Team, E305/4.2, 8 May 2014, pp. 1, 4-6, 9-10, 12-13, 17-20, 22; Confidential Annex B – New Witness, Civil Party and Expert Summaries for Case 002/02 – NUON Chea Defence Team, E307/4.3, 24 July 2014, pp. 2, 4.

<sup>457</sup> See paras 189-194.

<sup>458</sup> See para. 176.

<sup>459</sup> See paras 104, 124-130, 137-143.

<sup>460</sup> The Trial Chamber rejected the requests to call Stephen HEDER (2-TCE-87) and François PONCHAUD (2-TCE-99). See Decision on Reiterated Request of KHIEU Samphan Defence to Hear Stephen HEDER (2-TCE-87) and François PONCHAUD (2-TCE-99) (E408/6), E408/6/2, 3 November 2016.

<sup>461</sup> Decision on NUON Chea Defence Requests to Hear Additional Witnesses Pursuant to Internal Rule 87(4) (E391, E392, E395, E412 and E426) (Full Reasons) (confidential), E443/10, 30 March 2017.

<sup>462</sup> See Outstanding issues relating to Expert Michael Vickery (2-TCE-94), E408/5, 4 August 2016.

<sup>463</sup> WESU Report Concerning Witness 2-TCW-812 (confidential), E29/486, 5 May 2016.

### 10.3. Witnesses, and Experts heard by the Chamber

167. The Trial Chamber selected and heard the following witnesses and experts in relation to the Nature of the Armed Conflict: Stephen MORRIS (2-TCE-98), CHUON Thy (CHUON Thi) (alias THI Ov) (2-TCW-859), SOV Maing (SAO Champi) (alias SAO Maing) (2-TCW-1045), IENG Phan (2-TCW-1046), LONG Sat (2-TCW-1065),<sup>464</sup> SIN Oeng (SIN Ung) (2-TCW-1069) and NONG Nim (2-TCW-1070).<sup>465</sup>

168. The Trial Chamber had initially selected Nayan CHANDA (2-TCE-83) and KHUN Kim (alias NUON Paet) (2-TCW-810)<sup>466</sup> to testify in relation to the Nature of the Armed Conflict. However, on 15 August 2016 the Trial Chamber informed the parties that NAYAN Chanda (2-TCE-83) had indicated that he was unavailable to testify for the remainder of 2016 and early 2017.<sup>467</sup> The Chamber therefore withdraws NAYAN Chanda (2-TCE-83) from the list of selected experts, as it would be impossible to obtain his testimony within a reasonable time. In addition, KHUN Kim (2-TCW-810) was unable to testify due to a serious health condition.<sup>468</sup> The Trial Chamber therefore withdraws him from the list of selected witnesses,<sup>469</sup> and decides that he shall not be called to testify.

169. In total, the Trial Chamber heard 6 witnesses and 1 expert during the trial segment allocated to the Nature of the Armed Conflict.

<sup>464</sup> SOV Maing (SAO Champi) (alias SAO Maing) (2-TCW-1045), IENG Phan (2-TCW-1046), LONG Sat (2-TCW-1065) were not proposed by the Parties but were independently selected by the Trial Chamber to testify in relation to the Nature of the Armed Conflict. The Chamber selected these witnesses having regard to the content of their prior statements and/or interviews.

<sup>465</sup> Sin Oeng (SIN Ung) (2-TCW-1069) and NONG Nim (2-TCW-1070) were selected by the Trial Chamber to testify in relation to the Nature of the Armed Conflict following a request by the NUON Chea Defence to call two additional witnesses: *see* Decision on NUON Chea Defence Request E448 to call two additional witnesses, E448/2, 14 December 2016.

<sup>466</sup> While KHUN Khim (alias Nuon Paet) (2-TCW-810) was selected by the Trial Chamber to testify with respect to the Nature of the Armed Conflict, he was initially proposed by the Co-Prosecutors to testify with respect to the Role of the Accused: Annex I: Co-Prosecutors' Revised Combined Witness, Civil Party and Expert List for Case 002/02 in Recommended Order of Trial Segments and Appearance (July 2014) (confidential), E307/3/2.2, 28 July 2014, p. 1.

<sup>467</sup> *See* Email from Trial Chamber Legal Officer (confidential), 15 August 2016; WESU Report on 2-TCE-83, E29/492, 8 September 2016.

<sup>468</sup> *See* Medical Assessment Report for Witness 2-TCW-810 (strictly confidential), E29/495/1, 11 October 2016.

<sup>469</sup> *See* Summons to witness KHUN Kim, alias NUON Paet (confidential), E202/298, 15 August 2016.

## **11. PROPOSED WITNESSES, CIVIL PARTIES AND EXPERTS FOR THE ROLE OF THE ACCUSED TRIAL TOPIC**

170. The Parties proposed that the Chamber hear the following witnesses, Civil Parties and experts on the Role of the Accused.

### **11.1. Role of the Accused**

#### 1. The Co-Prosecutors:

1. LONH Dos (2-TCW-942);
2. THET Sambath (2-TCW-885);
3. YEN Kuch (2-TCW-871);
4. BIT Na (2-TCW-953);
5. KHUN Kim (alias NUON Paet) (2-TCW-810);
6. OU Dav (2-TCCP-235);
7. SON Em (2-TCCP-223);
8. SAR Sarin (2-TCCP-237);
9. MA Chhoeun (MAK Chhoeun) (2-TCW-823);
10. NONG Net (NORNG Net) (2-TCW-913);
11. SUON Ri (2-TCW-856) (reserve witness); and
12. SENG Lytheng (alias THENG) (reserve witness) (2-TCW-897).<sup>470</sup>

#### 2. The Lead Co-Lawyers:

1. HEM Savann (2-TCCP-250);
2. HOENG Neng (2-TCCP-253);
3. THEAV/KHIEV Neab (2-TCCP-258);
4. NEOU Sarem (2-TCCP-268);
5. SAR Sarin (2-TCCP-237);
6. SENG Soeun (2-TCCP-219); and
7. OU Dav (2-TCCP-235).<sup>471</sup>

#### 3. The NUON Chea Defence:

1. CHEY Sopheara (alias MAO) (2-TCW-814);
2. CHHANG Youk (2-TCW-870);
3. CHHEM Neang (2-TCW-899);
4. HENG Samrin (2-TCW-831);
5. Walter HEYNOWSKI (2-TCW-946);
6. KAINING Guek EAV (alias DUCH) (2-TCW-916);
7. Robert LEMKIN (2-TCW-877);

<sup>470</sup> Annex I: Co-Prosecutors' Revised Combined Witness, Civil Party and Expert List for Case 002/02 in Recommended Order of Trial Segments and Appearance (July 2014) (confidential), E307/3/2.2, 28 July 2014, p. 1.

<sup>471</sup> Confidential Annex IV: Proposed Order of Segments- Civil Parties Lead Co-Lawyers, E305/7.1.4, 9 May 2014, p. 3.

8. THET Sambath (2-TCW-885);
9. Nayan CHANDA (2-TCE-83);
10. David CHANDLER (2-TCE-84);
11. Stephen MORRIS (2-TCE-98);
12. Laura SUMMERS (2-TCE-100);
13. Michael VICKERY (2-TCE-94);
14. POL Saroeun (2-TCW-962); and
15. YIN Nean (2-TCW-963).<sup>472</sup>

171. The KHIEU Samphan Defence did not specifically propose any witnesses, Civil Parties or experts on the Role of the Accused.<sup>473</sup>

### 11.2. Witnesses and Civil Parties heard by the Chamber

172. The Trial Chamber selected and heard the following witnesses and Civil Parties in relation to the Role of the Accused trial topic: BEIT Boeurn (BIT Na), alias BIT Beuan (2-TCW-953), NORNG Net (NONG Net) (2-TCW-913), OU Dav (2-TCCP-235), SON Em (2-TCCP-223), SENG Lytheng, alias Theng (2-TCW-897), KHIEV Neab (THEAV/KHIEV Neab) (2-TCCP-258), THUCH Sithan (2-TCW-842), NHOEK Ly (2-TCW-920),<sup>474</sup> PREAP Chhon (PREAP Chhouen) (2-TCCP-1063)<sup>475</sup> and MAK Chhoeun (MA Chhoeun) (2-TCW-823).

173. In total, the Trial Chamber heard 6 witnesses and 4 Civil Parties during the trial segment allocated to the Role of the Accused.

<sup>472</sup> Confidential Annex B: Updated Summaries of Witnesses, Civil Parties and Experts (no protective measures sought)- Nuon Chea Defence Team, E305/4.2, 8 May 2014, pp. 2-7, 9, 14, 17-20, 22; Confidential Annex B – New Witness, Civil Party and Expert Summaries for Case 002/02 – NUON Chea Defence Team, E307/4.3, 24 July 2014, pp. 2-3.

<sup>473</sup> *Ordonnance aux fins du dépôt de pièces actualisées dans le cadre de la préparation du procès 002/02* (confidential), E305/5.2, 9 May 2014.

<sup>474</sup> While THUCH Sithan (2-TCW-842) and NHOEK Ly (2-TCW-920) were selected by the Trial Chamber to testify with respect to the Role of the Accused, they were initially proposed by the Co-Prosecutors to testify with respect to Internal Purges: Annex I: Co-Prosecutors' Revised Combined Witness, Civil Party and Expert List for Case 002/02 in Recommended Order of Trial Segments and Appearance (July 2014) (confidential), E307/3/2.2, 28 July 2014, p. 1.

<sup>475</sup> PREAP Chhon (PREAP Chhouen) (2-TCCP-1063) was selected by the Trial Chamber to testify with respect to the Role of the Accused following a request by the International Co-Prosecutor to call an additional Civil Party to testify on this trial topic: *See* Decision on the International Co-Prosecutor's Request to hear an Additional Civil Party on the Role of the Accused and for Admission of Related Statement (confidential), E436/1, 17 October 2016.

### 11.3. Unable or unwilling to testify

174. The Trial Chamber had initially selected YEN Kuch (2-TCW-871) to testify in relation to the Role of the Accused. However, on 6 December 2016 the Trial Chamber informed the Parties that YEN Kuch (2-TCW-871) was unable to testify due to a serious health condition and would be replaced by MAK Chhoeun (MA Chhoeun) (2-TCW-823).<sup>476</sup> The Trial Chamber ruled that LONH Dos (2-TCW-942) was unable to testify due to his serious health condition and would thus not be selected.<sup>477</sup>

175. Civil Party SAR Sarin (2-TCCP-237) was selected to give evidence with respect to the Role of the Accused and commenced his in-court statement on 8 November 2016. At the start of the hearing, SAR Sarin (2-TCCP-237) informed the Trial Chamber for the first time that due to high blood pressure, he preferred to be heard only for half-days. Following an examination of the Civil Party, the ECCC doctor concluded that he was in good and health and that he was fit to be questioned for full-day sessions. Questioning of SAR Sarin (2-TCCP-237) was due to resume on 10 November 2016. However, he informed WESU that he was feeling unwell and was taken to a medical clinic for a check-up. While the results did not indicate any medical issue, SAR Sarin (2-TCCP-237) insisted that he needed to rest and was thus taken back to his hotel. Later that morning when WESU called to enquire about the health of the Civil Party SAR Sarin (2-TCCP-237), they were informed that he left the hotel to return to his home town. SAR Sarin (2-TCCP-237) subsequently demanded relocation to another country as a condition for continuing to give evidence. The Trial Chamber denied this request for relocation and ruled that given that SAR Sarin (2-TCCP-237) was a Civil Party he could not be compelled to testify.<sup>478</sup> The Trial Chamber therefore withdrew SAR Sarin (2-TCCP-237) from the list of witnesses, Civil Parties and experts for the trial topic on the Role of the Accused.<sup>479</sup> As the Trial Chamber decides to no longer seek to hear the remainder of

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<sup>476</sup> See Email from Trial Chamber Legal Officer, 6 December 2016; Summons to Witness Yen Kuch (confidential), E202/319, 13 October 2016; Medical Report of Reserve Witness YEN Kuch (2-TCW-871)", E1/501.5, 22 November 2016 (strictly confidential).

<sup>477</sup> Decision on the Testimony of Witness 2-TCW-942 (confidential), E29/494/2, 7 December 2016; Medical Assessment report for witness 2-TCW-942 (strictly confidential), E29/494/1, 22 November 2016. See also Email from Senior Legal Officer of 14 September 2016.

<sup>478</sup> Decision Withdrawing 2-TCCP-237 from the List of Civil Parties Heard in Court (confidential), E29/501/1, 14 December 2016.

<sup>479</sup> Decision Withdrawing 2-TCCP-237 from the List of Civil Parties Heard in Court (confidential), E29/501/1, 14 December 2016.

his evidence it will consider the submissions of the Parties in determining what weight, if any, to attribute to the evidence already provided by SAR Sarin (2-TCCP-237).<sup>480</sup>

176. On 7 May 2015, the Trial Chamber granted the Co-Prosecutors' request to call THET Sambath (2-TCW-885) and instructed WESU to contact the witness in this regard.<sup>481</sup> On 28 May 2015, WESU reported that they discussed the possibility of remote testimony via video-link with THET Sambath (2-TCW-885) who lives in the United States of America. However, THET Sambath (2-TCW-885) stated that he would be unable to make himself available for testimony citing security concerns he had for himself and others. He further stated that the protective mechanisms offered by the ECCC could not ensure their continued safety. THET Sambath (2-TCW-885) also noted that he would be unable to answer questions during his testimony because he obtained information from other persons who "have not agreed for their material to be used in any other form or for any other purpose than for the production of his films" and that he had "promised these persons to protect their information and it would be a violation of that promise were he to testify".<sup>482</sup> The Chamber notes that THET Sambath (2-TCW-885) would largely be able to only provide hearsay evidence pertaining to those individuals who were interviewed for the purposes of his work. The Trial Chamber has already made attempts to secure the testimony of witnesses who might be relevant to THET Sambath's work including CHEAL Choeun (2-TCW-960) who testified in this case.<sup>483</sup> Having regard to these factors, the proposed content of his testimony and the serious practical difficulties it would face in seeking to compel a witness who resides outside Cambodia to testify within a reasonable time,<sup>484</sup> the Trial Chamber decides not to summons THET Sambath (2-TCW-885) to testify in this case.

<sup>480</sup> Co-Prosecutors' Submission Regarding Admissibility of Testimony of SAR Sarin, E453, 20 December 2016; *Conclusions de la Défense de KHIEU Samphân sur l'utilisation des déclarations de la partie civile SAR Sarin*, E453/1, 20 December 2016; Civil Party Lead Co-Lawyers' Submission on the use of testimony by Civil Party 2-TCCP-237, E453/2 20 December 2016; T. 7 December 2016 (Draft), pp. 33-54.

<sup>481</sup> Decision on Co-Prosecutors' Request to call THET Sambath as a priority witness, E335/3, 7 May 2015.

<sup>482</sup> Updated report in response to Trial Chamber Decision E335/3, E335/3/2 (confidential), 28 May 2015. See also Email from Trial Chamber Legal Officer, E335/1/1.1.1, 12 June 2015. On 21 October 2015 the Supreme Court Chamber denied an additional evidence request by the NUON Chea Defence to summon THETH Sambath to testify: Decision on Pending Requests for Additional Evidence on Appeal and Related Matters, F2/9, 21 October 2015.

<sup>483</sup> Decision on NUON Chea Defence Requests to hear Additional Witnesses Pursuant to Internal Rule 87(4) (E391, E392, E395, E412, and E426) (Full Reasons), E443/10 (confidential), 30 March 2017, paras 30, 41; T. 13 and 17 October 2016 (CHEAL Choeun).

<sup>484</sup> See Decision Withdrawing Witness 2-TCW-890 from the List of Witnesses, Civil Parties and Experts for Case 002/02, E202/322/3 (confidential), 9 December 2016. The Supreme Court Chamber has acknowledged the ECCC's weak enforcement powers with respect to non-cooperative witnesses: Case 002/01 Appeal Judgement, F36, 23 November 2016, para. 123.

177. Witness SUON Ri (2-TCW-856) was proposed as a reserve witness for this trial topic. During the initial selection process, the Chamber requested WESU to make a preliminary assessment of the health and availability of this witness. However, when WESU tried to contact SUON Ri (2-TCW-856) he attempted to obfuscate his identity, went into hiding and refused to co-operate with WESU or the ECCC.<sup>485</sup> The Chamber finds that obtaining his testimony appears to be impossible within a reasonable time and decides not to summons SUON Ri (2-TCW-856). In any event, the Chamber finds that SUON Ri (2-TCW-856)'s proposed evidence in so far it relates to the Role of the Accused, appears to be limited to Khieu Samphan's visits to the warehouses under the authority of the Ministry of Commerce<sup>486</sup> and notes that BEIT Boeurn (BIT Na) (2-TCW-953) also testified about her work in and the structure of the Ministry of Commerce and KHIEU Samphan's involvement in study sessions she attended.<sup>487</sup> The remainder of SUON Ri (2-TCW-856)'s evidence is likely to be substantially repetitive of evidence already heard on Security Centres and Internal Purges in Case 002/02 from several witnesses and Civil Parties.<sup>488</sup> Considering SUON Ri (2-TCW-856)'s unwillingness to testify and the content of his proposed evidence, the Chamber declines to summons him.

#### 11.4. **Repetitive and/or Irrelevant and/or Less Relevant**

##### 11.4.1. *Individuals proposed by the Lead Co-Lawyers*

178. The Lead Co-Lawyers proposed Civil Parties HEM Savann (2-TCCP-250), HOENG Neng (2-TCCP-253) and NEOU Sarem (2-TCCP-268) and SENG Soeun (2-TCCP-219) to testify on the Role of the Accused.<sup>489</sup>

179. According to the summary of the proposed evidence, HEM Savann (2-TCCP-250) was an eye witness to KHIEU Samphan distributing "green kramas" at Khbal Thnal in Phnom Penh in order to identify people from the East Zone and was also the direct victim of forced marriage in Svay Rieng Province.<sup>490</sup> The Chamber notes that her evidence so far as it relates

<sup>485</sup> Witness and Expert Support unit (WESU) Report on 2-TCW-856 (confidential), E29/510, 11 July 2017.

<sup>486</sup> Annex IIIA – OCP Updated Alternate Witness, Civil Party and Expert Summaries [Reserves], E305/6.5, 9 May 2014, p. 3.

<sup>487</sup> See T. 28 November 2016.

<sup>488</sup> See paras 105-144.

<sup>489</sup> Confidential Annex III: Updated Summaries of Witnesses, Civil Party and Experts (no protective measures sought) – Civil Party Lead Co-Lawyers, E305/7.1.3, 9 May 2014, pp. 10-12, 18-19.

<sup>490</sup> Confidential Annex III: Updated Summaries of Witnesses, Civil Party and Experts (no protective measures sought) – Civil Party Lead Co-Lawyers, E305/7.1.3, 9 May 2014, pp. 10-11.

to the movement of population phase 3 does not fall within the scope of Case 002/02.<sup>491</sup> In addition, her evidence on KHIEU Samphan's involvement in meeting people from the East Zone and in the distribution of clothes including kramas, is likely to be substantially repetitive of the evidence heard in Case 002/02 on this issue from, *inter alia*, KHIEV Neab (THEAV/KHIEV Neab) (2-TCCP-258) and PREAP Chhon (PREAP Chhouen) (2-TCCP-1063).<sup>492</sup> The remainder of her evidence on forced marriage is likely to be substantially repetitive of evidence heard on the Regulation of Marriage in Case 002/02 from several witnesses and Civil Parties.<sup>493</sup>

180. According to the summary of the proposed evidence, HOENG Neng (2-TCCP-253) was an eyewitness to KHIEU Samphan's visit to Pursat and saw him giving "green kramas" to people who were moved from Svay Rieng. In addition the Lead Co-Lawyers submit that HOENG Neng (2-TCCP-253) will explain the propaganda where the Accused "appeared as leaders" of the Democratic Kampuchea.<sup>494</sup> HOENG Neng (2-TCCP-253) mentioned KHIEU Samphan's involvement in distributing supplies and green scarves which identified people from the East. HOENG Neng (2-TCCP-253) also noted that they were required to watch documentary screenings on the regime, which included propaganda on achievements of the leadership including KHIEU Samphan and NUON Chea.<sup>495</sup> Having regard to the peripheral and passing reference to KHIEU Samphan and NUON Chea, the Trial Chamber finds that her evidence is of limited relevance with respect to the Role of the Accused. In addition, her evidence on KHIEU Samphan's involvement in meeting people from the East zone and in the distribution of clothes including kramas, is likely to be substantially repetitive of the evidence heard in Case 002/02 on this issue from KHIEV Neab (THEAV/KHIEV Neab) (2-TCCP-258) and PREAP Chhon (PREAP Chhouen) (2-TCCP-1063).<sup>496</sup> The Chamber notes that her evidence so far as it relates to the movement of population phase 3 does not fall within the scope of Case 002/02.<sup>497</sup>

<sup>491</sup> See Decision on Additional Severance of Case 002 and Scope of Case 002/02, E301/9/1, 4 April 2014, para. 37.

<sup>492</sup> See T. 29 November 2016 (KHEAV Neab); T. 30 November 2016 (PREAP Chhon). See also E3/5894, Civil Party Application of MEAS Soeurn (confidential) (2-TCW-917) (ERN 00339165); E3/5234, Written Record of Interview of CHAK Muli (confidential), (ERN 00288202-00288203).

<sup>493</sup> See Regulation of Marriage section.

<sup>494</sup> Confidential Annex III: Updated Summaries of Witnesses, Civil Party and Experts (no protective measures sought) – Civil Party Lead Co-Lawyers, E305/7.1.3, 9 May 2014, p. 11.

<sup>495</sup> Supplementary Information of Civil Party Applicant (confidential), E3/6000a, 18 March 2010, p. 2-3.

<sup>496</sup> See T. 29 November 2016 (KHEAV Neab); T. 30 November 2016 (PREAP Chhon).

<sup>497</sup> See Decision on Additional Severance of Case 002 and Scope of Case 002/02, E301/9/1, 4 April 2014, para. 37.

181. With respect to NEOU Sarem (2-TCCP-268), the summary of proposed evidence notes that she was forced to attend a seminar led by KHIEU Samphan in Phnom Penh for “returnees” where KHIEU Samphan spoke about the Khmer Rouge policies on the establishment of cooperatives and worksites and the production of rice. KHIEU Samphan allegedly also spoke about the virtue of the farmer and worker class as opposed to the intellectuals and the plan to send the Vietnamese back to Vietnam because of their inability to contribute to the agrarian goals of the new state.<sup>498</sup>

182. The Chamber further reviewed the Voice of America transcript of interview of NEOU Sarem (2-TCCP-268) referred to in her Civil Party application.<sup>499</sup> In the interview, NEOU Sarem (2-TCCP-268) spoke about attending an education session where KHIEU Samphan came to teach. KHIEU Samphan spoke about the importance of the farmer and worker class to the revolution, the weakness of the intellectuals and the plan to send the Vietnamese back to Vietnam because they did not know how to farm.<sup>500</sup>

183. The Trial Chamber in Case 002/01 declined to hear NEOU Sarem (2-TCCP-268) in light of the significant quantity of evidence before the Chamber in relation to alleged role of the Accused in political education.<sup>501</sup> The Chamber similarly finds that the in-court statement of NEOU Sarem (2-TCCP-268) in case 002/02 is likely to be substantially repetitive of the evidence heard on the Role of the Accused in Case 002/02 from, inter alia, BEIT Boeurn (BIT Na), alias BIT Beuan (2-TCW-953), NORNG Net (NONG Net) (2-TCW-913), SON Em (2-TCCP-223) and SENG Lytheng, alias Theng (2-TCW-897) who also testified about the involvement of the Accused in education or study sessions.<sup>502</sup>

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<sup>498</sup> Confidential Annex III: Updated Summaries of Witnesses, Civil Party and Experts (no protective measures sought) – Civil Party Lead Co-Lawyers, E305/7.1.3, 9 May 2014, pp. 18-19.

<sup>499</sup> See Transcript of Voice of America Khmer Service Interview with NEOU Sarem (confidential), E3/6934, 29 May 2015, E231/1, 10 January 2013.

<sup>500</sup> See Transcript of Voice of America Khmer Service Interview with NEOU Sarem, E3/6934, 29 May 2015, pp. 9-12. While the summary of the proposed evidence suggested that KHIEU Samphan also spoke about the establishment of co-operatives, the transcript of her interview with Voice of America notes that this particular education session was not taught by KHIEU Samphan.

<sup>501</sup> Final Decision on Witnesses, Experts and Civil Parties to be heard in Case 002/01, E312, 7 August 2014, paras 53-54.

<sup>502</sup> See T. 28 November 2016 (BEIT Boeurn); T. 10 November 2016 (NORNG Net); T. 21-22 November 2016 (SON Em); T. 29 November 2016 (SENG Lytheng). The Chamber also heard evidence on this issue from a number of witnesses who testified in Case 002/01. See CHEA Say (TCW-91), E1/124.1; EK Hen (TCW-164), E1/217.1; RUOS Suy (TCW-570), E1/184.1.

184. Therefore, the Trial Chamber will not call HEM Savann (2-TCCP-250), HOENG Neng (2-TCCP-253) and NEOU Sarem (2-TCCP-268). The Trial Chamber notes that SENG Soeun (2-TCCP-219) was heard during the Regulation of Marriage trial topic.<sup>503</sup>

#### 11.5. General witnesses

185. The Parties proposed several witnesses to testify generally on the Role of the Accused, among other subjects. However, the proposed subject matter of the testimony of many of these witnesses is more closely related to other trial topics. Therefore the Chamber's analysis on whether to call these witnesses is addressed in other sections of this decision. David CHANDLER (2-TCE-84) is addressed in the section on proposed experts. KHUN Kim (alias NUON Paet) (2-TCW-810) and Nayan CHANDA (2-TCE-83) are addressed in the section on the Nature of the Armed Conflict. CHEY Sopheara (alias MAO) (2-TCW-814), YIN Nean (2-TCW-963), Laura SUMMERS, (2-TCE-100), Walter HEYNOWSKI (2-TCW-946), HENG Samrin (2-TCW-831), POL Saroeun (2-TCW-962) and CHHEM Neang (2-TCW-899) are addressed in the section on Security Centres and Internal Purges. CHHANG Youk (2-TCW-870) is addressed in the Tram Kak Cooperatives and Kraing Ta Chan Security Centre section. KAINING Guek EAV (alias DUCH) (2-TCW-916) was heard during the Security Centres and Internal Purges trial topic<sup>504</sup> and Stephen MORRIS (2-TCE-98) was heard during the Nature of the Armed Conflict trial topic.<sup>505</sup>

186. The Trial Chamber has already rejected the request to call Robert LEMKIN (2-TCW-877)<sup>506</sup> and confirmed that Michael VICKERY (2-TCE-94) would not testify as an expert in this case.<sup>507</sup>

## 12. PROPOSED EXPERTS

187. The Co-Prosecutors, the Lead Co-Lawyers, the NUON Chea Defence, and the KHIEU Samphan Defence proposed that the Chamber hear the following experts in Case 002/02:

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<sup>503</sup> See para. 148.

<sup>504</sup> See para. 97.

<sup>505</sup> See para. 167.

<sup>506</sup> Decision on NUON Chea Defence Requests to Hear Additional Witnesses Pursuant to Internal Rule 87(4) (E391, E392, E395, E412 and E426) (Full Reasons) (confidential), E443/10, 30 March 2017.

<sup>507</sup> See Outstanding issues relating to Expert Michael Vickery (2-TCE-94), E408/5, 4 August 2016.

## (a) The Co-Prosecutors:

1. HARRIS Ian (2-TCE-86);
2. LOCARD Henri (2-TCE-90);
3. BECKER Elizabeth (2-TCE-97);
4. ETCHESON Craig (2-TCE-85);
5. BLENGSLI Bjorn (2-TCE-91);
6. TABEAU Ewa Maria (2-TCE-93);
7. HINTON Alexander (2-TCE-88);
8. NAKAGAWA Kasumi (2-TCE-82);
9. KIERNAN Ben (reserve) (2-TCE-89);
10. YSA Osman (2-TCE-95).<sup>508</sup>

## (b) The Lead Co-Lawyers:

1. HINTON Alexander Laban (2-TCE-88);
2. NAKAGAWA Kasumi (2-TCE-82).<sup>509</sup>

## (c) The NUON Chea Defence:

1. CHANDA Nayan (2-TCE-83);
2. CHANDLER David Porter (2-TCE-84);
3. ETCHESON Craig (2-TCE-85);
4. MORRIS Stephen John (2-TCE-98);
5. SUMMERS Laura J. (2-TCE-100);
6. TABEAU Ewa Maria aka TABEAU KOWALSKA Ewa Maria (2-TCE-93);
7. VICKERY Michael (2-TCE-94);
8. BURGLER Roel A. (2-TCE-96).<sup>510</sup>

## (d) The KHIEU Samphan Defence:

1. LEVINE Peg (2-TCE-81);
2. PONCHAUD Francois (2-TCE-99);
3. VICKERY Michael (2-TCE-94);
4. HEDER Stephen (2-TCE-87);
5. BURGLER Roel A. (2-TCE-96);
6. SHORT Philip (2-TCE-92).<sup>511</sup>

<sup>508</sup> Annex I: Co-Prosecutors' Revised Combined Witness, Civil Party and Expert List for Case 002/02 in Recommended Order of Trial Segments and Appearance (July 2014) (confidential), E307/3/2.2, 28 July 2014, pp. 1-2.

<sup>509</sup> Confidential Annex IV: Proposed Order of Segments- Civil Parties Lead Co-Lawyers, E305/7.1.4, 9 May 2014, p. 4.

<sup>510</sup> Confidential Annex B: Updated Summaries of Witnesses, Civil Parties and Experts (no protective measures sought)- Nuon Chea Defence Team, E305/4.2, 8 May 2014, pp. 17-23; Confidential Annex B – New Witness, Civil Party and Expert Summaries for Case 002/02 – NUON Chea Defence Team, E307/4.3, 24 July 2014, p.4.

<sup>511</sup> *Annexe III: Résumés actualisés des déclarations des témoins et des experts qui ne demandent l'octroi d'aucune mesure de protection*, E305/5.2, 9 May 2014, pp. 2-6.

188. In total, the Trial Chamber heard 8 experts during the trial in Case 002/02, specifically Peg LEVINE (2-TCE-81), Henri LOCARD (2-TCE-90), Elizabeth BECKER (2-TCE-97), Alexander Laban HINTON (2-TCE-88), Kasumi NAKAGAWA (2-TCE-82), Stephen John MORRIS (2-TCE-98), YSA Osman (2-TCE-95), as well as VOEUN Vuthy (2-TCE-1062), who was proposed by the NUON Chea Defence in a separate filing.<sup>512</sup>

189. The Trial Chamber notes that the proposed testimony of the following four experts is closely related to the subject matter of specific trial topics and the reasoning for not calling them is therefore addressed under those sections of this decision: Nayan CHANDA (2-TCE-83),<sup>513</sup> Laura J. SUMMERS (2-TCE-100),<sup>514</sup> Bjorn BLENGSLI (2-TCE-91),<sup>515</sup> and David CHANDLER (2-TCE-84).<sup>516</sup>

### 12.1. **Findings**

190. The Chamber recalls that Ian Charles HARRIS (2-TCE-86) is deceased<sup>517</sup> and that it has already issued its reasons for not hearing Stephen HEDER (2-TCE-87) and François PONCHAUD (2-TCE-99).<sup>518</sup> The Chamber notes that efforts were made to hear proposed experts Michael VICKERY (2-TCE-94) and Ben KIERNAN (2-TCE-89), but they both refused to testify before the ECCC.<sup>519</sup> The Chamber recalls that it has few practical means at its disposal to compel the attendance of an uncooperative expert residing abroad within a reasonable time.<sup>520</sup> In view of the proposed experts' refusal to assist the court, the Chamber decides not to hear their evidence in Case 002/02.<sup>521</sup>

191. The NUON Chea Defence requested that Ewa Maria TABEAU (2-TCE-93) be called to testify regarding “*inter alia*, the number and causes of alleged deaths in the DK”, while the

<sup>512</sup> See Decision on the Admission into Evidence of the Choeung Ek Study, E404/4, 23 May 2016, para. 7; Decision on the Designation of 2-TCE-1062, E404/8, 4 November 2016; NUON Chea's Observations on the Admissibility of the Choeung Ek Bone Study and Its External Evaluation, E404/2 with annexes, 12 May 2016, para. 24.

<sup>513</sup> See para. 168.

<sup>514</sup> See para. 143.

<sup>515</sup> See para. 85.

<sup>516</sup> See para. 142.

<sup>517</sup> See para. 28.

<sup>518</sup> Decision on Reiterated Request of KHIEU Samphan Defence to Hear Stephen HEDER (2-TCE-87) and Francois PONCHAUD (2-TCE-99) (E408/6), E408/6/2, 3 November 2016.

<sup>519</sup> Outstanding Issues Relating to Expert Michael VICKERY (2-TCE-94), E408/5, 4 August 2016; Email from KIERNAN Ben (2-TCE-89) to WESU dated 23 December 2015, E29/509; Email from KIERNAN Ben (2-TCE-89) to the Trial Chamber dated 12 September 2016, E29/509/1.

<sup>520</sup> Proposed testimony of Benedict KIERNAN before the Trial Chamber, E166/1/4, 13 June 2012, p. 2.

<sup>521</sup> The Chamber notes that it has previously confirmed that Michael VICKERY (2-TCE-94) would not testify as an expert. See Outstanding Issues Relating to Expert Michael VICKERY (2-TCE-94), E408/5, 4 August 2016.

Co-Prosecutors submitted that her testimony is relevant to Historical Background, Movement of the Population, Treatment of the Cham and Treatment of the Vietnamese.<sup>522</sup> Both Parties submitted that her expert qualifications stem *inter alia* from having co-authored a demographic expert report submitted to the Co-Investigating Judges on 30 September 2009.<sup>523</sup> The Chamber recalls that it initiated contact with Ewa Maria TABEAU (2-TCE-93) through WESU to determine her availability for testifying. She responded that she required several months in order to update her expert report.<sup>524</sup> Consequently, the Chamber requested oral submissions from the Parties with respect to the requests by the NUON Chea Defence and the Co-Prosecutors to hear this expert.<sup>525</sup> All the Parties agreed that it was no longer necessary to hear Ewa Maria TABEAU (2-TCE-93), with the KHIEU Samphan Defence emphasizing that she could not be considered an expert and the NUON Chea Defence requesting instead that Patrick HEUVELINE testify as a demographic expert.<sup>526</sup> On 13 September 2016, the Chamber informed the Parties that Ewa Maria TABEAU (2-TCE-93) would not be called to testify in Case 002/02 and on 6 December 2016 it issued its decision denying the request to call Patrick HEUVELINE.<sup>527</sup> In the latter decision, the Chamber noted that the absence of relevant and reliable statistical data for the purposes of assessing a precise number of deaths attributable to the DK regime leads to inherent uncertainty surrounding the use of demographic evidence.<sup>528</sup> It also found that determining a precise number of deaths during the DK period is not necessary for determining the alleged criminal liability of the Accused in this case.<sup>529</sup> Keeping in mind these findings, which in this context apply to all demographic experts, and noting that the Parties agree it is no longer necessary to call Ewa Maria TABEAU (2-TCE-93), the Chamber concludes that hearing her would not assist the Chamber in establishing legally relevant facts in this case. The Chamber therefore declines to summons her.

<sup>522</sup> Confidential Annex B: Updated Summaries of Witnesses, Civil Parties and Experts (no protective measures sought)- Nuon Chea Defence Team, E305/4.2, 8 May 2014, pp. 21-22; Annex III: OCP Updated Witness, Civil Party and Expert Summaries, E305/6.4, 9 May 2014, p. 47.

<sup>523</sup> Demographic Expert Report, E3/2413, 30 September 2009; Confidential Annex B: Updated Summaries of Witnesses, Civil Parties and Experts (no protective measures sought)- Nuon Chea Defence Team, E305/4.2, 8 May 2014, pp. 21-22; Annex III: OCP Updated Witness, Civil Party and Expert Summaries, E305/6.4, 9 May 2014, p. 47.

<sup>524</sup> See Request for Oral Submissions on Parties' Requests to hear testimony of Ewa Tabeau, E371/2, 29 August 2016.

<sup>525</sup> Request for Oral Submissions on Parties' Requests to hear testimony of Ewa Tabeau, E371/2, 29 August 2016.

<sup>526</sup> T. 1 September 2016, pp. 21-48. See also Decision on NUON Chea's Request to Summons Patrick Heuveline and to Admit Two Related Documents, E444/1, 6 December 2016 ("Patrick Heuveline Decision"), paras 2-5.

<sup>527</sup> Email from Trial Chamber to the Parties dated 13 September 2016; Patrick Heuveline Decision.

<sup>528</sup> Patrick Heuveline Decision, para. 22.

<sup>529</sup> Patrick Heuveline Decision, para. 21.

192. In their request to call Craig ETCHESON (2-TCE-85), the Co-Prosecutors described him as an “overview” expert, while the NUON Chea Defence considered his expertise relevant to the structure, conditions, operations, and roles of individuals at the S-21 Security Centre.<sup>530</sup> The Chamber recalls that Craig ETCHESON (2-TCE-85) testified in Case 001 as an expert on “Democratic Kampuchea military structure, the political and governmental structure of the Khmer Rouge, the communications network and the policy and ideology of the Khmer Rouge”.<sup>531</sup> The Chamber notes that Craig ETCHESON (2-TCE-85)’s testimony from Case 001, which includes several references to the S-21 Security Centre, is admitted into evidence in Case 002/02, as are his book and his Written Record of Analysis prepared for the ECCC.<sup>532</sup> Furthermore, expert Alexander Laban HINTON (2-TCE-88) testified *inter alia* on the operation of S-21 while Elizabeth BECKER (2-TCE-97) provided an overview of the history of the CPK and the DK regime.<sup>533</sup> The Chamber therefore finds that Craig ETCHESON (2-TCE-85)’s evidence is likely to be substantially repetitive of evidence before the Chamber in Case 002/02. The Chamber therefore declines to summons him.

193. The KHIEU Samphan Defence requested Philip SHORT (2-TCE-92) to testify as an expert on the pre-1975 history of the CPK and its institutional organization.<sup>534</sup> The Chamber notes that Philip SHORT (2-TCE-92) testified as an expert in Case 002/01 in relation to events prior to 1975 and that his testimony forms part of the significant amount of documentary evidence pertaining to this subject-matter that was admitted in Case 002/02.<sup>535</sup> The Chamber notes that Philip SHORT (2-TCE-92) was among the experts proposed prior to the severance of Case 002 and it therefore allowed for more extensive questioning within his unique area of expertise in order to avoid recalling him unnecessarily.<sup>536</sup> The Chamber therefore considers that hearing Philip SHORT (2-TCE-92)’s evidence a second time is likely to be substantially repetitive of evidence on the Case File, including the Case 002/01

<sup>530</sup> Annex I: Co-Prosecutors’ Revised Combined Witness, Civil Party and Expert List for Case 002/02 in Recommended Order of Trial Segments and Appearance (July 2014) (confidential), E307/3/2.2, 28 July 2014, p. 2; Confidential Annex B: Updated Summaries of Witnesses, Civil Parties and Experts (no protective measures sought)- Nuon Chea Defence Team, E305/4.2, 8 May 2014, p. 19.

<sup>531</sup> Decision Concerning the Assignment of Experts, D288/6.51, 23 April 2009, para. 4.

<sup>532</sup> See Case 001 Trial Transcripts (Craig ETCHESON): E3/345, 18 May 2009; E3/2981, 19 May 2009; E3/2982, 20 May 2009; E3/55, 21 May 2009; Craig ETCHESON, *The Rise and Demise of the Democratic Kampuchea*, E3/2113; Written Record of Analysis by Craig Etcheson, E3/494, 18 July 2007; E3/1813.

<sup>533</sup> See T. 14 March 2016 (Alexander HINTON); T. 15 March 2016 (Alexander HINTON); T. 9 February 2015 (Elizabeth BECKER); T. 10 February 2015 (Elizabeth BECKER).

<sup>534</sup> *Annexe III: Résumés actualisés des déclarations des témoins et des experts qui ne demandent l’octroi d’aucune mesure de protection*, E305/5.2, 9 May 2014, p. 3.

<sup>535</sup> See T. 6 May 2013 (Philip SHORT).

<sup>536</sup> Decision on Experts, E215, 5 July 2012, para. 4.

testimonies of Francois PONCHAUD (2-TCE-99), Stephen HEDER (2-TCE-87) and David CHANDLER (2-TCE-84).<sup>537</sup> The Chamber therefore declines to summons him.

194. The NUON Chea Defence proposed Roel A. BURGLER (2-TCE-96) as an expert on the CPK history and events during the DK, including concerns about the “ambitions of Vietnam”, as well as on the pre-1975 history of the CPK.<sup>538</sup> The KHIEU Samphan Defence requested this expert to testify primarily on the hierarchical relations between leaders of the DK regime, notably on the degree of autonomy held by local commanders.<sup>539</sup> As noted above, significant amount of documentary evidence pertaining to pre-1975 conditions is already on the Case File. Further, other experts and witnesses testified in Case 002/02 on the background and hierarchy of the CPK and its relations with Vietnam.<sup>540</sup> The Chamber has reviewed the material on the Case File relevant to Roel A. BURGLER (2-TCE-96), notably his publication *The Eyes of the Pineapple* which is admitted into evidence in Case 002/02,<sup>541</sup> and considers his proposed testimony to be substantially repetitive of evidence on the Case File, including the testimonies of experts Elizabeth BECKER (2-TCE-97) and Stephen John MORRIS (2-TCE-98).<sup>542</sup> The Chamber therefore declines to summons him.

### **13. INDIVIDUALS ON WHOM NO CONSENSUS COULD BE REACHED**

195. As stated above, the Chamber was unable to reach a consensus on whether to summons Witnesses HENG Samrin (2-TCW-831), POL Saroeun (2-TCW-962) and OUK Bunchhoeun

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<sup>537</sup> See Final Decision on Witnesses, Experts and Civil Parties to be Heard in Case 002/01, E312, 7 August 2014, para. 31; T. 6-9 May 2013 (Philip SHORT); T. 9-11 April 2013 (Francois PONCHAUD); T. 9-11, 15-18 July 2013 (Stephen HEDER); T. 19-20, 23, 25 July 2013 (David CHANDLER). The Chamber notes that the KHIEU Samphan Defence proposed this expert in relation to several trial topics and finds that his testimony is likely to be substantially repetitive of evidence heard on those topic by the Chamber in Case 002/02, *see above*, paras 25-39, 43-58, 68-86, 93-143, 164-168.

<sup>538</sup> Confidential Annex B: Updated Summaries of Witnesses, Civil Parties and Experts (no protective measures sought)- Nuon Chea Defence Team, E305/4.2, 8 May 2014, pp. 17-23; Confidential Annex B – New Witness, Civil Party and Expert Summaries for Case 002/02 – NUON Chea Defence Team, E307/4.3, 24 July 2014, p.4.

<sup>539</sup> *Annexe III: Résumés actualisés des déclarations des témoins et des experts qui ne demandent l’octroi d’aucune mesure de protection*, E305/5.2, 9 May 2014, p.2.

<sup>540</sup> See e.g. T. 15 March 2016 (Alexander HINTON); T. 16 March 2016 (Alexander HINTON); T. 31 October 2016 (IENG Phan); T. 25 October 2016, (CHUON Thy); T. 26 October 2016, (CHUON Thy).

<sup>541</sup> Attachment 17: Roeland A Burgler, “The Eyes of the Pineapple Revolutionary Intellectuals and Terror in Democratic Kampuchea”, E3/7333.

<sup>542</sup> See T. 9 February 2015 (Elizabeth BECKER); T. 10 February 2015 (Elizabeth BECKER); T. 11 February 2015 (Elizabeth BECKER); .T. 18 October 2016 (Stephen MORRIS); T. 19 October 2016 (Stephen MORRIS); (T. 20 October 2016 (Stephen MORRIS). The Chamber notes that both the KHIEU Samphan Defence and the NUON Chea Defence proposed this expert in relation to several trial topics and finds that his testimony is likely to be substantially repetitive of evidence heard on those topic by the Chamber in Case 002/02, *see above*, paras 25-39, 43-58, 68-86, 93-143, 164-168.

(2-TCW-951). As an affirmative majority as required by Article 14(1)(a) *new* of the Law on the ECCC was not reached, these three witnesses were not summonsed. The opinions of the majority and minority follow.

### 13.1. Procedural History

196. During the investigations in Case 002, the International Co-Investigating Judge issued summonses to HENG Samrin (2-TCW-831) and OUK Bunchhoeun (2-TCW-951), amongst other individuals, for the purpose of interviewing them as witnesses.<sup>543</sup> Both individuals failed to respond and the International Co-Investigating Judge concluded that they refused to attend for testimony. He also noted that implementing any coercive measures would be “fraught with significant practical difficulties” that, in “the best-case scenario, would unduly delay the conclusion of the judicial investigation, contrary to the need for expeditiousness”.<sup>544</sup> The International Co-Investigating Judge therefore decided to defer to the Trial Chamber to decide whether employing any coercive measures would be warranted.<sup>545</sup> The matter was appealed before the Pre-Trial Chamber, which criticised the reasoning of the International Co-Investigating Judge, but agreed with the conclusion that the matter should be deferred to the Trial Chamber.<sup>546</sup>

197. The NUON Chea Defence proposed HENG Samrin (2-TCW-831) and OUK Bunchhoeun (2-TCW-951) as witnesses for the purposes of the trial proceedings in Case 002 in June 2011.<sup>547</sup> In Case 002/01, no consensus could be reached amongst the Judges of the Trial Chamber on whether to summons them. In their minority opinion at the time, the International Judges Lavergne and Cartwright disagreed with the majority’s conclusion not to summons HENG Samrin (2-TCW-831) and OUK Bunchhoeun (2-TCW-951), and found that their proposed evidence was *prima facie* relevant and that therefore they should have been summonsed.<sup>548</sup>

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<sup>543</sup> Witness Summons, D136/3/1, 25 September 2009; Witness Summons, A298/1, 25 September 2009; Note by the Co-Investigating Judge (confidential), D301, 11 January 2010, p. 3.

<sup>544</sup> Note by the Co-Investigating Judge (confidential), D301, 11 January 2010, p. 3.

<sup>545</sup> Note by the Investigating Judge (confidential), D301, 11 January 2010, pp. 3-4.

<sup>546</sup> Decision on NUON Chea’s and IENG Sary’s Appeal Against OCIJ Order on Request to Summons Witnesses (confidential), D314/2/7, 8 June 2010, para. 71.

<sup>547</sup> Updated Lists and Summaries of Proposed Witnesses, Civil Parties and Experts, E305/4.2, 8 May 2014; New Witness, Civil Party and Expert Summaries for Case 002/02 – NUON Chea Defence Team (confidential), E307/4.3, 07 July 2014.

<sup>548</sup> Final Decision on Witnesses, Experts and Civil Parties to Be Heard in Case 002/01, E312, 7 August 2014, paras 104-111.

198. The Supreme Court Chamber, in its Appeal Judgement in Case 002/01, concluded that the Trial Chamber committed an error in not summoning these two witnesses. However, it did not decide to redress such error by calling the said witnesses and found instead that this error did not result in a “grossly unfair outcome in the judicial proceedings”.<sup>549</sup>

199. In Case 002/02, the NUON Chea Defence submitted its updated list of witnesses, Civil Parties and experts on 8 May 2014. The list included HENG Samrin (2-TCW-831) and OUK Bunchhoeun (2-TCW-951).<sup>550</sup> POL Saroeun (2-TCW-962) instead, was added to the list of proposed witnesses in July 2014.<sup>551</sup> The NUON Chea Defence later made numerous submissions requesting that these witnesses be heard.<sup>552</sup> While the National Co-Prosecutor objected to summoning these witnesses and proposed instead that written questions be sent to them, the International Co-Prosecutor stated that he had no objections to these witnesses being summonsed.<sup>553</sup>

#### 13.1.1. *NUON Chea Defence Submissions*

200. The Nuon Chea Defence contend that not calling HENG Samrin (2-TCW-831), OUK Bunchhoeun (2-TCW-951) and POL Saroeun (2-TCW-962) would violate fair trial rights and assert that their testimonies are likely to provide exculpatory evidence and would notably support the defence theory on the existence of a rebellion led by traitorous factions among the CPK. The summaries of the proposed witnesses’ testimony clarify the relevance of the evidence they are expected to provide.

201. According to the summary of proposed testimony submitted by the NUON Chea Defence, Witness HENG Samrin (2-TCW-831), who is the current Honorary President of the

<sup>549</sup> NUON Chea and KHIEU Samphan, Appeal Judgement, paras 149, 150-155, 158.

<sup>550</sup> Updated Lists and Summaries of Proposed Witnesses, Civil Parties and Experts, E305/4, 8 May 2014.

<sup>551</sup> NUON Chea Defence’s New Witness, Civil Party and Expert List for Case 002/02, E307/4, 24 July 2014 with Confidential Annexes E307/4.2, E307/4.3.

<sup>552</sup> NUON Chea’s First Rule 87(4) Request to Call Additional Witnesses and Rule 93 Request for Additional Investigations in Relation to the Case 002/02 Trial Segment on S-21 Security Centre and “Internal Purges”, E391, 24 March 2016; NUON Chea’s Second Witness Request for the Case 002/02 Security Centres and “Internal Purges” Segment (Leadership), E392, 1 April 2016; NUON Chea’s Third Witness Request for the Case 002/02 Security Centres and “Internal Purges” Segment (Evidence of Treasonous Rebellion), E395, 8 April 2016; NUON Chea’s Fourth Witness Request for the Case 002/02 Security Centres and “Internal Purges” Segment (S-21 Operations and Documentary Evidence), E412, 7 June 2016; NUON Chea’s Fifth Witness Request for the Case 002/02 Security Centres and “Internal Purges” Segment (Evidence of Treasonous Rebellion, Alleged Arbitrariness of Arrest and S-21 Security Centre), E426, 29 July 2016.

<sup>553</sup> National Co-Prosecutor’s Objections to the Witnesses and Experts Proposed by the Other Parties (confidential), E305/10, 30 May 2014; T. 30 July 2014, pp. 89-90; *see also*, Decision on National Co-Prosecutor’s Objections to the Witnesses and Experts Proposed by Other Parties, E305/10/1, 25 March 2016.

Cambodian People's Party, President of the Cambodian National Assembly, and Member of Parliament for Kampong Cham, is relevant as he could describe:

[his] experience as a high-ranking CPK cadre (Eastern Zone committee member, deputy chief of staff of Military Region 103, CPK division commander) and later as a major CPK defector and leader in the rebellion to overthrow the CPK. His insights may assist in establishing facts concerning internal divisions within the CPK, CPK policies concerning internal enemies and Vietnam, Vietnamese aggression against DK and top ranking CPK factional support including but not limited to Sao Phim and others, designation of traitors and internal purges in the Eastern Zone, policies and conditions relating to cooperatives, and treatment of former Lon Nol officials, the Vietnamese and the Cham.<sup>554</sup>

202. According to the NUON Chea Defence, Witness OUK Bunchhoeun (2-TCW-951), who is a Cambodian Senator and senior Cambodian People's Party member, is relevant as he could describe:

[his] experience as an Eastern Zone leader who participated in a rebellion against the CPK in 1978 and subsequently defected to Vietnam. His insights may assist in establishing facts concerning internal divisions within the CPK, CPK policies concerning internal enemies and Vietnam, Vietnamese aggression against DK and top ranking CPK factional support, and designation of traitors and internal purges in the Eastern Zone.<sup>555</sup>

203. As regards Witness POL Saroeun (2-TCW-962), who is the current Commander of the Royal Cambodian Armed Forces, the summary of his proposed evidence suggests that his testimony is relevant because he could describe:

[his] experience as a high-ranking CPK cadre in the East Zone and later as a major CPK defector and leader in the rebellion to overthrow the CPK. His insight may assist in establishing facts concerning internal divisions within the CPK, CPK policies concerning internal enemies and Vietnam, Vietnamese aggression against DK and top ranking CPK factional support including but not limited to Sao Phim and others, designation of traitors and internal purges in the Eastern Zone, policies and conditions relating to cooperatives, and treatment former Lon Nol Officials, the Vietnamese and the Cham.<sup>556</sup>

204. While the summary of proposed testimony is mostly a cut and paste used for most of the witnesses proposed for the Internal Purges trial topic, in subsequent oral and written

<sup>554</sup> Updated Lists and Summaries of Proposed Witnesses, Civil Parties and Experts, E305/4.2, 8 May 2014, pp. 5-6.

<sup>555</sup> Updated Lists and Summaries of Proposed Witnesses, Civil Parties and Experts, E305/4.2, 8 May 2014, p. 12.

<sup>556</sup> New Witness, Civil Party and Expert Summaries for Case 002/02 – NUON Chea Defence Team (confidential), E307/4.3, 07 July 2014, p. 2.

submissions NUON Chea and his Defence team emphasized the relevance of their proposed evidence. Following the Co-Prosecutors' opening statements on 17 October 2014, NUON Chea stressed that, in his view, HENG Samrin (2-TCW-831) is "even more important" in Case 002/02 than Case 002/01 "because it is even more important in this second trial to understand Vietnam's aggression, expansion, annexation and elimination of the Khmer people".<sup>557</sup> He stated that he believed that "several crimes" of which he is accused were in fact committed by SAO Phim, ROS Nhim and other "traitors" outside of NUON Chea's control and knowledge, and that HENG Samrin (2-TCW-831) would be able to confirm this to be the case.<sup>558</sup>

205. In various motions, the NUON Chea Defence held that from their perspective HENG Samrin (2-TCW-831) is "without a shadow of a doubt, *the most important witness in case 002/02 and Case 002 generally*", on a "completely different stratosphere than every other witness",<sup>559</sup> and OUK Bunchhoeun (2-TCW-951) as "perhaps the second-most important witness in case 002/02".<sup>560</sup> The NUON Chea defence insisted that HENG Samrin (2-TCW-831), who was only "two rungs below" SAO Phim, and OUK Bunchhoeun (2-TCW-951), who "was only one level below Sao Phim in the East Zone civilian hierarchy",<sup>561</sup> would offer insight into the heart of the Defence case that:

the CPK, far from being a disciplined, unified and "pyramidal" hierarchy, was engulfed in constant internal turmoil; that difference and equally strong factions (including one led by East Zone secretary Sao Phim and Northwest secretary Ruos Nhim) pursued competing agendas intending to seize overall control of the Party and the country; and that one of those factions also sought to advance the interest of at least Vietnam, if not the Soviet Union.<sup>562</sup>

<sup>557</sup> T. 17 October 2014, E1/242.1, p. 68, ERN (En) 01032824.

<sup>558</sup> T. 17 October 2014, E1/242.1, pp. 70-71, ERN (En) 01032826-010328267.

<sup>559</sup> NUON Chea's Urgent and Consolidated Request to Expedite Two Already-Requested Witnesses and Summons Four Additional Witnesses Regarding the Treatment of the Cham, E370, 29 September 2015, para. 18 (emphasis in the original); NUON Chea's Second Witness Request for the Case 002/02 Security Centres and 'Internal Purges' Segment (Leadership), E392, 1 April 2016, para. 18.

<sup>560</sup> NUON Chea's Urgent and Consolidated Request to Expedite Two Already-Requested Witnesses and Summons Four Additional Witnesses Regarding the Treatment of the Cham, E370, 29 September 2015, para. 19.

<sup>561</sup> NUON Chea's Urgent and Consolidated Request to Expedite Two Already-Requested Witnesses and Summons Four Additional Witnesses Regarding the Treatment of the Cham, E370, 29 September 2015, para. 20.

<sup>562</sup> NUON Chea's Urgent and Consolidated Request to Expedite Two Already-Requested Witnesses and Summons Four Additional Witnesses Regarding the Treatment of the Cham, E370, 29 September 2015, para.25; NUON Chea's Second Witness Request for the Case 002/02 Security Centres and "Internal Purges" Segment (Leadership), E392, 1 April 2016, para. 4; NUON Chea's Third Witness Request for the Case 002/02 Security Centres and "Internal Purges" Segment (Evidence of Treasonous Rebellions), E395, 8 April 2016, para. 4; NUON Chea's Submission on the Relevance of Evidence of Treasonous Rebellions to His Individual Criminal Responsibility in Case 002/02, E395/2, 10 June 2016, para. 10.

206. Further, the NUON Chea Defence stressed that, as the most senior surviving East Zone CPK cadres, HENG Samrin (2-TCW-831) and OUK Bunchhoeun (2-TCW-951) would obviously be able to offer “unparalleled, irreplaceable, eyewitness accounts” of the internal purges in the East Zone, which the Closing Order identifies as one of the two key sites where the “internal purges” took place from mid-1976 until the end of the fall of the CPK regime.<sup>563</sup> The NUON Chea Defence submitted that the many arrests “initiated by CPK cadres [in the East Zone] were motivated by the arrestee’s treason, and in particular, his or her participation in developing a rebellion and a coup d’état’s [sic] against the CPK and legitimate DK government”.<sup>564</sup> It claims that as “prominent leaders of a treasonous rebellion”, HENG Samrin (2-TCW-831) and OUK Bunchhoeun (2-TCW-951)’s eyewitness account would in this regard be “unparalleled” and “irreplaceable”.<sup>565</sup> The NUON Chea Defence pointed to HENG Samrin’s role in a rebellion and decision to “fight back” against POL Pot forces taken at a “meeting of 20 district secretaries and military commanders”,<sup>566</sup> his involvement “in creating a resistance front [...]” and the contact between HENG Samrin (2-TCW-831) and Vietnam from September 1978.<sup>567</sup> Finally, the NUON Chea Defence also submitted that POL Saroeun (2-TCW-962), as a former high-ranking CPK cadre in the East Zone who defected to Vietnam, may offer unique insights into preparations for rebellion and the participation and crackdown on East Zone cadres.<sup>568</sup>

207. In addition, due to their position in the East Zone and connection to Sector 21, the NUON Chea Defence argued that HENG Samrin (2-TCW-831) and OUK Bunchhoeun (2-TCW-951) would very likely have first-hand knowledge of “critical and irreplaceable” information that would establish whether a policy to target the Cham in Sector 21 existed and, if so, whether it can be attributed to NUON Chea.<sup>569</sup> According to the NUON Chea Defence,

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<sup>563</sup> NUON Chea’s Second Witness Request for the Case 002/02 Security Centres and “Internal Purges” Segment (Leadership), E392, 1 April 2016, para. 20

<sup>564</sup> Nuon Chea’s Second Witness Request for the Case 002/02 Security Centres and “Internal Purges” Segment (Leadership), E392, 1 April 2016, para. 21.

<sup>565</sup> Nuon Chea’s Second Witness Request for the Case 002/02 Security Centres and “Internal Purges” Segment (Leadership), E392, 1 April 2016, para. 21.

<sup>566</sup> Nuon Chea’s Second Witness Request for the Case 002/02 Security Centres and “Internal Purges” Segment (Leadership), E392, 1 April 2016, para. 23.

<sup>567</sup> Nuon Chea’s Second Witness Request for the Case 002/02 Security Centres and “Internal Purges” Segment (Leadership), E392, 4 April 2016, para. 23.

<sup>568</sup> NUON Chea’s Second Witness Request for the Case 002/02 Security Centres and “Internal Purges” Segment (Leadership), E392, 1 April 2016, paras 6, 26.

<sup>569</sup> NUON Chea’s Urgent and Consolidated Request to Expedite Two Already-Requested Witnesses and Summons Four Additional Witnesses Regarding the Treatment of the Cham, E370, 29 September 2015, para. 20; *see also*, NUON Chea’s Urgent and Consolidated Request to Expedite Two Already-Requested Witnesses and Summons Four Additional Witnesses Regarding the Treatment of the Cham, E370, 29 September 2015, paras 21-23.

HENG Samrin (2-TCW-831) is the only witness on whom the Co-Prosecutors relied in their Final Submissions, when “claiming that at the 20 May 1975 conference, ‘Pol Pot specifically instructed CPK cadres that they were to force the Chams to raise pigs and eat pork, and [that] anyone who resisted was to be killed’”.<sup>570</sup> The NUON Chea Defence also highlighted that HENG Samrin (2-TCW-831) was “the only witness still alive” who could “substantiate [...] assertions [...] that at the 20 May 1975 CPK leaders’ conference in Phnom Penh, cadres were advised of an eight point plan, the fifth point of which was to [e]liminate religions [...]”.<sup>571</sup> Further, the NUON Chea Defence submitted that OUK Bunchhoeun (2-TCW-951)’s interview with HEDER suggests that the treatment of the Cham was owed to the Cham’s separatist political tendencies, rather than to a genocidal policy.<sup>572</sup>

### 13.2. **Opinion of the Majority (Judges NIL Nonn, YA Sokhan and YOU Ottara)**

#### 13.2.1. ***Introduction***

208. According to the NUON Chea Defence, HENG Samrin (2-TCW-831) defected from the Khmer Rouge, had a prominent role in Vietnamese-backed forces that overthrew the government of Democratic Kampuchea, and has held senior positions in Cambodia since 1979, most recently as President of the National Assembly.<sup>573</sup> These are matters of understandable personal interest to NUON Chea; and of some historical and political significance. It does not follow, however, that such matters are legally relevant to Case 002/02 or the Trial Chamber’s assessment of NUON Chea’s innocence or guilt. The same can be said of two other witnesses requested by NUON Chea: OUK Bunchhoeun (2-TCW-951), now a senator; and POL Saroeun (2-TCW-962), now the commander in chief of the Royal Cambodia Armed Forces.<sup>574</sup>

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<sup>570</sup> NUON Chea’s Urgent and Consolidated Request to Expedite Two Already-Requested Witnesses and Summons Four Additional Witnesses Regarding the Treatment of the Cham, E370, 29 September 2015, para. 21.

<sup>571</sup> NUON Chea’s Urgent and Consolidated Request to Expedite Two Already-Requested Witnesses and Summons Four Additional Witnesses Regarding the Treatment of the Cham, E370, 29 September 2015, para. 21.

<sup>572</sup> NUON Chea’s Urgent and Consolidated Request to Expedite Two Already-Requested Witnesses and Summons Four Additional Witnesses Regarding the Treatment of the Cham, E370, 29 September 2015, para. 22.

<sup>573</sup> NUON Chea’s Updated Lists and Summaries of Proposed Witnesses, Civil Parties and Experts, E305/4.2, 8 May 2014, pp. 5-6.

<sup>574</sup> NUON Chea’s Updated Lists and Summaries of Proposed Witnesses, Civil Parties and Experts, E305/4.2, 8 May 2014, p. 12 (in relation to OUK Bunchhoeun); NUON Chea’s New Witness, Civil Party and Expert Summaries for Case 002/02, E307/4.3, 7 July 2014, p. 2 (in relation to POL Saroeun).

209. According to the NUON Chea Defence, HENG Samrin (2-TCW-831) is on a “completely different stratosphere” to any other potential witness in Case 002.<sup>575</sup> This does not fit with research by Ben KIERNAN (2-TCE-89), according to whom HENG Samrin (2-TCW-831) had a relatively junior position in the overall chain of command during the period relevant to Case 002/02.<sup>576</sup> The Chamber’s role, however, is not to decide whether a lawyer’s submissions amount to hyperbole; or one researcher’s assessment, an underestimate.<sup>577</sup> Our task is to evaluate the likely importance of any requested oral testimony to the issues in Case 002/02, considering the relevant legal principles and other evidence available.<sup>578</sup>

### 13.2.1.1. *The Supreme Court Chamber’s Judgement in Case 002/01*

210. The Supreme Court Chamber’s Judgement of 23 November 2016 addressed the relevant legal principles when finding that we erred by declining to summon HENG Samrin and OUK Bunchhoeun in Case 002/01.<sup>579</sup> The Supreme Court Chamber held that our decision in Case 002/01 was based on the purported delay likely to result from a summons; and that this basis was an assumption based largely on speculation.<sup>580</sup> In the Supreme Court Chamber’s view, the Trial Chamber should have better explored their availability to testify: only in the event that they refused to a respond to a summons would the Trial Chamber have had to face the question of coercive measures.<sup>581</sup>

211. The Supreme Court Chamber continued, however, that the Trial Chamber’s failure to call HENG Samrin or OUK Bunchhoeun did not result in a miscarriage of justice in Case

<sup>575</sup> Nuon Chea’s Second Witness Request for the Case 002/02 Security Centres and ‘Internal Purges’ Segment (Leadership), E392, 1 April 2016, para. 18; Nuon Chea’s Notice of Current Intention to Exercise his Right to Remain Silent in Case 002/02, E421/1/2, 1 August 2016, para. 6.

<sup>576</sup> Book edited by Ben KIERNAN (2-TCE-89) titled “Genocide and Democracy in Cambodia”, E3/3304, ERN (Kh) 00711534-00711535, ERN (En) 00430240, at p.13 referring to Table 2 therein.

<sup>577</sup> Scholarly views can differ and, although not directly related to the HENG Samrin (2-TCW-831), we heard evidence of such debate. Philip SHORT (2-TCE-92) disagreed with parts of Ben KIERNAN’s (2-TCE-89) work and said he was “misguided on many points”; see e.g., T. 8 May 2013 (Philip SHORT), pp. 82-83, 108-109. Stephen HEDER (2-TCE-87) said that he and Ben KIERNAN (2-TCE-89) have criticized each other’s work and he questioned Ben KIERNAN’s (2-TCE-89) conclusions that conditions in the East Zone were “less bad”; see e.g., T. 16 July 2013 (Stephen HEDER) pp. 74-79. David CHANDLER (2-TCE-84) agreed with Stephen HEDER (2-TCE-87) that Ben KIERNAN (2-TCE-89) did not adequately address the accountability of “lower-downs”; see T. 23 July 2012 (David CHANDLER), pp. 70-72. Stephen MORRIS (2-TCE-98) suggested that Ben KIERNAN (2-TCE-89) had a strong political agenda and aligned himself with the Vietnamese Communist Party’s interpretation of events; see T. 18 October 2016 (Stephen MORRIS), pp. 69-71.

<sup>578</sup> The relevant legal principles are summarised in the main body of this decision at paras 9-17. See also our opinion in the Final Decision on Witnesses, Experts and Civil Parties to be Heard in Case 002/01, 7 August 2014, E312, at paras 88-89. The international cases consider whether proposed evidence is available through other means, including in documentary evidence, before initiating the judicial power to compel.

<sup>579</sup> Appeal Judgement, F36, 23 November 2016, paras 123, 132-166.

<sup>580</sup> Appeal Judgement, F36, 23 November 2016, paras 146-7.

<sup>581</sup> Appeal Judgement, F36, 23 November 2016, para. 148 (in relation to HENG Samrin); para. 158 (in relation to OUK Bunchhoeun).

002/01.<sup>582</sup> In so holding, the Supreme Court Chamber held that the right to request that witnesses be called in one's defence is an essential component of the right to a fair trial, but the right is not absolute.<sup>583</sup> The Trial Chamber should strive to obtain the witness or other means of evidence that can best shed light on the events in question.<sup>584</sup> Where there are several witnesses or pieces of evidence relating to the same subject matter, the Trial Chamber may decide not to call all of them, but only those that are most relevant.<sup>585</sup>

### 13.2.1.2. *Our approach in Case 002/02*

212. We kept NUON Chea's requests to call HENG Samrin (2-TCW-831), OUK Bunchhoeun (2-TCW-951) and POL Saroeun (2-TCW-962) under review over the course of Case 002/02.<sup>586</sup> In May 2016, the President instructed WESU to make enquiries as to the proposed witnesses' availability and willingness to give oral evidence in Case 002/02.<sup>587</sup> Those enquiries were unsuccessful.<sup>588</sup> After WESU's enquiries, the issue for the Trial Chamber was whether to issue summonses and seek to compel testimony from HENG Samrin (2-TCW-831), OUK Bunchhoeun (2-TCW-951) or POL Saroeun (2-TCW-962). We considered the practical difficulties that compulsion would likely entail – most notably in relation to HENG Samrin (2-TCW-831) and OUK Bunchhoeun (2-TCW-951) who enjoy parliamentary immunity. Although the point remains that immunity needs to be invoked in order to operate, it would be formalistic and unrealistic to ignore the practical situation. If evidence is sufficiently important, unique or exculpatory, however, then practical difficulties (including any immunity) ought to be overcome in the interests of justice. We therefore focused our assessment on the likely significance of oral evidence from HENG Samrin (2-TCW-831), OUK Bunchhoeun (2-TCW-951) (and POL Saroeun (2-TCW-962)), rather than any practical difficulties that immunities (or apparent reluctance to cooperate) might create. We also gave careful and ongoing consideration to the evidence before the Chamber as Case 002/02 progressed.

<sup>582</sup> Appeal Judgement, F36, 23 November 2016, para. 155, with reference to para. 99.

<sup>583</sup> Appeal Judgement, F36, 23 November 2016, para. 133.

<sup>584</sup> Appeal Judgement, F36, 23 November 2016, para. 144.

<sup>585</sup> Appeal Judgement, F36, 23 November 2016, para. 150.

<sup>586</sup> See e.g., Decision on NUON Chea Request to Expedite two Previously Proposed Witnesses and Summons four Additional Witnesses during the Case 002/02 Trial Topic on the Treatment of the Cham – with Written Reasons to follow, E370/3, 18 December 2015, para. 2(b); reasons provided in E370/4, 25 March 2016, para. 18.

<sup>587</sup> Letters from Trial Chamber regarding HENG Samrin (2-TCW-831), OUK Bunchhoeun (2-TCW-951) and POL Saroeun (2-TCW-962), E29/504, 16 May 2016.

<sup>588</sup> See WESU Report on 2-TCW-831, 2-TCW-951, 2-TCW-962, E29/504/2, 2 September 2016.

213. NUON Chea failed to persuade us that these persons would give evidence of substantial assistance to his defence that is unavailable from other sources. We therefore declined to summon them, primarily on the basis of Internal Rule 87(3)(a) (that their proposed evidence was of lesser relevance or substantially repetitive of other evidence); but also under Internal Rule 87(3)(c) (their evidence is unsuitable to prove the matters advanced by NUON Chea); and under Internal Rule 87(3)(e) (in that some of the submissions of NUON Chea had no foundation and were frivolous).

214. Our eventual conclusion not to summon HENG Samrin (2-TCW-831), OUK Bunchhoeun (2-TCW-951) or POL Saroeun (2-TCW-962) differed from that of our international colleagues. On 27 December 2016, the Trial Chamber notified the Parties that it was unable to reach an affirmative majority, with the result that these persons would not be summoned.<sup>589</sup> This opinion sets out the reasons for our decision. We disagree with our international colleagues' focus on *prima facie* relevance. In our view, the correct approach is to weigh the relative importance of proposed witnesses to material issues in the case, while considering evidence already before the Chamber and the specific language in Internal Rule 87. We set out our reasoning in detail with references to evidence already before the Chamber. There are overlaps in our reasoning in relation to each person, partly because of the emphasis which NUON Chea placed on their respective roles in the overthrow of the government of Democratic Kampuchea (the "treasonous rebellion") and events in the East Zone. To minimise repetition, at points we elaborate more fully in relation to one person rather than another. It should be understood, however, that aspects of our reasoning in relation to one person might apply to another. We turn first to HENG Samrin (2-TCW-831) because of the number and nature of the submissions made in relation to him.

### 13.2.2. *HENG Samrin (2-TCW-831)*

215. Ben KIERNAN (2-TCE-89) interviewed HENG Samrin (2-TCW-831) in December 1991 and December 1992. Typed notes of those interviews are in evidence,<sup>590</sup> as are handwritten notes.<sup>591</sup> There is also an audio recording of the 1992 interview.<sup>592</sup> A biography

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<sup>589</sup> Final List of witnesses, Civil Parties and experts for Case 002/02, E454, 27 December 2016, para. 3.

<sup>590</sup> Interviews of HENG Samrin, E3/1568, *see* ERN (Kh) 00713940-00713967, ERN (En) 00651875-00651892 (for 1991); and ERN (Kh) 00713967-00713993, ERN (En) 00651892-00651907 (for 1992).

<sup>591</sup> Interview with CHEA Sim, Phnom Penh, 3 Dec 1991, and HENG Samrin, Phnom Penh 2 Dec 1991, E3/5593, *see* ERN (Kh) 00713941-00713967, ERN (En) 00419389-00419425 (for 1991) and ERN (Kh) 00713968-00713993, ERN (En) 00419426-00419457 (for 1992).

of HENG Samrin (2-TCW-831), said to have been prepared by Vietnamese or East German sources in December 1978, is also in evidence.<sup>593</sup> Some emphasis has also been placed on video footage which, it is said, depicts HENG Samrin (2-TCW-831) speaking at a gathering in the East Zone, possibly in 1978, attended by POL Pot and SAO Phim among others.<sup>594</sup>

#### 13.2.2.1. *The East Zone*

216. NUON Chea does not contend that HENG Samrin (2-TCW-831) was a member, or attended any meetings, of the Standing Committee, the Central Committee, the General Staff, the CPK's Military Committee, or any government ministry. Rather, NUON Chea emphasises that HENG Samrin (2-TCW-831) was the secretary of the East Zone's 4<sup>th</sup> Division; the East Zone's deputy chief of staff and a member of the East Zone committee.<sup>595</sup> NUON Chea submits that HENG Samrin (2-TCW-831) is therefore one of the "senior most surviving members of the East Zone authority structure".<sup>596</sup> (Ben KIERNAN (2-TCE-89) described HENG Samrin (2-TCW-831) as the East Zone's "third-ranking military officer".<sup>597</sup>)

217. The Chamber has before it documentary evidence of meetings involving military personnel apparently proximate to the upper levers of military power in Democratic Kampuchea, including records of meetings on 27 June 1976, 2 August 1976, 12 August 1976, 18 August 1976, 30 August 1976, 16 September 1976, 19 September 1976, 30 September 1976, 9 October 1976, 18 October 1976, 11 November 1976, 21 November 1976, 15 December 1976, 1 March 1977 and 3 April 1977.<sup>598</sup> None of these documents suggest, nor

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<sup>592</sup> HENG Samrin interviewed by Ben KIERNAN, 7-12-1992, E3/2961R (for Tape A) and HENG Samrin interviewed by Ben KIERNAN, 7-12-1992, E3/2962R (for Tape B).

<sup>593</sup> Compilation of 21 *Kurzbiographies* produced by the German Democratic Republic Ministry of State Security (Stasi), E3/9720, ERN (Kh) 01306165-01306169, ERN (En) 01206272-01206274, admitted on 11 March 2016: see Decision Admitting the Nuon Chea Defence's Proposed Document E307/5.2.8 Into Evidence, E305/18, 11 March 2016.

<sup>594</sup> The video is titled "Pol Pot visiting a rubber tree plantation and Khmer Rouge soldiers preparing for war", E3/3015R, V00422521, at 0.00-2 mins 19 seconds.

<sup>595</sup> NUON Chea's urgent and consolidated request to expedite two already-requested witnesses and summons four additional witnesses regarding the treatment of the Cham, E370, 29 September 2015, para. 20; Interviews of HENG Samrin, E3/1568, ERN (Kh) 00713925-00713926, ERN (En) 006518866; see also, ERN (Kh) 00713967-00713970, ERN (En) 00651892-00651893, stating that HENG Samrin (2-TCW-831) became Deputy Chief of Eastern Zone General Staff in early 1976, after the creation of the 4<sup>th</sup> Division in early 1976.

<sup>596</sup> NUON Chea's urgent and consolidated request to expedite two already-requested witnesses and summons four additional witnesses regarding the treatment of the Cham, E370, 29 September 2015. para. 20.

<sup>597</sup> [Corrected 1] Book by Ben KIERNAN entitled "The Pol Pot Regime: Race, Power, and Genocide in Cambodia under the Khmer Rouge, 1975-79", E3/1593, ERN (En) 01150102, p. 210, fn 115.

<sup>598</sup> The documentary evidence of high level military meetings we have reviewed included:

- **27 June 1976**, Minutes of Meeting between Secretaries, Division's logistic unit and Independent Regiment, E3/819, noting comments by Met, Mut, Tal, Pin, Oeun, Sok, 89, Nat, Brother Tum.
- **2 August 1976**, Minute of Meeting, E3/795, noting comments by Pin, Sokh, Tat, San, Yann, Oeun, Nay, Mom, Sim, Rin, Huy Sao, 89 and Nat. As to the reference in English to "Rin", we understand the original

has it been argued, that HENG Samrin (2-TCW-831) was involved in these meetings, or any similar meeting for which written records no longer remain. This is so even in relation to high-level military meetings discussing matters relevant to the East Zone.<sup>599</sup> There are also lists of hundreds of attendees at General Staff training sessions in 1976.<sup>600</sup> We have not identified any reference to HENG Samrin (2-TCW-831) attending meetings at this level. The same applies to records of Standing Committee meetings on matters closely related to the East Zone.<sup>601</sup>

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Khmer to refer to the Secretary of Regiment 75 (who was “Vin” rather than “Rin”); *see* 1<sup>st</sup> General Staff Training, E3/1585, 20 October 1976, ERN (Kh) 00095542, ERN (En) 00897664 at person 271.

- **12 August 1976**, Minutes of Meeting of the Committees Attached to Divisions and Independent Regiments, E3/796, noting comments from Brother 89, Pin, Meid, Oeun, Suong, Sung, Sim and Tal.
- **18 August 1976**, Minutes of the meeting of Division and Independent Regiments, E3/797, noting comments by Pin, Sok, Suong, 89.
- **30 August 1976**, Minutes of the Meeting of Secretaries and Deputy Secretaries of Divisions and Independent Regiments, E3/798, noting comments by 89, Suong, Veuang, Met, Met, Pin, Reuan, Sav;
- **16 September 1976**, Minute of Divisional and Independent Regiment Secretary-under secretary’s meeting, E3/800 and E3/9260, noting comments by Voeung, Pin, Nat, Met, Tat, 89.
- **19 September 1976**, Minute of Divisional and Regiment secretary-undersecretary of logistics meeting, E3/809 and E3/9260, noting comments from Met, Mut, Sokh, Pheap, Huy, Oeun, Suong, Pin, Hin, Sim, Comrade Vin, 81, 89.
- **30 September 1976**, Minute of the Meeting on Production Work, E3/801, recording reports from divisions 502, 310, 488, 152, 377, S-21, 703, 75, 170, 450.
- **9 October 1976**, Minutes of the Meeting of Secretaries and Deputy Secretaries of Divisions and Independent Regiments, E3/13, recording comments by 89, Suong, San, Met, Deum, Sok, Tal, Pin, Euan, Nai, Mut, Nat, Rin, Sav, Sim. As to the reference (in English) to “Rin”, *see* our observation in relation to the meeting on 2 August 1976.
- **18 October 1976**, Minutes of Meeting of Secretaries and Deputy Secretaries of Divisions and Regiments, E3/815, recording comments by 89.
- **11 November 1976**, Minutes of Meeting of Secretaries and Deputy Secretaries of Divisions and Independent Regiments, E3/802, noting comments by Nath, 89.
- **21 November 1976**, Minutes of the Plenary of the brigade/division committees/commanders, E3/803, noting comments by Met, Pin, Oeun, Sok, Suong, Tal, Nay, Mut, Pheap, Sim, Vin, Nat, 89.
- **15 December 1976**, Minutes of Meeting of Secretaries and Logistics Officers of Divisions and Independent Regiments, E3/804, noting comments by Met, Pin, Sokh, Savooun, Voueng, Suong, Say, Soeun, Pheap, Sim, Nai, Rin, 89. As to the reference (in English) to “Rin”, *see* our observation in relation to the meeting on 2 August 1976.
- **1 March 1977**, Minutes of the Meeting of Secretaries and Deputy Secretaries of Divisions and Independent Regiments, E3/807, recording reports by Met, Chhin, Maut, Pheap, Yan, Sokh, Sim, Tal, Pin, Sao, Rin, 89. As to the reference in English to “Rin”, *see* our observation in relation to the meeting on 2 August 1976.
- **3 April 1977**, Minutes of the meetings of divisions and independent regiments, E3/10693, recording reports by Sen, Pin, Opura, Sok, Tal, Suong, Sim, May.

<sup>599</sup> *See, e.g.*, the record of one meeting on 16 September 1976 (E3/822 and E3/4175) which records the views of Tal, 89, 81 and Duch, discussing the arrest of Chan Chakrei, his wife and niece, the Secretary of Sector 24 and matters involving Divisions 290 and 170. The reference to Tal may be to HENG Samrin’s (2-TCW-831) younger brother.

<sup>600</sup> *See* 1<sup>st</sup> General Staff Training dated 20 October 1976, E3/1585, attended by 342 persons (311 of whom are listed by name, function and unit); *see also*, E3/847; and the “Second General Staff Study Session” dated 23 November 1976, attended by some 326 persons.

<sup>601</sup> Meeting of the Standing Committee, 9 October 1975, E3/1612, ERN (Kh) 00019120-00019124, ERN (En) 00183403-00183405, discussing Comrade Mean and Comrade Chhouk among others; Record of Meeting of the Standing Committee, 11 March 1976, E3/217, discussing problems on the Eastern Frontier; Record of the Standing Committee, 23 March 1976, E3/218, where Comrade YA reports on results of negotiations with

218. The apparent limitation of HENG Samrin's (2-TCW-831) role to the East Zone might explain why he does not appear to have been involved in meetings of divisions or independent regiments under the General Staff. The East Zone was, according to the Closing Order and depending on the particular point in time, one of six or seven zones in Democratic Kampuchea.<sup>602</sup> The Closing Order also identifies five or six other regional entities which, like zones, reported directly to the Centre.<sup>603</sup> The East Zone was therefore one of 11 or 12 regional entities. Even if we weigh the East Zone's size,<sup>604</sup> its military forces,<sup>605</sup> its border with Vietnam, (none of which would make the East Zone unique), or the position that SAO Phim, the secretary of the East Zone, held in the CPK,<sup>606</sup> NUON Chea's submissions exaggerate the significance of HENG Samrin's (2-TCW-831) position in the overall hierarchy.

219. The Trial Chamber heard extensive evidence from witnesses, Civil Parties and experts about events in the East Zone, particularly after May 2016 and some of which we refer to elsewhere in this opinion. The volume of contemporaneous documentary evidence is also relevant to our assessment. Annexed to our opinion is an illustrative list of the contemporaneous documentary evidence that we reviewed when assessing whether it was necessary to summon HENG Samrin (2-TCW-831). This list is neither exhaustive nor definitive. Nothing we say in this opinion, nor the inclusion of a document in our Annex, represents a finding on factual issues. Yet considered together with witness and Civil Party evidence before us, the nature and extent of the contemporaneous documentary evidence

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Vietnam regarding the Eastern border; Examination of the Reaction of Vietnam During the Fifth Meeting, 13 May 1976, E3/221, with comments from Comrade Chan among others.

<sup>602</sup> Closing Order (OCIJ), D427, 15 September 2010 ("Closing Order"), at para. 65 states that, immediately after April 1975 there were six zones then in 1977 the North Zone was renamed as the Central Zone and a new North Zone was created.

<sup>603</sup> The Closing Order identifies Autonomous Sector 103 (Preah Vihear), Autonomous Sector 105 (Monduliri), Autonomous Sector 106 (Siem Reap), Autonomous Sector 505 (Kratie); Kamong Som Autonomous City; and Phnom Penh.

<sup>604</sup> Documentary evidence before the Trial Chamber indicates that the population of the East Zone was approximately 1.7 million persons (*see* Pol Pot Plans the Future, Document III: The Party's Four-Year Plan to Build Socialism in all Fields, 1977-1980, E3/8, ERN (Kh) 00075829, ERN (En) 00104024 at Table 1; and E3/8, Document VI: Report of Activities of the Party Center According to the General Political Tasks of 1976, ERN (En) 00104095 ("Only in the East is the labor force not feeble."))

<sup>605</sup> HENG Samrin (2-TCW-831) told Ben KIERNAN (2-TCE-89) that the East Zone had two divisions (the 3<sup>rd</sup> and 4<sup>th</sup> Divisions) then, from early 1977, a third division (the 5<sup>th</sup> Division) was added. HENG Samrin's (2-TCW-831) 4<sup>th</sup> Division had 6,000-8,000 troops but no tanks (E3/1568, ERN (Kh) 00713958, ERN (En) 00651886, ERN (Kh) 00713969, ERN (En) 00651893). The 3<sup>rd</sup> Division had 5000-6000 troops (ERN (Kh) 00713968, ERN (En) 00651892). The 5<sup>th</sup> Division, which was created in early 1977, had about 5,000 troops (E3/1568, ERN (Kh) 00713969, ERN (En) 00651893). In addition, sectors and districts also had forces (E3/1568, ERN (Kh) 00713971, ERN (En) 00651894). HENG Samrin (2-TCW-831) explained that the East Zone's 1<sup>st</sup> Division became Centre Division 280; and the East Zone's 2<sup>nd</sup> Division became Centre Division 290 (E3/1568, ERN (Kh) 00713968, ERN (En) 00861892).

<sup>606</sup> According to the Closing Order, para. 22, Sao Yann *alias* Sao Phim was a full rights member of the CPK Standing Committee.

related to the East Zone was a factor in our conclusion that it is unnecessary to summon him. It is unfortunate that NUON Chea waived several opportunities to address the Chamber on such contemporaneous documentary materials.<sup>607</sup>

#### 13.2.2.2. *Factions and treasonous rebellion*

220. HENG Samrin's (2-TCW-831) interviews with Ben KIERNAN (2-TCE-89) describe events of May 1978 when, according to him, he narrowly avoided arrest. SAO Phim withdrew HENG Samrin's (2-TCW-831) command of the 4<sup>th</sup> Division and sent him from Suong to Prey Veng city.<sup>608</sup> There followed days of considerable confusion, including a "coup", then a meeting on 27 May 1978 attended by 20 people including sector and district secretaries from the East Zone. A conditional plan was hatched to fight back against the Centre's forces; the condition being that SAO Phim wanted three days' grace to travel to Phnom Penh with his bodyguards in order to clarify matters with POL Pot.<sup>609</sup> According to HENG Samrin (2-TCW-831), SAO Phim's venture towards Phnom Penh was unsuccessful: he was surrounded, shot and injured. HENG Samrin (2-TCW-831) describes discovering SAO Phim wounded and with alcohol. In a further meeting, HENG Samrin (2-TCW-831) begged SAO Phim to flee, but he insisted on staying. SAO Phim was put in the care of forces from Srey Santhor District. HENG Samrin (2-TCW-831) then left SAO Phim for a further meeting in Prey Veng. Leaflets denouncing SAO Phim were then dropped from planes and he was killed by troops from Srei Santhor District.<sup>610</sup> HENG Samrin (2-TCW-831) describes a series of battles along Highway 15, in the surrounding forest, then further battles and meetings throughout the remainder of 1978. His forces became increasingly organised and obtained Vietnamese support.<sup>611</sup>

<sup>607</sup> After disagreeing with other parties' presentation of interviews during a document hearing on worksites on 26 August 2015, the Defence for NUON Chea repeatedly declined the opportunity to present key documents, or respond to make observations on key documents presented by other parties in relation to the treatment of targeted groups, *see* T. 23 February 2016, p. 5; security centres and internal purges, *see* T. 12 August 2016, p. 4; the nature of the armed conflict, *see* T. 3 November 2016, p. 3.

<sup>608</sup> Interviews of HENG Samrin, E3/1568, ERN (Kh) 00713978, ERN (En) 00651898.

<sup>609</sup> Interviews of HENG Samrin, E3/1568, ERN (Kh) 00713979-00713984, ERN (En) 00651899-00651901. HENG Samrin (2-TCW-831) identifies various attendees at the meeting of 27 May 1978 in Prey Veng, including SAO Phim, CHEA Sim, Ta Tim (deputy secretary of Sector 20), Pol Saroeun, Ta Tor, Khim Phan, brother Run (described as the chauffeur for Tep Vong, Hem Bo (secretary of Komcheay Meas District), and the commanders of two marine battalions.

<sup>610</sup> Interviews of HENG Samrin, E3/1568, ERN (Kh) 00713981-00713984, ERN (En) 00651900-1, ERN (Kh) 00713992-00713993, ERN (En) 00651907; *see also*, E3/5593, ERN (Kh) 00713980-00713981, ERN (En) 00419442.

<sup>611</sup> Interviews of HENG Samrin, E3/1568, ERN (Kh) 00713984-00713985, ERN (En) 00651902.

221. Events in the East Zone in May-June 1978 are described in the Closing Order in a section summarising alleged purges.<sup>612</sup> The Closing Order alleges that hundreds of people were arrested at the time corresponding to the alleged suicide of SAO Phim.<sup>613</sup> It is alleged that NUON Chea participated in the purge of SAO Phim and the East Zone.<sup>614</sup> It is further alleged that SON Sen called KAING Guek Eav *alias* Duch (2-TCW-916) from the East Zone to inform him that the Standing Committee had decided upon the purge.<sup>615</sup>

222. The Trial Chamber called LONG Sat (2-TCW-1065), a relative of SAO Phim and chief of a hospital in HENG Samrin's (2-TCW-831) East Zone Division 4.<sup>616</sup> He described himself as, from May 1978, leading a "regiment" of some 340 troops in rebellion against Centre forces.<sup>617</sup> He described various attacks from 25 May 1978 to November 1978.<sup>618</sup> He recounted personal conversations with SAO Phim.<sup>619</sup> SIN Oeng (SIN Ung) (2-TCW-1069), a relative and bodyguard of SAO Phim, also described events surrounding SAO Phim's death, including a meeting between SAO Phim and HENG Samrin (2-TCW-831) in Prey Veng in late May 1978.<sup>620</sup> According to SIN Oeng (SIN Ung) (2-TCW-1069), he travelled with SAO Phim towards Phnom Penh then later received news that SAO Phim killed himself when besieged by Khmer Rouge forces.<sup>621</sup>

223. Further still, NONG Nim (2-TCW-1070), a driver for SAO Phim, described the same period and forming an army of 200-300 persons to fight back against Centre forces.<sup>622</sup> MEAS Soeun (MEAS Soeun) (2-TCW-917), the son of SENG Hong *alias* Chan (the deputy secretary of the East Zone, among other roles), described leading some 500 troops to defend the East Zone's office in Suong and a letter from SAO Phim which requested that he fight.<sup>623</sup> His evidence was that SAO Phim travelled to Phnom Penh to meet POL Pot and NUON Chea.<sup>624</sup> MY Savoeun (MEY Savoeun) (2-TCCP-1040) described SAO Phim organizing a meeting in which he spoke of forces from the Southwest and West Zones who wanted to kill East Zone soldiers. SAO Phim asked the attendees if they wanted to be killed or rise up

<sup>612</sup> Closing Order, para. 200.

<sup>613</sup> Closing Order, para. 431.

<sup>614</sup> Closing Order, paras 891, 987.

<sup>615</sup> Closing Order, para. 941.

<sup>616</sup> T. 2 November 2016 (LONG Sat), p. 79.

<sup>617</sup> T. 1 November 2016 (LONG Sat), pp. 62-63; T. 2 November 2016 (LONG Sat), p. 77.

<sup>618</sup> T. 2 November 2016 (LONG Sat), pp. 25, 64.

<sup>619</sup> T. 1 November 2016 (LONG Sat), pp. 82-83.

<sup>620</sup> T. 1 December 2016 (SIN Oeng (SIN Ung)), pp. 101-103

<sup>621</sup> T. 5 December 2016 (SIN Oeng (SIN Ung)), pp.30-32, pp. 41-43.

<sup>622</sup> T. 12 December 2016 (NONG Nim), pp. 40-43; *see also*, E3/10717, ERN (En) 01355792.

<sup>623</sup> T. 29 June 2016 (MEAS Soeun), pp. 20-35, 76-78, 97; T. 30 June 2016 (MEAS Soeun), pp. 3-19.

<sup>624</sup> T. 29 June 2016 (MEAS Soeun), pp. 72-76.

instead.<sup>625</sup> HEM Moeun (2-TCW-976) testified that his regiment was involved in the arrest SAO Phim.<sup>626</sup> PRAK Khorn (PRAK Khan) (2-TCW-931), described as head of the “chewing unit” at S-21, gave evidence that he saw a photo of SAO Phim when he had shot himself to death in the East Zone.<sup>627</sup> Moreover, KAING Guek Eav *alias* Duch (2-TCW-916) described events at S-21 at this time, including direct instructions from NUON Chea in May 1978.<sup>628</sup> The Trial Chamber therefore heard extensive evidence in relation to the events of May-June 1978 in the East Zone.

224. We considered the potential significance of evidence of factions or rebellion in the East Zone *before* May 1978. For example, HENG Samrin (2-TCW-831) stated that in “1976-1977, we had a struggle but a secret one. But at that time it was tight and cramped, there was no opportunity to rise up and struggle”.<sup>629</sup> According to the Supreme Court Chamber in relation to SAO Phim, however, even if one assumes that senior persons in the CPK were opposed to NUON Chea, “this would not mean without more that the crimes committed [...] For which these Zone leaders were responsible could not be imputed on the other members of the JCE”.<sup>630</sup> The Supreme Court Chamber concluded that conflicts within large organizations are “not unusual” and do not impact on the question of criminal responsibility under JCE as long as the relevant elements are established.<sup>631</sup> There is only merit to the argument of alleged factions within the CPK where crimes were committed against the common plan; that is where they did not form part or were not carried out in furtherance thereof.<sup>632</sup> Apart from one isolated generalisation, however, we could not identify any coherent explanation by NUON Chea as to which crimes he contends were committed by SAO Phim (or others in the East Zone) *against* the alleged common plan.<sup>633</sup>

225. In May 2016, the Trial Chamber invited submissions from NUON Chea on the relevance of further evidence on factions or rebellions.<sup>634</sup> In response, NUON Chea referred to

<sup>625</sup> T. 17 August 2016 (MY Savoeun (MEY Savoeun)), pp. 68-70.

<sup>626</sup> T. 2 August 2016 (HEM Moeun), pp. 71-78; *see also* E3/9029, ERN (En) 01060647.

<sup>627</sup> T. 28 April 2016 (PRAK Khan), pp. 91-94.

<sup>628</sup> T. 14 June 2016 (KAING Guek Eav), pp. 39-43; T. 27 March 2012 (KAING Guek Eav), pp. 26-32.

<sup>629</sup> Interviews of HENG Samrin, E3/1568, ERN (Kh) 00713962-00713963, ERN (En) 00651889.

<sup>630</sup> Appeal Judgement, F36, 23 November 2016, para. 1041.

<sup>631</sup> *See e.g.*, Appeal Judgement, F36, 23 November 2016, paras 1041-1042.

<sup>632</sup> Appeal Judgement, F36, 23 November 2016, paras 47, 154.

<sup>633</sup> On 17 October 2014, NUON Chea said that “several crimes” of which he is accused were in fact committed by SAO Phim, ROS Nhim and other ‘traitors’ outside his control and knowledge, and that HENG Samrin (2-TCW-831) would be able to confirm this; T. 17 October 2014, pp. 70-71.

<sup>634</sup> Request for briefing on significance of conflicting factions within the DK leadership, E395/1, 11 May 2016, para. 4: “How would the assessment of NUON Chea’s criminal responsibility be affected by further evidence tending to prove the existence of conflicting factions or rebellions, whether supported by other countries or not?”

competing internal agendas to seize overall control of the Party and country. He did not argue, however, that crimes in the East Zone were in fact committed by SAO Phim (or HENG Samrin (2-TCW-831)) against CPK policy. Although he suggested that Zone leaders were “functionally independent”, he did not argue that any particular crimes committed in the East Zone were committed contrary to the alleged common plan. Rather, the focus of his submissions was that the presence of factions and/or rebellions *justified* arrests, detentions and the death penalty without any opportunity to challenge detention.<sup>635</sup> In light of this, although the full import of these submissions falls to be addressed in due course, NUON Chea failed to persuade us that evidence from HENG Samrin (2-TCW-831) on factions or rebellions was as important or unique as he had submitted.<sup>636</sup>

### 13.2.2.3. *Internal Purges and the armed conflict with Vietnam*

226. NUON Chea submitted that HENG Samrin (2-TCW-831) would offer “unique”<sup>637</sup> and “unparalleled, irreplaceable, eyewitness”<sup>638</sup> evidence on events in the East Zone. These submissions failed to address the substance of the allegations against NUON Chea. The Closing Order alleges that the Centre established two field commands in the East Zone and sent considerable forces there, including troops from Divisions 703, 340, 221, 460, 805, 210, 230, 250, 270, 207, 604, 280 and 175, among other forces, plus senior individuals such as KE Pauk and SON Sen (and those who reported to them).<sup>639</sup> The Closing Order alleges that the Standing Committee decided to purge East Zone military forces, and sent disarmed East Zone soldiers to the construction site of Kampong Chhnang airport site (a Case 002/02 crime Site located in the West Zone and about which the Trial Chamber heard evidence).<sup>640</sup> Purges in the East Zone are alleged to have been orchestrated by persons such as SON Sen and KE Pauk,

<sup>635</sup> NUON Chea’s Submissions on the Relevance of Evidence of Treasonous Rebellion to his Individual Criminal Responsibility in Case 002/02, E395/2, 10 June 2016.

<sup>636</sup> NUON Chea has been afforded opportunities to advance his case in this respect, see Decision on NUON Chea Defence Request E448 to call two additional witnesses, E448/2, 14 December 2016; Decision on NUON Chea Defence Requests to hear Additional Witnesses pursuant to Internal Rule 87(4) (E391, E392, E395, E412, and E426), E443, 21 September 2016; Decision on NUON Chea Defence Requests to hear Additional Witnesses pursuant to Internal Rule 87(4) (E391, E392, E395, E412, and E426) (Full Reasons), E443/10, 31 March 2017.

<sup>637</sup> NUON Chea’s urgent and consolidated request to expedite two already-requested witnesses and summons four additional witnesses regarding the treatment of the Cham, E370, 29 September 2015. para. 18, quoting NUON Chea Application for Disqualification of Judges Nil Nonn, Ya Sokhan, Jean-Marc Lavergne, and You Ottara, E314/6, 29 September 2014, para. 40.

<sup>638</sup> NUON Chea’s Second Witness Request for the Case 002/02 Security Centres and ‘Internal Purges’ Segment (Leadership), E392, 1 April 2016, para. 20.

<sup>639</sup> Closing Order, para. 130.

<sup>640</sup> Closing Order, paras 294, 304-305.

using forces from the Centre, and the Central and Southwest Zones who were placed under the Centre's command.<sup>641</sup>

227. It is, in our view, decisive that other sources of evidence can best shed light on these events, in particular evidence from relatively senior persons *sent to* the East Zone (as opposed to individuals already in the area). For example, CHHOUK Rin *alias* Sok's (TCW-110) evidence was that he rose to command Regiment 402 in Centre Division 703 and, in 1977, was *sent to* arrest cadres from the East Zone.<sup>642</sup> IENG Phan's (2-TCW-1046) evidence was that he rose to command Intervention Brigade 221 *sent to* Svay Rieng in early 1978.<sup>643</sup> CHUON Thy (CHUON Thi) *alias* THI Ov's (2-TCW-859) evidence was that he was *sent to* Svay Rieng in mid-1978, where he was deputy of Division 340.<sup>644</sup> These persons also gave evidence about the instructions they received before being sent to the East Zone and the structures within which they operated once there.

228. In addition, OU Dav's (2-TCCP-235) evidence was that he was *sent to* the East Zone in mid-1977 with some 800 to 1,000 soldiers, where he worked under SON Sen.<sup>645</sup> CHHUN Samorn (2-TCCP-236), a soldier in Sector 23, gave evidence that in 1977 reinforcement soldiers were sent from the Central and Southwest Zones, following which East Zone forces were called back for training sessions then disappeared.<sup>646</sup> BAN Seak *alias* HANG Phos's (2-TCW-950) evidence was that he was sent from the Central Zone to Krauch Chhmar District in 1978. He described soldiers being under the command of SON Sen.<sup>647</sup> There is therefore no foundation for NUON Chea's contention that HENG Samrin's position in the East Zone means that his evidence would be unparalleled or irreplaceable in relation to purges or the conflict with Vietnam.

229. In addition to the witness and Civil Party evidence described above, there is extensive documentary evidence emanating from S-21 directly relevant to events in the East Zone. A list of prisoners "smashed" on 27 May 1978 identifies 582 persons from various locations,

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<sup>641</sup> Closing Order, para. 200.

<sup>642</sup> See e.g., T. 22 April 2013 (CHHOUK Rin), p. 36; E3/362, ERN (En) 002268896; E3/421, ERN (En) 00414058. CHHOUK Rin was also interviewed by the Office of Co-Investigating Judges on 16 June 2015. That interview was admitted as E3/10621.

<sup>643</sup> See e.g., T. 1 November 2016 (IENG Phan), pp.34-37; T. 20 May 2013 (IENG Phan), pp. 23-25.

<sup>644</sup> See e.g., T. 25 October 2016, (CHUON Thy), pp. 81-83; T. 26 October 2016, (CHUON Thy), pp. 24-25, 46. T. 24 April 2013 (CHUON Thy), pp. 24, 31.

<sup>645</sup> T. 10 November 2016 (OU Dav), pp. 91-96, 103-106.

<sup>646</sup> T. 28 June 2016 (CHHUN Samorn), pp. 16-18, 31-32.

<sup>647</sup> T. 5 October 2015 (BAN Seak), pp. 67-72.

including many from the East Zone.<sup>648</sup> Interrogators' notebooks said to be from S-21 record matters from May 1978 and following months. The "Pon-Tuy Notebook" includes notes that those detained around May 1978 had to pay homage to images of two dogs;<sup>649</sup> and discusses the fate of "A-Phim" and his connections.<sup>650</sup> The "Chan Notebook" notes a speech of 12 April 1978 discussing events in the East Zone, including a principle of "1 against 90" in Svay Rieng.<sup>651</sup> There are further notes related to events in the East Zone in May 1978 and subsequent months.<sup>652</sup> As with the Pon-Tuy Notebook, there is a record dated 28 May 1978 that enemies brought in had to pay homage to images of dogs, accompanied by the use of the voice of superiors such as "sector 24, Chhouk".<sup>653</sup> There are lists of prisoners who entered S-21 from the East Zone throughout the relevant period.<sup>654</sup>

230. In relation to the earlier period (i.e. pre-1978), we have already referred to the contemporaneous documentary evidence before the Trial Chamber. Additionally, among the S-21 materials for Chan Chakrei *alias* Mean are notes suggesting that S-21 staff compared his confessions with those of Suos Neou *alias* Chhouk *alias* Men, the Secretary of Sector 24;<sup>655</sup> and notes refer to S-21 staff gathering and reporting materials on Keo Samnang *alias* Mon (i.e. the East Zone's Chief of Staff).<sup>656</sup> In the materials for Suos Neou *alias* Chhouk *alias* Men are notes from 4-5 August 1976 that he was detained for behaving like a king in Sector 24.<sup>657</sup> A further note of 30 September 1976 describes Angkar's analysis of Brother Phim, refers to Brother's Phim's decision to report Chhouk (and also Ly Phen).<sup>658</sup> A further note dated 1

<sup>648</sup> List of prisoners killed in 1978, E3/8463.

<sup>649</sup> Pon's uncatalogued 21-page document in DC-Cam's archive dated 7-12 December 1976, E3/834, ERN (Kh) 0077473, ERN (En) 00184496.

<sup>650</sup> Pon's uncatalogued 21-page document in DC-Cam's archive dated 7-12 December 1976, E3/834, ERN (Kh) 00077474-00077477, ERN (En) 00184498-00184499.

<sup>651</sup> S-21 Notebook by MAM Nai *alias* Chan, E3/833, ERN (Kh) 00077866-00077869, ERN (En) 00184599-00184600.

<sup>652</sup> S-21 Notebook by MAM Nai *alias* Chan, E3/833, ERN (Kh) 00077915-00077953, ERN (En) 00184612-00184617.

<sup>653</sup> S-21 Notebook by MAM Nai *alias* Chan, E3/833, ERN (Kh) 00077925-00077926, ERN (En) 00242259.

<sup>654</sup> See e.g., List of Prisoners from East Zone in 1976, E3/8489; List of Prisoners from East Zone, E3/2022; List of prisoners interrogated by documentation team, dated 23 May 1978, E3/1954; List of Prisoners from East Zone, 5 June 1978, E3/2187; List of Prisoners from East Zone dated June 1978, E3/1998; List of Prisoners from East Zone dated 17 July 1978, E3/8538; List of prisoners from East Zone and North East Zone, 16 October 1978, E3/2229.

<sup>655</sup> See Confession of Chan Chakrei, E3/2791, ERN (Kh) 00031418, ERN (En) 00827833, annotation stating "Wait and look at Suos Neou's responses again"; ERN (Kh) 00031315 ("keep for Bong Chhouk case"); and ERN (Kh) 00031418 ("wait and see Suos's answer").

<sup>656</sup> Confession of Chan Chakrei, E3/2791, ERN (Kh) 00031114, annotation noting the extraction of points on KEO Samnang *alias* Mum to be kept; ERN (Kh) 00031457 collection of reports implicating KEO Samnang, together with annotation "reported to Angkar on 2 October 1976."

<sup>657</sup> Confession of Suos Neou *alias* Chhouk, Secretary of Sector 24, E3/2494, ERN (Kh) 00318585, 00318613.

<sup>658</sup> Confession of Suos Neou *alias* Chhouk, Secretary of Sector 24, E3/2494, ERN (Kh) 00319062-3, ERN (En) 00347515-00347516. We are alert to the point that, according to HENG Samrin (2-TCW-831), Chhouk was

October 1976 describes the “Committee” as seeing Brother Phim as a major person in the CPK;<sup>659</sup> and further notes summarise Chhouk’s treatment in S-21 (including that recordings of Chan Chakrei’s confessions were played and/or shown to him).<sup>660</sup> For Seat Chhae *alias* Tum, a former Secretary of Sector 22, annotations indicate that he was asked about “Phim (203)” and to “report manipulative actions particularly with Yos, taken to prevent the Party’s plans in Sector 22 in the past”.<sup>661</sup>

231. In addition to the contemporaneous documentary evidence discussed above and annexed to our opinion, another factor in our assessment was NUON Chea’s failure to identify, request or utilise documentary evidence related to persons who, on his case, were significant because of their positions in the East Zone. For example, the OCIJ’s Prisoner List, among other sources, identifies readily available documentary evidence related to: Meas Mon *alias* Keo Samnang, the East Zone’s chief of staff;<sup>662</sup> KOY Chhoeun, HENG Samrin’s apparent successor as secretary of the East Zone’s 4<sup>th</sup> Division;<sup>663</sup> Sokh Khnul *alias* Lin *alias* Peam, chief of the East Zone’s office;<sup>664</sup> HENG Kim, secretary of the East Zone’s 5<sup>th</sup> Division;<sup>665</sup> secretaries of Centre Division 280;<sup>666</sup> and various secretaries of different sectors in the East Zone.<sup>667</sup> Lawyers may of course exercise judgement in deciding which evidence to seek out

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arrested when SAO Phim was in China for medical treatment between May and August 1976: *see* Interviews of HENG Samrin, E3/1568, ERN (Kh), ERN (En) 00651896, 00651889.

<sup>659</sup> Confession of Suos Neou *alias* Chhouk, Secretary of Sector 24, E3/2494, ERN (Kh) 00319131- 00319132 ERN (En) 00347519-00347520.

<sup>660</sup> *See e.g.*, Confession of Suos Neou *alias* Chhouk, Secretary of Sector 24, E3/2494, ERN (Kh) 00318935-00318936, ERN (En) 00347508-00347509, note dated 20 September 1976 signed Duch; ERN (Kh) 00318945-00318946, ERN (En) 00347513-00347514, note dated 26 September 1976 signed by Duch; Confession of Chan Chakrei, E3/2791 ERN (Kh) 00031234 “for IX to read”; and ERN (Kh) 00318623 “Sous Neo tried to make excuses after listening to Chakrei’s recording concerning his communications [...]”.

<sup>661</sup> *See e.g.*, S-21 Confession of SEAT Chhae *alias* Tum; Secretary of Sector 22, East Zone, E3/1893, ERN (Kh) 00005599; and E3/2490, ERN (Kh) 00313708, ERN (En) 00797067; List of Prisoners, E3/2285, ERN (Kh) 00009146, ERN (En) 00873280-00873281, indicates that SEAT Chhe *alias* Tom, former Secretary of Sector 22, entered S-21 on 2 October 1976 and was “smashed and photographed” on 8 December 1977.

<sup>662</sup> *See e.g.*, OCIJ S-21 Prisoners List 31 March 2016, E3/10604, which at 5235 identifies confession “M28”. This was also available to the Parties on the Shared Materials Drive: Confession of Meas Mon *alias* Meas Sithon *alias* Keo Somnang (Army Chief, East Zone – 203), ERN (Kh) 00035863-00036640.

<sup>663</sup> *See e.g.*, OCIJ S-21 Prisoners List 31 March 2016, E3/10604, which at 2363 identifies confession “K170”. According to HENG Samrin’s (2-TCW-831) interview with Ben KIERNAN (2-TCE-89), the command of the East Zone’s 4<sup>th</sup> Division was withdrawn from him on 18 May 1978 when he was sent from Suong to Prey Veng city by SAO Phim: *see* Interviews of HENG Samrin, E3/1568, ERN (Kh) 00713977-00713978, ERN (En) 00651898.

<sup>664</sup> *See e.g.*, OCIJ S-21 Prisoners List 31 March 2016, E3/10604, which at 8859 identifies confession “S42”.

<sup>665</sup> *See e.g.*, OCIJ S-21 Prisoners List 31 March 2016, E3/10604, which at 1989 identifies confession “H96”.

<sup>666</sup> *See e.g.*, OCIJ S-21 Prisoners List 31 March 2016, E3/10604, which at 2969 identifies confession “K252” for Ke San *alias* Sok (*alias* That), Secretary of Division 280 (described as Division 170); and at 2047 which identifies confession “I22” for It Man *alias* Tat, “Secretary of Division 170 or 280”.

<sup>667</sup> *See e.g.*, OCIJ S-21 Prisoners List 31 March 2016, E3/10604, which at 460 identifies confession “C180” for Chea Sin *alias* Sun, Secretary of Sector 20; and 5999 which identifies confession “O107” for Ok Ngatt (Uk

and how to advance their client's case. It is, however, difficult to reconcile the exorbitant claims as to the importance of HENG Samrin (2-TCW-831) with the apparent failure to take straightforward steps to identify and request contemporaneous documentary materials directly linked to the case advanced.

#### 13.2.2.4. *Treatment of targeted groups*

232. The Trial Chamber heard extensive evidence on the treatment of targeted groups. In relation to the treatment of the Vietnamese, parts of the Closing Order focus to a degree on events in Prey Veng and Svay Rieng provinces.<sup>668</sup> According to HENG Samrin's interviews, however, from 1976 until 1978 he was based in Kraek with the East Zone's 4<sup>th</sup> Division.<sup>669</sup> Counsel for NUON Chea placed some emphasis on video footage, or an image extracted from this video which, counsel suggests, depicts HENG Samrin speaking at a meeting in the East Zone also attended by with POL Pot and SAO Phim, among many other persons.<sup>670</sup> For the purposes of this decision, we assumed that this video footage indeed shows HENG Samrin (2-TCW-831). HENG Samrin's (2-TCW-831) interviews describe a gathering in the East Zone held in early 1978 attended by POL Pot among other persons. According to HENG Samrin (2-TCW-831), POL Pot announced that each Kampuchean soldier could undertake to kill 30 Vietnamese. HENG Samrin (2-TCW-831) explained that POL Pot included both Vietnamese troops and civilians in this figure.<sup>671</sup>

233. Although such evidence is relevant to Case 002/02, it does not appear to be exonerating or mitigating in relation to the charges faced by NUON Chea. Moreover, the arithmetic of 1 against 30 is repetitive of other evidence before the Trial Chamber.<sup>672</sup> Its meaning falls to be determined in due course, in light of all the evidence before the Trial Chamber. This video

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Savann) *alias* Savann or So, Secretary of Sector 23. The Trial Chamber has before it some materials pertaining to KONG Chea Sin *alias* Sun, namely [Corrected] S-21 Confession of KONG Chea Sin *alias* Sun, E3/2997.

<sup>668</sup> Closing Order, paras 797-801; *cf.* para. 214, paras 802-804, 814-831.

<sup>669</sup> Interviews of HENG Samrin, E3/1568, ERN (Kh) 00713958, ERN (En) 00651886.

<sup>670</sup> Pol Pot visiting a rubber tree plantation and Khmer Rouge soldiers preparing for war, E3/3015R, V00422521, at 0.00 - 2 mins 19 seconds. Counsel for NUON Chea showed this video, or stills from it, to the following witnesses: MEAS Soeurn (MEAS Soeun) (2-TCW-917) on 29 June 2016; LONG Sat (2-TCW-1065) on 7 November 2016; SIN Oeng (SIN Ung) (2-TCW-1069) on 5 December 2016; and NONG Nim (2-TCW-1070) on 8 December 2016. It does not seem to have been suggested that NUON Chea attended this meeting.

<sup>671</sup> Interviews of HENG Samrin, E3/1568, ERN (Kh) 00713986-00713989, ERN (En) 00651903-00651904.

<sup>672</sup> Revolutionary Flag for April 1978 includes a Presentation of the Secretary of the CPK on the 3<sup>rd</sup> Anniversary of 17 April 1975 includes a discussion of numbers before concluding "We implement 1 against 30" (E3/4604, ERN (Kh) 00064714, ERN (En) 00519834). According to the Closing Order, para. 823, in May 1978 the CPK broadcast a policy over the radio stating that "one of us must kill 30 Vietnamese"; Report about Cambodia's Strategy of Defence against Vietnam, Phnom Penh home service, 10 May 1978, E3/8398, ERN (Kh) 00225462-00225463, ERN (En) 00003960-00003961; Past Year's National Defence Efforts Reviewed, E3/1362, ERN (En) 00170016. *See also* T. 26 January 2016 (PRUM Sarat), pp. 61-67.

does not persuade us that HENG Samrin (2-TCW-831) should be summoned to further describe a meeting which was, according to the video footage, attended by a very large number of other people.<sup>673</sup> We further concluded that evidence from HENG Samrin (2-TCW-831) on the treatment of the Vietnamese would be substantially repetitive of other evidence before the Trial Chamber.<sup>674</sup>

234. In relation to the treatment of former leaders of the previous LON Nol government, HENG Samrin (2-TCW-831) gave an account of a meeting in Phnom Penh on 20 May 1975 when NUON Chea used the word “*komchat*” rather than “*komtec*”. HENG Samrin (2-TCW-831) stated, however, that he was one among thousands of persons to attend this meeting.<sup>675</sup> NUON Chea submission that HENG Samrin (2-TCW-831) is “the only witness alive” who could discuss numbered plans set out during this meeting must therefore be rejected.<sup>676</sup> We consider that the interview notes sufficiently and reliably demonstrate that HENG Samrin (2-TCW-831) stated that NUON Chea used the word “*komchat*” at the meeting on 20 May 1975. In Case 002/01, Supreme Court Chamber held that it is unlikely that testimony from HENG Samrin (2-TCW-831) would produce significant additional exonerating information in relation to the use of the word “*komchat*” at the meeting on 20 May 1975.<sup>677</sup> We agree. HENG Samrin (2-TCW-831) also recounts that NUON Chea said at this meeting that monks were a “special class” to be “wiped out” and that wats would not be allowed.<sup>678</sup> He said that NUON Chea talked of the need to “evacuate” Vietnamese residents from Cambodia – they were “not allowed in Kampuchea territory”.<sup>679</sup> In our assessment it is unlikely that oral evidence on such matters would be unique or exculpatory.

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<sup>673</sup> Elsewhere in his interviews with Ben KIERNAN (2-TCE-89), HENG Samrin (2-TCW-831) stated that it was not POL Pot and NUON Chea who ordered the killing of Vietnamese but the “implementing level” (E3/1568, ERN (Kh) ERN00713954-00713955, ERN (En) 00651884.) This was inconsistent with his detailed description of POL Pot’s speech in the East Zone. The meaning of the broadcast arithmetic 1 for 30 is a material issue before the Trial Chamber. We do not consider that oral evidence from HENG Samrin (2-TCW-831) on this arithmetic would be particularly unique. Our international colleagues also note HENG Samrin’s (2-TCW-831) reference to the “implementing level” killing Vietnamese (in 1976). We see no basis, however, to conclude that HENG Samrin (2-TCW-831) possesses unique evidence in this regard. In our view, this matter falls to be determined in due course in light of all the evidence before the Trial Chamber, including evidence from other locations such as the Southwest Zone, where no suggestion is made that TA Mok led any competing faction.

<sup>674</sup> See section 7 above.

<sup>675</sup> Interviews of HENG Samrin, E3/1568, ERN (Kh) 00713947-00713948, ERN (Kh) 00651880 (Borei Keila); ERN (Kh) 00713986-00713987, ERN (En) 00651903 (Borei Keila then Olympic Stadium).

<sup>676</sup> NUON Chea’s urgent and consolidated request to expedite two already-requested witnesses and summons four additional witnesses regarding the treatment of the Cham, E370, 29 September 2015. para. 21.

<sup>677</sup> Appeal Judgement, F36, 23 November 2016, para. 154.

<sup>678</sup> Interviews of HENG Samrin, E3/1568, ERN (Kh) 00713952-00713955, ERN (En) 00651883-00651884.

<sup>679</sup> Interviews of HENG Samrin, E3/1568, ERN (Kh) 00713954-00713955, ERN (En) 00651884.

235. The Chamber in any event heard numerous witnesses describe meetings in Phnom Penh in May 1975. Evidence from HENG Samrin (2-TCW-831) would be substantially repetitious of evidence from persons such as: PRAK Yut (2-TCW-938) (who described a big meeting at the Olympic Stadium with some 300-400 people there, including participants from every province and some sectors);<sup>680</sup> SAO Sarun (2-TCW-1012) (who described a 3 day session with representatives from sectors and division military representatives, where NUON Chea and POL Pot presented);<sup>681</sup> PHAN Van *alias* KHAM Phan (2-TCW-1011) (who accompanied his father to Phnom Penh in May 1975 and described cadres from every corner of the country at the gathering at the Olympic Stadium);<sup>682</sup> and KLAN Fit (TCCP-185) (who described being invited to Phnom Penh close to the time of the liberation where he attended a lecture given by NUON Chea to 500-600 individuals from various locations).<sup>683</sup> In relation to the treatment of former LON Nol soldiers and officials, other witnesses spoke of subsequent instructions, including PECH Chim (2-TCW-809) (who said that cadres at district level went to the big meeting in Phnom Penh)<sup>684</sup> and SAO Van *alias* Port (2-TCW-989).<sup>685</sup> Finally, we highlight elsewhere in our opinion the evidence before the Trial Chamber of many other meetings or study sessions in which NUON Chea was involved during the relevant period.

236. In relation to the Treatment of the Cham in the East Zone, we do not consider HENG Samrin (2-TCW-831) to be relevant to the allegations concerning Trea Village security centre as these focus on events “from mid-1978”.<sup>686</sup> As to earlier events, in particular the Cham rebellions in Sector 21 in 1975, HENG Samrin (2-TCW-831) claimed that his troops were not

<sup>680</sup> T. 19 January 2016 (PRAK Yut), pp. 85-91; T. 21 January 2016 (PRAK Yut), pp. 43, 66-67.

<sup>681</sup> T. 6 June 2012 (SAO Sarun), pp. 32-35; 44-45; 60-62; T. 30 March 2016 (SAO Sarun), pp. 32-37;

<sup>682</sup> T. 11 December 2012 (PHAN Van), pp. 93-96; T. 12 December 2012 (PHAN Van), pp. 35-37; 14 December 2012 (PHAN Van), pp. 26-27.

<sup>683</sup> T. 10 January 2012 (KLAN Fit), pp. 101-103. Our international colleagues highlight that neither minutes nor other contemporaneous documents from the May 1975 meetings are available (if they ever existed) and that there are discrepancies in the evidence from those who attended. We do not consider this to be an unusual situation for a trial taking place so long after the events in question (and any discrepancies thought to be material could have been raised with those witnesses). Our international colleagues further question how policies were disseminated or implemented after 20 May 1975. This fails to consider any other evidence before the Trial Chamber, not least the contemporaneous materials available from 1975 including: issues of Revolutionary Flag for August 1975 (E3/5) and October-November (E3/748); Issues of Revolutionary Youth for July 1975 (E3/724), August 1975 (E3/749), September 1975 (E3/728); October 1975 (E3/729), November 1975 (E3/750) or December 1975 (E3/730); and Policy Document Number 3, 19 September 1975 (E3/781) and Policy Document Number 6, 22 September 1975 (E3/99).

<sup>684</sup> T. 23 April 2015 (PECH Chim), pp. 69-75.

<sup>685</sup> T. 1 February 2016 (SAO Van), pp. 19-23, 34, 65.

<sup>686</sup> Closing Order, paras 784-790.

involved; rather it was “security” following direct orders from POL Pot.<sup>687</sup> We expand on this point below in relation to OUK Bunchhoeun (2-TCW-951).

13.2.2.5. Character or otherwise unique or exculpatory evidence

237. During the Case 002 investigation, counsel submitted that “according to instructions” HENG Samrin (2-TCW-831) acted as NUON Chea’s guide on missions to Eastern Cambodia to visit SAO Phim and Nguyen Van Linh (a member of the Communist Party of Vietnam).<sup>688</sup> NUON Chea stated to the Trial Chamber that HENG Samrin (2-TCW-831) guided him to meet Nguyen Van Linh *in the 1960s*.<sup>689</sup> He later explained that HENG Samrin (2-TCW-831) was tasked by SAO Phim to escort him to the border; that HENG Samrin (2-TCW-831) was close to him, courageous, and that these trips took place approximately every two months, the last in perhaps late 1975.<sup>690</sup>

238. The ambitious submission advanced on NUON Chea’s behalf was that NUON Chea and HENG Samrin (2-TCW-831) have “known each other for 60 years, and worked together for two decades” and that “few people still alive in Cambodia today had as long and close a relationship with NUON Chea”.<sup>691</sup> Neither the evidence nor counsel’s described instructions bore a reasonable relation to the submissions advanced. Other witnesses claimed far greater connection to, and personal interaction with, NUON Chea, especially during the period of 1975 to 1979. For example, SAO Sarun (2-TCW-1012), who became Secretary of Autonomous Sector 105, which (like the East Zone) bordered Vietnam, described high-level meetings in Phnom Penh with NUON Chea among other persons when he was asked to become Sector Secretary.<sup>692</sup> Kaing Guek Eav *alias* Duch (2-TCW-916) gave evidence of regular one-on-one meetings with NUON Chea from 15 August 1977.<sup>693</sup> SAUT Toeung’s (TCW-617) evidence was that he was one of NUON Chea’s bodyguards and messengers and he travelled with NUON Chea, including to the East Zone, where NUON Chea would meet

<sup>687</sup> Interviews of HENG Samrin, E3/1568, ERN (Kh) 00713956, 00713966, ERN (En) 00651885, 00651891.

<sup>688</sup> NUON Chea’s lawyers’ 10th request for investigative actions, 24 February 2009, D136, para. 10.

<sup>689</sup> T. 31 January 2012 (NUON Chea), p. 46.

<sup>690</sup> T. 9 February 2012 (NUON Chea), pp. 44-46.

<sup>691</sup> See NUON Chea’s Request for Reconsideration of the Supreme Court Chamber’s Decision not to summon HENG Samrin and Robert LEMKIN, F2/10, 4 February 2016, para. 39; to which we were directed by Nuon Chea’s Second Witness Request for the Case 002/02 Security Centres and ‘Internal Purges’ Segment (Leadership), E392, 1 April 2016, para. 18; and Nuon Chea’s Notice of Current Intention to Exercise his Right to Remain Silent in Case 002/02, E421/1/2, 1 August 2016, para. 6.

<sup>692</sup> See *e.g.*, T. 6 June 2012 (SAO Sarun), pp. 98-99.

<sup>693</sup> T. 7 June 2016 (KAING Guek Eav), pp. 51-54, 60-63; T. 14 June 2016 (KAING Guek Eav *alias* Duch), pp. 55-62, 74-80.

SAO Phim.<sup>694</sup> SIN Oeng (SIN Ung) (2-TCW-1069) was one of SAO Phim’s bodyguards and described visits by NUON Chea to the East Zone to meet SAO Phim; notably not HENG Samrin (2-TCW-831).<sup>695</sup> LY Nhoek (2-TCW-920) said that NUON Chea assigned him to be a courier between him and RUOS Nhim from 1960-1966, and he performed this role again after 1975, with NUON Chea’s trust.<sup>696</sup> NUON Chea’s contention that HENG Samrin had to be summoned as his only character witnesses, and his subsequent submission that the continued exercise of his right to silence turned on HENG Samrin (2-TCW-831), was therefore unpersuasive.

239. HENG Samrin (2-TCW-831) stated that Southwest forces started killing Easterners immediately after the liberation: “I knew about this clearly, but I did not dare say anything, because if I said anything I would be in danger myself”.<sup>697</sup> He stated that his younger brother, HENG Thal (Secretary of Centre Division 290), was “arrested and killed by the Pol Pot group. His whole family was also killed, his wife and 5 children”.<sup>698</sup> In evidence are documentary materials related to Sam Huoy *alias* Meas Tall *alias* Tal, Secretary of Centre Division 290, which includes annotations indicating that he was arrested on 23 May 1978 and matters reported on 10 June 1978 and 3 July 1978.<sup>699</sup>

240. NUON Chea has emphasised “familial connections” between HENG Samrin (2-TCW-831) and a secretary of Sector 21, Touch Chaem *alias* Sot, who married HENG Samrin’s (2-TCW-831) sister.<sup>700</sup> HENG Samrin (2-TCW-831) indicated that, apart from one who died in 1959, all of his other younger sisters’ husbands were taken and killed and he also lost three brothers-in-law.<sup>701</sup> There is documentary evidence in relation to Sot, including annotations indicating that materials were reported on 9 June 1978.<sup>702</sup> KE Pauk’s son, KE Pich Vannak, told investigators before he died that, when he was with his father in the East Zone, there was an order from the Centre to arrest HENG Samrin (2-TCW-831), but shortly afterwards HENG

<sup>694</sup> T. 18 April 2012 (SAUT Toeung), pp. 43-44, 73; T. 19 April 2012 (SAUT Toeung), pp. 19-21, 47-49. Counsel for NUON Chea did not suggest to this witness that NUON Chea met with HENG Samrin (2-TCW-831).

<sup>695</sup> T. 5 December 2016 (SIN Oeng), pp. 11, 63-64.

<sup>696</sup> T. 6 December 2016 (LY Nhoek), pp. 9-12.

<sup>697</sup> Interviews of HENG Samrin, E3/1568, ERN (Kh) 00713960-00713961, ERN (En) 00651888.

<sup>698</sup> Interviews of HENG Samrin, E3/1568, ERN (Kh) 00713941-00713942, ERN (En) 00651876.

<sup>699</sup> See e.g. S-21 Confession of SAM Huoy *alias* Meah Tal, E3/1887, ERN (Kh) 00016611, 00016752.

<sup>700</sup> NUON Chea’s urgent and consolidated request to expedite two already-requested witnesses and summons four additional witnesses regarding the treatment of the Cham, E370, 29 September 2015, para. 20.

<sup>701</sup> Interviews of HENG Samrin, E3/1568, ERN (Kh) 00713941-00713942, ERN (En) 00651876.

<sup>702</sup> Confession of Tauch Chem *alias* Sot, E3/2803, ERN (Kh) 00086672-00086673, ERN (En) 00823443; S-21 TAUCH Chaem *alias* Sot, E3/2804, ERN (Kh) 00086676, ERN (En) 00284070.

Samrin (2-TCW-831) disappeared.<sup>703</sup> Records from S-21 list “traitor groups in the East” and make reference to “Rin, 4<sup>th</sup> Division Chairman”.<sup>704</sup> (As noted previously, NUON Chea emphasises that HENG Samrin (2-TCW-831) was secretary of the East Zone’s 4<sup>th</sup> Division.<sup>705</sup>) NUON Chea failed to substantiate how, in light of such material, HENG Samrin’s (2-TCW-831) account of his escape in May 1978, and the limited evidence of any personal interactions between them after the 1960s, he could reasonably be expected to give favourable or unique character evidence on NUON Chea’s behalf.

### 13.2.3. *OUK Bunchhoeun (2-TCW-951)*

241. Ben KIERNAN (2-TCE-89) interviewed OUK Bunchhoeun (2-TCW-951) in October 1980. Typed and handwritten notes of this interview are in evidence.<sup>706</sup> Stephen HEDER (2-TCE-87) interviewed OUK Bunchhoeun (2-TCW-951) in August 1990; typed notes of which are in evidence together with an audio recording.<sup>707</sup> A biography of OUK Bunchhoeun (2-TCW-951), apparently prepared by Vietnamese or East German sources in December 1978, is also in evidence.<sup>708</sup> OUK Bunchhoeun (2-TCW-951) is, according to the NUON Chea Defence, “perhaps the second-most important witness in Case 002/02”.<sup>709</sup> The justification for this submission is that OUK Bunchhoeun (2-TCW-951) is said to have been “one level below” SAO Phim in the East Zone civilian hierarchy, in that from July 1975 until 25 May 1978 he was deputy secretary of Sector 21 responsible for economics, administration, education and organisation.<sup>710</sup>

<sup>703</sup> [Corrected 1] WRI of KE Pich Vannak, E3/35, ERN (Kh) 00340566, ERN (En) 00346153; BAN Seak *alias* HANG Phos (2-TCW-950) testified that Vannak was KE Pauk’s messenger and that is how he knew about this event: *see* T. 5 October 2015 (BAN Seak), p. 17. SOU Soeun, KE Pauk’s wife, testified that she did not know about this order but her son always stayed with KE Pauk – he was his driver; *see* T. 5 June 2015 (SOU Soeun), p. 38.

<sup>704</sup> Name list of traitors in the Eastern Zone, E3/2096, ERN (Kh) 00006751, ERN (En) 00182905. This list also makes reference to “Chhoeun, Sector 21 Deputy Secretary” at ERN (Kh) 00006753, ERN (En) 00182908.

<sup>705</sup> NUON Chea’s urgent and consolidated request to expedite two already-requested witnesses and summons four additional witnesses regarding the treatment of the Cham, E370, 29 September 2015, para. 20.

<sup>706</sup> Handwritten English Translation of OUK Bunchhoeun’s Interview with Ben Kiernan (Typed version), E3/432, is the typed set of notes; Handwritten English Translation of OUK Bunchhoeun’s Interview with Ben Kiernan, E3/523, ERN (En) 00517707-00517740 is the handwritten set of notes.

<sup>707</sup> [Corrected 1] Transcript of recorded interview with OUK Bunchhoeun on 04-08-1990, E3/387, is the typed set of notes; E3/2774R, E3/2775R, E3/2776R are the audio recordings.

<sup>708</sup> Compilation of 21 *Kurzbiographien* produced by the German Democratic Republic Ministry of State Security (Stasi), E3/9720, E3/9720, ERN (Kh) 01306165-01306169, ERN (En) 01206272-01206274.

<sup>709</sup> Nuon Chea’s Second Witness Request for the Case 002/02 Security Centres and ‘Internal Purges’ Segment (Leadership), 1 April 2016, E392, para. 18.

<sup>710</sup> NUON Chea’s urgent and consolidated request to expedite two already-requested witnesses and summons four additional witnesses regarding the treatment of the Cham, E370, 29 September 2015, para. 20. Although NUON Chea does not appear to place any reliance on the following matters, OUK Bunchhoeun (2-TCW-951) also stated that he was in charge of Sector 21’s liaison with Vietnam, specifically the liaison post with Tay Ninh,

### 13.2.3.1. *East Zone and Sector 21*

242. We were not persuaded that OUK Bunchhoeun's (2-TCW-951) role as the deputy secretary of one sector in the East Zone substantiated NUON Chea's characterisation of his overall importance to Case 002/02. Although events in Sector 21 are relevant, they are one aspect of Case 002/02. OUK Bunchhoeun's (2-TCW-951) interviews describe the presence of multiple forces in the East Zone.<sup>711</sup> We are not persuaded that evidence from OUK Bunchhoeun (2-TCW-951) would be sufficiently important or unique to justify summoning him in the circumstances. As we indicated in relation to HENG Samrin (2-TCW-831), there is extensive evidence before the Trial Chamber related to the East Zone in general and Sector 21 in particular. In particular, the Trial Chamber heard from BAN Seak *alias* HANG Phos (2-TCW-950), who became District Secretary for Krauch Chhmar District in Sector 21 in 1978 and was related to KE Pauk's wife, SOU Soeurn.<sup>712</sup> As recorded in the Annex to our opinion, there is extensive contemporaneous documentary evidence before the Trial Chamber related to the East Zone and Sector 21. Evidence from OUK Bunchhoeun (2-TCW-951) would be substantially repetitive of such evidence and NUON Chea's submissions ignore the various forces sent to the East Zone from elsewhere in the country.

### 13.2.3.2. *Factions and treasonous rebellion*

243. NUON Chea submitted that OUK Bunchhoeun (2-TCW-951) was a prominent leader of "treasonous rebellion" whose evidence was thus "unparalleled" and "irreplaceable".<sup>713</sup> He submitted that OUK Bunchhoeun (2-TCW-951) would therefore offer insight into the heart of

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to solve frontier disputes until contact was broken in 1977 (*see* Notes of Recorded 1990 Interview with OUK Bunchhoeun, E3/387, ERN (Kh) 00379483-00379484, ERN (En) 00350203, ERN (Kh) 000379496-00379497, ERN (En) 00350214; Notes of 1980 Interview with OUK Bunchhoeun, E3/432, ERN (Kh) 00583871-00583872, ERN (En) 00542181). He also stated that he performed a role as assistant to Phuong (*see* Notes of 1980 Interview with OUK Bunchhoeun, E3/432, ERN (Kh) 00583869-00583871, ERN (En) 00542181). Our international colleagues (at paras 264 and 271) place weight on OUK Bunchhoeun's role on a liaison committee. Given that there is documentary evidence that the Standing Committee discussed *numerous* Zone and Sector Liaison Committees with Vietnam, OUK Bunchhoeun's role on one such (sector-level) committee does not alter our conclusion: *see* Standing Committee Minutes of 23 March 1976, E3/218, ERN (Kh) 00000754, ERN (En) 00182654 (Presentation of Comrade Ya: "We agreed to set up the Zone/Region and Sector Liaison Committees"; ERN (Kh) 00000756, ERN (En) 00182656 (Opinion and instructions from Comrade Deputy Secretary: "Zone and Sector Liaison Committees were set up to maintain contacts with Vietnam.") There is detailed contemporaneous documentary evidence of higher level discussions with Vietnam. This sheds better light than anything occurring at a sector level on one part of the border. *See e.g.*, Standing Committee Minutes, E3/221, 14 May 1976, Examination of the Reaction of Vietnam During the Fifth Meeting.

<sup>711</sup> Notes of 1980 Interview with OUK Bunchhoeun, E3/432, ERN (Kh) 00583867-00583868, ERN (En) 00542178-00542179 (describing the presence of Centre Divisions, and Ta Mok's Southwest Zone forces going into Sectors 23 and 24 in 1977, bringing Southwestern cadres, then six months later moving into Sectors 20-22).

<sup>712</sup> T. 5 October 2015 (BAN Seak), pp. 9-10; T. 6 October 2015 (BAN Seak), pp. 40-41, 55

<sup>713</sup> Nuon Chea's Second Witness Request for the Case 002/02 Security Centres and 'Internal Purges' Segment (Leadership), E392, 1 April 2016, para. 21.

his case, namely that the CPK was not disciplined, unified and pyramidal hierarchy, but was engulfed in constant internal turmoil with different and equally strong factions pursuing competing agendas to seize control.<sup>714</sup>

244. According to OUK Bunchhoeun (2-TCW-951), he started hiding weapons in “early 1978”<sup>715</sup> and became the head of a battlefield committee around 10-11 May 1978, with Phok (head of the Zone ammunition store) as his deputy and Nin Neath as a member.<sup>716</sup> On 24 May 1978, the Centre began arresting people by calling them to meetings.<sup>717</sup> Armed opposition commenced on 25 May 1978 after POL Pot arrested commanders and deployed troops along Route 7.<sup>718</sup> Phuong did not want to join the resistance, and he was arrested and killed in June 1978.<sup>719</sup> (Available to NUON Chea was documentary evidence indicating that Phuong was detained at S-21 but he did not request that it be admitted into evidence.<sup>720</sup>) OUK Bunchhoeun (2-TCW-951) describes his participation in resistance over the remainder of 1978. His account is substantially repetitive of other evidence before the Trial Chamber.<sup>721</sup> For example, LONG Sat (2-TCW-1065) described being in the jungle with OUK Bunchhoeun (2-TCW-951), eventually travelling with him by helicopter to Ho Chi Minh.<sup>722</sup>

245. The Trial Chamber rejected various additional witnesses on factions proposed by NUON Chea because it was satisfied that the evidence was of limited relevance or, to the degree it was generally relevant, it was repetitive of other evidence heard by the Trial Chamber such as MY Savoeun (MEY Savoeun) (2-TCCP-1040); VAN Mat *alias* Sales Ahmat (2-TCW-893); MEAS Soeurn (MEAS Soeun) (2-TCW-917); SOS Min (2-TCCP-244); KEO Leour (2-TCW-932); SOY Sao (2-TCW-1029); SEM Hoeurn (2-TCW-943) CHHAE Heap (2-TCCP-275);

<sup>714</sup> NUON Chea’s urgent and consolidated request to expedite two already-requested witnesses and summons four additional witnesses regarding the treatment of the Cham, E370, 29 September 2015, para. 25.

<sup>715</sup> Notes of Recorded 1990 Interview with OUK Bunchhoeun, E3/387, ERN (Kh) 00379502-00379505, ERN (En) 00350218-00350220.

<sup>716</sup> Notes of Recorded 1990 Interview with OUK Bunchhoeun, E3/387, ERN (Kh) 00379508-00379512 ERN (En) 00350223-00350226.

<sup>717</sup> Notes of Recorded 1990 Interview with OUK Bunchhoeun, E3/387, ERN (Kh) 00379507-00379508, ERN (En) 00350222.

<sup>718</sup> Notes of Recorded 1990 Interview with OUK Bunchhoeun, E3/387, ERN (Kh) 00379483-00379484, ERN (En) 00350203; ERN (Kh) 00379510-00379512, ERN (En) 00350225.

<sup>719</sup> Notes of 1980 Interview with OUK Bunchhoeun, E3/432, ERN (Kh) 00583871-00583872, ERN (En) 00542181.

<sup>720</sup> See e.g., OCIJ S-21 Prisoners List 31 March 2016, E3/10604, which at 14502 identifies confession “P-322” for Phuong *alias* Sat Saphon, Chief of East Zone Rubber Plantation. This was available to the Parties on the Case File; see S-21 Confession of VEUNG Chhaem also known as Sok Saphon *alias* Phuong, IS. 5.116, ERN (Kh) 00009797-00009935, ERN (En) 00183089-00183176.

<sup>721</sup> See paras 221-224 above.

<sup>722</sup> T. 2 November 2016 (LONG Sat), pp. 26-27, 91.

HIM Han Rean (2-TCW-901).<sup>723</sup> In addition, BAN Seak *alias* HANG Phos (2-TCW-950) described being sent from the Central Zone to Krauch Chhmar District in 1978; SOS Romly *alias* Yusuf Romly (2-TCW-904) described representatives from the Central Zone and cadres from the Southwest zone arriving in Trea;<sup>724</sup> and IT Sen (2-TCW-813) described SENG from the Southwest Zone in Krouch Chhmar District, holding the position of commune chief and military chief of a commune.<sup>725</sup> We therefore reject the submission that evidence from OUK Bunchhoeun (2-TCW-951) would be unparalleled or irreplaceable.

246. As to the period *before* early 1978, according to OUK Bunchhoeun (2-TCW-951) he was not a “traitor” and neither were people like SAO Phim, HOU Yuon, HU Nhim, “the leader of the North Zone” (which could be a reference to KOY Thuon), Chhouk and Chan Chakkrei. According to OUK Bunchhoeun (2-TCW-951), spurious reasons were given to say that somebody was a traitor then people were tortured until they gave names.<sup>726</sup> OUK Bunchhoeun (2-TCW-951) said that he was implicated in confessions and the matter was sent to SAO Phim who declined to arrest him. This led POL Pot and NUON Chea to stop trusting SAO Phim, so Chan became the secretary of sectors 23 and 24. OUK Bunchhoeun (2-TCW-951) said that NUON Chea educated Chan in this regard.<sup>727</sup> OUK Bunchhoeun (2-TCW-951) said he did not believe “any stories about rebellions in the POL Pot period because I myself did nothing at all”.<sup>728</sup> In light of this, it is improbable that evidence from OUK Bunchhoeun (2-TCW-951) would substantially assist the case advanced by NUON Chea.

### 13.2.3.3. Internal purges and the armed conflict with Vietnam

247. There is extensive evidence before the Trial Chamber of internal purges and armed conflict with Vietnam in the East Zone. We have already referred to some of the evidence we heard on these matters.<sup>729</sup> The Annex to our decision references numerous contemporaneous telegrams documenting the progress of the armed conflict with Vietnam, events that LONG

<sup>723</sup> Decision on NUON Chea Defence Requests to hear Additional Witnesses pursuant to Internal Rule 87(4) (E391, E392, E395, E412, and E426), E443, 21 September 2016; Decision on NUON Chea Defence Requests to hear Additional Witnesses pursuant to Internal Rule 87(4) (E391, E392, E395, E412, and E426) (Full Reasons), E443/10, 31 March 2017, paras 37-38.

<sup>724</sup> T. 8 January 2016 (SOS Romly), p. 73.

<sup>725</sup> T. 8 September 2015 (IT Sen), p. 8.

<sup>726</sup> Notes of 1980 Interview with OUK Bunchhoeun, E3/432, ERN (Kh) 00583863-00583869, ERN (En) 00542177-00542179.

<sup>727</sup> Notes of 1980 Interview with OUK Bunchhoeun, E3/432, ERN (Kh) 00583878-00583879, ERN (En) 00542185.

<sup>728</sup> Notes of 1980 Interview with OUK Bunchhoeun, E3/432, ERN (Kh) 00583882-00583884, ERN (En) 00542187-00542189.

<sup>729</sup> See paras 226-231 above.

Sat (2-TCW-1065) among others addressed in some detail. Even if we focus on the period *before* 1978, the nature of the contemporaneous documentary evidence is significant.

248. As to purges *before* 1978, in materials related to Ly Phen *alias* Samrit is a written record of interview conducted by Sector 21 Security on 12 June 1976 by chief interrogator “Phi” and several other interrogators<sup>730</sup> with numerous annotations.<sup>731</sup> In materials related to PECH Phan *alias* MAI Pha, the Transportation Chairman of the Rubber Plantations in the East Zone, is an interrogator’s note dated 24 July 1977 stating that Bang Phuong arrested PECH Phan and sent him to S-21.<sup>732</sup> A later report records that security warned PECH Phan *alias* MAI Pha for implicating Phuong, and points were then extracted from his confessions and questions raised within S-21 as to whether this was appropriate in the circumstances.<sup>733</sup> Further still, in the materials for Pen Chhe *alias* Chham Sarat or Savat, Secretary of Chhlong District in Sector 21, is a note assessing that his confession was “no different from that of MAI Phau, who has been arrested by Brother Phuong and who talked about Brother Phuong constantly”.<sup>734</sup> For BIN Ban Bo, Secretary of Peam Chilaing District in Sector 21, a note dated 7 September 1977 records persons implicated and questions whether matters could be sent to “Brother Phim” secretly.<sup>735</sup> A further note records that names were taken out of the list before it was sent to “Bang Phim”, then “Khieu” queries whether the whole document should be sent to “Bang Phim” and “keep silent”.<sup>736</sup> Another note contained within other materials records that Bau had said that there were meetings at Zone 203 Agriculture and “Brother Phim has requested clarification of this”.<sup>737</sup> In relation to TUY Pheng *alias* Phe, the Secretary of Kaoh Sautin, a cover page dated 12 November 1977 states that his confession was submitted to the Eastern Zone via Comrade Chan.<sup>738</sup> It is unfortunate that NUON Chea

<sup>730</sup> L40 Colour Copy Excerpts from Confession of Li Phel *alias* Li Phen *alias* Samrit, E3/3837, ERN (Kh) 00172688-00172698, ERN (En) 00807161-00807177.

<sup>731</sup> L40 Colour Copy Excerpts from Confession of Li Phel *alias* Li Phen *alias* Samrit, E3/3837, ERN (Kh) 00172699-00172704, ERN (En) 00223138-00223142.

<sup>732</sup> Colour copy Excerpt of Confession of Pech Phan *alias* Mey Phau, E3/1563, ERN (Kh) 00175187, ERN (En) 00827958.

<sup>733</sup> Colour copy Excerpt of Confession of Pech Phan *alias* Mey Phau, E3/1563, ERN (Kh) 00175172, ERN (En) 00827936.

<sup>734</sup> Confession of Pen Chhe *alias* Chhaom Savat, Secretary, Chhlaung District, Sector 21, East Zone, E3/2484, ERN (Kh)00309795, ERN (En) 00823942.

<sup>735</sup> Colour copy Excerpt of Confession of Bin Ban *alias* Bau, E3/3668, ERN (Kh) 00174263, ERN (En) 00777935 and ERN (Kh) 00174273, ERN (En) 00777951.

<sup>736</sup> DC-Cam Report on “At Risk” Documents, E3/8468, ERN (Kh) 00081624, ERN (En) 01320345.

<sup>737</sup> Colour copy Excerpt of Confession of Pech Phan *alias* Mey Phau, E3/1563, ERN (Kh) 00175172, ERN (En) 00827936.

<sup>738</sup> DC-Cam Report on “At Risk” Documents, E3/8468, ERN (Kh) 00081681, ERN (En) 01320428 (*see also*, E3/4518 and E3/3693).

waived opportunities to address the Chamber on such documentary evidence.<sup>739</sup> In our view, such evidence from S-21 has the potential to shed greater light on purges in the East Zone than further oral testimony from a deputy secretary of one sector. Moreover, KAING Guek Eav *alias* Duch discussed some of the documentary evidence from S-21 concerning the removal of names from confessions related to the East Zone, including Sector 21, in order to allow NUON Chea to send documents to SAO Phim for further implementation and arrest.<sup>740</sup> In our view, such evidence has the potential to shed clearer light on the issues in Case 002/02 compared to oral evidence from OUK Bunchhoeun (2-TCW-951).

#### 13.2.3.4. *Treatment of targeted groups*

249. In relation to the treatment of the Vietnamese, the Closing Order alleges waves of killings of Vietnamese civilians in Prey Veng and Svay Rieng provinces, specifically Sectors “20, 22, 23 and 24”.<sup>741</sup> No such allegation is made in relation to Sector 21. Although there is a separate reference to killings in Krauch Chmar and Khsach Kandal in the East Zone,<sup>742</sup> we are not persuaded that evidence from OUK Bunchhoeun (2-TCW-951) would be unique in this regard.<sup>743</sup>

250. In relation to the treatment of the Cham, the Closing Order contains allegations related to events in Sector 21 of the East Zone, among other places (including in the Central Zone). We are not persuaded that OUK Bunchhoeun (2-TCW-951) is relevant to the allegations related to Trea Village from mid-1978. However, the Closing Order also describes two Cham rebellions in September and October 1975 in the East Zone: the first in Koh Phal village (an island in the Mekong River); the second in Svay Khleang village.<sup>744</sup> It is alleged that “district and

<sup>739</sup> After disagreeing with other parties’ presentation of interviews during a document hearing on worksites on 26 August 2015, the defence for Nuon Chea repeatedly declined the opportunity to present key documents, or respond to make observations on key documents presented by other parties in relation to the treatment of targeted groups (see T. 23 February 2016, E1/390.1, p. 5, ERN (Kh) 01208629, ERN (En) 01209228), security centres and internal purges (see T. 12 August 2016, E1456.1, p. 4, ERN (Kh) 01345680-01345681, ERN (En) 01381154); the nature of the armed conflict (see T. 3 November 2016, p. 3).

<sup>740</sup> See T. 14 June 2016 (KAING Guek Eav), pp. 31-34; T. 15 June 2016 (KAING Guek Eav), p. 12, discussing E3/1688, ERN (Kh) 00226401, ERN (En) 00284069, a note from Duch to Pon, to remove the name of Chhien, Sector 22, brother Mon and brother Soe. Further stating that “Brother II” advised on 25 February 1978 that the names of Soe, Mon, Soth (Sector 21), Chien (Sector 22) Tat and Sokh (Division 170) and Tal (Division 290) “must be withdrawn, if they appear in this confession.”

<sup>741</sup> Closing Order, para. 797.

<sup>742</sup> Closing Order, para. 803.

<sup>743</sup> In Notes of Recorded 1990 Interview with OUK Bunchhoeun, E3/387, ERN (Kh) 00379493, ERN (En) 00350210, OUK Bunchhoeun (2-TCW-951) stated as follows: “When Pol Pot was in good relationship with Vietnam again, Vietnam sent those people back to him. A number of them were killed. This was like that. So, I understood that it was a problem”.

<sup>744</sup> Closing Order, para. 758.

subdistrict CPK cadres” were involved in suppressing those rebellions.<sup>745</sup> Allegations follow in relation to later periods and connections are alleged between the treatment of the Cham in East Zone and the Central (or Old North) Zone.<sup>746</sup>

251. As noted in the main body of the Trial Chamber’s decision, NUON Chea did not propose OUK Bunchhoeun (2-TCW-951) in relation to the treatment of the Cham.<sup>747</sup> Rather, the belated submission followed that OUK Bunchhoeun (2-TCW-951) should nevertheless be heard during a trial segment focused on the treatment of the Cham, on the basis that East Zone military forces were involved in suppressing Cham rebellions at Koh Phal, Svay Khleang and Trea Village.<sup>748</sup> This motion included another belated submission questioning the exclusion of Kroch Chhmar Security Centre from Case 002/02.<sup>749</sup> NUON Chea had not questioned the exclusion of Krauch Chhmar Security Centre when the scope of Case 002/02 was discussed and settled upon. No request was made to expand the scope of Case 002/02.

252. The NUON Chea Defence’s assertions that the prosecution focused on alleged crimes against the Cham which took place after the arrival of CPK cadres from the Southwest Zone in 1977;<sup>750</sup> or that the Trial Chamber sought to “hide” evidence in relation the treatment of the Cham in 1975 by avoiding “evidence which might incriminate present government members”<sup>751</sup> lack any substance.<sup>752</sup> The Trial Chamber heard extensive evidence of the Cham rebellions in 1975. VAN Mat *alias* SALES Ahmat (2-TCW-893) worked in a commune economics office in Krauch Chhmar District and described the repression of the Cham rebellion on Koh Phal.<sup>753</sup> IT Sen (2-TCW-813) was based in Ampil and described the Cham rebellion on nearby Koh Phal, where he had family, and said that the Khmer Rouge soldiers could have come from the District or the Sector.<sup>754</sup> SOS Romly *alias* Yusuf Romly (2-TCW-

<sup>745</sup> Closing Order, para. 759.

<sup>746</sup> Closing Order, paras 762-769; and 784-788.

<sup>747</sup> [Corrected 1] Annex B: Updated Summaries of Witnesses, Civil Parties and Experts (no protective measures sought), E305/4.2, 8 May 2014, p.12

<sup>748</sup> NUON Chea’s urgent and consolidated request to expedite two already-requested witnesses and summons four additional witnesses regarding the treatment of the Cham, E370, 29 September 2015, paras 19-20.

<sup>749</sup> NUON Chea’s urgent and consolidated request to expedite two already-requested witnesses and summons four additional witnesses regarding the treatment of the Cham, E370, 29 September 2015, paras 8-9.

<sup>750</sup> NUON Chea’s urgent and consolidated request to expedite two already-requested witnesses and summons four additional witnesses regarding the treatment of the Cham, E370, 29 September 2015, para. 9.

<sup>751</sup> NUON Chea’s Request to Reconsider Admitting One Extract and to Admit Two Additional Extracts from the Human Rights Watch Report ‘30 Years of Hun Sen’, E347/2, 11 December 2015, para. 11; T. 8 September 2015, p. 26.

<sup>752</sup> In its Severance Order for Case 002/02, the Trial Chamber selected numerous events from the East Zone, including paragraphs addressing the Cham rebellions of 1975.

<sup>753</sup> T. 9 March 2016 (VAN Mat), pp. 50-52; 76; E3/9323, ERN (Kh) 00275387, ERN (En) 0021842.

<sup>754</sup> T. 7 September 2015 (IT Sen), pp. 62-63; T. 8 September 2015 (IT Sen), pp. 13-14.

904) worked in the Trea commune office for the commune chief and described events in late 1975, and in May 1978 onwards.<sup>755</sup> SOS Ponyamin (2-TCCP-244) lived in Svay Khleang and was involved in Cham rebellions in 1975.<sup>756</sup> MAN Sles (2-TCCP-263) lived in Svay Khleang and described soldiers forcing the entire population out of Svay Khleang and said that Long and PENG Heng, the chief and deputy chief of Svay Khleang commune were involved.<sup>757</sup> NO Sates *alias* Tas (2-TCCP-270) described Cham rebellions in October 1975 and evacuations that followed.<sup>758</sup> MATH Sor *alias* Ahmat Safiyal (2-TCW-928) described being detained with other girls and questioned by the district.<sup>759</sup> YSA Osman (2-TCE-95) described his research related to Sector 21, including the rebellions in Koh Phal and Svay Khleang.<sup>760</sup> There is also potentially significant documentary evidence before the Trial Chamber from this period, including a telegram dated 30 November 1975 from Chhon to Brother Pol.<sup>761</sup>

253. The decisive factor in our conclusion that it was unnecessary to summon OUK Bunchhoeun (2-TCW-951) in relation to the 1975 rebellions, however, was the relevance which NUON Chea ascribes to those events. In NUON Chea's submission, the suppression of the 1975 rebellions was "at least as brutal as alleged treatment in the Central (Old North) Zone in 1977 and the East Zone in 1978".<sup>762</sup> This argument does little to assist NUON Chea. Even if it is established that the treatment to which Cham were treated in Sector 21 in 1975 was "at least as brutal" as the treatment to which they were subjected later on, or in different locations, this would not appear to be exculpatory.<sup>763</sup> There is extensive evidence before the Trial Chamber related to the events upon which NUON Chea wishes to focus in any event. Finally, we note the Supreme Court Chamber's emphasis on the need to examine and compare events in different Zones when assessing the existence or not, as the case may be, of a centrally devised policy.<sup>764</sup>

<sup>755</sup> T. 6 January 2016 (SOS Romly), pp. 89-97; T. 8 January 2016 (SOS Romly), pp. 6-17; 42-49, 76.

<sup>756</sup> T. 9 September 2015 (SOS Ponyamin), pp. 48-52.

<sup>757</sup> T. 29 February 2016 (MAN Sles), pp. 58-59, 73.

<sup>758</sup> T. 28 September 2015 (NO Sates), pp. 49, 79; T. 29 September 2015 (NO Sates), pp. 5-28;

<sup>759</sup> T. 13 January 2016 (MATH Sor), p. 91.

<sup>760</sup> T. 9 February 2016 (YSA Osman), pp. 25-35; T. 9 February 2016 (YSA Osman), pp. 59-65.

<sup>761</sup> Telegram 15 to brother Pol: About the people disrespect Angkar advised, E3/154, ERN (Kh) 00008494, ERN (En) 00185064-00185065; *cf.* DC-Cam Report on "At Risk" Documents, E3/8468, ERN (En) 00105211.

<sup>762</sup> NUON Chea's urgent and consolidated request to expedite two already-requested witnesses and summons four additional witnesses regarding the treatment of the Cham, E370, 29 September 2015, para. 23.

<sup>763</sup> In relation to the Cham rebellion on Koh Phal, OUK Bunchhoeun (2-TCW-951) stated to Stephen HEDER (2-TCE-87) that the "district authority went to Koh Phal back and forth" and the military in Krauch Chhmar "went to crack down on them." *See* Notes of Recorded 1990 Interview with OUK Bunchhoeun, E3/387, ERN (Kh) 00105211, ERN (En) 00350213.

<sup>764</sup> Appeal Judgement, F36, 23 November 2016, para. 963.

13.2.3.5. Otherwise unique or exculpatory evidence

254. We were unable to discern any other basis on which it might be said that OUK Bunchhoeun (2-TCW-951) offers exculpatory evidence for NUON Chea. Although NUON Chea did not propose him in relation to the treatment of former LON Nol officials, according to OUK Bunchhoeun (2-TCW-951) in April 1975 POL Pot issued a secret but widely announced policy of wiping out elements of the LON Nol regime, purging from the sub-district up and sweeping clean soldiers from second lieutenants up to generals.<sup>765</sup> Such evidence would not appear to be exculpatory and does not require that he be summoned.

255. OUK Bunchhoeun's interviews describe various meetings that he attended in Phnom Penh, including the above-discussed meeting in May 1975.<sup>766</sup> The Trial Chamber heard evidence of various meetings and study sessions involving NUON Chea, including from the following persons: EM Oeun (TCCP-28) (training session at Borei Keila);<sup>767</sup> CHEA Say (TCW-91) (study sessions at Borei Keila and the Technological Institute);<sup>768</sup> ROCHOEUM Ton *alias* PHY Phuon (TCW-564) (various study sessions);<sup>769</sup> MEAS Voeun (2-TCW-1008) (Zone congresses in the West Zone);<sup>770</sup> NY Kan *alias* Kan (TCW-487) (West Zone assembly meeting attended by NUON Chea); LONG Norin (party congresses held at the Olympic stadium in Phnom Penh once per year, with NUON Chea seated on the stage with POL Pot);<sup>771</sup> SUONG Sikoeun *alias* Kung (TCW-694) (study session at Borei Keila in June 1976);<sup>772</sup> KHIEV En (TCW-320) (smaller meetings chaired by NUON Chea);<sup>773</sup> PECH Chim (2-TCW-809) (study sessions at Borei Keila in late 1975 and 1976);<sup>774</sup> EK Hen (TCW-164) (study sessions at Borei Keila);<sup>775</sup> RUOS Suy (TCW-570) (study sessions at Ounalom Pagoda Borei Keila or the Olympic Stadium);<sup>776</sup> CHHOUK Rin (TCW-110) (study sessions based on

<sup>765</sup> Notes of Recorded 1990 Interview with OUK Bunchhoeun, E3/387, ERN (Kh) 00379486, ERN (En) 00350205.

<sup>766</sup> Notes of Recorded 1990 Interview with OUK Bunchhoeun, E3/387, ERN (Kh) 00379488-00379489, ERN (En) 00350207-00350208; Notes of 1980 Interview with OUK Bunchhoeun, E3/432, ERN (Kh) 00583873-00583874, ERN (En) 00542182.

<sup>767</sup> See e.g., T. 23 August 2012 (EM Oeun), p. 82. T. 27 August 2012 (EM Oeun), pp. 39-45; T. 28 August 2012 (EM Oeun), pp. 11-12.

<sup>768</sup> See e.g., T. 20 September 2012 (CHEA Say), pp. 29-37, 70-71.

<sup>769</sup> See e.g., T. 25 July 2012 (ROCHOEM Ton), pp. 74-78; T. 1 August 2012 (ROCHOEM Ton), pp. 95-96.

<sup>770</sup> See e.g., T. 2 February 2016 (MEAS Voeun), pp. 15-20, 68-71; T. 4 October 2012 (MEAS Voeun), pp. 44, 46-54.

<sup>771</sup> See e.g., T. 8 December 2011 (LONG Norin), pp. 55-57.

<sup>772</sup> See e.g., T. 6 August 2012 (SUONG Sikoeun), pp. 74-79.

<sup>773</sup> See e.g., T. 2 October 2012 (KHIEV En), p. 9; T. 1 October 2012 (KHIEV En), pp. 33-37.

<sup>774</sup> See e.g., T. 01 July 2013 (PECH Chim), pp. 38-41, 74; T. 22 April 2015 (PECH Chim), pp. 34-35.

<sup>775</sup> See e.g., T. 3 July 2013 (EK Hen), pp. 40-53, 77-99.

<sup>776</sup> See e.g., T. 25 April 2013 (RUOS Suy), pp. 46, 58-59.

Revolutionary Flag);<sup>777</sup> NEANG Ouch *alias* Ta San (2-TCW-803) (meeting NUON Chea at a yearly study session);<sup>778</sup> and PRAK Yut (2-TCW-938) (study session for district secretaries of the entire country, including the 20 May 1975 meeting).<sup>779</sup> It is therefore unnecessary to summon OUK Bunchhoeun (2-TCW-951).

#### 13.2.4. *POL Saroeun (2-TCW-962)*

256. NUON Chea's submissions in relation to POL Saroeun (2-TCW-962) were largely speculative.<sup>780</sup> His primary submission was that POL Saroeun (2-TCW-962) "may offer unique insight into preparations for rebellion and the participation and crackdown on East Zone cadres".<sup>781</sup> As described above, there is extensive evidence before the Trial Chamber on these matters. A further factor is that Ben KIERNAN (2-TCE-89) interviewed POL Saroeun (2-TCW-962) in 1981.<sup>782</sup> NUON Chea did not make a specific request to obtain the notes of this interview.<sup>783</sup>

257. We nevertheless sought to evaluate matters in relation to which POL Saroeun (2-TCW-962) might testify, weighing as above the potential significance of his evidence and other evidence before the Trial Chamber. According to Ben KIERNAN (2-TCE-89), POL Saroeun (2-TCW-962) was deputy chief of the East Zone's military staff and ran the East Zone's ammunition factory in Koh Sautin district. Based on his interview with POL Saroeun (2-TCW-962), Ben KIERNAN (2-TCE-89) highlighted a meeting at Tuol Preap on 24 May 1978, when SAO Phim ordered POL Saroeun (2-TCW-962) to "seek out friends" and rebuild

<sup>777</sup> See e.g., T. 22 April 2013 (CHHOUK Rin), pp. 66-68; T. 23 April 2013 (CHHOUK Rin), pp. 8-14.

<sup>778</sup> See e.g., T. 10 March 2015 (NEANG Ouch), pp. 38-47; T. 11 March 2015 (NEANG Ouch), p. 49.

<sup>779</sup> See e.g., T. 19 January 2016 (PRAK Yut), pp. 67-77, 85-89.

<sup>780</sup> New Witness, Civil Party and Expert List for Case 002/02, E307/4, 24 July 2014, para. 3; E307/4.3, 24 July 2014, p.2.

<sup>781</sup> Nuon Chea's Second Witness Request for the Case 002/02 Security Centres and 'Internal Purges' Segment (Leadership), E392, 1 April 2016, para. 26.

<sup>782</sup> See [Corrected 1] Book by Ben KIERNAN entitled "The Pol Pot Regime: Race, Power, and Genocide in Cambodia under the Khmer Rouge, 1975-79", E3/1593, ERN (Kh) 00637952, ERN (En) 01150204, p. 395, fn 37 for reference to an interview with POL Saroeun in Takeo on 27 August 1981. KIERNAN (2-TCE-89) describes POL Saroeun as being, until May 1978, "deputy chief of the Zone military staff [...] who ran the Zone ammunition factory in Koh Sautin district."

<sup>783</sup> Cf. NUON Chea's Rule 93 Request to obtain any available records of relevant interviews of other individuals mentioned by Ben KIERNAN (2-TCE-89) relating to local company commander who defected to Thailand in 1977; another CPK military defector who reached Thailand at the end of 1977; and a "1977 defector" with knowledge of Chan Chakrei's alleged involvement in coups d'etat: NUON Chea's First Rule 87(4) Request to Call Additional Witnesses and Rule 93 Request for Additional Investigations in Relation to the Case 002/02 Trial Segment on S-21 Security Centre and 'Internal Purges', E391, 24 March 2016, paras 27-33, 36(b). The Trial Chamber rejected the Rule 93 Request because it was untimely and there was limited identifying information concerning the alleged defectors; see Decision on NUON Chea Defence Requests to hear Additional Witnesses pursuant to Internal Rule 87(4) (E391, E392, E395, E412, and E426) (Full Reasons), E443/10, 31 March 2017, paras 34, 36.

bridges with the Vietnamese. SAO Phim told POL Saroeun (2-TCW-962) that his troops should not attack KE Pauk's forces, but remain alert to see what happened next. On his way home from Tuol Preap, POL Saroeun (2-TCW-962) noticed KE Pauk's forces checking the number of his motorcycle and he "suspected something was up". The next day, on 25 May 1978, KE Pauk "struck".<sup>784</sup>

258. Ben KIERNAN (2-TCE-89) describes another meeting on or around 27 May 1978 involving some 20 people including POL Saroeun (2-TCW-962). SAO Phim decided to travel to Phnom Penh but told others to "hold off" in the meantime. Thereafter, when matters deteriorated, POL Saroeun (2-TCW-962) took command of three companies of the 75<sup>th</sup> Regiment composed of troops attached to Zone artillery units – 300 troops in total – who fought against Centre forces through to Suong then into the forest to the north.<sup>785</sup> As discussed above, however, the Trial Chamber heard evidence on the events surrounding May 1978. It is therefore unnecessary to summon POL Saroeun (2-TCW-962).<sup>786</sup>

### 13.2.5. *Conclusions*

259. We recognise that there is some force in the opinion expressed by our international colleagues that it would have been preferable if HENG Samrin (2-TCW-831), OUK Bunchhoeun (2-TCW-951) and POL Saroeun (2-TCW-962) had appeared before the Trial Chamber in Case 002/02. The decision for the Trial Chamber, however, is whether it is necessary to initiate the process to compel testimony by issuing summonses. For the reasons set out in this opinion, we concluded that it was unnecessary to venture down that path and we declined to summon them on the basis of Internal Rule 87(a), (c) and (e). We were not persuaded that evidence from either person was sufficiently important or exculpatory. There is extensive evidence before the Trial Chamber on all the matters on which NUON Chea sought evidence from these persons.

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<sup>784</sup> [Corrected 1] Book by Ben KIERNAN entitled "The Pol Pot Regime: Race, Power, and Genocide in Cambodia under the Khmer Rouge, 1975-79", E3/1593, ERN (Kh) 00637952, ERN (En) 01150204, p. 395.

<sup>785</sup> [Corrected 1] Book by Ben KIERNAN entitled "The Pol Pot Regime: Race, Power, and Genocide in Cambodia under the Khmer Rouge, 1975-79", E3/1593, ERN (Kh) 00637956, ERN (En) 01150206, p. 398.

<sup>786</sup> See paras 220-223 above. Our international colleagues place weight on Ben KIERNAN's (2-TCE-89) ranking of POL Saroeun (2-TCW-962) in sixth position in the East Zone (said to be one place below HENG Samrin (2-TCW-831)). As we note in the second paragraph of our opinion, however, Ben KIERNAN (2-TCE-89) assessed HENG Samrin (2-TCW-831) to hold a relatively junior position in the CPK's overall power structure. That he placed POL Saroeun (2-TCW-962) *below* HENG Samrin (2-TCW-831) reinforces our overall conclusion in relation to POL Saroeun (2-TCW-962).

260. Although we respect our international colleagues' conclusion that evidence from these persons would have been non-repetitive because they are among some of the most senior persons from the East Zone to have survived purges, such that they are said to be better positioned to describe those events, we prioritised evidence from senior persons *sent to* purge the East Zone, such as IENG Phan (2-TCW-1046), CHUON Thy (CHUON Thi) *alias* THI Ov's (2-TCW-859) and CHHOUK Rin *alias* Sok (TCW-110). Combined with the extensive evidence related to S-21, and the evidence heard from persons already in the East Zone identified in our opinion, we concluded that it was unnecessary to summon the requested persons. We will, however, carefully evaluate any inferences that should be drawn in NUON Chea's favour, including by reference to the interviews with HENG Samrin (2-TCW-831) and OUK Bunchhoeun (2-TCW-951).<sup>787</sup>

### 13.3. **Opinion of the Minority (Judges Jean-Marc LAVERGNE and Claudia FENZ)**

261. At the outset we stress that the minority opinion fully adheres to the description of the legal framework provided in paragraphs 9 to 17 of the current decision. The Trial Chamber in Case 002/02 has consistently assessed the admission of evidence and decided on requests to call witnesses in accordance with the criteria set out in Internal Rule 87(3). In the overwhelming majority of cases, the issues to be determined were the ones addressed by IR 87(3)(a), which allows rejection of evidence where it is found to be irrelevant or repetitious. In making that assessment the Trial Chamber had regard to the *prima facie* standards of relevance, reliability and authenticity.<sup>788</sup> Similarly in the Case 002/01 judgement, the Trial Chamber held that "evidence put before the Chamber must be *prima facie* relevant and reliable".<sup>789</sup> A final evaluation of the evidence as a whole and what weight it will be given will be carried out in the verdict.

<sup>787</sup> In Case 002/01, the Supreme Court Chamber concluded that proceeding in such a way would not prejudice NUON Chea, while contributing to the efficiency of the proceedings. *See* Appeal Judgement, F36, 23 November 2016, paras 38, 155.

<sup>788</sup> *See for example* Decision on NUON Chea Defence Requests to hear Additional Witnesses, E443/10, 30 March 2017, paras 27, 37; Decision on NUON Chea Defence Request E448 to call two additional witnesses, E448/2, 14 December 2016, para. 4; Decision on Motions to Hear Additional Witnesses on the Topic of the Treatment of the Vietnamese, E380/2, 25 May 2016, para. 18; Decision on International Co-Prosecutor's Request to Admit Written Records of Interview Pursuant to Rules 87(3) & (4) and To Call Four Additional Witnesses for Upcoming Case 002/02 Segments, E319/36/2, 25 May 2016, para. 8 (confidential); Decision on NUON Chea's First Rule 87(4) Request to Call One Additional Witness and to Admit One Interview for the Case 002/02 Trial Segment on the Phnom Kraol Security Centre, E390/2, 4 May 2016, para. 3; Reasons following Decision on the NUON Chea Defence's Consolidated Rule 87(4) Request to hear Additional Witnesses for the First Case 002/02 Trial Segment, E346/3, 31 March 2016, para. 31 (confidential).

<sup>789</sup> Case 002/01 Trial Judgement, E313, 7 August 2014, para. 26.

262. Finally we note that, according to its own findings, where several individuals are proposed to be heard on similar facts or issues, the Chamber shall give preference to those whose proposed evidence is sought by one or more parties to the proceedings, covers multiple trial topics, or are likely to have greater relevance or probative value.<sup>790</sup>

263. We note that both the requesting Party and the majority opinion rely heavily on Ben KIERNAN. According to his interview with KIERNAN, HENG Samrin (2-TCW-831) joined the party in 1961, and became the chief of the 126<sup>th</sup> Zone Regiment in 1973, which was part of the 1<sup>st</sup> Division of the East Zone.<sup>791</sup> After the liberation of 17 April 1975, HENG Samrin (2-TCW-831) stayed in Phnom Penh for about three months and was then sent back to the East Zone, specifically to Prey Veng.<sup>792</sup> In early 1976, he gathered troops and took the command of the East Zone's 4<sup>th</sup> Division based in Krek, where he remained until early 1978.<sup>793</sup> The 4<sup>th</sup> Division had approximately 8,000 troops in total, but no tanks,<sup>794</sup> and was responsible for patrolling Highway 7.<sup>795</sup> HENG Samrin (2-TCW-831) was also deputy chief of staff for the East Zone's military forces and apparently a member of the Zone Committee.<sup>796</sup> KIERNAN's analysis of the military chain of command in the East Zone tends to show that HENG Samrin is the most senior military cadre of this zone who survived the purges.<sup>797</sup>

<sup>790</sup> See above, para. 15.

<sup>791</sup> Retyped from a Handwritten Interview of CHEA Sim, Phnom Penh, 3 Dec 1991, and HENG Samrin, Phnom Penh, 2 Dec 1991, E3/1568, 30 December 1991, ERN (En) 00651878.

<sup>792</sup> Retyped from a Handwritten Interview of CHEA Sim, Phnom Penh, 3 Dec 1991, and HENG Samrin, Phnom Penh, 2 Dec 1991, E3/1568, 30 December 1991, ERN (En) 00651880, 00651893.

<sup>793</sup> Retyped from a Handwritten Interview of CHEA Sim, Phnom Penh, 3 Dec 1991, and HENG Samrin, Phnom Penh, 2 Dec 1991, E3/1568, 30 December 1991, ERN (En) 00651886; according to HENG Samrin, the East Zone's 5<sup>th</sup> Division was created in early 1977 and it had about 5,000 troops, see Ben Kiernan, *Genocide and Resistance in South East Asia: Documentation, Denial and Justice in Cambodia and East Timor* (New Brunswick, NJ: Transaction, 2008), D269/5.1, p. 80, ERN (En) 00488219.

<sup>794</sup> Retyped from a Handwritten Interview of CHEA Sim, Phnom Penh, 3 Dec 1991, and HENG Samrin, Phnom Penh, 2 Dec 1991, E3/1568, 30 December 1991, ERN (En) 00651893.

<sup>795</sup> Retyped from a Handwritten Interview of CHEA Sim, Phnom Penh, 3 Dec 1991, and HENG Samrin, Phnom Penh, 2 Dec 1991, E3/1568, 30 December 1991, ERN (En) 00651893.

<sup>796</sup> Retyped from a Handwritten Interview of CHEA Sim, Phnom Penh, 3 Dec 1991, and HENG Samrin, Phnom Penh, 2 Dec 1991, E3/1568, 30 December 1991, ERN (En) 006518886; see also, Retyped from a Handwritten Interview of CHEA Sim, Phnom Penh, 3 Dec 1991, and HENG Samrin, Phnom Penh, 2 Dec 1991, E3/1568, 30 December 1991, ERN (En) 00651892-00651893, stating that he became Deputy Chief of Eastern Zone General Staff in early 1976, after the creation of the 4<sup>th</sup> Division in early 1976 out of other elements.

<sup>797</sup> Book edited by Ben KIERNAN: *Genocide and Democracy in Cambodia*, E3/3304, 1993, ERN (En) 00430242, p. 15. In Table 2.B which describes "the Democratic Kampuchea Military Chain of Command", HENG Samrin ranks in the fifth position in the Eastern Zone. All individuals ranked in more senior positions (SAO Phim, CPK Zone Secretary; SENG Hong, CPK Zone Deputy Secretary; KEV Samnang, Chief of the Zone Military Staff; LY Pheng, Chief Political Commissar), allegedly committed suicide or were executed following purges. Further, according to the same table, three Divisions were placed under the authority of the East Zone. The 3<sup>rd</sup> Division commander POEU Hak was allegedly executed in 1976, his successor KRY was allegedly executed in 1978, PHAN and HENG Kim respectively political commissar and CPK Secretary of the 4<sup>th</sup>

264. According to his interviews with KIERNAN and HEDER, OUK Bunchhoeun (2-TCW-951) became deputy secretary of Sector 21, in charge of administration, controlling the economy, “mass organization” and the “foreign work”, in July 1975. Whereas “Soh”, the sector secretary, was in charge of the army and security.<sup>798</sup> OUK Bunchhoeun (2-TCW-951) held this position until May 1978, when he started opposing POL Pot and joined the resistance.<sup>799</sup> OUK Bunchhoeun (2-TCW-951) was also in charge of Sector 21’s liaison with Vietnam, specifically the liaison post with Tay Ninh to solve frontier disputes until contact was broken off in 1977.<sup>800</sup> He also performed a role as an assistant to Phuong, Chief of the East Zone rubber plantation and full rights member of the Central Committee.<sup>801</sup> KIERNAN’s analysis of the military chain of command in Sector 21 tends to show that OUK Bunchhoeun is the most senior cadre of this sector who survived the purges.<sup>802</sup>

265. As regards POL Saroeun (2-TCW-962), according to HENG Samrin (2-TCW0831)’s interview with KIERNAN, he was the deputy chief of the East Zone military, in charge of equipment and of an ammunition factory at Koh Sautin.<sup>803</sup> KIERNAN identifies him as 2<sup>nd</sup> Deputy Chief of the East Zone military staff, below HENG Samrin (2-TCW-831).<sup>804</sup> In an interview with Stephen HEDER, MAT Ly mentions that POL Saroeun was part of the East Zone military and more precisely that “[h]e was division level, economics for the [East]

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Division were allegedly executed in 1976 and 1978, PAEN Cheuan CPK Secretary of the 5<sup>th</sup> Division was allegedly executed in 1978.

<sup>798</sup> Handwritten English Translation of OUK Bunchhoeun Interview with Ben Kiernan (Typed Version), E3/432, 30 September 1980, ERN (En) 00542181; *see also* Transcript of Recorded Interview with OUK Bunchhoeun on 04-08-1990, E3/387, 4 August 1990, ERN (En) 00350203. *See* OCIJ S-21 Prisoners List, 31 March 2016, E3/10604, p. 522, ERN (En) 01222849, which at entry 12681 identifies TAUCH Chem *alias* Sot as the Secretary of Sector 21 of the East Zone who entered S-21 on 5 June 1978. *See also* Book edited by Ben KIERNAN: *Genocide and Democracy in Cambodia*, E3/3304, 1993, ERN (En) 00430242, p.15. According to KIERNAN’s analysis in Table 2 C which describes the Chain of Command in “Region” 21 in the East Zone, the CPK Secretary of sector 21 was executed in 1978.

<sup>799</sup> Transcript of Recorded Interview with OUK Bunchhoeun on 04-08-1990, E3/387, 4 August 1990, ERN (En) 00350203.

<sup>800</sup> Transcript of Recorded Interview with OUK Bunchhoeun on 04-08-1990, E3/387, 4 August 1990, ERN (En) 00350203, 00350214; Handwritten English Translation of OUK Bunchhoeun Interview with Ben Kiernan (Typed Version), E3/432, 30 September 1980, ERN (En) 00542181.

<sup>801</sup> Handwritten English Translation of OUK Bunchhoeun Interview with Ben Kiernan (Typed Version), E3/432, 30 September 1980, ERN (En) 00542176 and 00542181. *See* OCIJ S-21 Prisoners List 31 March 2016, E3/10604, which at 14502 identifies Phuong *alias* Sat Saphon as the Chief of East Zone Rubber Plantation.

<sup>802</sup> Book edited by Ben KIERNAN: *Genocide and Democracy in Cambodia*, E3/3304, 1993, ERN (En) 00430242, p. 15. *See* Table 2.B which describes “the Democratic Kampuchea Military Chain of Command” in particular at Sector 21 of the East Zone level.

<sup>803</sup> Retyped from a Handwritten Interview of CHEA Sim, Phnom Penh, 3 Dec 1991, and HENG Samrin, Phnom Penh, 2 Dec 1991, E3/1568, 30 December 1991, ERN (En) 00651899; Interview of CHEA Sim, Phnom Penh, 3 Dec 1991, and HENG Samrin, Phnom Penh, 2 Dec 1991, E3/5593, 30 December 1991, ERN (En) 00419440 (where the name Hem Samin and the location of Koh Sautin appears to be legible, while they are not mentioned in the retyped version of this document).

<sup>804</sup> Book by Ben Kiernan: *Genocide and Democracy in Cambodia* (confidential), E3/3304, p. 15, ERN (En) 00430242.

Military Zone”.<sup>805</sup> POL Saroeun (2-TCW-962) is said to have been among the 20 or so people at the meeting with SAO Phim on 27 May 1978.<sup>806</sup> HENG Samrin (2-TCW-831) suggests that after this, meeting POL Saroeun (2-TCW-962) led three companies of 300 men and engaged many times in fighting against Centre forces.<sup>807</sup> POL Saroeun (2-TCW-962) is also said to have attended a meeting in Memot in September 1978, soon after which HENG Samrin (2-TCW-831) crossed the border to Vietnam.<sup>808</sup> KIERNAN’s analysis of the military chain of command in the East Zone tends to show that POL Saroeun is the second most senior military cadre of this zone after HENG Samrin who survived the purges.<sup>809</sup>

266. While the Chamber heard a number of witnesses on the topic of the Internal Purges, including on the resistance that emerged within the East Zone against POL Pot<sup>810</sup> and the alleged *coup d’état* attempt against the CPK leaders in Phnom-Penh,<sup>811</sup> such witnesses held a much lower rank than HENG Samrin (2-TCW-831), OUK Bunchhoeun and POL Saroeun (2-TCW-962) within the East Zone and had had minor roles in the events that unfolded there in 1978. We recall that HENG Samrin was the commander of the 4<sup>th</sup> Division and that he had direct contact with SAO Phim. According to his interview with KIERNAN, HENG Samrin (2-TCW-831) was with SAO Phim before the “coup” and when the latter gave the order to fight against POL Pot.<sup>812</sup> HENG Samrin (2-TCW-831) further stated that he was the one who

<sup>805</sup> Transcript of Recorded Interview with MAT Ly in 1990, E3/390, 9 April 2012, ERN (En) 00436849.

<sup>806</sup> Retyped from a Handwritten Interview of CHEA Sim, Phnom Penh, 3 Dec 1991, and HENG Samrin, Phnom Penh, 2 Dec 1991, E3/1568, 30 December 1991, ERN (En) 00651899-00651900. OUK Bunchhoeun describes a meeting that occurred in August 1978 to which comrade Sabun, comrade Phok, comrade Nal, comrade Kai, comrade HENG Samrin, comrade POL Saroeun, and comrade KOAM Meadan participated. The meeting was held to discuss a request from CHEA Sim on combatants who had fled from Kampong Chhnang airport and where comrade CHAN Chim, the assistant of the ministry of communication, came to tell them that POL Pot “had to kill all the people in the East Zone”; Transcript of Recorded Interview with OUK Bunchhoeun on 04-08-1990, E3/387, 4 August 1990, ERN (En) 00350227-00350228; *see also*, Transcript of Recorded Interview with MAEN Chhân and CHEY Sophea on 07-08-1990 (confidential), E3/389, 7 August 1990, ERN (En) 00434377-00434378.

<sup>807</sup> Retyped from a Handwritten Interview of CHEA Sim, Phnom Penh, 3 Dec 1991, and HENG Samrin, Phnom Penh, 2 Dec 1991, E3/1568, 30 December 1991, ERN (En) 00651900-00651901; *see also*, Transcript of Recorded Interview with MAEN Chhân and CHEY Sophea on 07-08-1990 (confidential), E3/389, ERN (En) 00434377-00434378; T. 2 November 2016 (2-TCW-1065), pp. 86-91.

<sup>808</sup> Retyped from a Handwritten Interview of CHEA Sim, Phnom Penh, 3 Dec 1991, and HENG Samrin, Phnom Penh, 2 Dec 1991, E3/1568, 30 December 1991, ERN (En) 00651902-006519023.

<sup>809</sup> Book edited by Ben KIERNAN: *Genocide and Democracy in Cambodia*, E3/3304, 1993, ERN (En) 00430242, p.15. In Table 2 B which describes “the Democratic Kampuchea Military Chain of Command”, POL Saroeun ranks in the sixth position and HENG Samrin in the fifth position in the Eastern Zone. All individuals ranked in more senior positions (SAO Phim, CPK Zone Secretary; SENG Hong, CPK Zone Deputy Secretary; KEV Samnang, Chief of the Zone Military Staff; LY Pheng, Chief Political Commissar), allegedly committed suicide or were executed following purges.

<sup>810</sup> *See* T. 17 August 2016 (MEY Savoeun), pp. 51-60.

<sup>811</sup> *See* T. 28 June 2016 (CHHUN Samorn), pp. 21-25, 33-34, 39-41, 65-69, 89.

<sup>812</sup> Retyped from a Handwritten Interview of CHEA Sim, Phnom Penh, 3 Dec 1991, and HENG Samrin, Phnom Penh, 2 Dec 1991, E3/1568, 30 December 1991, ERN (En) 00651889. The Minority considers that the

then “gave the order directly to the military”.<sup>813</sup> A review of HENG Samrin’s interview with KIERNAN, shows that he would have been in a position to clarify the nature and details of the events unfolding, and to identify the participants to an alleged rebellion. Furthermore, it is very likely that HENG Samrin (2-TCW-831) would have been able to provide particularly relevant evidence as to the organisation of the possible resistance against the forces of RAK in charge of purging and fighting the East Zone soldiers<sup>814</sup> and as to whether, as NUON Chea claims, some of the crimes of which he is accused were committed by SAO Phim and other members who were out of the control of the CPK.

267. In addition, as regards the policies set out at the meeting of 20 May 1975, we note that in his interview with KIERNAN, HENG Samrin (2-TCW-831) offers a detailed account of how the meeting unfolded, noting that POL Pot spoke little and only about “big general principles” and about the abolition of religion, while NUON Chea did most of the talking, the “consciousness work” and the propaganda. NUON Chea allegedly spoke about the treatment of the monks, the Vietnamese, the LON Nol officials and the abolishment of the money and markets.<sup>815</sup> According to HENG Samrin (2-TCW-831), both POL Pot and NUON Chea reportedly stated that “it was important to look after Vietnam and those who came from Vietnam”. In his interview with KIERNAN, HENG Samrin (2-TCW-831) reportedly stated that “look after” meant to “kill them” and suggested that this was the basis to purge all Khmer people who went to Vietnam to study after the 1954 Geneva Conference and came back later to Cambodia, as they were accused of being spies.<sup>816</sup> The interview also raises the question as to whether when discussing the treatment of the LON Nol officials, the term “*komchat*”, which means “to remove from the framework”, was used rather than “*komtec*”, which means “to kill”.<sup>817</sup> The Supreme Court Chamber in its Appeal Judgement in Case 002/01, addressed this issue and found that the interview raises a number of “issues relevant to the charges in Case 002/01, some of which would have been clarified through the live testimony of HENG

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term “coup” may be understood to refer to acts of the Centre directed, amongst others, against the cadres of the East Zone.

<sup>813</sup> Retyped from a Handwritten Interview of CHEA Sim, Phnom Penh, 3 Dec 1991, and HENG Samrin, Phnom Penh, 2 Dec 1991, E3/1568, 30 December 1991, ERN (En) 00651889.

<sup>814</sup> See Retyped from a Handwritten Interview of CHEA Sim, Phnom Penh, 3 Dec 1991, and HENG Samrin, Phnom Penh, 2 Dec 1991, E3/1568, 30 December 1991, ERN (En) 00651890-00651903.

<sup>815</sup> Retyped from a Handwritten Interview of CHEA Sim, Phnom Penh, 3 Dec 1991, and HENG Samrin, Phnom Penh, 2 Dec 1991, E3/1568, 30 December 1991, ERN (En) 00651883-00651885.

<sup>816</sup> Retyped from a Handwritten Interview of CHEA Sim, Phnom Penh, 3 Dec 1991, and HENG Samrin, Phnom Penh, 2 Dec 1991, E3/1568, 30 December 1991, ERN (En) 00651885.

<sup>817</sup> Retyped from a Handwritten Interview of CHEA Sim, Phnom Penh, 3 Dec 1991, and HENG Samrin, Phnom Penh, 2 Dec 1991, E3/1568, 30 December 1991, ERN (En) 00651884.

Samrin”.<sup>818</sup> The Supreme Court Chamber also noted that a possible interpretation of the words that according to HENG Samrin (2-TCW-831) were used at the meeting, could be exonerating, but underlined that the interview notes were before the Chamber and that it was “unlikely that HENG Samrin’s testimony would have produced significant additional exonerating information in relation to the meeting on 20 May 1975”.<sup>819</sup> While acknowledging the Supreme Court Chamber’s finding in this regard, we find that, in the current case there is uncertainty concerning the precise meaning of words recorded in an out of court statement as reportedly spoken by an Accused. Therefore, hearing an in-court clarification of these words from HENG Samrin (2-TCW-831) is obviously relevant to ascertaining the truth and assessing NUON Chea’s responsibility, in particular as this goes to the acts and conduct of an Accused. In these circumstances it is always appropriate to hear the oral testimony of the author of the statement and to give the parties an opportunity to examine him, particularly where the potential evidence is directly relevant to matters which are at the heart of the charges and appears to contain both exculpatory and incriminating aspects, such as in this case.

268. Additionally, we wish to stress that the scope of Case 002/1 is different from Case 002/02, as it encompasses the treatment of Vietnamese, Cham, Buddhists and former Khmer Republic officials and includes charges of genocide and crimes against humanity committed against these groups, all matters on which this proposed witness may have testified.<sup>820</sup> Despite having heard numerous witnesses, Civil Parties and experts in relation to the treatment of the targeted groups, we are convinced that HENG Samrin, as the future commander of the 4<sup>th</sup> Division of the East Zone, as one of the few surviving high ranking cadres who personally attended the meeting of 20 May 1975 could have provided particularly relevant testimony on how this meeting unfolded, the roles played by POL Pot and NUON Chea, the policies that were disseminated on that occasion and if and how they were later implemented at the Zone level.<sup>821</sup>

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<sup>818</sup> Case 002/01 Appeal Judgement, F36, 23 November 2016, para. 154.

<sup>819</sup> Case 002/01 Appeal Judgement, F36, 23 November 2016, para. 154.

<sup>820</sup> See above, paras 25-40, 68-89.

<sup>821</sup> Neither minutes, nor any other contemporaneous document relating to the 20 May 1975 meeting are available in the case file. With the exception of HENG Samrin, SIN Song, MAT Ly and CHEA Sim, all individuals heard by Ben KIERNAN on this matter, are deceased (see Book by Ben KIERNAN: The Pol Pot Regime: Race, Power, and Genocide in Cambodia under the Khmer Rouge, 1975-79, E3/1593, 1996, ERN (En) 001150024-01150026, pp. 55-59). Three witnesses PRAK Yut (2-TCW-938), SAO Sarun (2-TCW-1012), PHAN Van *alias* KHAM Phan (2-TCW-1011) and one Civil Party KLAN Fit (TCCP-185) provided in court evidence which on a *prima facie* basis may relate to the meeting of 20 May 1975. While all concur that there was

269. We consider in particular that it would have been important to hear from HENG Samrin whether or not he could clarify his recollection of the instructions given by POL Pot and NUON Chea concerning the treatment of Vietnamese and the implementation of these instructions. In his interview with KIERNAN, HENG Samrin stated that the killings of Vietnamese started in 1976, and added that: “it was not POL Pot and NUON Chea who ordered this, it was the implementing level who said this. They even ordered husbands to kill their own wives who were Vietnamese. This happened, but it happened little [...] If the wife stayed she would be killed and if they killed the wife and children it would be hard for the husband to live with. And they even went so far as to kill those of us who were attached to their wives and children.”<sup>822</sup> The testimony of HENG Samrin in this regard, could not only have been conducive to ascertaining the truth, but could also have been potentially exculpatory when it comes to the assessment of NUON Chea’s responsibility.

270. Having assessed the criteria set out in the Legal Framework above we find that HENG Sarmin’s evidence was *prima face* relevant, non-repetitious and should have been heard. In reaching that conclusion we considered that he appears to be the most senior cadre of the East Zone to have survived the purges, that he would have been able to testify with respect to multiple trial topics and was better positioned to provide testimony on key issues when compared with other witnesses who testified in this case.

271. Similarly, we note that in his interview with HEDER, OUK Bunchhoeun (2-TCW-951) offers a detailed account of the policies set out by the Party and POL Pot in the lead up to the

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a very large attendance, they are inconsistent notably when it comes to the speakers, the location of the meeting and the content of the speeches. PRAK Yut (2-TCW-938) remembered that TA Mok, SO Phim and POL Pot presided the meeting. She was not sure about NUON Chea and KHIEU Samphan because “at that time she didn’t know them well”. She cannot remember the kind of topics discussed in the meeting except that the main topics were first about “the creation of cooperatives” and second about “the re-establishment of Pagodas”. SAO Sarun (2-TCW-1012) stated that he saw Nuon Chea and Pol Pot making presentations. Both of them “talked about political matters, cooperative organization, currency prohibition, market and monastery closings and stated that they would be reopened in the future.” However, he did not hear POL Pot or NUON Chea talking about the Vietnamese matter. KLAN Fit (TCCP-185) remembers having attended studies sessions lead by NUON Chea alone with a large attendance. He remembers that people attending the study sessions “were educated on how to understand how to manage our country [...] to maintain this independence; [and ...] to make sure we can ensure peace and order”. He further stated that his “Khmer language was very embryonic” at that time. He could not read and write Khmer very well [...] The party discipline was discussed, but he could not recall the details. PHAN Van (2-TCW-1011) merely recalled that he accompanied his father to Phnom-Penh, but he did not attend the meeting himself and was therefore unable to indicate who spoke and what was discussed: T. 19 January 2016 (PRAK Yut), pp. 85-89; T. 21 January 2016 (PRAK Yut), pp. 43, 66-67; T. 6 June 2012 (SAO Sarun), pp. 32-35; 44-45; 60-62; T. 30 March 2016 (SAO Sarun), pp. 32-35; T. 11 December 2012 (PHAN Van), pp. 93-96; T. 12 December 2012 (PHAN Van), pp. 35-37; 14 December 2012 (PHAN Van), pp. 26-27; T. 10 January 2012 (KLAN Fit), pp. 101-103.

<sup>822</sup> Retyped from a Handwritten Interview of CHEA Sim, Phnom Penh, 3 Dec 1991, and HENG Samrin, Phnom Penh, 2 Dec 1991, E3/1568, 30 December 1991, ERN (En) 00651884.

liberation of Phnom Penh of April 1975 in relation: to religion, including the treatment of the Buddhists and the Cham; to the treatment of the Vietnamese and the LON Nol officials; on the cooperatives; the division of population in classes; and the production of rice.<sup>823</sup> He also described the meeting convened by POL Pot in May 1975 at the Kampuchea-Soviet Technology School where the new policy on the implementation of the socialist revolution was announced.<sup>824</sup> According to OUK Bunchhoeun, POL Pot called “district level cadres and sector level cadres, military cadres ranging from battalion level and above throughout the country” to participate to this meeting.<sup>825</sup> In addition, OUK Bunchhoeun (2-TCW-951) could have provided a particularly relevant insight, from the perspective of deputy secretary of Sector 21,<sup>826</sup> on the internal purges in the East Zone, describing the sequence of events that according to him led to POL Pot’s loss of trust in the cadres in the East Zone, the alleged coup organised by Chakrey against POL Pot, the subsequent arrests, and the clash between the Central forces and the East Zone forces in 1978. In his interview with HEDER, OUK Bunchhoeun (2-TCW-951) also described a meeting which occurred in August 1978 following these clashes, to which HENG Samrin (2-TCW-831) and POL Saroeun (2-TCW-962) participated, amongst others, and at which they tried to establish if POL Pot had betrayed them, or if the clashes were the result of a coup d’état orchestrated by SON Sen and Ke Pauk against POL Pot.<sup>827</sup> Further, as head of the Vietnam-Cambodian Liaison Committee for Sector 21 from 1977, OUK Bunchhoeun (2-TCW-951) could provide evidence on the relationship and conflict with Vietnam from 1977.<sup>828</sup> As regards the treatment of the Cham, we also note that the Cham rebellions of 1975 described in the Closing Order occurred in the Kroch Chhmar district, in Sector 21, and that the Trea Village security centre, where Chams were allegedly killed, is also located in the Kroch Chhmar district, Sector 21.<sup>829</sup> As deputy secretary of Sector 21 from July 1975 until May 1978,<sup>830</sup> OUK Bunchhoeun could have

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<sup>823</sup> Transcript of Recorded Interview with OUK Bunchhoeun on 04-08-1990, E3/387, 4 August 1990, ERN (En) 00350203-00350205.

<sup>824</sup> Transcript of Recorded Interview with OUK Bunchhoeun on 04-08-1990, E3/387, 4 August 1990, ERN (En) 00350206-00350207.

<sup>825</sup> Transcript of Recorded Interview with OUK Bunchhoeun on 04-08-1990, E3/387, 4 August 1990, ERN (En) 00350206.

<sup>826</sup> Transcript of Recorded Interview with OUK Bunchhoeun on 04-08-1990, E3/387, 4 August 1990, ERN (En) 00350214.

<sup>827</sup> Transcript of Recorded Interview with OUK Bunchhoeun on 04-08-1990, E3/387, 4 August 1990, ERN (En) 00350228.

<sup>828</sup> Transcript of Recorded Interview with OUK Bunchhoeun on 04-08-1990, E3/387, 4 August 1990, ERN (En) 00350214.; Handwritten English Translation of OUK Bunchhoeun’s Interview with Ben KIERNAN (Typed Version), E3/432, 30 September 1980, ERN 00542181.

<sup>829</sup> Closing Order, paras 753-761, 784-789.

<sup>830</sup> Transcript of Recorded Interview with OUK Bunchhoeun on 04-08-1990, E3/387, 4 August 1990, ERN (En) 00350203.

provided evidence on the implementation of the policy against the Cham in his Sector. For example, in his interview with HEDER, he describes the suppression of two Cham/Muslim movements since the early stages of Democratic Kampuchea.<sup>831</sup> Having assessed the criteria set out in the Legal Framework above, we find that OUK Bunchhoeun's evidence was *prima facie* relevant, non-repetitious and should have been heard. In reaching that conclusion we considered that he appears to be the most senior cadre of Sector 21 in the East Zone to have survived the purges, that he would have been able to testify with respect to multiple trial topics and was better positioned to provide testimony on key issues when compared with other witnesses who testified in this case.<sup>832</sup> Further, as noted above, we find that because of the potentially inculpatory nature of his evidence, it was necessary to afford the NUON Chea Defence with an opportunity to examine him.

272. Finally, as regards POL Saroeun (2-TCW-962), we note that the information regarding this proposed witness is relatively scarce compared to the other two witnesses. However, we note that according to HENG Samrin (2-TCW-831), POL Saroeun (2-TCW-962) was present at the meeting that occurred in May 1978 where a number of East Zone high ranking individuals met to discuss and organise the resistance against POL Pot and to seek the support of the Vietnamese to do so, whereas OUK Bunchhoeun (2-TCW-951) places him at a similar meeting in August 1978.<sup>833</sup> According to Ben KIERNAN who interviewed him, POL Saroeun was 2<sup>nd</sup> Deputy Chief of the East Zone military staff and his involvement at the military zone level is corroborated by HENG Samrin and OUK Bunchhoeun.<sup>834</sup> He also played an active role in fighting against the forces under POL Pot's control and attended important meetings where allegedly decisions to rebel against the CPK Leaders in Phnom Penh were made. Considering his position at the time, we find that in the absence of the testimony of HENG Samrin, it would have been relevant to hear POL Saroeun (2-TCW-962)'s evidence on these matters and, because of his position at the time, he would not have been repetitive of other evidence before the Chamber.

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<sup>831</sup> Transcript of Recorded Interview with OUK Bunchhoeun on 04-08-1990, E3/387, 4 August 1990, ERN (En) 00350206.

<sup>832</sup> See above, paras 68-89, 93-144.

<sup>833</sup> Retyped from a Handwritten Interview of CHEA Sim, Phnom Penh, 3 Dec 1991, and HENG Samrin, Phnom Penh, 2 Dec 1991, E3/1568, 30 December 1991, ERN (En) 00651899-00651901; Transcript of Recorded Interview with OUK Bunchhoeun on 04-08-1990, E3/387, 4 August 1990, ERN (En) 00350227-00350228.

<sup>834</sup> See above, para. 271.

273. We therefore disagree with the majority's conclusion not to summons these three witnesses, as we consider that they would be in the position of providing evidence *prima facie* relevant to key issues within the scope of Case 002/2 and non-repetitious.

274. The Chamber requested WESU to approach the three witnesses proposed by the NUON Chea Defence to assess their availability to testify before the Chamber, and sent individual letters to the offices of HENG Samrin (2-TCW-831), OUK Bunchhoeun (2-TCW-951) and POL Saroeun requesting a meeting with a WESU staff to assess their availability to testify.<sup>835</sup> Regretfully, the office of HENG Samrin (2-TCW-831) refused to receive such letter, the office of OUK Bunchhoeun (2-TCW-951) did not respond, whereas the office of POL Saroeun indicated that he was too busy to meet with the WESU staff.<sup>836</sup> As stated in the minority opinion in the witness decision in Case 002/01,<sup>837</sup> we consider that it is important that the Trial Chamber be perceived as treating equally all those whose testimony is deemed to be conducive to ascertaining the truth or furthering justice. Despite their apparent lack of cooperation with the Court, we believe they should and could have been summoned to testify in Case 002/02 in light of the *prima facie* relevant and non-repetitive evidence they could have provided.

275. Finally, we note that the Chamber has heard a number of testimonies relevant to internal purges and internal rebellions during the topic specifically dedicated to the Internal purges,<sup>838</sup> as well as during other trial topics in Case 002/02.<sup>839</sup> We also acknowledge that, as noted by our colleagues, extensive contemporaneous documents relevant to these matters have been admitted into evidence in Case 002/02.<sup>840</sup> Having these factors in mind, we will consider the

<sup>835</sup> Letter from the Trial Chamber to WESU, E29/504, 16 May 2016; Letter from Trial Chamber to WESU, E29/503, 16 May 2016; Letter to Trial Chamber to WESU, E29/502, 16 May 2016.

<sup>836</sup> WESU Report (confidential), E29/504/2, 2 September 2016; Letter from WESU to His Excellency Lieutenant General MAM Sam, E29/504/1, 6 June 2016; Letter from Army Headquarters (confidential), E29/504/2.1, 17 June 2016; Letter from WESU to His Excellency UM Sarith, E29/503/1, 22 June 2016; Letter from WESU to His Excellency LENG Peng Long, E29/502/1, 22 June 2016.

<sup>837</sup> See Final Decision on Witnesses, Experts and Civil Parties to Be Heard in Case 002/01, E312, 7 August 2014, para. 109.

<sup>838</sup> 18 individuals were heard during the Internal Purges trial topic alone, 9 of whom proposed by the NUON Chea Defence on the internal factions: CHIN Saroeun (2-TCW-1028), MY Savoeun (MEY Savoeun) (2-TCCP-1040), SOY Sao (SUOY Sav) (2-TCW-1029), SEM Om (SEM Am) (2-TCW-1031), CHHORN Vorn (2-TCW-1036), CHEAL Choeun (CHIEL Chhoeun) (2-TCW-960), HUON Choeurm (HUON Choeum) (2-TCW-1037), LONG Vonn (LONG Vun) (2-TCW-971), NUON Trech (TES Ol; TES Trech) (2-TCW-1060).

<sup>839</sup> See for example, KEO Kin (KEV Kin) (2-TCW-910) (Kampong Chhang Airport), VAN Mat alias SALES Ahmat (2-TCW-893) (Treatment of the Cham) and PRAK Khorn (PRAK Khan) (2-TCW-931) (S-21 Security Centre).

<sup>840</sup> See above, paras 217-218, 229-231.

impact of the absence of in court testimony of these three witnesses when assessing all available evidence for the verdict.

**FOR THE FOREGOING REASONS, THE TRIAL CHAMBER:**

**On the Tram Kak Cooperatives and Kraing Ta Chan Security Centre trial topic**

**REJECTS** the request to summons the following proposed witnesses and Civil Parties: SOK Sim (2-TCW-922), TUON Taem (2-TCW-875), TOEM Hy (2-TCW-833), TEP Ngoen (2-TCW-930), SAO Lan (2-TCCP-290), ORN/ORM Em (2-TCCP-297), SENG Sivutha's (2-TCCP-218), SAUT Saroeun's (2-TCCP-217), PRUM Tra (2-TCCP-301), CHHIM Chheak/Chiek (2-TCCP-239), BUN Khen (2-TCCP-257), MOM Vanny (2-TCCP-265), CHHANG Youk (2-TCW-870) and HONG Sok (2-TCCP-282).

**DECLARES MOOT** the requests as regards the following deceased individuals: Professor Ian HARRIS (2-TCE-86), SOK Soth (2-TCW-862), IEP Duch (2-TCW-815) and NEANG Dam (2-TCW-802).

**On the Worksites trial topic**

**REJECTS** the request to summons the following proposed witnesses and Civil Parties: SAOM Phan (2-TCW-876), SUM Sokhân (2-TCW-911), CHEA Marie (2-TCCP-294), CHHOEM Rin (2-TCCP-228), ROS Chay Laim (2-TCCP-278), TULOH Slai Man (2-TCCP-227), TY Pho (2-TCCP-229), ORM Mâk (2-TCCP-284), THUN Hâm (2-TCCP-279), and IM Chaem (2-TCW-924);

**DECLARES MOOT** the requests as regards the following deceased individuals: KE Un (2-TCW-896), IENG Chham (2-TCW-912), CHHIT In (2-TCW-861) and CHEA Sim (2-TCW-878).

**On the Treatment of Targeted Groups trial topic**

**REJECTS** the request to summons the following proposed witnesses, Civil Parties and experts: CHHUON Ri (2-TCW-843), LENG Samet, alias Tech (2-TCW-957), BOU Van (2-TCW-939), CHUOP Kep (2-TCW-905), PEOU Sinuon (POV Sinuon) (2-TCCP-295), UK Soeum alias SAN Soeun (2-TCW-806), KHUN Samit (2-TCW-857), IENG On (2-TCW-935), PRUM Yan (2-TCW-837), NGUYEN Thi Tyet (2-TCCP-234), NGVIENG Yang Anh

(2-TCCP-240), UN Sovannary (2-TCCP-231), MAN Heang (2-TCW-895), NHEM Kol alias Say (2-TCW-884), PHLONG Hân (2-TCCP-285), SUM Chan Thol (2-TCCP-272), RES Tort (2-TCW-818) (as reserve witness), KAE Noh (2-TCW-839), CHEA Maly (2-TCW-947), KHUTH Voeurn (2-TCCP-260), LI Pat (2-TCCP-262), TOLORS Karsim (2-TCCP-226) and BLENGSLI Bjorn (2-TCE-91).

**DECLARES MOOT** the requests as regards the following deceased individuals: KHUN Mon (2-TCW-958), LANG Hel (2-TCW-927), IER Pov (2-TCW-874), HOK Hoeun (2-TCW-955), and CHEA Sim (2-TCW-878).

### **On the Security Centres and Internal Purges trial topic**

**REJECTS** the request to summons the following proposed witnesses, Civil Parties and experts: Witness MAO Phat (2-TCW-825), Witness UM Keo (2-TCW-892), Civil Party ROCHAM Blek (2-TCCP-302), Civil Party NAI Seak (2-TCCP-266), Civil Party SEV Liem (2-TCCP-221), Witness SAOM Met (2-TCW-902), Witness NHEP Hau (2-TCW-811), Witness CHEAM Sour (2-TCW-826), Witness CHUUN Phal (2-TCW-872), Witness KHIEU Ches (2-TCW-907), Witness KOK Sros (2-TCW-941), Witness PESS Matt aka PES Math alias LY Try (2-TCW-824), Witness YIN Nean (2-TCW-963), Witness CHEY Sopheara (2-TCW-814), Witness CHHEM Neang (2-TCW-899), Civil Party CHIN Met (2-TCCP-242), Civil Party PHOAK Khan (2-TCCP-291), Civil Party NAM Mon (2-TCCP-267), Civil Party CHUM Neou (2-TCCP-246), Witness Walter HEYNOWSKI (2-TCW-946), Witness KAO Son (2-TCW-940), Civil Parties LOEM/LIM Korn (2-TCCP-277), CHAN Savuth (2-TCW-959), HEL Oun (2-TCCP-249), PIN Phorn (2-TCCP-299), Witness THIOUNN Mumm (2-TCW-890), MEAS Muth (2-TCW-903), expert David Porter CHANDLER (2-TCE-84) and expert Laura J. SUMMERS (2-TCE-100).

**DECLARES MOOT** the requests as regards the following deceased individuals: Witness KHOEM Peou (2-TCW-835), Witness SAN Lan (2-TCW-853), Civil Party SOK Ei (2-TCCP-222), Witness AUM Mol (2-TCW-863), Witness CHEA Sim (2-TCW-878), Witness MAM Nai (2-TCW-864), Witness LY Hor (2-TCW-956), Witness CHEA Choem (2-TCW-812), Witness CHHAOM Se (2-TCW-840), Witness TOAT Thoeun (2-TCW-829) and Witness PEN Sovan (2-TCW-952);

### **On the Regulation of Marriage trial topic**

**REJECTS** the request to summons the following proposed witnesses and Civil Parties: YIM Saroem (2-TCCP-929), HORNG Orn (2-TCCP-254), OEM Pum (2-TCCP-289), CHECH Sopha (2-TCCP-281), SOEU Ry (2-TCCP-287), HENG Kuylang (2-TCCP-276), DORK Sokin (2-TCCP-248), MAO Kroeum (2-TCCP-264), HENG Mach (2-TCCP-280), SENG Thâng (2-TCCP-292), TEU Ry (2-TCCP-225) and TRI Touch (2-TCW-1024).

**On the Nature of the Armed Conflict trial topic**

**REJECTS** the request to summons KHUN Khim (2-TCW-810) and NAYAN Chanda (2-TCE-83).

**DECLARES MOOT** the request to call deceased Witness CHEA Choeum (aka CHEA Chhoem) (2-TCW-812).

**On the Role of the Accused trial topic**

**REJECTS** the request to summons the following proposed witnesses and Civil Parties: YEN Kuch (2-TCW-871), LONH Dos (2-TCW-942), THET Sambath (2-TCW-885), SUON Ri (2-TCW-856), HEM Savann (2-TCCP-250), HOENG Neng (2-TCCP-253), NEOU Sarem (2-TCCP-268); and

**NO LONGER SEEKS** to hear SAR Sarin (2-TCCP-237) from the list of witnesses, Civil Parties and experts for the trial topic on the Role of the Accused.<sup>841</sup>

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<sup>841</sup> Decision Withdrawing 2-TCCP-237 from the List of Civil Parties heard in Court (confidential), E29/501/1, 14 December 2016.

**On the Experts**

**REJECTS** the request to summons the following proposed experts: Ben KIERNAN (2-TCE-89), Ewa Maria TABEAU (2-TCE-93), Craig ETCHESON (2-TCE-85), Philip SHORT (2-TCE-92) and Roel A. BURGLER (2-TCE-96).

**REJECTS** the request to summons Witnesses HENG Samrin (2-TCW-831), POL Saroeun (2-TCW-962), OUK Bunchhoeun (2-TCW-951) on the basis that no consensus could be reached.

**Phnom Penh, 18 July 2017**

**President of the Trial Chamber**



**Nil Nonn**