

**BEFORE THE SUPREME COURT CHAMBER  
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

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**NUON CHEA'S SIXTH REQUEST TO CONSIDER AND OBTAIN  
ADDITIONAL EVIDENCE IN CONNECTION WITH THE APPEAL AGAINST  
THE TRIAL JUDGEMENT IN CASE 002/01**

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## I. INTRODUCTION

Pursuant to ECCC Internal Rules 104(1) and 108(7), the Co-Lawyers for Mr. Nuon Chea (the “Defence”) submit this request (the “Request”) to consider and obtain additional evidence in connection with its appeal against the Trial Judgement in Case 002/01 (the “Appeal”):<sup>1</sup>

1. On 25 June 2015, the Defence advised in its fifth request for additional evidence (“Fifth Additional Evidence Request”) that it intended to file the instant Request.<sup>2</sup> On 12 August 2015, the Defence advised the Supreme Court Chamber that this Request would in fact encompass three additional evidence requests’ (i.e. 90 pages) worth of evidence.<sup>3</sup> The Defence requested the Chamber to permit it to file this evidence in a consolidated request of 60 pages, extended from the usual 30 pages. It argued that this would enable the Chamber to receive a single, concentrated presentation of the complex evidence and background; reduce repetition; and benefit judicial efficiency.<sup>4</sup> On 17 August 2015, the Chamber granted the Defence’s request.<sup>5</sup> In addition, on 10 September 2015, following a request from the Defence, the Chamber directed the Defence to file this Request in English only, with the Khmer translation to “follow at the earliest convenience”.<sup>6</sup>

## II. KEY TRIAL CHAMBER FINDINGS

### A. Structure of the Communist Party of Kampuchea and the Role of the Zones

2. In its Case 002/01 Judgement delivered on 7 August 2014 (the “Judgement”), the Trial Chamber found that the structure of the Communist Party of Kampuchea (“CPK”) was “strictly hierarchical”, “pyramidal” and unified, and that cadres throughout the Party were firmly subordinated to the “Party leadership”,<sup>7</sup> which it also referred to under the umbrella term of “Party Centre”.<sup>8</sup> Party decisions, in the Chamber’s view, were made “centrally, by the upper echelons of the party” and especially by “a small Standing Committee to which all other tiers were functionally subordinate”.<sup>9</sup> According to the Trial Chamber, “zone

<sup>1</sup> F16, ‘Nuon Chea’s Appeal Against the Case 002/01 Judgement’, 29 Dec 2014 (“Appeal”).

<sup>2</sup> F2/7, ‘Nuon Chea’s Fifth Request to Consider and Obtain Additional Evidence in Connection with the Appeal Against the Trial Judgement in Case 002/01’, 25 Jun 2015 (“Fifth Additional Evidence Request”), paras. 2 and 5.

<sup>3</sup> F27, ‘Nuon Chea’s Urgent Request for an Extension of the Page Limit for its Forthcoming Sixth Request to Consider and Obtain Additional Evidence in Connection with the Appeal Against the Trial Judgement in Case 002/01’, 12 Aug 2015 (“Page Extension Request”), para. 4.

<sup>4</sup> F27, Page Extension Request, paras. 4-8.

<sup>5</sup> F27/1, ‘Decision on NUON Chea’s Request for an Extension of the Page Limit for His Prospective Sixth Request for Additional Evidence’, 17 Aug 2015.

<sup>6</sup> Email from Supreme Court Chamber Senior Legal Officer to Nuon Chea Defence Team, 10 September 2015.

<sup>7</sup> E313, ‘Case 002/01 Judgement’, 7 Aug 2014 (“Judgement”), paras. 223, 893-896 and 913.

<sup>8</sup> E313, Judgement, para. 206.

<sup>9</sup> E313, Judgement, para. 223.

leaders” such as Sao Phim and Ruos Nhim faithfully implemented the instructions of the “Party leadership” and “reported to” and received instructions from Pol Pot and Nuon Chea.<sup>10</sup> The Chamber dismissed the possibility that these “zone leaders”, who were also Standing Committee members themselves, acted independently to commit the crimes for which Nuon Chea was charged.

## **B. Common Purpose, Joint Criminal Enterprise, Superior Responsibility and Ordering**

### **3. The Trial Chamber found that:**

[B]y June 1974 until December 1977, there was a plurality of persons who shared a common purpose to “implement rapid socialist revolution through a ‘great leap forward’ and defend the Party against internal and external enemies, by whatever means necessary”. Members of the Standing and Central Committees, government ministers, and Zone and Autonomous Sector secretaries, including NUON Chea, KHIEU Samphan, POL Pot, IENG Sary, SON Sen, VORN Vet, Ta Mok, SAO Phim, ROS Nhim, KOY Thuon, KE Pauk, CHANN Sam, CHOU Chet, BOU Phat, YONG Yem, BORN Nan, IENG Thirith and MEY Prang, were part of this group with the specified common purpose.<sup>11</sup>

### **4. While the Trial Chamber acknowledged that this “common purpose” was not itself criminal,<sup>12</sup> it found that “Khmer Rouge”<sup>13</sup> policies underlying the movement of the population and the targeting of former Khmer Republic soldiers and officials at Tuol Po Chrey were criminal. This was because the policies “resulted in and/or involved the commission of a crime as a means of bringing the common plan to fruition”<sup>14</sup> – namely forced transfers, murders, attacks against human dignity and political persecution in respect of the population movements,<sup>15</sup> and the murder and extermination of former Khmer Republic officials at Tuol Po Chrey.<sup>16</sup> On this basis, the Chamber satisfied itself that a joint criminal enterprise (“JCE”) had existed.<sup>17</sup> In turn, the Trial Chamber held Nuon Chea responsible through that JCE for the crimes against humanity of murder, political persecution, other inhumane acts (comprising forced transfer and attacks against human dignity), and extermination.<sup>18</sup>**

<sup>10</sup> See, e.g., **E313**, Judgement, paras. 276, 773, 798, 851, 893 and 956.

<sup>11</sup> **E313**, Judgement, para. 777 (footnotes omitted, emphases added).

<sup>12</sup> **E313**, Judgement, paras. 804 and 835.

<sup>13</sup> The Defence contests the use of this term since it was never used by the CPK itself and is overly simplistic and imprecise: see, e.g., **E313/1/1**, ‘Notice of Appeal Against the Judgment in Case 002/01’, 29 Sep 2014 (“Notice”), p. 8 (Ground 38); **F16**, Appeal, Part VIII(A); T. 2 Jul 2015 (Sao Van, **F1/1.1**), p. 76, lns. 2-10.

<sup>14</sup> **E313**, Judgement, paras. 804 and 835.

<sup>15</sup> **E313**, Judgement, para. 804.

<sup>16</sup> **E313**, Judgement, para. 835.

<sup>17</sup> **E313**, Judgement, paras. 804 and 835.

<sup>18</sup> **E313**, Judgement, paras. 877 and 940. The Chamber excluded the crime against humanity of enforced disappearances from the JCE because the Co-Investigating Judges did not specifically allege this in their Closing Order: see, **E313**, Judgement, para. 780.

5. According to the Trial Chamber, Nuon Chea also exercised effective control – including *de jure* and *de facto* authority – over Zone secretaries, Party members, and members of the military, including commanders.<sup>19</sup> The Chamber held that Nuon Chea knew or had reason to know that crimes would be committed<sup>20</sup> and failed to take reasonable measures to prevent or punish their commission.<sup>21</sup> These findings led the Chamber to hold Nuon Chea responsible under the doctrine of superior responsibility for the crimes against humanity of murder, political persecution, other inhumane acts (comprising forced transfer, attacks against human dignity, and also enforced disappearances), and extermination.<sup>22</sup> However, the Chamber further held that since it had already found Nuon Chea “directly responsible for these crimes on the basis of his participation in the JCE” (and presumably also other direct modes of responsibility),<sup>23</sup> it would accordingly decline to enter a conviction against him on the basis of superior responsibility.<sup>24</sup>
6. The Trial Chamber also held that Nuon Chea, together with Pol Pot, exercised the ultimate decision-making power of the Party, and used *de jure* and *de facto* authority to instruct lower-level cadres to commit the crimes against humanity of murder, extermination, political persecution and the other inhumane acts of forced transfer and attacks against human dignity. It accordingly convicted Nuon Chea of these crimes on the basis of the direct mode of responsibility of ordering.<sup>25</sup>

### C. Policy to Re-educate and Kill Enemies

7. Although the Trial Chamber acknowledged that “[e]vidence concerning the nature and implementation” of a so-called CPK policy of re-educating and killing enemies was to be examined in Case 002/02,<sup>26</sup> it was already satisfied on the basis of evidence adduced in Case 002/01 that such a policy had existed.<sup>27</sup> The Chamber held that “[t]he way in which “enemy” was defined was tactical, remaining vague enough to allow various interpretations

<sup>19</sup> E313, Judgement, paras. 893, 913-914 and 933-934.

<sup>20</sup> E313, Judgement, paras. 897, 915 and 935-936.

<sup>21</sup> E313, Judgement, paras. 898, 916 and 939.

<sup>22</sup> E313, Judgement, paras. 898, 917, 939 and 941.

<sup>23</sup> The Trial Chamber explained that it declined to enter a conviction for superior responsibility for any crimes against humanity due to its decision to convict Nuon Chea through the JCE. However, as his JCE liability does not encompass enforced disappearances (*see, supra*, note 18), the Defence presumes that the Trial Chamber in fact intended not to convict Nuon Chea of superior responsibility for enforced disappearances on the basis that it had already convicted him of this crime through other direct modes of responsibility: *see*, E313, Judgement, paras. 899 (planning), 906 (ordering), 909 (instigating), and 912 (aiding and abetting).

<sup>24</sup> E313, Judgement, para. 941.

<sup>25</sup> E313, Judgement, para. 884.

<sup>26</sup> E313, Judgement, para. 118.

<sup>27</sup> E313, Judgement, paras. 117-118.

and to create an uncertain atmosphere”.<sup>28</sup> The Chamber identified “CIA, KGB and Vietnamese (“Yvon”)” spies, “former soldiers and officers of the Lon Nol regime”, and “those within the party who stood in the way of the “great leap forward”” as being among the CPK’s enemies.<sup>29</sup>

8. However, the Chamber signalled clear scepticism that these enemies posed a genuine threat to the CPK. Not only did the Chamber suggest that the enemies policy was intended as fear-mongering, it also qualified most of its references to enemies as *purported* or *perceived* enemies,<sup>30</sup> or used quotation marks to signal its ironic intentions when referring to “enemies”, “bad elements”, “agents”, “traitors”, or “aggression”,<sup>31</sup> or its scepticism with regard to certain evidence presented.<sup>32</sup> The Chamber was equally dismissive of the possibility that the CPK faced a genuine threat from Vietnam. It made an apparently ironic reference to “Vietnamese “aggression””,<sup>33</sup> and described Vietnam as a state which the CPK “considered [...] a rival and threat insofar as [it] *purportedly* sought to extend [its] own communist interests in Cambodia”.<sup>34</sup>

### III. THE DEFENCE’S POSITION

#### A. Arguments Challenging Key Trial Chamber Findings

9. The Defence challenged these findings under numerous appeal grounds advanced in its 29 December 2014 Appeal. These grounds reiterated and built on earlier arguments the Defence had made in its closing brief in Case 002/01 (“Closing Brief”)<sup>35</sup> and that the Trial Chamber had resoundingly ignored in its Judgement.
10. A key line of defence presented was that there was ample evidence suggesting that the “Party Centre” in Phnom Penh exercised only limited effective control over cadres throughout the CPK hierarchy.<sup>36</sup> By contrast, there was only slim evidence for the Trial Chamber’s finding to the contrary.<sup>37</sup> Rather than being “strictly hierarchical”, unified and “pyramidal”, the CPK was cleaved with deep factional divisions and plagued by

<sup>28</sup> E313, Judgement, para. 117.

<sup>29</sup> E313, Judgement, para. 118.

<sup>30</sup> E313, Judgement, paras. 117, 118, 195, 199, 256, 278, 526, 795, and fns. 287 and 1579. However, the Defence identified at least one exception to this: *see*, para. 298.

<sup>31</sup> E313, Judgement, paras. 117, 121, 221, 253, 383, 908 (twice), 1062 and 1093.

<sup>32</sup> E313, Judgement, paras. 284, 288, 383 and 998.

<sup>33</sup> E313, Judgement, para. 383.

<sup>34</sup> E313, Judgement, fn. 1579 (emphases added).

<sup>35</sup> E295/6/3, ‘NUON Chea’s Closing Submissions in Case 002/01’, 26 Sep 2013 (“Closing Brief”), paras. 8, 20, 26, 200, 180-8 and 435-7; T. 22 Oct 2013 (Closing Oral Submissions, E1/232.1), pp. 23-26, p. 28, lns. 3-11.

<sup>36</sup> F16, Appeal, paras. 225, 230 and 236-243.

<sup>37</sup> *See*, F16, Appeal, para. 244.

internecine armed conflict. “Zone leaders” such as Sao Phim and Ruos Nhim, rather than being subordinated to Pol Pot and Nuon Chea, were powerful leaders who exercised substantial independent authority with which Pol Pot, Nuon Chea and others could not lightly interfere.

11. Moreover, Sao Phim, Ruos Nhim, and many others (possibly including, *inter alia*, Koy Thuon, Vorn Vet and Chou Chet) had in fact leveraged their authority from the earliest days after the liberation on 17 April 1975 to foment rebellion and/or treason against the CPK and at a later stage the legitimate government of Democratic Kampuchea (“DK”). This opposition was substantially supported by Vietnam which in turn was bolstered by the Soviet Union seeking to dominate Southeast Asia. Vietnam was involved in an alliance between Sao Phim, Ruos Nhim, and many others within both the Standing and Central Committees of the CPK, the government, ministries and lower leadership levels.
12. In short, the Defence argued that according to the evidence, there were strong indications that the CPK, far from being a disciplined, unified and “pyramidal” hierarchy, was engulfed in constant internal turmoil. Different and equally strong factions pursued competing agendas intending to seize overall control of the Party and the country. As stated above, one of those factions also sought to advance the interests of at least Vietnam, if not also the Soviet Union.
13. Based on this evidence, no reasonable trier of fact could have concluded that Pol Pot and Nuon Chea shared a common purpose and apparently colluded in a JCE *with the very leaders who sought to foment rebellion and/or treason against them*, nor that Nuon Chea exercised effective control over those leaders’ civilian and military forces. Thus, the Trial Chamber erred in convicting Nuon Chea through a JCE for the crimes against humanity of murder, political persecution, other inhumane acts (comprising forced transfer and attacks against human dignity), and extermination. This evidence would also prohibit any reasonable trier of fact from entering an alternate conviction against Nuon Chea under superior responsibility for the crimes against humanity of murder, political persecution, other inhumane acts (comprising forced transfer, attacks against human dignity, and also enforced disappearances), and extermination.

**B. Role of the Supreme Court Chamber, Appeal Proceedings, and the Defence**

14. Pursuant to Internal Rules 104(1) and 108(7), the Defence has, between September 2014 and today, submitted a total of six requests for the Chamber to consider and obtain

additional evidence in connection with its Appeal.<sup>38</sup> These requests supplement requests included in the Defence's Appeal for the Chamber to summons various additional witnesses to testify.<sup>39</sup> The Defence regards all of these actions as perfectly appropriate and consistent with its understanding of Internal Rules 104(1) and 108(7), and considers that the evidence it has sought is of clear importance to the Defence's Appeal. Cumulatively, it could have served as a decisive factor in key Trial Chamber findings, including on critical factual and legal matters.

15. In addition, the Defence notes its view that the Supreme Court Chamber's scope of appeal is broader than the test which the Chamber had previously established in its judgement in Case 001.<sup>40</sup> For the reasons set out in paragraphs 2-11 of its Appeal, the Defence argues that as a *sui generis* court, the Supreme Court Chamber:

should fulfil the functions normally served by both appellate and cassation courts in Cambodia. In practical terms, this means both that the Supreme Court Chamber has the authority to review factual findings *de novo* and that its findings are final and not subject to further review.<sup>41</sup>

16. However, the Co-Prosecutors imply that the Defence's approach is merely a bad faith attempt to ensure that the appeal proceedings "deteriorat[e] into a second trial, unduly prolong[] proceedings and promot[e] inefficient litigation".<sup>42</sup> The Defence trusts that the Supreme Court Chamber is unmoved by this argument, given that it has already partially entertained some of the Defence's additional evidence requests,<sup>43</sup> including by summoning three Defence witnesses to testify on appeal.<sup>44</sup> The Defence has also sought to explain that certain evidence it has sought for admission was only recently disclosed to it

<sup>38</sup> The first five requests were as follows: (1) **F2**, 'Request to Obtain and Consider Additional Evidence in Connection with the Appeal Against the Trial Judgment in Case 002/01', 1 Sep 2014 ("First Additional Evidence Request") (relating to evidence in the possession of filmmakers Thet Sambath and Rob Lemkin); (2) **F2/1**, 'Second Request to Consider Additional Evidence in Connection with the Appeal Against the Trial Judgment in Case 002/01', 2 Sep 2014 (relating to the video of an interview of Silvia Cartwright and excerpts of a book by Marcel Lemonde); (3) **F2/4**, 'Third Request to Consider and Obtain Additional Evidence in Connection with the Appeal Against the Trial Judgment in Case 002/01', 25 Nov 2014 ("Third Additional Evidence Request") (relating to evidence by appeal witness Toat Thoeun); (4) **F2/6**, 'Nuon Chea's Fourth Request to Consider Additional Evidence in Connection with the Appeal Against the Trial Judgment in Case 002/01', 15 Jun 2015 ("Fourth Additional Evidence Request") (relating to evidence by Case 002/01 and 002/02 trial witness Pech Chim); and (5) **F2/7**, Fifth Additional Evidence Request (relating to evidence of rebellion and/or treason in the Northwest Zone).

<sup>39</sup> These are summarised at **F16**, Appeal, para. 730.

<sup>40</sup> **E313/1/1**, Notice, para. 2.

<sup>41</sup> **F16**, Appeal, paras. 6-7 (emphasis added) and, generally, paras. 2-11.

<sup>42</sup> **F2/6/2**, 'Co-Prosecutors' Response to Nuon Chea's Fourth Request to Consider and Obtain Additional Evidence in Connection with the Appeal Against the Trial Judgment in Case 002/01', 30 Jun 2015, para. 5; **F2/7/1**, 'Co-Prosecutors' Response to Nuon Chea's Fifth Request to Consider and Obtain Additional Evidence in Connection with the Appeal Against the Trial Judgment in Case 002/01', 13 Jul 2015, para. 3.

<sup>43</sup> **F2/4/2**, 'Decision on Part of NUON Chea's Third Request to Obtain and Consider Additional Evidence in Appeal Proceedings of Case 002/01', 16 Mar 2015, para. 24; **F2/4/3**, 'Interim Decision on Part of NUON Chea's First Request to Consider Additional Evidence in Appeal Proceedings of Case 002/01', 1 Apr 2015.

<sup>44</sup> **F2/5**, 'Decision on Part of Nuon Chea's Requests to Call Witnesses on Appeal', 29 May 2015, para. 26.



by the International Co-Prosecutor from the ongoing Case 003 and 004 investigations.<sup>45</sup> Other relevant evidence has emerged through the Case 002/02 trial,<sup>46</sup> which is surely unsurprising given the perverse nature of the severance of Case 002.<sup>47</sup>

17. Nevertheless, for the avoidance of any doubt, the Defence clarifies for the record that this is not an unhinged lunatic conspiracy theory designed to obfuscate the issues and avoid the question of criminal responsibility. Nuon Chea himself has already repeatedly and publicly accepted moral responsibility for the events that occurred during the Democratic Kampuchea period.<sup>48</sup> He has emphasised that he has participated in these proceedings in the hope that they will enable the Cambodian people to understand why those events occurred.<sup>49</sup> He has frequently stressed that this understanding should be a comprehensive one, encompassing not only the body of the crocodile but also its head and tail<sup>50</sup> – in other words, not only what occurred but also what its “root cause[s] and consequence[s]” were.<sup>51</sup> Finally, he has long been convinced that Vietnam, together with internal factions within the CPK, played a decisive role in this sense.<sup>52</sup>
18. Consistent with Nuon Chea’s instructions and the ECCC’s mandate, the Defence has sought to advance these arguments and seek the admission of certain additional evidence in order to assist in the ascertainment of the truth. However, it is the Defence’s perception that at the ECCC, the presumption of innocence and the burden of proof are effectively reversed. Here, it is patently clear that Nuon Chea’s guilt is presumed, and that in order to displace this presumption, the onus is on the Defence to disprove the Co-Prosecutors’ case, at least on the balance of probabilities and if not beyond reasonable doubt. At the risk of stating the obvious, it is the Co-Prosecutors alone who bear the burden of proof and who are required to establish their case beyond reasonable doubt. In order to convince a judge

<sup>45</sup> F2/4, Third Additional Evidence Request; F2/7, Fifth Additional Evidence Request; and the instant Request.

<sup>46</sup> F2/6, Fourth Additional Evidence Request; and the instant Request.

<sup>47</sup> In this regard, the Defence notes Judge Rowan Downing’s description that “[i]n the Case 002/01 trial Judgement, the [] judges made findings, beyond reasonable doubt, on a number of factual issues which the applicants argue are fundamental to the determination of their alleged responsibility in Case 002/02”: E314/12/1, ‘Reasons for Decision on Applications for Disqualification’, 30 Jan 2015 (Partially Dissenting Opinion of Judge Rowan Downing), para. 3.

<sup>48</sup> T. 30 May 2013 (Civil Party Impact, E1/199.1), p. 84, lns. 1-10; T. 31 Oct 2013 (Closing Oral Submissions, E1/237.1), p. 33, lns. 4-6, 20-25 – p. 34, ln. 4; T. 17 Oct 2014 (002/02 Opening Statements, E1/242.1), p. 69, lns. 5-13.

<sup>49</sup> T. 22 Nov 2011 (Nuon Chea 002/01 Opening Statement, E1/14.1), p. 77, lns. 9-15; T. 17 Oct 2014 (Nuon Chea 002/02 Opening Statement, E1/242.1), p. 73, lns. 9-10.

<sup>50</sup> See, e.g., T. 31 Oct 2013 (Closing Oral Submissions, E1/237.1), p. 21, lns. 6-7 (“They should not bring to trial only the body of the crocodile and allow its head or tail to evade the net of the law. This is so unfair to me.”).

<sup>51</sup> T. 22 Nov 2011 (Nuon Chea 002/01 Opening Statement, E1/14.1), p. 77, lns. 20-21.

<sup>52</sup> At the outset of Case 002/01, Nuon Chea summarised these views in his opening statement: see, T. 22 Nov 2011 (Nuon Chea 002/01 Opening Statement, E1/14.1), p. 78, ln. 5 – p. 81, ln. 6.

to rule otherwise, all that a defence should need to do in a proper court of law is to create that reasonable doubt. No more, and no less.

19. The Defence's arguments should be relatively uncontroversial. Some of the underlying evidence is reflected in thousands of pages of evidence already on the case file. This includes not only popular works referenced by the Trial Chamber in its Judgement, such as those by Philip Short, David Chandler, Ben Kiernan, and Nayan Chanda, but also limited witness evidence – and the latter even though the investigating judges and prosecutors focused on a different narrative and the ECCC prohibited the Defence from conducting its own investigations or being present at witness interviews conducted by investigators and prosecutors.<sup>53</sup> Some of the relevant evidence, and significant additional material, also exists in the public domain.
20. Moreover, additional evidence has recently come to light that has given previous evidence striking new significance by corroborating it, enhancing its credibility, and supplementing it with extensive additional details. Much of that evidence has been gathered in the course of the ongoing investigations in Cases 003 and 004<sup>54</sup> and disclosed to the Defence as part of the Case 002/02 trial. This is sadly unsurprising. It has occurred not simply because the scope of Case 002/02 enables the exploration of a much wider range of issues than Case 002/01, but more importantly because 003 and 004 relate to criminal responsibility at lower levels of the CPK. The Defence has consistently argued that it is impossible to adequately assess Nuon Chea's criminal responsibility without considering the role of such lower levels. However, despite the Defence's arguments in this regard, this perspective was deliberately excluded from Case 002/01<sup>55</sup> due to political interference from the Royal Government of Cambodia, whose highest members were former ranking members of the CPK who would be implicated if such a perspective was to be explored.<sup>56</sup> This interference also left witnesses too scared to talk to the ECCC, as filmmaker Thet Sambath has reported.<sup>57</sup> Recent communications by Thet Sambath and Rob Lemkin describe additional evidence witnesses have provided to them, but not always to the ECCC, in the course of producing their films.<sup>58</sup> In addition, the previous Co-Investigating Judges' single-minded

<sup>53</sup> In this regard, *see*, **F16**, Appeal, paras. 31-32.

<sup>54</sup> *See*, **F2/4**, Third Additional Evidence Request; **F2/6**, Fourth Additional Evidence Request; **F2/7**, Fifth Additional Evidence Request.

<sup>55</sup> In this regard, *see, e.g.*, **F16**, Appeal, paras. 34-36.

<sup>56</sup> *See*, **F16**, Appeal, paras. 19-29.

<sup>57</sup> **F2**, First Additional Evidence Request, ERN 01022847.

<sup>58</sup> *See*, **F2**, First Additional Evidence Request; **F2/4/3/1**, 'Written Record of Witness Interview – Robert T.F. Lemkin', 15 May 2015 ("Lemkin WRI"); **F2/4/3/3.1**, 'Annex – Robert Lemkin's Notes on Ruos Nhim's Political Agenda', 12 Jun 2015 ("Lemkin's Notes").

focus only on the criminal responsibility of senior leaders of CPK led them to reject the Defence's longstanding contention that it was essential for Case 002/01 to consider evidence in the possession of foreign countries. For instance, already in January 2010, the Co-Investigating Judges had rejected the Defence's request to obtain evidence in respect of foreign government spies within Cambodia on the basis that this evidence would not be exculpatory anyway.<sup>59</sup>

21. Despite the already-available evidence, as well as the Defence's arguments as to the relevance of additional evidence that has come to light, there is an air of controversy and conspiracy surrounding the Defence's arguments. The Defence believes this emanates from a combination of three factors. The first is the Co-Prosecutors' persistent attempts to cast aspersions as to the Defence's motives for making these arguments. The second is the fact that while the evidence has long existed, certain obvious conclusions that can be drawn from it have been omitted from what Michael Vickery calls the "standard total view" of what occurred during the ECCC's temporal jurisdiction of 17 April 1975 to 6 January 1979.<sup>60</sup> The third factor, related to the second, is that given the obvious suffering and the passage of time, it has become all too easy to accept that the definitive "truth" has already been established and that the ECCC's role is simply to frame that "truth" in legal terms and then award reparations to the victims. That "truth" is a reductionist Manichaeic narrative wherein Pol Pot, Nuon Chea and those loyal to them were paranoid monsters irrationally bent on wreaking havoc on Cambodia, Cambodians, and their magnanimous and patient Vietnamese neighbours, all the while guided by an ideology offensive to the West.
22. This Manichaeic interpretation of events has the allure of simplicity, especially by portraying the events that occurred as the product of aberrant human nature and flawed ideology. Unfortunately, it is untrue. The Defence has tried to present the true account of what happened at various points throughout Case 002/01, and as mentioned above, it can also be discerned from the case file and the public domain. However, for the convenience of the Chamber, a very brief overview of it follows.

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<sup>59</sup> See, **D315**, 'Order on NUON Chea's Requests for Investigative Action Relating to Foreign States (D101, D102, D105, D126 & D128)', 13 Jan 2010, paras. 15-18 and 25.

<sup>60</sup> See, **E3/1757**, Michael Vickery, 'Cambodia: 1975-1982', 1984 ("*Cambodia: 1975-1982*") at ERNs 00396954-00396983 (pp. 39-68).

#### IV. THE HEAD AND TAIL OF THE CROCODILE

23. As described below, the material tendered for admission into evidence in the instant Request (outlined at paragraphs 71 to 148, *infra*), together with other material already in evidence and requested by the Defence in its earlier additional evidence requests, sheds great light on the head and tail of the crocodile which Nuon Chea has, for so many years, implored this Tribunal to examine.

##### A. Vietnam's Plans for Cambodia

24. In February 1978, the Vietnamese Communist Party Central Committee convened their Fourth Plenum. There, they agreed on a plan to overthrow Cambodia's legitimate and widely-recognised DK government<sup>61</sup> and secure Vietnam's total control over the country.<sup>62</sup> "Plan A" was to achieve this by sponsoring an internal coup d'état<sup>63</sup> led by CPK Standing Committee member, First Deputy Chairman of the DK State Presidium<sup>64</sup> and East Zone secretary Sao Phim,<sup>65</sup> who Vietnamese Communist Party General Secretary Le Duan informed the Soviet ambassador in Hanoi in September 1978 "is our man" in Cambodia.<sup>66</sup> If "Plan A" failed, Vietnam would then initiate "Plan B": it would directly invade Cambodia<sup>67</sup> in the style of the Soviet Union's 1968 invasion of Czechoslovakia.<sup>68</sup>

25. As will be discussed in detail below, we know that these plans are true because they actually happened. Sao Phim did attempt a coup d'état in 1978. However, his attempt failed because the CPK learned of it and were able to take effective countermeasures, leading to Sao Phim's suicide in June.<sup>69</sup> At this point, Vietnam shifted to "Plan B". From

<sup>61</sup> The DK had formal relations with a wide range of European countries including the Netherlands, Denmark, Italy, the United Kingdom, Belgium, Sweden, Greece, Finland, Austria, Switzerland and Norway (Dutch Government Response to Questions of a Member of Parliament, in 'Tweede Kamer der Staten – Generaal', no. 587, 1976-1977, pp. 1171-1172) and approximately 100 states in total (*Zur Entwicklung im Demokratischen Kampuchea* [Regarding developments in Democratic Kampuchea], Abteilung FO (Fern-Ost) [Division Far-East], Berlin, 30 Mar 1977, in: MfAA – C 6682, cited in Christian Oesterheld, 'East German Socialism and the Khmer Rouge Revolution: Insights from the GDR's Diplomatic Archives', Vienna 10<sup>th</sup> International Academic Conference, 3 Jun 2014, pp. 559-574 ("East German Socialism and the Khmer Rouge Revolution"), at p. 564, available at:

<http://proceedings.iises.net/index.php?action=proceedingsIndexDownload&id=1&cid=2&iid=71&rid=843>). See, also, F2/7, Fifth Additional Evidence Request, fn. 13.

<sup>62</sup> See, *infra*, note 58.

<sup>63</sup> E3/7340, William J. Duiker, 'China and Vietnam: The Roots of Conflict', 1986 ("China and Vietnam"), ERN 01002007 (p. 77); see, also, Nayan Chanda, 'The Timetable for a Takeover', *Far Eastern Economic Review*, 23 Feb 1979 ("Timetable for a Takeover"), p. 33.

<sup>64</sup> E3/165, 'Document on Conference I of Legislature I of the People's Representative Assembly of Kampuchea, 11-13 April 1976' ("People's Representative Assembly of Kampuchea"), ERN 00184068.

<sup>65</sup> E3/7340, Duiker, *China and Vietnam*, ERN 01002004 (p. 74); Chanda, *Timetable for a Takeover*, p. 34.

<sup>66</sup> E3/7338, Stephen J. Morris, *Why Vietnam Invaded Cambodia: Political Culture and the Causes of War*, 1999 ("Why Vietnam Invaded Cambodia"), ERNs 01001776-01001777 (pp. 109-110).

<sup>67</sup> E3/7340, Duiker, *China and Vietnam*, ERN 01002004 (p. 74).

<sup>68</sup> See, *infra*, para. 57 and fn. 226.

<sup>69</sup> See, the additional evidence requested *infra*, para. 75 (Witness 5).

the summer of 1978, it actively prepared for a massive invasion. According to Hoang Van Hoan, a senior Vietnamese leader who later defected to China, Vietnam intensified its relationship with the Soviet Union, securing military aid and a counterweight to DK's ally China.<sup>70</sup> It cobbled Cambodian defectors and refugees<sup>71</sup> together into a military front which could participate in the invasion and then be installed as a new Vietnamese-controlled puppet government in Phnom Penh.<sup>72</sup> Finally, it stepped up its propaganda offensive against the legitimate DK government by seeking to paint it as black as possible in order to justify its eventual invasion.<sup>73</sup> With all of this in place, on 25 December 1978, Vietnam committed a blatantly illegal act of aggression by invading Cambodia. Prince Sihanouk described the invasion to the UN Security Council as:

an all-out attack with all the power of its Hitlerite armed forces for the conquest of Kampuchea. The irresistible advance of a host of armoured tanks and cars, accompanied by a dozen infantry divisions supported by the most modern heavy artillery, preceded and protected by innumerable aircraft of all types, including MIG-21s and some MIG-23s, that advance, a veritable German-style blitzkrieg in nature, strangely reminds us of the blitzkrieg of the Hitlerite armed forces to which so many European countries – France and Poland in particular – fell at the beginning of the Second World War.<sup>74</sup>

26. We also know that Vietnam's plans for Cambodia were true because they are entirely consistent with the dominant theme in Vietnam's attitude towards Cambodia and all of Southeast Asia for nearly 1,000 years. Throughout that time, Vietnam has relentlessly pursued "*nam tien*" ("the march to the south").<sup>75</sup> Over the last 500 years, it has increasingly encroached upon territory in Southeast Asia, including contested islands in the South China Sea and ever more territory in Cambodia – an appetite which still appears to be insatiable today.<sup>76</sup> After 1834, Cambodia was even designated for a time as a "Vietnamese province".<sup>77</sup> As Prince Sihanouk concluded, the impact of Vietnam's endless

<sup>70</sup> Hoang Van Hoan, *A Drop in the Ocean: Hoang Van Hoan's Revolutionary Reminiscences*, 1988 ("A Drop in the Ocean"), p. 363.

<sup>71</sup> Jon James Alexiou, 'The Foreign Policy of the People's Republic of China Towards the Socialist Republic of Vietnam, 1975-1979', 1982 ("*Foreign Policy of the PRC towards the SRV*"), p. 92.

<sup>72</sup> Chanda, *Timetable for a Takeover*, p. 34.

<sup>73</sup> E3/2370, 'Vietnam-Cambodia Conflict: Report Prepared at the Request of the Subcommittee on Asian and Pacific Affairs Committee on International Relations', 4 Oct 1978 ("*Pike Congressional Report*"), ERN 00187389 (p. 10).

<sup>74</sup> E3/7335, 'United Nations Security Council Official Records: 2108<sup>th</sup> Meeting, 11 January 1979', 11 Jan 1979 ("UN Security Council Meeting Minutes"), ERN 01001643 (p. 7).

<sup>75</sup> E3/2370, *Pike Congressional Report*, ERN 00187381 (p. 2).

<sup>76</sup> Vietnam's current claims over islands in the South China Sea have been very widely reported in the context of the most recent round of disputes over the area. For a recent report of Vietnam's possible encroachment on Cambodian territory, see, e.g., Kuch Naren, 'PM Orders Senator's Arrest Over Facebook Post', *Cambodia Daily*, 14 Aug 2015, available at: <https://www.cambodiadaily.com/news/pm-orders-senators-arrest-over-facebook-post-91638/>.

<sup>77</sup> E3/7338, Morris, *Why Vietnam Invaded Cambodia*, ERNs 01001692-01001693 (pp. 25-26).

appetite “to swallow up little Kampuchea just [like] a starving boa constrictor” over hundreds of years was that:

From the fifteenth to the beginning of the twentieth century, Viet Nam, in spite of the bitter and indomitable resistance of the army and people of Kampuchea, succeeded in swallowing up a good half of Kampuchea. That half became what is known today as “South Viet Nam”; it used to be the south of Kampuchea [i.e. Kampuchea Krom].<sup>78</sup>

27. Moreover, what Chinese Communist Party politburo member, Vice-Premier and Minister of Defence Geng Biao called Vietnam’s “malicious intentions [...] to encroach on Cambodia”<sup>79</sup> had in fact formed the basis of the express foreign policy of Vietnamese leaders such as General Vo Nguyen Giap<sup>80</sup> in the 1950s, and Le Duan in the 1970s,<sup>81</sup> to absorb Cambodia and Laos into an “Indochinese Federation” or “Democratic Republic of Indochina” with Vietnam at the helm. Indeed, following their defection from the Vietnamese Communist Party, former Vietnamese senior leaders Hoang van Hoan and Truong Nhu Tang publicly confirmed that Le Duan’s ultimate aim was to install Vietnam as the “hegemonic overlord of Indochina and Southeast Asia”<sup>82</sup> and the Soviet Union’s “regional hegemonist proxy”.<sup>83</sup> Tang also reported that the Vietnamese party leaders’ school taught leaders about a “Union of the Socialist Republic of Southeast Asia [...] to be set up in the end of [the twentieth] century”.<sup>84</sup>
28. In December 1976, Vietnam revealed its longstanding hegemonic intentions for Cambodia to the rest of the world. That month, its party congress announced that its priority was to “preserve and develop the *special relations* between the Vietnamese people and the *fraternal peoples* of Laos and Kampuchea”,<sup>85</sup> stressing that the three countries would “forever be associated with one another in the building and defence of their respective countries”.<sup>86</sup> Just seven months later, it succeeded in bringing Laos into the fold when on

<sup>78</sup> E3/7335, UN Security Council Meeting Minutes, ERN 01001643 (p. 7) (emphasis added).

<sup>79</sup> E3/7325, Geng Biao, ‘Geng Biao’s Report on the Situation of the Indochinese Peninsula’, 1981 (“*Report on the Indochina Situation*”), ERN 01001621 (p. 380).

<sup>80</sup> General Vo Nguyen Giap reportedly established the goal of establishing a “Democratic Republic of Indochina”: E/9, Philip Short, *Pol Pot: The History of a Nightmare*, 2004 (“*Pol Pot*”), ERNs 00396245-00396246 (pp. 53-54).

<sup>81</sup> E3/7325, Geng Biao, *Report on the Indochina Situation*, ERN 01001621 (p. 380).

<sup>82</sup> Hoang Van Hoan, *A Drop in the Ocean*, p. 347. Hoang Van Hoan was in fact one of the co-founders of the Indochinese Communist Party with Ho Chi Minh, and had at one time been a politburo member before being steadily marginalised and ultimately defecting to China.

<sup>83</sup> Truong Nhu Tang was the founder of the National Liberation Front and former National Liberation Front Minister of Justice and gave these remarks to the US Congress: see, ‘U.S. Policy Toward Indochina Since Vietnam’s Occupation of Kampuchea: Hearings Before the Subcommittee on Asian and Pacific Affairs of the Committee on Foreign Affairs, House of Representatives’, 15, 21, 22 Oct 1981 (“*1981 US Congressional Debate*”), p. 4.

<sup>84</sup> Truong Nhu Tang, cited in, *1981 US Congressional Debate*, p. 4.

<sup>85</sup> E3/2376, Nayan Chanda, *Brother Enemy: The War After the War*, 1986 (“*Brother Enemy*”), ERN 00192270 (p. 85) (emphases added).

<sup>86</sup> E/9, Short, *Pol Pot*, ERNs 00396572-00396573 (pp. 363-364) (emphasis added).

17 July 1977 the two countries signed a 25-year “friendship treaty”. That treaty echoed Vietnam’s December 1976 policy announcement, pledging that the two countries would remain “*forever united* in national construction and defence”,<sup>87</sup> promising mutual defence assistance, and permitting Vietnam to station what would ultimately be 50,000 troops and thousands of advisers<sup>88</sup> in Laos<sup>89</sup>. Having effectively secured “overall control” over Laos,<sup>90</sup> Vietnam next set its sights on Cambodia, indeed just like a boa constrictor.

## **B. Plan A: Internal Rebellion**

### **(i) Vietnam’s Very Long Game**

29. When the Vietnamese Communist Party politburo decided in February 1978 to initiate an internal armed rebellion in Cambodia, they were in fact giving the green light to the final move in a very long game they had already been playing for many years. Vietnam had laid preliminary foundations for internal rebellion in Cambodia nearly 50 years earlier when in 1930, Ho Chi Minh tried to pre-emptively impose Vietnamese control over future Southeast Asian revolutionary movements by establishing an Indochinese Communist Party with Vietnamese immigrant-dominated Cambodian and Laotian party cells.<sup>91</sup>
30. However, Vietnam’s efforts only gained significant traction in 1945 when Japan, who had occupied Indochina since 1941, was defeated in World War II and subsequently left Cambodia.<sup>92</sup> Japan’s departure created a space not only for the short-term return of the French colonials to Cambodia, but also for an increase in Vietnamese control. Vietnam initially sought to achieve this by influencing the Khmer Issarak independence movement that sprang up after 1945.<sup>93</sup> In 1954, it also began mentoring the so-called “Khmer Viet Minh”. The “Khmer Viet Minh” consisted of over 1,000 individuals, many of whom were Khmer Issaraks and all of whom were members of the Khmer People’s Revolutionary Party (a CPK predecessor party discussed below).<sup>94</sup> In 1954, they fled Cambodia following a crackdown by the then-Sihanouk government, resettling in Hanoi where they undertook

<sup>87</sup> E3/2376, Chanda, *Brother Enemy*, ERN 00192280 (p. 95) (emphasis added); E/9, Short, *Pol Pot*, ERN 00396582 (p. 374).

<sup>88</sup> This information featured in remarks made by the Chinese Ambassador to the UN, Chen Chu, at the UN Security Council on 11 January 1979: E3/7335, UN Security Council Meeting Minutes, ERN 01001646 (p. 10).

<sup>89</sup> E/9, Short, *Pol Pot*, ERN 00396582 (p. 374).

<sup>90</sup> Chinese Ambassador to the UN, Chen Chu, made this remark at the UN Security Council on 11 January 1979: E3/7335, UN Security Council Meeting Minutes, ERN 01001646 (p. 10).

<sup>91</sup> E3/2376, Chanda, *Brother Enemy*, ERNs 00192303 (p. 118), 00192242 (p. 57) and 00192304 (p. 119).

<sup>92</sup> See, e.g., E/9, Short, *Pol Pot*, ERN 00396226 (p. 34).

<sup>93</sup> See, e.g., E3/7338, Morris, *Why Vietnam Invaded Cambodia*, ERNs 01001698-01001699 (pp. 31-32); E/9, Short, *Pol Pot*, ERN 00396232 (p. 40).

<sup>94</sup> See, *infra*, para. 35.

training by the Vietnamese and waited for the right opportunity to return to Cambodia.<sup>95</sup> For many “Khmer Viet Minh”, that moment arrived from 1970 onwards, when Vietnam began appointing them to positions of leadership in FUNK-liberated zones where they served as liaisons between Cambodia and Vietnam<sup>96</sup> but ultimately reported to Vietnamese rather than Cambodian minders,<sup>97</sup> such as long-time Cambodian-Vietnamese liaison committee member and friend of Sao Phim, Hay Sau,<sup>98</sup> who was later implicated as a key attendee at secret meetings in the East Zone to plan Vietnamese incursions into Cambodia in 1978.<sup>99</sup>

**(ii) The May 1975 Meeting**

31. Vietnam’s most dramatic preparatory move was the one it made in May 1975. At that point, directly after the CPK’s first congress in Phnom Penh following the liberation of the city and country, Vietnam’s inside man Sao Phim hosted an audacious, clandestine follow-up event attended by “several hundred high- and middle-ranking cadres, representing four out of the five zones”.<sup>100</sup> At this meeting, Sao Phim declared that “Pol Pot was a CIA spy sent to sabotage the revolution”.<sup>101</sup> At the meeting, participants decided to respond by implementing a military coup that would aim to “*take over the revolution and form a union with Vietnam*” and would include several attempts to assassinate Pol Pot.<sup>102</sup> Witnesses who have recently testified before the Trial Chamber have also described attending what may be

<sup>95</sup> Margaret Slocomb, *The People’s Republic of Kampuchea, 1979-1989: The Revolution After Pol Pot*, 2003 (“*The People’s Republic of Kampuchea*”), p. 6; **E3/2376**, Chanda, *Brother Enemy*, ERN 00192435 (p. 50); **E3/7338**, Morris, *Why Vietnam Invaded Cambodia*, ERNs 01001702-01001703 (pp. 35-36).

<sup>96</sup> **E3/7338**, Morris, *Why Vietnam Invaded Cambodia*, ERNs 01001721-01001722 (pp. 54-55).

<sup>97</sup> Slocomb, *The People’s Republic of Kampuchea*, pp. 16-17; **E/9**, Short, *Pol Pot*, ERN 00396405 (p. 205).

<sup>98</sup> **E3/387**, ‘Transcript of Recorded Interview with Ouk Bunchhoeun on 04-08-1990’ (“*Heder Ouk Bunchhoeun Interview*”), ERN 00350217. Philip Short inaccurately identifies Hay Sau as an alias for senior Vietnamese Communist Party Leader (and later, its General Secretary) Nguyen Van Linh (see, **E3/9**, Short, *Pol Pot*, ERNs 00396369-00396370 (pp. 169-170); see, also, the testimony of the witness Toat Thoeun who confirms knowing Hay Sau: T. 6 Jul 2015 (Toat Thoeun, **F1/3.1**), p. 38, ln. 15 – p. 39, ln. 23, and in particular, p. 39, lns. 18-23).

<sup>99</sup> See, *infra*, para. 61, and **E3/1262**, ‘Press Communiqué of the Spokesman of the Ministry of Propaganda and Information of Democratic Kampuchea on the Annihilation of the New Plan of Coup d’Etat Fomented by the Socialist Republic of Vietnam Aiming at Overthrowing Democratic Kampuchea’, 25 June 1978 (“*CPK Vietnam Coup d’Etat Press Release*”), ERNs 00079722-00079724 (pp. 1-3).

<sup>100</sup> This is based on the testimony of Rob Lemkin and Thet Sambath’s interviewee W1: see, **F2/4/3/3.1**, Lemkin’s Notes, ERN 01106929 (p. 2); see, also, T. 6 Jul 2015 (Toat Thoeun, **F1/3.1**), p. 10, ln. 21 – p. 11, ln. 6. The Supreme Court Chamber has already noted that according to Rob Lemkin, the witnesses W1, W2 and W3 referred to in Lemkin’s Notes have had their identities publicly disclosed in **E3/4202**, Gina Chon and Thet Sambath, *Behind the Killing Fields: A Khmer Rouge Leader and One of His Victims*, 2011 (“*Behind the Killing Fields*”), ERN 00757532 (pp. 106-107), and that one publicly testified before the Supreme Court Chamber in open session: see, **F2/4/3/3/5**, ‘Third Interim Decision on the Additional Investigation’, 20 Aug 2015, ERN 01132012; see, also, **F2/7**, Fifth Additional Evidence Request, paras. 42-46 and 67.

<sup>101</sup> **F2/4/3/3.1**, Lemkin’s Notes, ERN 01106929 (p. 2) (W1).

<sup>102</sup> **F2/4/3/3.1**, Lemkin’s Notes, ERN 01106929 (p. 2) (emphasis added) (W1).



the same meeting or similar meetings in Phnom Penh where plans for a rebellion were formulated.<sup>103</sup>

32. At the May 1975 meeting, Sao Phim shared the podium with the opportunistic Northwest Zone secretary Ruos Nhim, who was also a Central Committee and possibly Standing Committee<sup>104</sup> member, as well as the Second Deputy Chairman of the DK State Presidium.<sup>105</sup> Other CPK leaders in attendance included Chan Chakrei and Tiv Ol.<sup>106</sup> In addition to his official roles, Ruos Nhim was also related to Sao Phim by marriage, as one of Nhim's sons had been engaged to Phim's only daughter.<sup>107</sup> This familial connection not only signified the closeness of the two men and their desire to cement their political alliance, but it also provided Phim and Nhim with the perfect cover story for regularly meeting each other. Ruos Nhim's foster son, the witness Toat Thoeun, described how Phim used to visit the Northwest Zone to see his daughter and whenever doing so, would share the same house as Nhim.<sup>108</sup>

**(iii) *The Kampuchean Workers' Party***

33. Sao Phim and Ruos Nhim's "family reunions" were clearly effective. By August 1975, the two had spearheaded the formation of a secret political union which transitioned into a "separate secret communist party"<sup>109</sup> known as the Kampuchean Workers' Party. A CPK press release issued after Sao Phim's suicide and Ruos Nhim's arrest simultaneously announced both the existence and demise of the Kampuchean Workers' Party and revealed its top leadership.<sup>110</sup> Among the many names listed were five zone secretaries and military commanders, namely Sao Phim, Ruos Nhim, North Zone secretary Koy Thuon, Northeast Zone secretary Ney Sarann,<sup>111</sup> and West Zone secretary Chou Chet.<sup>112</sup> Together, they represented every single zone situated along Cambodia's borders with Vietnam and Thailand except for Ta Mok's Southwest Zone.

<sup>103</sup> See, the additional evidence requested *infra*, paras. 79, 82 (Keo Loeur), 86 and 91 (Sèm Hoeun).

<sup>104</sup> See, e.g., E3/7328, 'Excerpts from Minutes of the April 11, 1977 Meeting of the Standing Committee of the Party Central Committee', ERN 01002086.

<sup>105</sup> E3/165, *People's Representative Assembly of Kampuchea*, ERN 00184068.

<sup>106</sup> F2/4/3/3.1, Lemkin's Notes, ERN 01106929 (p. 2) (W1).

<sup>107</sup> In this regard, see, e.g., F2/7, Fifth Additional Evidence Request, para. 35, summarising the evidence of Witness 3; see, also, T. 6 Jul 2015 (Toat Thoeun, F1/3.1), p. 9, lns. 12-21.

<sup>108</sup> T. 6 Jul 2015 (Toat Thoeun, F1/3.1), p. 11, lns. 10-18.

<sup>109</sup> F2/4/3/3.1, Lemkin's Notes, ERN 01106929 (p. 2) (W2).

<sup>110</sup> E3/7327, 'Greetings to our Party's Victories in the Leadership of the CIA's Kampuchean Workers' Party on June 3<sup>rd</sup> 1978' ("CPK Kampuchean Workers' Party Press Release"), ERNs S 00015679-00015680.

<sup>111</sup> Ney Sarann was identified in the list by his revolutionary *alias* Ya: E3/7327, CPK Kampuchean Workers' Party Press Release, ERN S 00015679.

<sup>112</sup> E3/7327, CPK Kampuchean Workers' Party Press Release, ERN S 00015679.

34. However, the Kampuchean Workers' Party leadership was not limited simply to top CPK military leaders. It also included top CPK political leaders, some of whom were senior members of the DK government. The CPK press release named Keo Meas and Son Ngoc Minh;<sup>113</sup> Khieu Samphan's fellow "ghosts" Hou Youn and Hu Nim;<sup>114</sup> and Non Suon,<sup>115</sup> Tiv Ol and Touch Phoeun, as other Kampuchean Workers' Party leaders. Vorn Vet may have been yet another,<sup>116</sup> although he had not yet been arrested at the time of the press release, which may be why his name was not included on the list. Several of these names may also strike a familiar chord since the Trial Chamber included them as co-participants in a joint criminal enterprise with Pol Pot and Nuon Chea from "June 1974 to December 1977" – the very period in which it appears that the Kampuchean Workers' Party was in fact actively plotting an internal rebellion to overthrow them.<sup>117</sup>
35. Some of the Kampuchean Workers' Party's political leaders had at one time been senior figures in the Khmer People's Revolutionary Party ("KPRP").<sup>118</sup> The KPRP was a CPK predecessor party which Vietnam established in 1951<sup>119</sup> and clearly dominated, with even the party's name and statutes translated into Khmer from the original Vietnamese.<sup>120</sup> According to the 1981 East German documentary *Die Angkar*, which drew heavily on Vietnamese intelligence sources, the co-founders of the KPRP included Son Ngoc Minh, Keo Moni and Keo Meas, at least two of whom later became leaders of the Kampuchean Workers' Party.<sup>121</sup> From 1954, many KPRP party members became so-called "Khmer Viet Minh" and resettled in Hanoi where they underwent training by the Vietnamese. On the one hand, therefore, Vietnamese influence over the development of the CPK is clear. And yet, on the other hand, the CPK's history also bore the deep scars of its repeated betrayal by Vietnam whenever it mattered most. For example, in 1968, the Vietnamese refused to support the CPK's decision to instigate an armed uprising against Sihanouk's government

<sup>113</sup> Son Ngoc Minh had died in 1972.

<sup>114</sup> E3/7327, CPK Kampuchean Workers' Party Press Release, ERNs S 00015679-00015680.

<sup>115</sup> Non Suon was erroneously identified in the list as "Son Suon": E3/7327, CPK Kampuchean Workers' Party Press Release, ERN S 00015679.

<sup>116</sup> E3/4202, Chon and Sambath, *Behind the Killing Fields*, ERN 00757532 (p. 106), cited in, F2/7, Fifth Additional Evidence Request, para. 43. It appears that this witness may be W1, W2 or W3 from F2/4/3/3.1, Lemkin's Notes: see, *supra*, note 100. See, also, F2/4/3/3.1, Lemkin's Notes, ERN 01106929 (p. 2) (W3), and E3/1757, Vickery, *Cambodia: 1975-1982*, ERN 00397256 (p. 341, fn. 288).

<sup>117</sup> The Chamber's definition of the JCE included Sao Phim, Ruos Nhim, Koy Thuon, Chou Chet and Vorn Vet as participants: see, E313, Judgement, para. 726.

<sup>118</sup> See, e.g., E/9, Short, *Pol Pot*, ERNs 00396246-00396248 (pp. 54-56).

<sup>119</sup> See, e.g., E3/1593, Kiernan, *The Pol Pot Regime*, ERN 00678501 (pp. 12-13); E/9, Short, *Pol Pot*, ERNs 00396246-00396248 (pp. 54-56); Slocumb, *The People's Republic of Kampuchea*, p. 3.

<sup>120</sup> E3/7338, Morris, *Why Vietnam Invaded Cambodia*, ERNs 01001701-01001702 (pp. 34-35). Short also reported that the KPRP's members had to be approved by a majority-Vietnamese committee and that the party was dominated by ethnic Vietnamese: E/9, Short, *Pol Pot*, ERNs 00396246-00396248 (pp. 54-56).

<sup>121</sup> E3/3095R, *Die Angkar* (The Angkar), 1981, 14:25-15:10.

because at the time, the Vietnamese had made the strategic decision to remain aligned with Sihanouk, who was offering them safe passage through Cambodia during the Second Indochina War<sup>122</sup> and who Vietnam calculated would be the likely victor of the internal struggle.<sup>123</sup> Five years later, during the Paris Peace Agreements, Vietnam betrayed the CPK again by trying to persuade the CPK to negotiate with Lon Nol.<sup>124</sup> The CPK's refusal to do so led to a vicious retaliatory bombing campaign by the US, in which the Americans dropped more bombs on Cambodia in six months than it did on Japan for the whole of World War II,<sup>125</sup> resulting in at least ten times as many deaths as the Trial Chamber's death toll assessment for the evacuation of Phnom Penh.

36. Whole books can and have been written about these issues, and they are highly relevant in order to understand what really happened in Cambodia between 1975 and 1979. However, they cannot be explored in any detail here. Suffice it to say, it is for these reasons that the CPK's debate over its founding date (1951 vs. 1960) was so significant. It was not mere semantics;<sup>126</sup> it was a question of whether the party's foundational narrative should acknowledge Vietnamese domination, which was part of the broad, fundamental policy question of whether Cambodia should pursue an independent path or one in Vietnam's shadow. The CPK and thereafter the legitimate DK government – and thus, Cambodia – chose the former. The Kampuchean Workers' Party chose the latter. It is this choice that propelled them to betray Cambodia by planning a military coup in league with Vietnam. That plan was to be effected by the military leaders among the Kampuchean Workers' Party, likely with a view to installing the party's political leaders as a new national government once the military coup was successful.

**(iv) Preparations for Internal Rebellion**

37. Early preparations for internal rebellion were underway even before Sao Phim and Ruos Nhim had established the political union that would become the Kampuchean Workers' Party. In July 1975, when the CPK consolidated its zone-based armed forces into a national Revolutionary Army of Kampuchea ("RAK") under Son Sen's centralised

<sup>122</sup> See, e.g., E3/2376, Chanda, *Brother Enemy*, ERNs 00192246-00192247 (pp. 61-62); E/9, Short, *Pol Pot*, ERN 00396357 (p. 157); E3/7338, Morris, *Why Vietnam Invaded Cambodia*, ERNs 01001714-01001715 (pp. 47-48); Slocumb, *The People's Republic of Kampuchea*, pp. 7-8.

<sup>123</sup> See, e.g., E3/2376, Chanda, *Brother Enemy*, ERNs 00192246-00192247 (pp. 61-62); E3/2370, *Pike Congressional Report*, ERN 00187384 (p. 5).

<sup>124</sup> See, e.g., E3/7338, Morris, *Why Vietnam Invaded Cambodia*, ERN 01001725 (p. 58); E/9, Short, *Pol Pot*, ERNs 00396444-00396445 (p. 244-245).

<sup>125</sup> See, e.g., E3/2376, Chanda, *Brother Enemy*, ERN 00192253 (p. 58).

<sup>126</sup> See, e.g., E3/1684, David Chandler, *Voices from S-21: Terror and History in Pol Pot's Secret Prison*, 1999 (*"Voices from S-21"*), ERN 00192738 (p. 59).

command, there are reports that Ruos Nhim “held back forces for a secret army”, hiding them “in the forests around the Tonle Sap lake”.<sup>127</sup> Vietnamese intelligence indicates that current top CPP leader Ouk Bunchhoeun, who had been based in the East Zone, had turned against the CPK from as early as May 1975,<sup>128</sup> while current Prime Minister Hun Sen alleges that he had begun resisting CPK orders from September 1975.<sup>129</sup> This suggests that Sao Phim may have been building up secret forces in the East Zone at that early stage as well.

38. In addition, according to several witnesses, concerted weapons stockpiling efforts took place around the country from 1975 onwards. Witnesses testify that weapons had been collected and stored in the East Zone’s zone-level warehouse;<sup>130</sup> in the Phnom Penh warehouse of North Zone-affiliated Division 310<sup>131</sup> (with some of those weapons transferred to an East Zone sector in Kampong Cham);<sup>132</sup> and in various locations around the Northwest Zone, including in forests,<sup>133</sup> Battambang, Banteay Meanchey, and even in the custody of Vietnam<sup>134</sup> as well as with Thai communists.<sup>135</sup> In addition to weapons, participants in the North Zone rebellion testified that they siphoned off and created secret stockpiles of food in their warehouse north of Pochentong Airport in Phnom Penh,<sup>136</sup> while their counterparts in the Northwest Zone stockpiled rice, fish, medicine, medical equipment, gasoline,<sup>137</sup> and military uniforms donated by Vietnam.<sup>138</sup> At one point, the

<sup>127</sup> **F2/4/3/3.1**, Lemkin’s Notes, ERN 01106929 (p. 2) (on holding back forces: W1, W2 and W3; and on concealing the secret forces around the Tonle Sap: W2); *see*, the additional evidence requested *infra*, para. 109 (Lat Suoy).

<sup>128</sup> *See*, the additional evidence requested *infra*, para. 114 (Ouk Bunchhoeun biography). Ouk Bunchhoeun himself claims, however, that he only turned against Pol Pot on 25 May 1978: *see*, **E3/387**, *Heder Ouk Bunchhoeun Interview*, ERN 00350203.

<sup>129</sup> *See*, **E347.3**, Human Rights Watch, *30 Years of Hun Sen: Violence, Repression, and Corruption in Cambodia*, ERN 01086026 (p. 19).

<sup>130</sup> *See*, the additional evidence requested *infra*, para. 73 (Witness 5).

<sup>131</sup> *See*, the additional evidence requested *infra*, paras. 93 (Sèm Hoeun) and 78 (Keo Loeur); *see, also*, **E3/7540 (IS 19.201)**, ‘Documentation Center of Cambodia: Thach Siek *alias* San Biography’, 25 Nov 2002, ERN 00337712 (p. 6).

<sup>132</sup> *See*, the additional evidence requested *infra*, paras. 94-95 (Sèm Hoeun).

<sup>133</sup> **E319.1.27**, ‘Written Record of Interview of Toat Thoeun’, 10 Sep 2013, ERN 00974021 (at A35); T. 6 Jul 2015 (Toat Thoeun, **F1/3.1**), p. 22, lns. 8-13, p. 24, ln. 13 – p. 25, ln. 3; *see*, the additional evidence requested *infra*, para. 109 (Lat Suoy).

<sup>134</sup> **E319.1.27**, ‘Written Record of Interview of Toat Thoeun’, ERNs 00974046-00974047 (at A165).

<sup>135</sup> **E3/4202**, Chon and Sambath, *Behind the Killing Fields*, ERN 00757532 (pp. 106), and *cited in*, **F2/7**, Fifth Additional Evidence Request, paras. 43-44. It appears that these two witnesses may be W1, W2 or W3 from **F2/4/3/3.1**, Lemkin’s Notes: *see, supra*, note 100.

<sup>136</sup> *See*, the additional evidence requested *infra*, paras. 79 and 81 (Keo Loeur).

<sup>137</sup> **E3/4202**, Chon and Sambath, *Behind the Killing Fields*, ERN 00757532 (p. 106), *cited in*, **F2/7**, Fifth Additional Evidence Request, paras. 43-44. It appears that this witness may be W1, W2 or W3 from **F2/4/3/3.1**, Lemkin’s Notes: *see, supra*, note 100.

<sup>138</sup> **F2/7**, Fifth Additional Evidence Request, para. 16.

East Zone also reportedly transferred supplies of sandals to their Northwest Zone co-conspirators.<sup>139</sup>

39. Moreover, clandestine meetings were reportedly held throughout the country to develop and disseminate plans for rebellion. Witnesses describe meetings in Phnom Penh, north of Wat Phnom and/or south of Preah Ket Mealea hospital, which were attended by North Zone-affiliated Division 310 regiment and battalion members and led by division commander Oeun.<sup>140</sup> One witness also testified having heard of meetings attended by commanders of both the North Zone and East Zone in order to jointly develop their plans for a rebellion.<sup>141</sup> In the Northwest Zone, witnesses attended frequent planning meetings in Sdao commune at which Ruos Nhim stressed that “secrecy was mandatory”.<sup>142</sup> In Region 106, defectors reported attending one meeting in late 1975 and several meetings from May 1976 in various locations throughout Oddar Meanchey, including the provincial capital Samraong and the district Chongkal. These meetings were reportedly led by the region’s secretary Soth and various military commanders.<sup>143</sup>
40. Finally, in a move straight out of Vietnam’s playbook, there are at least six reports suggesting that the Kampuchean Workers’ Party generated propaganda intended to destabilise the CPK’s position. In September 1975, an unnamed Northwest Zone cadre was reported to have told the *Bangkok Nation* and *Bangkok Post* that Cambodia was likely to *remain without a central government* “for another six months” due to “confusion as to who was the real power in Cambodia”.<sup>144</sup> A later diplomatic cable from 29 September 1977 indicates that “two leaders of the Cambodian resistance based in Thailand” told US Embassy staff in Thailand of internal dissatisfaction with Phnom Penh.<sup>145</sup> One witness testified about being instructed to “spread chaos” in the Northwest Zone by “encouraging arbitrary arrests, withholding food from villagers and prosecuting a phoney war with Thailand to maintain troop levels in the North West”,<sup>146</sup> while a diplomatic cable suggests that the plan for a “phoney war” was indeed pursued.<sup>147</sup> Another reported that a Region

<sup>139</sup> See, the additional evidence requested *infra*, para. 101 (Witness 6).

<sup>140</sup> See, the additional evidence requested *infra*, paras. 79 (Keo Loeur) and 91 (Sèm Hoeun).

<sup>141</sup> See, the additional evidence requested *infra*, para. 86 (Sèm Hoeun).

<sup>142</sup> E3/4202, Chon and Sambath, *Behind the Killing Fields*, ERN 00757532-00757533 (pp. 106-107), cited in, F2/7, Fifth Additional Evidence Request, paras. 43-44. It appears that these two witnesses may be W1, W2 or W3 from F2/4/3/3.1, Lemkin’s Notes: see, *supra*, note 100.

<sup>143</sup> Anthony Paul, ‘Plot Details Filter Through’, *Far Eastern Economic Review*, 19 May 1978 (“Plot Details Filter Through”), p. 25.

<sup>144</sup> E3/1593, Kiernan, *The Pol Pot Regime*, ERN 00678541 (p. 93).

<sup>145</sup> See, the additional evidence requested *infra*, paras. 128 (Cable 3).

<sup>146</sup> F2/4/3/3.1, Lemkin’s Notes, ERN 01106929 (p. 2) (W3).

<sup>147</sup> See, the additional evidence requested *infra*, para. 125 (Cable 2).

106 commander instructing his troops to stop planting mines and sharp sticks along the Thai border,<sup>148</sup> which presumably meant disregarding an RAK order.

**(v) Early Attempts at Rebellion**

41. Alongside concerted efforts to prepare for rebellion, in 1975 and 1976, the Kampuchean Workers' Party also made several attempts to actually instigate internal rebellion against the CPK and the legitimate DK government. At least two planned attempts to assassinate Pol Pot are known to have been thwarted. One was to have been in July 1975 at the CPK party congress at Phnom Penh's Chenla Theatre and the other at Pochentong Airport.<sup>149</sup> However, Pol Pot learned of both plans and avoided his would-be assassins by skipping the party congress and re-routing his plane to another airfield.<sup>150</sup>
42. In addition to assassination attempts, in September 1975, Phnom Penh Radio fell silent for two days. Ieng Sary later explained that this was due to an East Zone-led coup attempt in the capital which failed when the soldiers could not find a target.<sup>151</sup> Cambodian refugees reported that Cambodia was in "widespread disorder" from late 1975 due to "plotting against the Phnom Penh Government".<sup>152</sup> There were also reports of border skirmishes with CPK defectors along the Thai border<sup>153</sup> at Koh Kong<sup>154</sup> in the West Zone and Oddar Meanchey<sup>155</sup> in the North Zone; and along the Vietnamese border (in the Northeast or East zones) against the apparently mostly-Cham<sup>156</sup> "Khmer Sar" ("White Khmer") group.<sup>157</sup> Moreover, one witness suggested that from as early as 1975, Sao Phim and Ruos Nhim had considered undertaking a "pincer offensive" from the Northwest and East simultaneously, but ultimately "dithered".<sup>158</sup>
43. This early period ultimately culminated in two major rebellion attempts. The first occurred on 25 February 1976, when an explosion in Siem Reap (in Region 106) destroyed a

<sup>148</sup> Paul, *Plot Details Filter Through*, p. 25.

<sup>149</sup> F2/4/3/3.1, Lemkin's Notes, ERN 01106929 (p. 2) (source unclear but presumably W1, W2, W3, or W4).

<sup>150</sup> F2/4/3/3.1, Lemkin's Notes, ERN 01106929 (p. 2) (source unclear but presumably W1, W2, W3, or W4).

<sup>151</sup> E3/1593, Ben Kiernan, *The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge, 1975-79*, 1996 (*The Pol Pot Regime*), ERN 00678543 (p. 96).

<sup>152</sup> Paul, *Plot Details Filter Through*, p. 25. See, also, the additional evidence requested *infra* at para. 114 (describing Ouk Bunchhoeun's shifting allegiance in May 1975) (Ouk Bunchhoeun biography) and at para. 120 (describing "pockets of resistance" and predicting rebellion) (Cable 1).

<sup>153</sup> E3/1593, Kiernan, *The Pol Pot Regime*, ERN 00678567 (p. 144).

<sup>154</sup> E3/1593, Kiernan, *The Pol Pot Regime*, ERNs 00678531-00678533 (pp. 72-73, 75 and 77); Slocumb, *The People's Republic of Kampuchea*, p. 39.

<sup>155</sup> Paul, *Plot Details Filter Through*, p. 25.

<sup>156</sup> E3/1593, Kiernan, *The Pol Pot Regime*, ERN 00678529 (p. 68).

<sup>157</sup> E3/1593, Kiernan, *The Pol Pot Regime*, ERN 00678529 (p. 68).

<sup>158</sup> F2/4/3/3.1, Lemkin's Notes, ERN 01106929 (p. 2) (W2).

munitions depot.<sup>159</sup> The explosion, which has never been publicly claimed or explained by any group, was – and still is – surrounded by an air of mystery. At the time, its attribution and motive were the subject of much diplomatic speculation,<sup>160</sup> despite the fact that the CPK had swiftly denounced it as an American bombing.<sup>161</sup> Less than six weeks later, the explosion was followed by an even more dramatic attempt, this time in the capital Phnom Penh. On 2 April 1976, on the very day on which Sihanouk had been due to announce his resignation<sup>162</sup> as the DK's head of state, grenades were thrown outside the palace<sup>163</sup> and shots fired at the national museum.<sup>164</sup> There is also evidence that in the same period, “artillery was set up around Chbar Ampeou to bombard Pol Pot's headquarters”,<sup>165</sup> although this plan was suppressed by the CPK before it could be carried out.

44. The Defence's view is that the Siem Reap explosion was coordinated by long-time North Zone secretary Koy Thuon together with the Region 106 secretary Soth, who at least two defectors report had been working together on a coup plot.<sup>166</sup> The CPK itself suspected Koy Thuon.<sup>167</sup> At the time of the explosion, Koy Thuon had been the DK Commerce Minister. This means that the situation which the CPK was facing was that a top-ranking member of the government had masterminded a dramatic, public act of treason. In any country, this would have been cause for severe concern, to say the least. Nevertheless, despite this, and despite the fact that Koy Thuon had already fallen from grace over a messy sex scandal,<sup>168</sup> the CPK treated him with considerable restraint. A week after the explosion, Koy Thuon was placed under house arrest<sup>169</sup> and reports suggest that he was later seen in public,<sup>170</sup> which could imply lax house arrest conditions. Koy Thuon was only formally arrested and transferred to S-21 in February 1977, one year after the Siem Reap explosion took place.<sup>171</sup>

<sup>159</sup> E/9, Short, *Pol Pot*, ERN 00396562 (p. 354); E3/1684, Chandler, *Voices From S-21*, ERNs 00192725-00192726 (pp. 46-47); E3/7338, Morris, *Why Vietnam Invaded Cambodia*, ERN 01001760 (p. 93).

<sup>160</sup> See, e.g., the additional evidence requested *infra*, paras. 139-148 (Cable 6, Cable 7 and Cable 8).

<sup>161</sup> E/9, Short, *Pol Pot*, ERN 00396562 (p. 354).

<sup>162</sup> E3/1684, Chandler, *Voices From S-21*, ERN 00192731 (p. 52).

<sup>163</sup> E3/1684, Chandler, *Voices From S-21*, ERNs 00192731-00192732 (pp. 52-53); E3/9, Short, *Pol Pot*, ERN 00396566 (p. 358).

<sup>164</sup> E3/1684, Chandler, *Voices From S-21*, ERN 00192731 (p. 52).

<sup>165</sup> This is according to a defector's interview apparently gathered by Stephen Heder and cited in, E3/1684, Chandler, *Voices From S-21*, ERN 00192731 (p. 52).

<sup>166</sup> These defectors' accounts are described in E3/1593, Kiernan, *The Pol Pot Regime*, ERN 00678672 (p. 340).

<sup>167</sup> E3/1684, Chandler, *Voices From S-21*, ERNs 00192725 (p. 46).

<sup>168</sup> E/9, Short, *Pol Pot*, ERNs 00396562-00396563 (pp. 354-355).

<sup>169</sup> E/9, Short, *Pol Pot*, ERN 00396562-00396563 (pp. 354-355).

<sup>170</sup> E3/1593, Kiernan, *The Pol Pot Regime*, ERN 00678664 (p. 325).

<sup>171</sup> E3/1684, Chandler, *Voices From S-21*, ERNs 00192740-1 (pp. 61-62).

45. Unlike the Siem Reap explosion, the attribution of responsibility for the Phnom Penh grenade-throwing and shooting was clear, since those involved were captured and confessed. The events had been orchestrated by Division 170, an East Zone affiliated-division which had been stationed on Phnom Penh's outskirts<sup>172</sup> and was commanded by Mean *alias* Chan Chakrei, who was also the deputy national commander of the RAK under Son Sen.<sup>173</sup> Chakrei was arrested on 19 May 1976. Chakrei had fallen under CPK suspicion at least six months earlier, when his loyalties were the subject of a lengthy discussion at an October 1975 Standing Committee meeting. The meeting minutes report that Pol Pot described Chakrei as having "many good points", and had concluded that despite suspicions as to his loyalties, the CPK leadership would not react but only continue to "analyse the circumstances", investigate, monitor, and remain "agile".<sup>174</sup> The detailed nature of the leaders' discussion; their decision to gather further information before reaching a conclusion; and the fact that Chakrei remained in a senior command position for six more months before his eventual arrest, once again reveals the CPK's considerable restraint in the face of possible treason. It also demonstrates the CPK's desire to act carefully and only on the basis of concrete information rather than on rumour, intrigue, and paranoia.
46. It has already been noted that these early attempts at rebellion took place alongside careful preparatory acts, such as building up forces, stockpiling weapons and supplies, holding meetings, and issuing propaganda. The Defence believes the likely explanation for this is that the Kampuchean Workers' Party decided that zone leaders should initially act on their own initiative and take every opportunity available to them to foment unrest, chaos and internal rebellion within the country. However, in anticipation of the possible failure of these individual attempts, the zones would also prepare for the possible eventual coordination and escalation their efforts. This grander plan, in the Defence's view, was ultimately Vietnam's "Plan A". "Plan A" very likely also included not simply moral but also material support from Vietnam. This is supported by the testimony of one Division 310 soldier, who reported that according to Division 310 commander Oeun, "[i]f we could not defeat Pol Pot we would appeal to Vietnam" and call for help from "the Yuon" (i.e. the

<sup>172</sup> E3/1684, Chandler, *Voices From S-21*, ERN 00192731 (p. 52).

<sup>173</sup> E3/1684, Chandler, *Voices From S-21*, ERN 00192731 (p. 52).

<sup>174</sup> E3/182, Meeting of the Standing Committee 9 October 75, ERNs 00183403-00183404. The Defence notes that a similar English translation of the same minutes appears at E3/183, Meeting of the Standing Committee 9 October 75, with identical ERNs 00183403-00183404.



Vietnamese) and the “force at the east under Chakrei”.<sup>175</sup> Most importantly, however, the Defence’s view is that “Plan A” could only be implemented when Vietnam gave it the green light. As we now know, this occurred at the Fourth Plenum in February 1978.

**(vi) The Grand “Plan A”**

47. As a secret plot to commit the highest form of treason, it should come as no surprise that certain details of “Plan A” are shadowy and limited. For instance, we only have partial information on the extent and nature of coordination between zones and very limited knowledge of the role of the political leaders of the Kampuchean Workers’ Party within the plan. However, what is abundantly clear from multiple witnesses’ testimony is that treasonous plans were definitely afoot around the country. Several witnesses explicitly stated that these plans were to overthrow Pol Pot, Nuon Chea, and DK government.<sup>176</sup> They also provided operational details of the plans, all of which focused in different ways on effecting a coup d’état to overthrow Pol Pot, Nuon Chea, and the legitimate DK government. The Defence’s view is that these plans, which each intended to undertake an attack in distinct ways, were likely intended to form a comprehensive, coordinated, large-scale attack to encircle and crush Pol Pot and the DK government.
48. Witnesses report that under the instructions of its commander Oeun, the North Zone-affiliated Division 310, which was already stationed in Phnom Penh, would isolate the CPK leadership by attacking the Steung Meanchey radio station in Phnom Penh (the radio headquarters for all of the DK), thereby cutting off a major form of the CPK’s communications.<sup>177</sup> At the same time, Division 310 would seize an RAK artillery and armoured vehicle warehouse,<sup>178</sup> and Division 310 and possibly also East Zone forces<sup>179</sup> would attack and close Pochentong Airport,<sup>180</sup> eliminating a major exit route for the CPK leaders and simultaneously preventing reinforcements from arriving. One witness also

<sup>175</sup> **E3/7535 (IS 19.193)**, ‘Documentation Center of Cambodia: Suoy Sav Biography’, 20 Jan 2005, ERN 00324172.

<sup>176</sup> See, the additional evidence requested *infra*, paras. 79 (Keo Loeur: the plan was “to overthrow the DK regime”), 87, 92 (Sèm Hoeun: the plan was “to attack and take over Phnom Penh” and “attack the Democratic Kampuchea in order to overthrow the government”), and 104 (Witness 7: there was a “traitorous plot”); **F2/7**, Fifth Additional Evidence Request, paras. 28 (Witness 1: “both divisions of the Northwest Zone had planned to fight back against Pol Pot”) and 33 (Witness 3: the Northwest and East zones “had turned against POL Pot”); **E3/4202**, Chon and Sambath, *Behind the Killing Fields*, ERN 00757531-00757532 (pp. 104-106), cited in, **F2/7**, Fifth Additional Evidence Request, paras. 43, 45 (2-TCW-959 stated that the plot was ‘to overthrow Pol Pot’; 2-TCW-961 stated that Northwest and East zones would “stage a coup” “to overthrow Pol Pot, Nuon Chea, and the rest of the leadership”); it appears that these two witnesses may be W1, W2 or W3 from **F2/4/3/3.1**, Lemkin’s Notes: see, *supra*, note 100.

<sup>177</sup> See, the additional evidence requested *infra*, paras. 88-89 (Sèm Hoeun).

<sup>178</sup> See, the additional evidence requested *infra*, para. 88 (Sèm Hoeun).

<sup>179</sup> See, the additional evidence requested *infra*, paras. 89-90 (Sèm Hoeun).

<sup>180</sup> See, the additional evidence requested *infra*, paras. 88-90 (Sèm Hoeun).

suggests that the efforts of Division 310 and the East Zone were linked to the “Khmer Sar” (“White Khmer”) movement.<sup>181</sup> In the meantime, Region 106 in the north planned to build a civilian rebel force which would consist of “youth mobile units”<sup>182</sup> and as many civilians as could be recruited from Siem Reap, Kampong Thom, and Kampong Cham.<sup>183</sup> In the Northwest Zone, the zone’s mobile units<sup>184</sup> and two military divisions<sup>185</sup> would rise up and capture Battambang,<sup>186</sup> along the way blowing up bridges across the Sangke river in Battambang to secure the western side, where supplies would be stored.<sup>187</sup> The force would then advance in a southward arc, capturing Pursat, Kampong Chhnang, and finally Phnom Penh.<sup>188</sup> We also know that the East Zone intended to make a push from the east against CPK forces because this particular aspect of Plan A was in fact implemented by Sao Phim and approximately 8,000 soldiers in mid-1978.<sup>189</sup>

**(vii) Failure of the Internal Rebellion**

49. However, according to the assessment of a witness who had participated in the Northwest Zone’s treasonous efforts, the Kampuchean Workers’ Party failed to adequately appreciate that “Pol Pot was much smarter than us; we found it hard to beat him”.<sup>190</sup> Indeed, the principal reason for the failure of “Plan A” appears to be the ability of Pol Pot, Nuon Chea and the CPK leaders to learn of treasonous plots – as with the assassination attempts, for example – and to take careful countermeasures to thwart them. Following the arrest of Chan Chakrei in early 1976, several individuals implicated by Chan Chakrei in the East Zone plots against Phnom Penh were arrested. They included Sao Phim’s protégé Suas Neou *alias* Chhouk (secretary of East Zone sector 24),<sup>191</sup> and top Kampuchean Workers’

<sup>181</sup> See, the additional evidence requested *infra*, para. 97 (Sèm Hoeun); see, also, James Fenton, ‘Cambodia: Communism Alters Lifestyle’, *Washington Post*, 24 Nov 1974, p. K1.

<sup>182</sup> Paul, *Plot Details Filter Through*, p. 25.

<sup>183</sup> Paul, *Plot Details Filter Through*, p. 25.

<sup>184</sup> See, the additional evidence requested *infra*, at paras. 100 and 104 (Witness 6 and Witness 7).

<sup>185</sup> F2/7, Fifth Additional Evidence Request, para. 28 (Witness 2).

<sup>186</sup> E3/4202, Chon and Sambath, *Behind the Killing Fields*, ERN 00757531 (pp. 104-105), and, see, F2/7, Fifth Additional Evidence Request, para. 44. It appears that this witness may be W1, W2 or W3 from F2/4/3/3.1, Lemkin’s Notes: see, *supra*, note 100.

<sup>187</sup> E3/4202, Chon and Sambath, *Behind the Killing Fields*, ERN 00757532 (pp. 106), and, see, F2/7, Fifth Additional Evidence Request, para. 43. It appears that this witness may be W1, W2 or W3 from F2/4/3/3.1, Lemkin’s Notes: see, *supra*, note 100.

<sup>188</sup> E3/4202, Chon and Sambath, *Behind the Killing Fields*, ERN 00757531 (pp. 104-105), and, see, F2/7, Fifth Additional Evidence Request, para. 44. It appears that this witness may be W1, W2 or W3 from F2/4/3/3.1, Lemkin’s Notes: see, *supra*, note 100.

<sup>189</sup> See, *infra*, at paras. 72 (Witness 5).

<sup>190</sup> F2/4/3/3.1, Lemkin’s Notes, ERN 01106929 (p. 2) (W1).

<sup>191</sup> E3/1684, Chandler, *Voices From S-21*, ERN 00192732 (p. 53).

Party leaders Ney Sarann and Keo Meas.<sup>192</sup> A number of Koy Thuon's close associates were also arrested at this time, including Kampuchean Workers' Party leader Non Suon.<sup>193</sup>

50. These arrests were likely the reason that Son Sen announced, at a 9 October 1976 meeting with military commanders nationwide, including the Division 310 and 450 commanders Oeun and Soeun, that the CPK had thwarted a plot of "the enemy of the East, the Vietnamese with the Soviets behind them" to attack Cambodia "in the Czechoslovakian and Angolan style".<sup>194</sup> However, Son Sen's announcement proved to be premature. Following this announcement, it appears that more details of the North Zone and Region 106's involvement in the plot soon emerged, for in February 1977, Koy Thuon was formally arrested.<sup>195</sup> This was followed by Division 310 commander Oeun,<sup>196</sup> other senior Division 310 commanders,<sup>197</sup> Region 106 secretary Soth,<sup>198</sup> and cadres at various levels in Region 106.<sup>199</sup> Later that year, the CPK renamed the North Zone as the Central Zone with Ke Pauk as its secretary.<sup>200</sup>
51. What is striking to note at this point is that despite growing evidence of widespread treason implicating leaders at the highest levels of the CPK and DK government, Pol Pot, Nuon Chea and the CPK leaders continued to take a measured approach. From mid-1976, various confessions had consistently implicated Sao Phim in the plot,<sup>201</sup> while one witness reports that Pol Pot and Nuon Chea were aware of suspicions that Ruos Nhim was holding back forces for a secret army.<sup>202</sup> Nevertheless, the CPK refrained from immediately undertaking arrests in either of those zones. Instead, it took further steps to monitor and gather information on those zones' activities. From 1977 to 1978, cadres from the Southwest Zone who served under Ta Mok were sent to, *inter alia*, the Northwest Zone. There, they integrated themselves into local structures,<sup>203</sup> thus gaining a vantage point over activities in the zone.

<sup>192</sup> E3/9, Short, *Pol Pot*, ERN 00396566 (p. 358).

<sup>193</sup> E3/1593, Kiernan, *The Pol Pot Regime*, ERN 00678669 (pp. 334-335).

<sup>194</sup> E3/13, 'Minutes of the Meeting of Secretaries and Deputy Secretaries of Divisions and Independent Regiments', 9 Oct 1976, ERN 00940343 (p. 8).

<sup>195</sup> E3/1684, Chandler, *Voices From S-21*, ERNs 00192740-00192741 (pp. 61-62).

<sup>196</sup> See, the additional evidence requested *infra*, para. 82 (Keo Loeur).

<sup>197</sup> See, the additional evidence requested *infra*, para. 82 (Keo Loeur).

<sup>198</sup> Paul, *Plot Details Filter Through*, p. 25; see, also, E3/1593, Kiernan, *The Pol Pot Regime*, ERN 00678672 (p. 340).

<sup>199</sup> Paul, *Plot Details Filter Through*, p. 25.

<sup>200</sup> E3/1593, Kiernan, *The Pol Pot Regime*, ERN 00678671 (pp. 338-339).

<sup>201</sup> E3/9, Short, *Pol Pot*, ERN 00396566 (p. 358).

<sup>202</sup> F2/4/3/3.1, Lemkin's Notes, ERN 01106929 (p. 2) (W1, W2 and W3).

<sup>203</sup> See, F2/7, Fifth Additional Evidence Request, paras. 27 (Witness 2) and 41 (Witness 4).

52. To Nuon Chea, Sao Phim was as close as a “brother”, and both he and Pol Pot harboured very sentimental feelings towards Phim.<sup>204</sup> In 1978, Pol Pot and Nuon Chea continued to try to defuse the situation in the East Zone by appealing directly to Sao Phim.<sup>205</sup> They each personally wrote Sao Phim letters, with Nuon Chea’s letter advising Phim to “be careful and alert and to have a high revolutionary spirit” and Pol Pot’s letter urging Phim to compromise.<sup>206</sup> However, Pol Pot and Nuon Chea never received any response, and they instead learned of Vietnam’s February 1978 Fourth Plenum decision to implement “Plan A” with Sao Phim at the helm.
53. At this point, all reasonable efforts having been exhausted and their old friend being revealed as Vietnam’s inside man, Pol Pot, Nuon Chea and the CPK leaders began the final crackdown against the Kampuchean Workers’ Party. In March 1978, West Zone secretary Chou Chet was arrested, and additional arrests of Northwest Zone leaders commenced.<sup>207</sup> In April, further arrests began in the East Zone.<sup>208</sup> By May 1978, traitorous East Zone troops were undertaking guerrilla “hit-and-run” attacks against the RAK,<sup>209</sup> and by June, the situation had degenerated into a full-blown international armed conflict. One witness testified that Sao Phim led approximately 8,000 of his troops to fight against RAK soldiers, and that despite the fact that the RAK dropped leaflets on them for three days entreating them to surrender and be spared, they refused to do so, compelling the RAK to suppress the rebellion by force.<sup>210</sup> On 3 June 1978, surrounded by the RAK, Sao Phim committed suicide, while his in-law Ruos Nhim was arrested one week later on 11 June 1978.<sup>211</sup> This marked the final failure of the internal rebellion and Vietnam’s “Plan A”.

## C. Plan B: Invasion

### (i) *The Role of China and Soviet Union*

54. Since Sao Phim, Ruos Nhim and the Kampuchean Workers’ Party had failed to overthrow Pol Pot and Nuon Chea through a coup d’état, Vietnam took matters into its own hands and shifted to “Plan B”: invading Cambodia directly. Its first step in implementing this plan was to neutralise Cambodia’s major ally and insurance policy against a Vietnamese

<sup>204</sup> E3/4202, Chon and Sambath, *Behind the Killing Fields*, ERN 00757536 (p. 115).

<sup>205</sup> E3/4202, Chon and Sambath, *Behind the Killing Fields*, ERN 00757536 (p. 115).

<sup>206</sup> E3/4202, Chon and Sambath, *Behind the Killing Fields*, ERN 00757536 (p. 115).

<sup>207</sup> See, F2/7, Fifth Additional Evidence Request, para. 25 (Witness 2).

<sup>208</sup> E3/9, Short, *Pol Pot*, ERN 00396593 (p. 385).

<sup>209</sup> E3/9, Short, *Pol Pot*, ERN 00396594 (p. 384).

<sup>210</sup> See, the additional evidence requested *infra*, at paras. 74-75 (Witness 5).

<sup>211</sup> E3/7327, CPK Kampuchean Workers’ Party Press Release, ERN S 00015679; see, the additional evidence requested *infra*, paras. 75 (Witness 5) and 112 (2-TCW-918).

invasion – China – by drawing the Soviet Union in even closer as a counterweight. China had already signalled its support for the CPK only two days after the liberation of Phnom Penh. On 19 April 1975, China agreed to provide Cambodia US \$1 billion economic and military aid and trading opportunities,<sup>212</sup> a promise formalised on 10 February 1976 in a non-refundable aid treaty.<sup>213</sup> In contrast, its relationship with Vietnam was cooler. The two countries had locked horns over territory in the South China Sea in 1974 and 1975,<sup>214</sup> which may be one reason that in 1976, China rejected Le Duan's request for an aid package for Vietnam and one-time Chinese President and Chinese Communist Party Chairman Deng Xiaoping pointedly denounced "hegemonism" during his opening remarks at the welcoming banquet for Le Duan.<sup>215</sup>

55. Nevertheless, the relationship between China and Vietnam had been far from hostile. It was Vietnam which tipped the balance in July 1977 when it signed the friendship treaty with Laos. By signalling its intention to pursue its "Indochinese Federation" ambition, Vietnam pushed China towards Cambodia. On 30 July 1977, Chinese Foreign Minister Huang Hua announced that while China would not take sides in Indochina, it equally could not "watch indifferently any *intervention in Cambodian sovereignty or coveting of Cambodian territory*".<sup>216</sup> In mid-December 1977, following a year of border skirmishes between Vietnam and Cambodia quite often provoked by the Vietnamese, 60,000 Vietnamese troops crossed the border from Vietnam into Cambodia,<sup>217</sup> from the "Parrot's Beak" to Snoul.<sup>218</sup> That month, as Geng Biao later explained, China finally decided to throw its weight behind Cambodia, "strengthening it so that it might cope with the possible new situation when negotiations fail to solve the problems".<sup>219</sup>
56. Vietnam drove a further wedge between it and China from early 1978, when Vietnam began to subject its population of over one million overseas Chinese to a severely discriminatory policy and one which was reminiscent of the Nuremberg Laws. Vietnam nationalised overseas Chinese businesses, confiscated their property, forced mixed Chinese-Vietnamese couples to divorce, forcibly relocated the overseas Chinese to live in

<sup>212</sup> See, e.g., E3/9, Short, *Pol Pot*, ERNs 00396509-00396510 (pp. 301-302).

<sup>213</sup> See, e.g., E3/2376, Chanda, *Brother Enemy*, ERNs 00192202-00192203 (pp. 17-18).

<sup>214</sup> See, e.g., E3/2376, Chanda, *Brother Enemy*, ERNs 00192319-00192320 (pp. 134-135); E3/1593, Kiernan, *The Pol Pot Regime*, ERN 00678546 (pp. 102-103).

<sup>215</sup> See, e.g., E3/2376, Chanda, *Brother Enemy*, ERNs 00192210-00192212 (pp. 25-27).

<sup>216</sup> Huang Hua, 'Problems with Indochina, Albania, and Yugoslavia', in King C. Chen (ed.), *China and the Three Worlds*, 1979, pp. 271-272.

<sup>217</sup> E3/2370, *Pike Congressional Report*, ERN 00187388 (p. 9).

<sup>218</sup> E/9, Short, *Pol Pot*, ERN 00396585 (p. 377).

<sup>219</sup> E3/7325, Geng Biao, *Report on the Indochina Situation*, ERN 01001625 (p. 384).

impoverished conditions in special economic zones, expelled 270,000 of them in a gruelling overland migration back to China, and put 100,000 on boats out to sea<sup>220</sup> where tens of thousands died.<sup>221</sup> This was clearly a deliberate attempt by Vietnam to “poke the bear” and see its reaction, and a move connected to Vietnam’s ambitions in Cambodia: the policy approach towards the overseas Chinese was the other major decision that the Vietnamese Communist Party Central Committee took at its February 1978 Fourth Plenum, alongside the decision to give the green light to “Plan A” and “Plan B”.<sup>222</sup> Unsurprisingly incensed, China’s approach to Vietnam subsequently became increasingly critical. During 1978, Deng Xiaoping labelled Vietnam as the “hooligans of the East”<sup>223</sup> and, during discussions with then-National Security Advisor to US President Carter, Zbigniew Brzezinski, as “the Asian Cuba”.<sup>224</sup>

57. Having firmly raised China’s ire, Vietnam next sought to firm up its insurance policy against any possible Chinese reaction to its eventual invasion of Cambodia. The Soviet Union was Vietnam’s obvious choice for such coverage. Vietnam’s relationship with the Soviet Union, China’s main rival and threat, had already been warming while its relationships with Cambodia and China cooled. In October 1975, immediately after China rebuffed Vietnam’s request for aid, Vietnam turned around and secured a promise from the Soviet Union for long-term military aid, and the two signed a joint communiqué endorsing the Soviet Union’s foreign policy.<sup>225</sup> In mid-1977, Vietnam’s then Prime Minister Pham Van Dong met the Soviet Union’s State Presidium Chairman and Communist Party General Secretary Leonid Brezhnev for preliminary talks in preparation for the formalisation of a partnership. More strikingly, in late January 1978, just before the Fourth Plenum, Vietnam’s minister of defence General Vo Nguyen Giap sought the counsel of the Soviet Union’s commander-in-chief of ground forces, General Grigoriyevich Pavlovskiy, on how to resolve the “Cambodian situation”. Pavlovskiy advised the Vietnamese to “do a Czechoslovakia”,<sup>226</sup> referring to the Soviet Union’s 1968 invasion of Czechoslovakia. Ironically, this precisely echoed Son Sen’s 1976 speech in which he claimed that the CPK

<sup>220</sup> E/9, Short, *Pol Pot*, ERN 00396587 (p. 379); Hoang Van Hoan, *A Drop in the Ocean*, p. 356-358; E3/7340, Duiker, *China and Vietnam*, ERNs 01002004-01002005 (pp. 74-75).

<sup>221</sup> E/9, Short, *Pol Pot*, ERN 00396587 (p. 379).

<sup>222</sup> Chanda, *Timetable for a Takeover*, pp. 33-34.

<sup>223</sup> E3/2376, Chanda, *Brother Enemy*, ERN 00192446 (p. 261).

<sup>224</sup> E3/7339, Sophie Richardson, *China, Cambodia, and the Five Principles of Peaceful Coexistence*, 2010 (“*China, Cambodia, and the Five Principles*”), ERN 01001994 (p. 102). In this context, the Chinese term for “hooligan”, 流氓 or *liú máng*, would have been intended to mean someone who is dishonest, unreliable and dishonourable and cares little about what means they may use to get what they want.

<sup>225</sup> E3/2376, Chanda, *Brother Enemy*, ERN 00192213 (p. 28).

<sup>226</sup> E3/2376, Chanda, *Brother Enemy*, ERN 00192401 (p. 216).

had triumphed over an enemy plot seeking to do exactly that.<sup>227</sup> Vietnam clearly took Pavlovskiy's advice to heart, invading Cambodia less than a year later. Indeed, the Defence notes that as part of the "Brezhnev doctrine", the Soviet Union itself undertook a similar invasion on a much grander scale a year later, when it invaded Afghanistan. Today, not only are aftershocks of that invasion still being felt, but similar sentiments still form part of Russian foreign policy, as its 2014 military intervention in Ukraine suggests.

58. From mid-1978, the relationship between Vietnam and the Soviet Union rapidly solidified. On 28 June, Vietnam joined the Soviet bloc's economic group, Comecon.<sup>228</sup> In August, the Soviet Union began airlifting and shipping arms to Vietnam, including long-range guns, missiles, radar, ammunition and MiG-21 fighter jets.<sup>229</sup> Finally, on 3 November 1978, Vietnam and the Soviet Union signed a 25-year friendship treaty.<sup>230</sup> The treaty pledged that "[w]hen either side is attacked or is under the threat of attack, the two signatories shall immediately conduct meetings to work out ways of stamping out the threat and take appropriate, effective measures to guarantee the peace and security of the two countries".<sup>231</sup> As Geng Biao described, the treaty "bolstered Vietnam up" and made it "swollen with arrogance",<sup>232</sup> since it served as firm insurance for Vietnam's "Indochinese Federation" ambitions – particularly in light of China's characteristic commitment to the principle of non-interference in the affairs of other states.<sup>233</sup>

**(ii) Building up a Cambodian "Front"**

59. The next step Vietnam undertook in preparing to invade Cambodia was to build up a military front of Cambodian defectors and refugees.<sup>234</sup> This front was to serve a twofold purpose. First, it was to at least marginally participate in the invasion and thereby offer the invasion a propagandistic "cloak of legitimacy"<sup>235</sup> or "political fig leaf"<sup>236</sup> which painted a thin veneer of "liberation" over a blatantly aggressive invasion. Second, upon the

<sup>227</sup> See, *supra*, para. 49.

<sup>228</sup> E3/2376, Chanda, *Brother Enemy*, ERN 00192431 (p. 246).

<sup>229</sup> E3/2376, Chanda, *Brother Enemy*, ERN 00192443 (p. 258).

<sup>230</sup> E3/2376, Chanda, *Brother Enemy*, ERN 00192506 (p. 321).

<sup>231</sup> Hoang Van Hoan, *A Drop in the Ocean*, p. 359.

<sup>232</sup> E3/7325, Geng Biao, *Report on the Indochina Situation*, ERN 01001623 (p. 382).

<sup>233</sup> E3/7325, Geng Biao, *Report on the Indochina Situation*, ERN 01001623 (p. 382).

<sup>234</sup> Alexiou, *Foreign Policy of the PRC towards the SRV*, p. 92.

<sup>235</sup> E3/7340, Duiker, *China and Vietnam*, ERN 01002008 (p. 78); E3/7338, Morris, *Why Vietnam Invaded Cambodia*, ERNs 01001777-01001778 (pp. 110-111).

<sup>236</sup> E3/7338, Morris, *Why Vietnam Invaded Cambodia*, ERNs 01001777-01001778 (pp. 110-111).

invasion's success, the front's leaders would be able to serve as "the basis of a puppet government which [Vietnam] intended to install in Phnom Penh."<sup>237</sup>

60. Steps had already been taken long before the Fourth Plenum to cobble the front together. East Zone commanders including Hun Sen and Chea Sim had fled across the border to Vietnam in mid-1977,<sup>238</sup> while the recruitment drive among Cambodian refugees in southern Vietnam reportedly began a few months later in October 1977.<sup>239</sup> It is also reported that in December 1977, while 60,000 Vietnamese troops were streaming over the border into Cambodia, hidden among them were two Vietnamese tanks containing Hun Sen, Hem Samin, and a handful of others. They entered Cambodia on 22 December 1977 intending to make contact with Sao Phim,<sup>240</sup> presumably in order to coordinate their efforts and/or exchange information. Unable to locate Sao Phim, however, the tanks returned.<sup>241</sup>
61. The fledgling front was bolstered in 1978 when reportedly some 1,500 East Zone troops, including Heng Samrin, fled across the border during the armed conflict.<sup>242</sup> By at least mid-1978, more significant steps were taken to form the Kampuchean National United Front for National Salvation ("KNUFNS")<sup>243</sup> led by Heng Samrin.<sup>244</sup> For example, there are reports that at least six Vietnamese, including long-time Cambodia liaisons Hay Sau and Ba Ha, had held several clandestine meetings with East Zone leaders in Kampong Cham between February and May 1978 to plan successive invasions of Cambodia.<sup>245</sup> From April 1978, Vietnam set up guerrilla training camps for the front forces,<sup>246</sup> while from June 1978, Radio Hanoi also began to broadcast calls for Cambodians to rise up against Pol Pot<sup>247</sup> and Vietnam began to build up its border with Cambodia.<sup>248</sup> There are also reports that refugees were recruited from camps along the Thai border in October 1978.<sup>249</sup>

<sup>237</sup> E3/7338, Morris, *Why Vietnam Invaded Cambodia*, ERNs 01001777-01001778 (pp. 110-111).

<sup>238</sup> E3/7339, Richardson, *China, Cambodia, and the Five Principles*, ERN 01001992 (p. 99); *see, also*, the additional evidence requested *infra*, para. 116 (Hun Sen biography).

<sup>239</sup> E3/7338, Morris, *Why Vietnam Invaded Cambodia*, ERN 01001768 (p. 101).

<sup>240</sup> E3/1593, Kiernan, *The Pol Pot Regime*, ERN 00678689 (p. 375).

<sup>241</sup> E3/1593, Kiernan, *The Pol Pot Regime*, ERN 00678689 (p. 375).

<sup>242</sup> *See*, the additional evidence requested *infra*, para. 112 (2-TCW-918); *see, also*, E3/1593, Kiernan, *The Pol Pot Regime*, ERN 00678702 (pp. 400-401).

<sup>243</sup> Chanda, *Timetable for a Takeover*, p. 34.

<sup>244</sup> E3/7338, Morris, *Why Vietnam Invaded Cambodia*, ERNs 01001777-01001778 (pp. 110-111); *see, also*, the additional evidence requested *infra*, para. 115 (Heng Samrin biography).

<sup>245</sup> E3/1262, *CPK Vietnam Coup D'Etat Press Release*, ERNs 00079722-00079724 (pp. 1-3); *see, also*, E3/387, *Heder Ouk Bunchhoeun Interview*, ERN 00350217.

<sup>246</sup> *See, e.g.*, E3/2376, Chanda, *Brother Enemy*, ERNs 00192403-00192404 (pp. 218-219).

<sup>247</sup> Chanda, *Timetable for a Takeover*, p. 34; E3/7338, Morris, *Why Vietnam Invaded Cambodia*, ERNs 01001777 (p. 110).

<sup>248</sup> Chanda, *Timetable for a Takeover*, p. 34.

<sup>249</sup> *See*, the additional evidence requested *infra*, paras. 137 (Cable 5) and 133 (Cable 4).



However, the formation of KNUFNS was not formally announced until 3 December 1978, just three weeks before the invasion would commence.<sup>250</sup>

**(iii) Controlling the Narrative**

62. With its plans to secure Soviet support and develop the KNUFNS underway, Vietnam commenced the third and final step in readying for the invasion. This was to lay careful foundations to enable it to control the narrative that would emerge when they eventually invaded Cambodia. Vietnam did this by engaging DK in a ferocious propaganda war to seize the high moral ground in the eyes of the international community. As Vietnam expert Douglas Pike reported to the US Congress in October 1978:

Both sides make bids for world public opinion, the Vietnamese far more skillfully than the Cambodians. [...] Both sides speak of sacred borders, the determination not to be dominated. Both claim they are not waging war, only resisting aggression. Both avow they are untarnished by aggressive ambition, want only friendship with the other. [...]

Both sides hurl grisly atrocity charges [...]. The Cambodians say the Vietnamese take no prisoners (a report confirmed by reliable sources). In Hanoi, Vietnamese give visitors briefings with color photos. The Cambodians surface Vietnamese prisoners who describe months of preparation for the attack. Both sides traffic heavily in captured documents. Both take selected visitors to the front.<sup>251</sup>

63. In addition to the above strategies, there were reports that Vietnam issued regular radio broadcasts about Cambodian misdeeds,<sup>252</sup> paving the way for Vietnam to craft a later narrative of the invasion as a humanitarian intervention. Its campaign steadily narrowed the personification of the Cambodian enemy from the “Kampuchean authorities” to the “Phnom Penh authorities” and by June 1978, the dual-headed “Pol Pot-Ieng Sary clique”, the term which eventually stuck. It also sought to paint itself as the magnanimous party seeking a compromise and the Cambodians as the aggressor spoiling for a fight.<sup>253</sup> However, this argument is undermined by the fact that despite reports of numerous border clashes with Thailand during the CPK’s reign,<sup>254</sup> the CPK had long sought to have good relations with Thailand<sup>255</sup> and was ultimately able to avoid escalation to full-scale armed conflict and instead, successfully normalise relations between the two countries by

<sup>250</sup> E3/7338, Morris, *Why Vietnam Invaded Cambodia*, ERNs 01001777-01001778 (pp. 110-111).

<sup>251</sup> E3/2370, *Pike Congressional Report*, ERN 00187389 (p. 10).

<sup>252</sup> See, e.g., E3/2376, Chanda, *Brother Enemy*, ERNs 00192403-00192404 (pp. 218-219).

<sup>253</sup> E3/2370, *Pike Congressional Report*, ERN 00187389 (p. 10).

<sup>254</sup> E3/1593, Kiernan, *The Pol Pot Regime*, ERN 00678680-00678681 and 00678685 (pp. 357-358 and 366); E3/7338, Morris, *Why Vietnam Invaded Cambodia*, ERNs 01001745 and 01001747 (pp. 78 and 80).

<sup>255</sup> See, e.g., the additional evidence requested *infra*, para. 131 (Cable 4).

September 1978.<sup>256</sup> Moreover, as Nayan Chanda noted, Vietnam's propaganda campaign only had a short-term impact at the time and:

Some observers are convinced that had the Cambodian regime got a year's reprieve, its internal and international image would have been improved enough to make any Vietnamese drive [to invade Cambodia] very difficult if not impossible. So the Vietnamese had to strike [quickly].<sup>257</sup>

64. Vietnam's propaganda campaign was not simply limited to hurling nasty words. For example, in February 1978, Vietnam made DK an offer to settle their dispute over Vietnam's December 1977 invasion. However, a Vietnamese official later confessed that Vietnam knew that Cambodia would never accept the proposed settlement terms and that Vietnam had offered the deal simply to ensure that DK would refuse and thus be the one to shoulder the blame for the conflict instead of Vietnam.<sup>258</sup> Furthermore, and as already discussed, the establishment of the KNUFNS was in and of itself a propaganda move to shield the invasion's true nature and motives. Only announcing its existence on 3 December 1978 was equally calculated as a way to suggest that the invasion was a spontaneous uprising of the people rather than a deliberate and carefully-planned invasion by a powerful and ruthless military force. The notion was clearly ridiculous, as Sihanouk suggested before the UN Security Council when he said that:

Even school children at the primary level would be unable to believe that in the extremely short space of only 22 days, this tiny and insignificant so-called Kampuchean Front could recruit, equip, teach, train, and lick into shape such an Olympian armed force of so many components and furthermore equipped with machines and weapons requiring a perfect mastery of electronics and ballistics, not to mention the special skills that can be possessed only by units which have already taken part in large-scale operations.<sup>259</sup>

**(iv) Vietnam Does a "Czechoslovakia"**

65. Having carefully undertaken all the necessary preparations, Vietnam was at last ready to effect "Plan B". On 25 December 1978, Vietnam stormed Cambodia in a "blitzkrieg" "Czechoslovakia"-style invasion carried out by over 150,000 Vietnamese and KNUFNS troops. By 7 January 1979, they had captured Phnom Penh. Heng Samrin was installed as the new head of a puppet state known as the People's Republic of Kampuchea, while former "Khmer Viet Minh" and current CNRP Member of Parliament Pen Sovan<sup>260</sup> was installed as the secretary of a new Kampuchean People's Revolutionary Party, a party name

<sup>256</sup> E3/7338, Morris, *Why Vietnam Invaded Cambodia*, ERNs 01001749-01001750 (pp. 82-83). See, also, E295/6/3, Closing Brief, para. 170.

<sup>257</sup> Nayan Chanda, 'Cambodia: Fifteen Days That Shook Asia', *Far Eastern Economic Review*.

<sup>258</sup> E3/2376, Chanda, *Brother Enemy*, ERN 00192401 (p. 216).

<sup>259</sup> E3/7335, UN Security Council Meeting Minutes, ERN 01001644 (p. 8).

<sup>260</sup> See, the additional evidence requested *infra*, para. 117 (Pen Sovan biography).

strikingly similar to the 1951 Vietnam-controlled Khmer People's Revolutionary Party which had been one of the precursors for the Kampuchean Workers' Party.<sup>261</sup> At last, Vietnam had put in place the final piece in its Indochinese Federation puzzle.

66. However, not all of "Plan B" went according to Vietnam's plan, at least at the time. On 11 January 1979, less than a week after the invasion, the UN Security Council convened an emergency session in response to a request sent by Ieng Sary on behalf of the DK government. There, to Vietnam's surprise and humiliation, the majority of member states present (with the limited exception of Soviet bloc states) condemned Vietnam's actions, characterising them precisely as an unprovoked invasion of a sovereign state in flagrant violation of international law. In particular, the Chinese ambassador to the UN, Chen Chu, described the Vietnamese invasion as:

a large-scale naked armed aggression against Democratic Kampuchea, seriously violating the independence, sovereignty and territorial integrity of Democratic Kampuchea and gravely violating and menacing peace and security in South-East Asia, the whole of Asia and the world at large.<sup>262</sup>

67. Chen Chu further noted that by so invading Cambodia, Vietnam was "trampling upon the elementary principles guiding international relations and violating the Charter of the United Nations".<sup>263</sup> Sihanouk also took the opportunity to read into the record the criticisms lodged against Vietnam's invasion of Cambodia by the United States, Japan, Kuwait, Sweden, Colombia, Australia, Romania and Yugoslavia.<sup>264</sup>
68. Worldwide criticism and economic sanctions followed, and for the next decade, Vietnam and the People's Republic of Kampuchea were the pariahs of the international community.<sup>265</sup> Reversing this situation required Vietnam to embark on another concerted, long-term propaganda campaign, again taking every effort to paint the CPK and DK government as black as night. One striking example is when Vietnam brought in Mai Lam, the curator of Vietnam's Museum of American War Crimes (now known as the War Remnants Museum), to transform S-21 into a genocide museum which drew as many (inaccurate) parallels as possible between S-21 and Auschwitz, and ultimately between DK and Nazi Germany.<sup>266</sup> Another example is the two Vietnam-sympathising East German documentaries *Die Angkar* and *Kampuchea: Sterben und Auferstehen*, both produced by

<sup>261</sup> E3/7338, Morris, *Why Vietnam Invaded Cambodia*, ERN 01001778 (p. 111).

<sup>262</sup> E3/7335, UN Security Council Meeting Minutes, ERN 01001638 (p. 2).

<sup>263</sup> E3/7335, UN Security Council Meeting Minutes, ERN 01001646 (p. 10).

<sup>264</sup> E3/7335, UN Security Council Meeting Minutes, ERNs 01001644-01001645 (pp. 8-9).

<sup>265</sup> E3/2376, Chanda, *Brother Enemy*, ERN 00192561 (p. 376).

<sup>266</sup> E3/1684, Chandler, *Voices From S-21*, ERN 00192684 (p. 5).

East German filmmakers named Walter Heynowski and Gerhard Scheumann, who were renowned for having developed the agitational propaganda film to new levels of sophistication.<sup>267</sup>

69. In 1979, Geng Biao had remarked that:

[n]o matter what kinds of mistakes the Cambodian Communist Party and the Government of Democratic Kampuchea have committed in the past, this should absolutely not be taken as a [pretext] by any regime to interfere in, subvert, and invade Cambodia, which is still a sovereign state.<sup>268</sup>

However, this is exactly what has happened. Vietnam's relentless efforts to legitimise its illegal aggression towards Cambodia, revive its image and denigrate that of the CPK and the DK eventually succeeded. Today, it appears that Vietnam's ruthless, calculating and aggressive designs for Cambodia under "Plan A" and "Plan B" are entirely forgotten. In their place is a very different narrative. This narrative is one which enabled the Trial Chamber to conclude that the very Kampuchean Workers' Party leaders who sought to overthrow Pol Pot, Nuon Chea and the legitimate DK government were instead co-conspirators with them in a joint criminal enterprise, and that Pol Pot and Nuon Chea exercised "effective control" over the Kampuchean Workers' Party leaders' treasonous forces. This is an absolutely absurd conclusion which simply has no place in reality whatsoever.

## V. ADDITIONAL EVIDENCE

70. The Defence requests the Chamber to admit 22 additional pieces of evidence and summons 2 witnesses to testify. This additional evidence is set out in detail from paragraphs 71 to 148 and consists of 10 pieces of witness testimony (namely WRIs, trial transcripts and DC-Cam statements) relating to rebellion in the East Zone, rebellion by the North Zone-affiliated Division 310, and rebellion in the Northwest Zone, as well as 12 foreign government documents (namely intelligence reports and diplomatic cables) from the public domain.

<sup>267</sup> E3/3095R, 'Die Angkar'; E3/535R, 'Kampuchea: Sterben und Auferstehen'. The Defence has sought Heynowski's appearance as a witness in Case 002/02. Scheumann is deceased.

<sup>268</sup> E3/7325, Geng Biao, *Report on the Indochina Situation*, ERN 01001630 (p. 389).

## A. Witness Testimony on Rebellion in the East Zone

### (i) *WRI of Witness 5<sup>269</sup> (Combatant in East Zone Rebellion)*

71. The first piece of evidence the Defence seeks to admit is the WRI of Witness 5. Witness 5 was interviewed by the International Co-Investigating Judge on 11 October 2013<sup>270</sup> and the subsequent WRI was made available to the Defence on 18 February 2015.<sup>271</sup> His WRI is attached as **(Confidential) Attachment 1**. Witness 5 is the first witness in this Request who the Defence requests to be summoned to testify.
72. Witness 5 describes joining an internal rebellion led by Sao Phim, the East Zone Secretary and the disunity between the East Zone and the rest of the CPK:

A15: I left Lvea Aem in 1976. When I arrived in Prey Veng, I was placed at that worksite where I was starved and forced to overwork without adequate medicine. Later on, in around July or August in 1978, the Party Committee of SAO Phim agitated us to rearm by withdrawing us from that worksite. SAO Phim was the [Zone] Secretary there. I joined that movement in order to fight the Khmer Rouge. SAO Phim arranged for me to be positioned along National Road 15. The Khmer Rouge soldiers came from the Southwest and the West to surround the East Zone.<sup>272</sup> [...]

A17: There were Sala-Sa soldiers, and even the wounded who had not recovered completely were also armed. About 8,000 people joined the movement. This movement was organized quickly and spontaneously while being surrounded by aircraft, tanks, and infantry.<sup>273</sup> [...]

A18: [...] POL Pot started to kill the East Zone people straightaway by accusing them of being the Yuon enemy. That was why this movement was created. SAO Phim just gathered the forces and started it immediately.<sup>274</sup>

73. Witness 5 indicates that there had been a degree of preparation to the revolt. Notably, “the weapons [used] were from the Zone Warehouse, because they had been collected and stored there.”<sup>275</sup>

<sup>269</sup> The Defence refers to the witnesses *only* by pseudonyms in accordance with the Supreme Court Chamber’s directive that it “identify the Case 003 or 004 witness only by a pseudonym assigned by the Trial Chamber for Case 002/02 or by the Supreme Court Chamber for Case 002/01, or will use only general words reasonably calculated to avoid identifying the witness”: *see*, F22, ‘Directions Concerning Proposed Witnesses in Appeal Proceedings of Case 002/01’, 26 Mar 2015 (“SCC Direction on Witness Identities”), para. 6(d). A number of witnesses to which this Request relates have never been assigned pseudonyms by either the Trial or Supreme Court Chambers. Accordingly, the Defence has assigned its own pseudonyms to those witnesses. The pseudonyms used in this request follow on from the sequence used in F2/7, Fifth Additional Evidence Request.

<sup>270</sup> E319/13.3.39, ‘Written Record of Interview [Witness 5]’, 11 October 2013 (“Witness 5 WRI”).

<sup>271</sup> E319/13/1, ‘Notice of Acceptance of Documents’, 26 February 2015; *see, also*, E319/13 International Co-Prosecutor’s Disclosure of Documents from Case File 004 Relevant to Case 002 Pursuant to Case 004-D193/11, 18 February 2015.

<sup>272</sup> E319/13.3.39, Witness 5 WRI, ERNs 00978752-00978753 (emphases added).

<sup>273</sup> E319/13.3.39, Witness 5 WRI, ERN 00978753 (emphasis added, Khmer phrase omitted).

<sup>274</sup> E319/13.3.39, Witness 5 WRI, ERN 00978753 (Khmer phrase omitted).

<sup>275</sup> E319/13.3.39, Witness 5 WRI, ERN 00978753.

74. According to Witness 5, the CPK announced that “the traitors were only SAO Phim and his wife, Yeay Karo” and that the rest “would be fine if they surrendered”. The CPK appealed for everyone to surrender “by dropping leaflets from the planes for three days.”<sup>276</sup> After the three days, Witness 5 explained that:

A22: [...] their forces launched attacks by aircraft and tanks. I did not remember clearly, but it was about July 28 or August when they attacked us. [...]

A23: The people were eventually killed because there were so many tanks, and the tanks were too big for our weapons to disable, so I dropped my weapon and fled. Those tanks were [sic] crushed people to death.<sup>277</sup>

75. Finally, Witness 5 detailed the suppression of the rebellion and Sao Phim’s suicide:

Q: When the Khmer Rouge re-took the East Zone, what happened to those rebels?

A24: SAO Phim shot himself dead. SAO Phim had ordered us by phone to keep fighting, but we could not fight because they had too many tanks. [...]

A25: The rebels were shot dead by the Khmer Rouge and piled up in a pond near a pagoda. As for those who has escaped, the Khmer Rouge assigned some forces to chase and capture them. Some of them were taken to be interrogated and imprisoned; some were sent to build an airport in Kampong Chhang province, and some were shot dead east of Pursat Town.<sup>278</sup>

## B. Witness Testimony on Rebellion in North Zone-Affiliated Division 310

76. During the Case 002/02 trial’s Kampong Chhnang Airport Worksite segment, several witnesses provided insight into operations in the North Zone (which later became the Central Zone), as they had worked at the worksite. Two of these witnesses offered detailed testimony concerning the zone’s participation in fomenting rebellion.

### (i) *Transcripts of Witness Keo Loeur*<sup>279</sup> (*Company Commander in Division 310*)

77. The second and third pieces of evidence the Defence seek to admit are two transcripts of witness Keo Loeur’s live testimony in Case 002/02 (on 15 and 16 June 2015),<sup>280</sup> attached as **(Public) Attachments 2 and 3**. Keo Loeur also gave a DC-Cam interview on 16 February 2005, which is already part of the Case 002/01 case file.<sup>281</sup>

<sup>276</sup> E319/13.3.39, Witness 5 WRI, ERN ERNs 00978753-00978754.

<sup>277</sup> E319/13.3.39, Witness 5 WRI, ERN 00978754 (emphasis added).

<sup>278</sup> E319/13.3.39, Witness 5 WRI, ERN 00978754 (emphases added).

<sup>279</sup> As Keo Loeur has already testified in Case 002/02, his identity is already in the public domain. Therefore, the Defence considers that referring to him by name rather than pseudonym is in compliance with the Supreme Court Chamber’s relevant directions in this regard: F22, SCC Direction on Witness Identities, para. 2.

<sup>280</sup> T. 15 Jun 2015 (Keo Loeur, E1/316.1) and T. 16 Jun 2015 (Keo Loeur, E1/317.1).

<sup>281</sup> E3/5658, DC-Cam Interview with KEO Loeur, 16 Feb 2005 (“Keo Loeur DC-Cam Interview”).

78. Keo Loeur joined the military to fight against Lon Nol in 1970 and was promoted to deputy commander of Battalion 317 of Division 310 in 1974.<sup>282</sup> Injured in battle in 1975, he was transferred to K-4, a battalion-level unit in Division 310 for disabled/injured soldiers stationed “north of Pochentong Airport”, where he served as a company commander. In 1977, he briefly acted as the head of K-4.<sup>283</sup>
79. During his live testimony in Case 002/02, Keo Loeur provided much more detailed evidence on an attempted coup by the military in which Division 310 was involved, supplementing the limited information contained in his DC-Cam interview in this regard.<sup>284</sup> In particular, Keo Loeur testified that he saw a truck loaded with weapons “[come] from the north direction”<sup>285</sup> which stopped near Keo Loeur’s location “near the front of the Calmette hospital”.<sup>286</sup> When asked what made him think that the weapons were for rebellion, Keo Loeur recalled that before he had seen the truck loaded,<sup>287</sup> he and “the entire division”<sup>288</sup> had been called to attend a meeting held by Oeun, the head of Division 310, “at a location north of Wat Phnom”,<sup>289</sup> where Oeun told them that:
- the regular force soldiers would be sent to the front battlefield and for the disabled soldiers, we would lend our hand in packaging food in order for us to overthrow the DK regime by attacking Phnom Penh.<sup>290</sup>
80. Keo Loeur added that “[w]hile the meeting was held the weapons were already stationed outside”<sup>291</sup> and that while he did not personally see the weapons there, he did hear Oeun and “the senior cadres speaking among themselves that the weapons had been brought in” to Phnom Penh.<sup>292</sup>
81. As to the role of K-4 in the coup plot, Keo Loeur testified that “the disabled soldiers unit of K-4 was tasked to assist in packing the food”.<sup>293</sup> He did not know where the food was transported from but testified that the food he packed was “put in K-4”.<sup>294</sup>

<sup>282</sup> E3/5658, Keo Loeur DC-Cam Interview, ERNs 00863275 and 00863280; T. 15 Jun 2015 (Keo Loeur, E1/316.1), p. 40.

<sup>283</sup> E3/5658, Keo Loeur DC-Cam Interview, ERNs 00863287 and 00863288-89; T. 16 Jun 2015 (Keo Loeur, E317.1), p. 12, lns. 4-7; T. 15 Jun 2015 (Keo Loeur, E1/316.1), pp. 43-51, 54-55.

<sup>284</sup> E3/5658, Keo Loeur DC-Cam Interview, ERN 00863305.

<sup>285</sup> T. 16 Jun 2015 (Keo Loeur, E1/317.1), p. 11, ln. 2.

<sup>286</sup> T. 16 Jun 2015 (Keo Loeur, E1/317.1), p. 10, lns. 10-13. (emphasis added).

<sup>287</sup> T. 16 Jun 2015 (Keo Loeur, E1/317.1), p. 10, lns. 10-12.

<sup>288</sup> T. 15 Jun 2015 (Keo Loeur, E1/316.1), p. 34, ln. 20.

<sup>289</sup> T. 15 Jun 2015 (Keo Loeur, E1/316.1), p. 35, ln. 5.

<sup>290</sup> T. 15 Jun 2015 (Keo Loeur, E1/316.1), p. 33, lns. 14-17.

<sup>291</sup> T. 15 Jun 2015 (Keo Loeur, E1/316.1), p. 35, lns. 12-13.

<sup>292</sup> T. 15 Jun 2015 (Keo Loeur, E1/316.1), pp. 35-36, lns. 24-1.

<sup>293</sup> T. 16 Jun 2015 (Keo Loeur, E1/317.1), p. 11, lns. 12-14.

<sup>294</sup> T. 16 Jun 2015 (Keo Loeur, E1/317.1), p. 12, ln. 3.

82. According to Keo Loeur, “no precise indication” was given for when the rebellion would begin. Oeun merely said that “you all comrades wait and see and we will do it when time permits”.<sup>295</sup> However, the coup never eventuated, since “the night after the meeting those comrades had been arrested at the division”.<sup>296</sup> About “two days after [Oeun] had been arrested”, the soldiers in the division were called to a “study session” “where [Oeun’s] confession on tape was [] played”.<sup>297</sup> Keo Loeur also indicated that other soldiers in the were not arrested, describing how:

we were not questioned about the plot by the leaders but we were urged to work hard and we were told that we had been affiliated with the former regime because the leaders – our leaders betrayed Angkar.<sup>298</sup>

83. Following the leaders’ arrests, Keo Loeur explained that Southwest cadres came to take over his unit.<sup>299</sup>
84. Finally, Keo Loeur confirmed that Ta Kim, the deputy of Division 310, had a house “near Wat Phnom”, although he claimed not to know whether Kim and Oeun and other senior comrades used to meet in this house to discuss the coup plot.<sup>300</sup>

*(ii) Transcripts of Sèm Hoeun<sup>301</sup> (Commander in Division 310)*

85. The fourth and fifth pieces of evidence the Defence seek to admit are two transcripts of Sèm Hoeun’s live testimony in Case 002/02 (on 22 and 23 June 2015) during the trial segment on the Kampong Chhnang Airport Worksite,<sup>302</sup> which are attached as **(Public) Attachments 4 and 5**. Sèm Hoeun also gave a DC-Cam interview on 28 February 2005 which is already part of the Case 002/01 case file.<sup>303</sup>
86. Sèm Hoeun joined the front to fight against Lon Nol in 1970 and acted for a time as a battalion commander in the North Zone-affiliated Division 310.<sup>304</sup> During his live testimony in Case 002/02, Sèm Hoeun confirmed<sup>305</sup> his DC-Cam testimony in relation to a

<sup>295</sup> T. 15 Jun 2015 (Keo Loeur, **E1/316.1**), p. 36, lns. 7-12.

<sup>296</sup> T. 15 Jun 2015 (Keo Loeur, **E1/316.1**), p. 37, lns. 1-2.

<sup>297</sup> T. 15 Jun 2015 (Keo Loeur, **E1/316.1**), p. 37, lns. 18-20.

<sup>298</sup> T. 16 Jun 2015 (Keo Loeur, **E1/317.1**), pp. 13-14, lns. 23-1.

<sup>299</sup> T. 15 Jun 2015 (Keo Loeur, **E1/316.1**), p. 34, lns. 8-9.

<sup>300</sup> T. 16 Jun 2015 (Keo Loeur, **E1/317.1**), pp. 3-4, lns. 25-7.

<sup>301</sup> As Sèm Hoeun has already testified in Case 002/02, his identity is already in the public domain. Therefore, the Defence considers that referring to him by name rather than pseudonym is in compliance with the Supreme Court Chamber’s relevant directions in this regard: **F22**, SCC Direction on Witness Identities, para. 2.

<sup>302</sup> T. 22 Jun 2015 (Sèm Hoeun, **E1/319.1**) and T. 23 Jun 2015 (Sèm Hoeun, **E320.1**).

<sup>303</sup> **E3/7516**, DC-Cam Interview with SÈM Hoeun, 28 Feb 2005 (“Sèm Hoeun DC-Cam Interview”).

<sup>304</sup> **E3/7516**, Sèm Hoeun DC-Cam Interview, ERNs 00876481 and 00876488-00876489; T. 17 Jun 2015 (Sèm Hoeun, **E1/318.1**), pp. 91-93 and p. 99, lns. 10-11; T. 22 Jun 2015 (Sèm Hoeun, **E1/319.1**), p. 68, ln. 20 – p. 69, ln. 2.

<sup>305</sup> T. 22 Jun 2015 (Sèm Hoeun, **E1/319.1**), p. 76, ln. 24 – p. 77, ln. 25.



military coup attempt in which Division 310 was involved and provided additional and more detailed evidence on this topic. In particular, he described the coup attempt as a joint effort together with the East Zone, with commanders from both zones attending joint meetings:

[I]t was the combined plan and the East Zone would be engaged in the attack in its own zone and the North Zone would be responsible for its own.<sup>306</sup> [...]

What I knew is that the commanders of North Zone and East Zone had the meetings but in other places which I did not know.<sup>307</sup>

87. Sèm Hoeun also appeared to suggest that other zones were involved, explaining the roles of the East and North Zones in the rebellion, indicating that there would also be a role for “forces from *various* zones” in the plan, and detailing its specifics:

The rebellion plan was that for the East Zone it will be led by So Phim, and the other zone [i.e. the North Zone] was led by the respective leader and they already prepared their force at the front and at the rear, and also they prepared the force at the centre level in order to attack and take over Phnom Penh while the forces from *various* zones will -- would take -- would contact -- rather, would attack and take over the outskirts of the city.<sup>308</sup>

88. As to the specifics of the coup attempt itself, Sèm Hoeun had explained to DC-Cam that:

my Chief Oeun had his own nationalist conscience as well. He tried to build up internal forces called ‘Khmer White’ to struggle against the Khmer Rouge regime. So, he tried to build up hidden forces in a division. This is what I recall. He sent me to penetrate myself in Kampong Cham. He gave me a platoon to lead and six 55-trucks to transport weapons to hide in Kampong Cham. When all the leaders such as Oeun and Thuch were arrested, I was found to have had an association with them. [...]

We were ordered to stand by for further orders; when the time came, we were to transport these weapons on to Khieu’s place in Pochentong, to attack and seize Pochentong Airport, to attack and seize an artillery and armoured vehicle warehouse. Another battalion was ordered to get ready to attack the Radio Station. However, the plot was revealed and all involved leaders and their associates were arrested. The war could have started at any time since 1976 should these arrangements be successful.<sup>309</sup>

89. During Sèm Hoeun’s live testimony, he specified that Division 310 planned to attack “the radio station at Stueng Mean Chey” and that “[a]t that time, the broadcast from [that] radio station was the official main broadcast of the Democratic Kampuchea, and its broadcast extended to all provinces throughout the country”.<sup>310</sup> He also explained that “[t]he

<sup>306</sup> T. 22 Jun 2015 (SÈM Hoeun, E1/319.1), p. 80, lns. 12-14 (emphasis added).

<sup>307</sup> T. 22 Jun 2015 (SÈM Hoeun, E1/319.1), p. 84, lns. 23-25.

<sup>308</sup> T. 23 Jun 2015 (SÈM Hoeun, E1/320.1), p. 6, lns. 16-22 (emphases added).

<sup>309</sup> E3/7516, Sèm Hoeun DC-Cam Interview, ERNs 00876520-00876521.

<sup>310</sup> T. 23 Jun 2015 (SÈM Hoeun, E1/320.1), p. 4, ln. 24 – p. 5, ln. 4.

intention was to occupy the radio station and after that to take over the Pochentong Airport to stop any further flood in or out of Democratic Kampuchea”.<sup>311</sup>

90. Sèm Hoeun further explained that the planned capture of Pochentong Airport was supposed to happen “in mid-1977”.<sup>312</sup> He also confirmed that the planned capture of the artillery and armour vehicles warehouse was supposed to happen just before the capture of Pochentong Airport, describing how:

The plan was that the weapons needed to be transported to the East Zone for the sector soldiers to capture the airport and the sector would be responsible for the attack in their own sectors.<sup>313</sup>

91. When asked if he knew of a meeting held by Oeun north of Wat Phnom where rebellion was discussed, Sèm Hoeun testified that he in fact attended that meeting and that it was held “to the south of the Preah Ket Mealea Hospital”.<sup>314</sup> Sèm Hoeun explained that “[a]ll members from regiment and battalion were called into the meeting so I could give my estimate that there were around 500 people in the meeting”.<sup>315</sup> Neither the North Zone leader Koy Thuon nor the current Prime Minister Hun Sen (who according to Sèm Hoeun was serving in Division 310 at that time<sup>316</sup>) were present at the meeting.<sup>317</sup>
92. Rebellion plans appeared to be afoot already in 1975, since Sèm Hoeun confirmed that he had been committing clandestine acts in relation to the rebellion as of 1975.<sup>318</sup> When asked for examples of the rebellious acts he performed, Sèm Hoeun responded:

I could not give you a full description but I could give you the summary of it. There was a plan at that time in 1975 and as I told the Court already, killing took place from time to time and because of this there was a plan and rebellion against the regime and there was a plan to heat up uprising and attack the Democratic Kampuchea in order to overthrow the government of that regime.<sup>319</sup> [...]

It started from 1975 that I was accused of being linked with traitorous network and I was under that accusation from 1975 up to 1977.<sup>320</sup>

93. Sèm Hoeun detailed Division 310’s efforts to stockpile weapons “[i]n 1975 and 1976”, when “weapons were withdrawn from the soldiers and kept at the division warehouse”.<sup>321</sup>

<sup>311</sup> T. 23 Jun 2015 (SÈM Hoeun, E1/320.1), p. 5, lns. 8-10.

<sup>312</sup> T. 22 Jun 2015 (SÈM Hoeun, E1/319.1), p. 79, ln. 25 – p. 80, ln. 2 (emphasis added).

<sup>313</sup> T. 22 Jun 2015 (SÈM Hoeun, E1/319.1), p. 80, lns. 6-9 (emphasis added).

<sup>314</sup> T. 22 Jun 2015 (SÈM Hoeun, E1/319.1), p. 83, ln. 19.

<sup>315</sup> T. 22 Jun 2015 (SÈM Hoeun, E1/319.1), p. 84, lns. 6-8.

<sup>316</sup> E3/7516, DC-Cam Interview with SÈM Hoeun, 28 Feb 2005, ERNs 00876488-00876489; T. 22 Jun 2015 (SÈM Hoeun, E1/319.1), p. 76, lns. 5-6.

<sup>317</sup> T. 22 Jun 2015 (SÈM Hoeun, E1/319.1), p. 84, lns. 11 and 14.

<sup>318</sup> T. 23 Jun 2015 (SÈM Hoeun, E1/320.1), p. 16, lns. 20-22.

<sup>319</sup> T. 23 Jun 2015 (SÈM Hoeun, E1/320.1), p. 17, lns. 1-7.

<sup>320</sup> T. 23 Jun 2015 (SÈM Hoeun, E1/320.1), p. 15, lns. 12-14 (emphasis added).

In addition, when division soldiers were sent on clandestine missions related to the planned rebellion, they would be secretly given stockpiled weapons to transport.<sup>322</sup> As an example, Sèm Hoeun testified that:

There was a mission for us to go to a specific area, for example, to Pochentong Airport in order to observe the situation there, we were then handed down weapons for that particular mission. Then after we arrived at Pochentong to observe the situation, then the weapons would be provided only for that specific period and usually the weapons were given only for missions to be conducted at night-time not during the day time.<sup>323</sup>

94. Moreover, according to Sèm Hoeun, on one occasion, he followed an order from Division 310 commander Oeun and led a platoon which transported six trucks of stockpiled weapons to Kampong Cham<sup>324</sup> in the East Zone. As the witness described:

I transported the weapons from Division 310 office at Wat Phnom and I had to [...] bring them to Kampong Cham, to one village which I could not give you the name. [...] I took the weapons from Division 310 warehouse.<sup>325</sup> [...]

There was one intention from Oeun, he told me to transport weapons to the head of the sector and the weapons had to be transported to the East Zone.<sup>326</sup> [...]

He told me to transport weapons to Kampong Cham and kept in Sector 31 perhaps and at that time I handed over the weapons to Tol (phonetic), the chief of the sector.<sup>327</sup>

95. During his live testimony, Sèm Hoeun explained that he transported weapons in six “CMC trucks” with 10 wheels.<sup>328</sup> He testified that the trucks were “full” of weapons,<sup>329</sup> including “M-79[s], AK rifles and Pekin”,<sup>330</sup> and that “[t]here were 36 of us” in the platoon transporting the weapons, all from Battalion 123.<sup>331</sup> The transportation of weapons took place one month before Oeun was arrested,<sup>332</sup> although Sèm Hoeun later clarified that:

I transported the weapons from 1976 up to 1977. The plan was completed in 1977 and we were not instructed to transport any other weapons after 1977.<sup>333</sup>

96. As to whether rice was siphoned off for the rebellion, Sèm Hoeun explained that:

<sup>321</sup> T. 23 Jun 2015 (SÈM Hoeun, E1/320.1), p. 18, lns. 17-18 (emphasis added).

<sup>322</sup> T. 23 Jun 2015 (SÈM Hoeun, E1/320.1), pp. 19-21, and in particular, p. 21, lns. 3-6.

<sup>323</sup> T. 23 Jun 2015 (SÈM Hoeun, E1/320.1), p. 20, ln. 19 – p. 21, ln. 1.

<sup>324</sup> T. 22 Jun 2015 (SÈM Hoeun, E1/319.1), p. 78, lns. 1-5.

<sup>325</sup> T. 23 Jun 2015 (SÈM Hoeun, E1/320.1), p. 18, lns. 9-21.

<sup>326</sup> T. 22 Jun 2015 (SÈM Hoeun, E1/319.1), p. 85, lns. 4-6 (emphasis added).

<sup>327</sup> T. 22 Jun 2015 (SÈM Hoeun, E1/319.1), p. 81, lns. 2-4. Sector 31 was indeed in the Eastern Zone part of Kampong Cham province.

<sup>328</sup> T. 22 Jun 2015 (SÈM Hoeun, E1/319.1), p. 78, lns. 16-17. This contrasted with Sèm Hoeun’s DC-Cam statement, which records that the weapons were transported in “55-trucks”: see, E3/7516, Sèm Hoeun DC-Cam Interview, ERN 00876520.

<sup>329</sup> T. 22 Jun 2015 (SÈM Hoeun, E1/319.1), p. 79, ln. 2.

<sup>330</sup> T. 22 Jun 2015 (SÈM Hoeun, E1/319.1), p. 78, lns. 22-23.

<sup>331</sup> T. 22 Jun 2015 (SÈM Hoeun, E1/319.1), p. 79, ln. 8.

<sup>332</sup> T. 22 Jun 2015 (SÈM Hoeun, E1/319.1), p. 78, lns. 13-14 (emphasis added).

<sup>333</sup> T. 23 Jun 2015 (SÈM Hoeun, E1/320.1), pp. 16, lns. 11-13 (emphasis added).

As for the soldiers who were in preparation for the rebellion, they did not take along any rice or unhusked rice. People at the rear battlefield they were ready in food supply and as for those in the front line they had to be ready for the rebellion.<sup>334</sup>

97. In relation to the White Khmer (“Khmer Sar”) movement, Sèm Hoeun testified that he “heard the phrase “Khmer Sar” after the arrest of Oeun”, “in late 1977”.<sup>335</sup> He heard they were “formed in order to gather the forces to join the resistance to overthrow the Democratic Kampuchea regime”.<sup>336</sup> He did not know exactly when it was founded, but indicated that it was “after 1975”.<sup>337</sup> Finally, Sèm Hoeun said that the East Zone forces he talked about were “in the same movement initiated by the Khmer Sar force”.<sup>338</sup>

### C. Witness Testimony on Rebellion in the Northwest Zone

98. Additional witness evidence concerning rebellion in the Northwest Zone was added to the case file during Case 002/02. Witnesses have also provided details of operations and fomenting rebellion in the Northwest Zone during the Case 002/02 trial segment on the Trapeang Thma Dam Worksite, which was situated in the Northwest Zone. This evidence supplements the evidence already requested in the Defence’s Fifth Additional Evidence Request and detailed by the filmmaker Rob Lemkin to this Chamber.<sup>339</sup>

#### (i) *DC-Cam Statement of Witness 6 (Trapeang Thma Dam Mobile Unit Cell Chief)*

99. The sixth piece of evidence the Defence seeks to admit is the DC-Cam statement of Witness 6 dated 16 June 2011.<sup>340</sup> Witness 6’s statement was made available in the Case 002/02 case file on 8 December 2014 and assigned an E3 number on 15 June 2015. His statement is attached as **(Confidential)**<sup>341</sup> **Attachment 6**. Witness 6 is the second witness in this Request who the Defence requests to be summoned to testify.
100. Witness 6 was the chief of the third major mobile unit cell responsible for constructing the Trapeang Thma Dam worksite, and was in charge of 100-120 people.<sup>342</sup> In his DC-Cam statement, Witness 6 detailed the Northwest Zone’s treasonous plot against Pol Pot

<sup>334</sup> T. 23 Jun 2015 (SÈM Hoeun, E1/320.1), p. 13, lns. 2-5.

<sup>335</sup> T. 23 Jun 2015 (SÈM Hoeun, E1/320.1), pp. 9-10, lns. 1 & 4.

<sup>336</sup> T. 23 Jun 2015 (SÈM Hoeun, E1/320.1), p. 9, lns. 14-15.

<sup>337</sup> T. 23 Jun 2015 (SÈM Hoeun, E1/320.1), p. 9, ln. 19.

<sup>338</sup> T. 23 Jun 2015 (SÈM Hoeun, E1/320.1), p. 9, ln. 7.

<sup>339</sup> See, F2/4/3/1, Lemkin WRI; F2/4/3/3.1, Lemkin’s Notes.

<sup>340</sup> E3/9076, ‘Interview with [Witness 6]’, 16 Jun 2011 (“Witness 6 DC-Cam Interview”).

<sup>341</sup> While DC-Cam statements are publicly available on request, in order to ensure compliance with the Chamber’s requirements as to the use of pseudonyms for witnesses, the Defence has suggested that this statement be assigned confidential status.

<sup>342</sup> E3/9076, Witness 6 DC-Cam Interview, ERN 00731161.

coordinated by his superiors, Sector 5 secretary Ta Hoeng and mobile unit chief Ta Val, describing its operational features and steps taken in preparation for its execution:

[Ta] Hoeng had a plan to take all members of mobile work units and make them into soldiers to fight against the KR. He provided one pair of cloth and one scarf for each. He wanted to give weapons to the mobile units.<sup>343</sup> [...]

When Ta Val spoke, at the same time scarves, (cigarette)s lighters, and white shirts were given to the leaders. Then he would say, “you are all captains”. He repeated “You are all captains, colonel”. He pointed at and walked out joking with the cadres after the meeting. He compared this selection of mobile unit the same the military did. The plan was at Phnom Kaun Khleng. The plan could not be executed but I just learned about that plan ... not meeting for killing people. If there was a meeting to have a plan it was but in secret[.].

[DC-Cam staff]: In what year?

[Witness 6]: The year was in late, probably in late 77. [...] It was a plan to arm the mobile unit. But it could not be executed. The supplies had already arrived. The progress of this plan was not known of and we were unable to speak out about it. It was clear. So we did not need to speak this out.<sup>344</sup>

101. Ruos Nhim, who Witness 6 described as a “close friend of So[ P]him”, “quite often” visited the Trapeang Thma Dam construction site “when there was a plan”.<sup>345</sup> On one occasion, Witness 6 described how Ruos Nhim “brought [nice] sandals for the Eastern [Zone] for the mobile units.”<sup>346</sup>
102. However, the plan was discovered when the Southwest zone cadres transferred to the Northwest, confirming that the replacement of Northwest Zone cadres by those from the Southwest was a direct consequence of the discovery of the plot:

[Witness 6]: No arms were given and the plan was never executed. The arrest was launched then it became quiet. [...] At that time Ta Hoeng and Ta Val were arrested and taken away. [...] The Southwest Zone came down. [...] Southwest Zone came down to arrest the Northwest Zone.

[DC-Cam staff]: Did the Southwest Zone come before or after the existence of a plan?

[Witness 6]: After the existence of a meeting and the plan. It was quite long after the meeting when the Southwest Zone came down to arrest him because the plan broke out. [...] They came with men and women and some military as well. The military came down to our place and asked if we fully ate or not. As everyone faced hardships, a report was made available then the Southwest Zone arrested them. [...] They came down as a group and were stationed somewhere but, as was my observation, they came like spied to the unit. [...] T]hey did not work. It was sure that they asked information for everywhere. The arrests

<sup>343</sup> E3/9076, Witness 6 DC-Cam Interview, ERN 00731170 (emphasis added).

<sup>344</sup> E3/9076, Witness 6 DC-Cam Interview, ERN 00731172 (emphasis added).

<sup>345</sup> E3/9076, Witness 6 DC-Cam Interview, ERN 00731172.

<sup>346</sup> E3/9076, Witness 6 DC-Cam Interview, ERN 00731172.

would start after they began asking around. They did not come suddenly and made the arrest.<sup>347</sup>

**(ii) DC-Cam Interview of Witness 7 (Trapeang Thma Dam Mobile Unit Chief)**

103. The seventh piece of evidence the Defence seeks to admit is the DC-Cam statement of Witness 7 dated 16 June 2011.<sup>348</sup> Witness 7's interview was made available in the case file on 8 December 2014 and assigned an E3 number on 15 June 2015. Witness 7's statement is attached as **(Confidential)**<sup>349</sup> **Attachment 7**.

104. In 1977, Witness 7 was appointed as a unit chief at the Trapeang Thma Dam worksite where he was in charge of 300 people.<sup>350</sup> In his interview, Witness 7 described how:

[Ruos Nhim] was associated with a failed traitorous plot because the people from the Southwest Zone had known about the plot before it was done. According to my knowledge, he planned to arm all the sector mobile units under him and send them to the jungle.<sup>351</sup>

105. In particular, Witness 7 explained that he had a conversation with some members of Ruos Nhim's rebellious forces:

I once saw Ta Nhim's forces crossed a remote field. But if anyone of this group went too far away from their group they would be arrested right away by the other ones. I knew this because one day I was in the field hunting for eels and I met those forces of Ta Nhim's were also hunting for eels in the field. I chatted with them and I noticed that they had weapons in their hands. They hunted for rivals too.<sup>352</sup>

106. According to Witness 7's understanding, Ruos Nhim's forces were fighting against the Southwest Zone cadres who came in the Northwest Zone, won the battle and arrested Ruos Nhim and his network:

These people killed each other and I was not sure of how they became traitorous against each other. It depended on who did the arrests and killing first, and if you managed to do it before anyone else you would be the winner. But the people from the Southwest Zone were able to do so first. They came in numbers and first made arrests of Ta Nhim and his subordinates, and later on everyone else associated with them.<sup>353</sup>

**(iii) DC-Cam Statement and Transcript of Lat Suoy<sup>354</sup> (Northwest Zone Guard)**

<sup>347</sup> E3/9076, Witness 6 DC-Cam Interview, ERNs 00731172-00731173.

<sup>348</sup> E3/8991, 'Statement of [Witness 7]', 16 Jun 2011 ("Witness 7 DC-Cam Interview").

<sup>349</sup> See, *supra*, note 341.

<sup>350</sup> E3/8991, Witness 7 DC-Cam Interview, ERNs 00969888-00969889.

<sup>351</sup> E3/8991, Witness 7 DC-Cam Interview, ERN 00969893 (emphasis added).

<sup>352</sup> E3/8991, Witness 7 DC-Cam Interview, ERN 00969904 (emphasis added).

<sup>353</sup> E3/8991, Witness 7 DC-Cam Interview, ERN 00969904.

<sup>354</sup> As Lat Suoy has already testified in Case 002/02, his identity is already in the public domain. Therefore, the Defence considers that referring to him by name rather than pseudonym is in compliance with the Supreme Court Chamber's relevant directions in this regard: F22, SCC Direction on Witness Identities, para. 2.

107. The eighth and ninth pieces of evidence the Defence seek to admit are the DC-Cam statement dated 18 May 2011, made available in the Case 002/02 case file on 8 December 2014 and assigned an E3 number on 15 June 2015,<sup>355</sup> and the Case 002/02 trial transcript dated 12 August 2015,<sup>356</sup> of the witness Lat Suoy. The statement and transcript are attached as **(Public) Attachments 8**<sup>357</sup> and **9**.
108. From April 1975, Lat Suoy was assigned to guard several locations in the Northwest Zone, including Svay Sisophon, Kaun Khlaeng mountain, and from approximately late 1976, the Trapeang Thma Dam.<sup>358</sup> In his DC-Cam statement, Lat Suoy testified that the Northwest Zone's leaders were arrested by Southwest Zone cadres in 1978, one year before the Vietnamese arrived.<sup>359</sup> They had been accused of "betrayal" and "disloyalty", for instance because they printed and used currency and paid salaries. Lat Suoy further explained that arrests in the East Zone occurred one month after the currency had been issued in the Northwest Zone, at which point Ruos Nhim advised Ta Hoeng to "mobilise troops and fle[e] to the forest".<sup>360</sup> During his testimony at trial, Lat Suoy clarified that he was first shown the currency in "late 1977".<sup>361</sup>
109. Lat Suoy testified at trial that "before the arrival of the Southwest Zone cadres", his team had hidden weapons in the Kaun Khlaeng forest.<sup>362</sup> The weapons included "80[-type] machine guns and different kinds of other rifles".<sup>363</sup> Moreover, at one point, Lat Suoy explained that soldiers, including his team,<sup>364</sup> went and hid in the forest alongside the hidden weapons cache:

Q: Did you know beforehand that the Southwest Zone cadres would be coming to the Northwest Zone?

A: Before they arrested Ta Nhim, the sector was aware of that. They fled into the jungle.<sup>365</sup> [...]

A: [...] And then they stationed in the Kaun Khlaeng jungle. And they stayed there for about half a month. And then they withdrew to Svay and they also brought together with

<sup>355</sup> E3/9060, 'Interview with Lat Suoy', 18 May 2011 ("Lat Suoy DC-Cam Interview"), ERN 00728736.

<sup>356</sup> T. 12 Aug 2015 (Lat Suoy, E1/329.1).

<sup>357</sup> The Defence considers that as DC-Cam statements are publicly available on request, it is appropriate to request a public classification for this statement.

<sup>358</sup> E3/9060, Lat Suoy DC-Cam Interview, ERNs 00728708-00728714.

<sup>359</sup> E3/9060, Lat Suoy DC-Cam Interview, ERN 00728736.

<sup>360</sup> E3/9060, Lat Suoy DC-Cam Interview, ERN 00728739.

<sup>361</sup> T. 12 Aug 2015 (Lat Suoy, E1/329.1), p. 66, ln. 9.

<sup>362</sup> T. 12 Aug 2015 (Lat Suoy, E1/329.1), p. 64, lns. 6-7.

<sup>363</sup> T. 12 Aug 2015 (Lat Suoy, E1/329.1), p. 62, lns. 24-25.

<sup>364</sup> E3/9060, Lat Suoy DC-Cam Interview, ERN 00728736.

<sup>365</sup> T. 12 Aug 2015 (Lat Suoy, E1/329.1), p. 63, lns. 21-25.

[them] their machine guns. And then at that time, the Southwest Zones lured them to surrender themselves and then they could arrest all of them eventually.<sup>366</sup>

**(iv) DC-Cam Statement of 2-TCW-918 (Mobile Unit Deputy Chief at Trapeang Thma Dam)**

110. The tenth piece of evidence the Defence seeks to admit is the DC-Cam statement of 2-TCW-918 dated 18 June 2011, made available in the Case 002/02 case file on 8 December 2014 and assigned an E3 number on 15 June 2015.<sup>367</sup> The statement is attached as **(Confidential)**<sup>368</sup> **Attachment 10**. 2-TCW-918 was scheduled to testify in the Case 002/02 trial and the Defence was initially awaiting his live testimony before filing this Request. However, on 17 August 2015, the Trial Chamber advised that the witness was no longer available to testify due to illness.<sup>369</sup>
111. 2-TCW-918 was the deputy chief of Ta Val's mobile unit,<sup>370</sup> where he was responsible for supervising the construction of several dams, including the Trapeang Thma Dam.<sup>371</sup> He testified that he was once told by Ta Hoeng and Ta Val of a secret plot to arm "all mobile forces, when they went to cut down cotton in Kang Va Mountain, planted cotton farms" and "run to Thailand".<sup>372</sup> This was to have occurred before Trapeang Thma Dam was to be built (i.e. in late 1976).<sup>373</sup>
112. The witness also described what happened to Sao Phim, Ruos Nhim and Heng Samrin when the Vietnamese entered the country:

As the Vietnamese entered the country, some Cambodians betrayed the country, such as Soa Phim, Moul Sambath [i.e. Ruos Nhim], Heng Samrin, and others by joining the Vietnamese. Soa Phim was arrested, and Heng Samrin was able to escape. He fled with 1,500 soldiers.<sup>374</sup>

**D. Foreign Government Documents in the Public Domain**

**(i) Biographies from the Archives of the German Democratic Republic Ministry of State Security (the "Stasi")**

113. The eleventh through fourteenth pieces of evidence the Defence seek to admit are four short biographies extracted from the publicly-accessible official records of the State Security Service of the former German Democratic Republic (the "Stasi"). The biographies

<sup>366</sup> T. 12 Aug 2015 (Lat Suoy, E1/329.1), p. 62, ln. 25 – p. 63, ln. 5.

<sup>367</sup> E3/9094, 'Interview with [2-TCW-918]', 18 Jun 2011 ("2-TCW-918 DC-Cam Interview").

<sup>368</sup> See, *supra*, note 341.

<sup>369</sup> Email from the Trial Chamber Senior Legal Officer to the Parties, 17 Aug 2015.

<sup>370</sup> E3/9094, 2-TCW-918 DC-Cam Interview, ERN 00728651.

<sup>371</sup> E3/9094, 2-TCW-918 DC-Cam Interview, ERNs 00728651, 00728659 and 00728666.

<sup>372</sup> E3/9094, 2-TCW-918 DC-Cam Interview, ERNs 00728682-00728683.

<sup>373</sup> E3/9094, 2-TCW-918 DC-Cam Interview, ERN 00728684.

<sup>374</sup> E3/9094, 2-TCW-918 DC-Cam Interview, ERN 00728699.



are German translations of documents originally written in Vietnamese and likely obtained by the State Security Service from Vietnam. These documents were provided to the Defence on 17 July 2014. The Defence subsequently sought their admission into evidence in Case 002/02 on 24 July 2014,<sup>375</sup> and they are currently being translated before the Trial Chamber makes a final determination as to their admission.<sup>376</sup> As these documents are not yet available in any ECCC working languages, the Defence hereby provides a summary of each biography and a translation of relevant extracts.

114. **Biography of Ouk Bunchhoeun (East Zone Sector 21 Deputy Secretary and Current Senator):** The eleventh piece of evidence that the Defence seeks to admit is a biography of Ouk Bunchhoeun, dated 27 December 1978. It contains information about his family, and an overview of his activities and functions until July 1975. The biography indicates that in May 1975, Ouk Bunchhoeun, then Deputy Secretary of Sector 21, shifted allegiance to lead the fight against Pol Pot in Sector 21.<sup>377</sup> Ouk Bunchhoeun's biography is attached as **(Public) Attachment 11**. The Defence notes that it has already requested that Ouk Bunchhoeun testify on appeal.<sup>378</sup>
115. **Biography of Heng Samrin (East Zone Division Commander, KNUFNS Leader and Current President of the National Assembly of Cambodia):** The twelfth piece of evidence that the Defence seeks to admit is a biography of Heng Samrin. It contains a brief personal, political, and familial history, an overview of his activities and functions until 1979, as well as a character assessment. The biography quotes from Heng Samrin describing Pol Pot and Ieng Sary as 'a bunch of traitors' who split from the Party.<sup>379</sup> The document also questions Heng Samrin's ability to fulfil his duties as commander of the 4th Division of the East Zone in 1975, when he had to police 'his own people' and fight

<sup>375</sup> E307/5, 'Initial Document List for Case 002/02', 24 Jul 2014; E307/5.2.8, 'Compilation of 21 Kurzbiographies Produced by the German Democratic Republic Ministry of State Security (Stasi) ("Stasi Kurzbiographies")'.

<sup>376</sup> See, E305/17, 'Decision on Objections to Documents Proposed to be put Before the Chamber in Case 002/02', 30 Jun 2015, paras. 28-30; see, also, E305/17/2, 'Nuon Chea's Response to the Trial Chamber's Request to Indicate Portions of Doc. No. E307/5.2.8 to Put Before the Trial Chamber in Case 002/02', 14 Jul 2015.

<sup>377</sup> E307/5.2.8, *Stasi Kurzbiographies*, ERN 01002029.

<sup>378</sup> F16, Appeal, para. 730(a). The Defence further notes that the Supreme Court Chamber excluded Ouk Bunchhoeun from its order to refer to proposed witnesses by pseudonym: see, F22.1, 'Annex A – List of Pseudonyms for Witnesses Proposed in Case 002/01 Appeal, 26 Mar 2015, ERN 01079194.

<sup>379</sup> E307/5.2.8, *Stasi Kurzbiographies*, ERN 01002010: 'Als aber das Verräterpack eine Spaltung herbeiführte [...] erkannte ich nicht den reaktionären [...] Weg von Pol-Pot/Ieng Sary'.

Vietnam.<sup>380</sup> Heng Samrin's biography is attached as **(Public) Attachment 12**. The Defence notes that it is already requested that Heng Samrin testify on appeal.<sup>381</sup>

116. **Biography of Hun Sen**<sup>382</sup> **(East Zone Commander and Current Prime Minister of Cambodia)**: The thirteenth piece of evidence that the Defence seeks to admit is a biography of Hun Sen. It contains an overview of his activities and functions until 1979. It describes how Hun Sen defected to Vietnam in June 1977 and requested to build combat forces to assist in the fight against Pol Pot.<sup>383</sup> Hun Sen's biography is attached as **(Public) Attachment 13**.

117. **Biography of Pen Sovan**<sup>384</sup> **(FUNK Member, Vietnamese Informant and Current Member of Parliament)**: The fourteenth piece of evidence that the Defence seeks to admit is a biography of Pen Sovan. It contains a brief personal, political and familial history, an overview of his activities and functions until 1978, as well as a character assessment. The biography indicates that during his time working for the FUNK, Pen Sovan served as an informant for the Vietnamese Communist Party about the situation in Cambodia and the stance of Ieng Sary towards Vietnam.<sup>385</sup> Pen Sovan's biography is attached as **(Public) Attachment 14**.

**(ii) Declassified U.S. Government Diplomatic Cables Made Available by Wikileaks**

118. The fifteenth through twenty-second pieces of evidence that the Defence seek to admit are diplomatic cables published in the public domain by the international non-profit WikiLeaks. Established in 2007, WikiLeaks' stated aims are to "bring important news and information to the public". One of WikiLeaks' main activities is to collect original source

<sup>380</sup> E307/5.2.8, *Stasi Kurzbiographies*, ERN 01002011: 'Wie führte Rin damals, als er noch Sekretär und Politleiter der F. 4 der Hauptkraft des K 203 zur Durchsetzung der militärischen Politik der kampuscheanischen Reaktion, war und unter dem eigenen Volk aufräumen und Vietnam schalgen sollte, seine Arbeit durch?'.

<sup>381</sup> F16, Appeal, para. 730(a). The Defence further notes that the Supreme Court Chamber excluded Heng Samrin from its order to refer to proposed witnesses by pseudonym: see, F22.1, 'Annex A – List of Pseudonyms for Witnesses Proposed in Case 002/01 Appeal, 26 Mar 2015, ERN 01079194.

<sup>382</sup> The Defence notes that the Supreme Court Chamber's directive as to the use of pseudonyms refers only to proposed witnesses: see, F22, SCC Direction on Witness Identities, para. 1. As Hun Sen is not a proposed witness for the Case 002/01 appeal, and is moreover a high-profile public figure, the Defence considers it appropriate to refer to him by name.

<sup>383</sup> E307/5.2.8, *Stasi Kurzbiographies*, ERN 01002013.

<sup>384</sup> The Defence notes that the Supreme Court Chamber's directive as to the use of pseudonyms refers only to proposed witnesses: see, F22, SCC Direction on Witness Identities, para. 1. As Pen Sovan is not a proposed witness for the Case 002/01 appeal, and is moreover a high-profile public figure, the Defence considers it appropriate to refer to him by name. The Defence also notes that it had requested Pen Sovan as a witness in Case 002/01 (TCW-509), although the Trial Chamber dismissed this on the basis that his testimony was irrelevant or repetitious: see, E312.2, 'Annex II: Individuals requested by the parties in relation to Case 002/01 but ultimately not heard before the Trial Chamber', ERN 01004773.

<sup>385</sup> E307/5.2.8, *Stasi Kurzbiographies*, ERN 01002020: 'während seiner Tätigkeit am Sender FUNK traf er sich des Öfteren mit Genossen der Abteilung GP. 48 und informierte sie über die innere Lage Kampuchéas und die Haltung des Ehepaares Ieng-Sarry gegenüber Vietnam'.

material; which it makes available to the public through its website.<sup>386</sup> WikiLeaks has published three collections of U.S. diplomatic cables – confidential communications exchanged between U.S. embassies and U.S. government departments. The first collection – the “Kissinger Cables” – date from 1973 to 1976. These were made available to the public on 7 April 2013. The second collection – the “Carter Cables” – date from 1977 and were made available to the public on 25 May 2014. The third collection – the “Carter Cables II” – date from 1978 and were made available to the public on 27 May 2015<sup>387</sup>. These documents were declassified and released by the U.S. National Archives as part of its ongoing systematic review of classified documents.<sup>388</sup> The cables sought for admission are from all three WikiLeaks collections. All have been sent by US embassies in either Bangkok or Paris to the US Secretary of State, the US State Department, and various US ambassadors worldwide.

119. **Cable 1 (“Vulnerability of the Phnom Penh Regime”, 18 August 1978):** The fifteenth piece of evidence that the Defence seeks to admit is a diplomatic cable from the US Embassy in Bangkok to the Secretary of State and US ambassadors in China, France, Japan and Russia, with the subject “Vulnerability of the Phnom Penh Regime”, and is dated 18 August 1978 (“Cable 1”).<sup>389</sup> Cable 1 is an assessment by the embassy of the potential vulnerabilities of the DK government. Cable 1 was published by WikiLeaks on 27 May 2015 as part of the “Carter Cables II” collection. It is attached as **(Public) Attachment 15**.

120. In particular, Cable 1 foreshadows internal rebellion within Cambodia:

The [Thai Government] envision increasing success of a Hanoi-Backed insurgency in Kampuchea, but that is not the only realistic possibility. Others are a revolt within the Kampuchean military, rebellion by regional commanders or diminished central authority. [...]

Reports continue of pockets of resistance possibly lead by Khmers trained in Vietnam or by Khmer opponents of the Pol Pot regime.

121. Cable 1 also describes the prominent role of Sao Phim (*alias* Sovanna):

<sup>386</sup> WikiLeaks, *About: What is WikiLeaks?*, available at <https://wikileaks.org/About.html>.

<sup>387</sup> WikiLeaks, *WikiLeaks Special Project K: The Kissinger Cables*, 7 Apr 2013, available at <https://wikileaks.org/plusd/pressrelease>; WikiLeaks, *WikiLeaks Releases the Carter Cables*, 24 Apr 2014, available at <https://wikileaks.org/WikiLeaks-releases-the-Carter.html>; WikiLeaks, *WikiLeaks Releases more than Half a Million US Diplomatic Cables from 1978*, 27 May 2015, available at <https://wikileaks.org/plusd/pressrelease>.

<sup>388</sup> National Archives Press Release: *National Archives Makes State Department Records Available Online* (22 March 2006) available at: <http://www.archives.gov/press/press-releases/2006/nr06-71.html>, accessed 12 June 2015; *Press Release* <https://wikileaks.org/plusd/pressrelease>, accessed 12 June 2015

<sup>389</sup> US Diplomatic Cable: *Vulnerability of the Phnom Penh Regime*, US Embassy Bangkok, 18 Aug 1978.

[The Thai ministry of foreign affairs] shares our curiosity about journalistic reports that So Vanna...is leading resistance forces and that So Vanna may in fact be So Phim...Journalists with good contacts in Hanoi have heard from the Vietnamese that So Vanna is So Phim and he is leading the fight in Eastern Kampuchea against Pol Pot. That Hanoi would look for a high figure like So Phim to lead the resistance adds credibility to this report.

122. More generally, Cable 1 describes the CPK Centre's lack of control over other Zones and military units:

Regional military/political commanders in any section of the country could rebel and attempt to oust Pol Pot. Such instability has already occurred in the western regions of Kampuchea, leading to purges in 1977 and 1978.

123. Finally, Cable 1 describes Vietnamese involvement in internal conflicts within the CPK. The cable refers to a "Hanoi-backed insurgency", "trained in Vietnam" and makes note of "determined Vietnamese effort[s] to overthrow [the DK government] by a combination of major force and subversion".

124. **Cable 2 ("More Khmer Border Raids on Thailand", 16 February 1978):** The sixteenth piece of evidence that the Defence seeks to admit is a diplomatic cable from the US Embassy in Bangkok to the US Secretary of State and US ambassadors in China, France, and Laos, with the subject "More Khmer Border Raids on Thailand", and is dated 16 February 1978 ("Cable 2").<sup>390</sup> Cable 2 reports border clashes between Thailand and Cambodia on 7 and 15 February 1978. Cable 2 was published by WikiLeaks on 25 May 2014 as part of the "Carter Cables" collection. It is attached as **(Public) Attachment 16**.

125. Cable 2 reports a press conference given by Thai foreign minister Fonmin Uppadit on 15 February 1978, noting that Uppadit "could not understand the motives for the attacks in face of governmental agreement he achieved during his Phnom Penh visit [on 2 February 1978] to halt such activities." The cable noted that the Thai Prime Minister Kraingsak, in another statement, suggested that "local Khmer Rouge initiative" may be behind the attacks. Likewise, the US Embassy in Bangkok concluded that the continued Thai-Cambodian border attacks questioned the CPK's control over its forces:

[This] raise[s] questions about either Phnom Penh's sincerity or else its ability to control its border forces...we suspect the immediate cause is antagonism between Khmer Rouge and Khmer resistance forces.

126. **Cable 3 ("Cambodia-Conversations With the Resistance", 29 September 1977):** The seventeenth piece of evidence that the Defence seeks to admit is a diplomatic cable from

<sup>390</sup> US Diplomatic Cable: *More Khmer Border Raids on Thailand*, US Embassy Bangkok, 16 Feb 1978.

the US Embassy in Bangkok to the US Secretary of State and US ambassadors in China, France, and Laos, with the subject “Cambodia-Conversations With the Resistance”, and is dated 29 September 1977 (“Cable 3”).<sup>391</sup> Cable 3 reports on a conversation between embassy staff and “two leaders of the Cambodian resistance based in Thailand”. Those leaders were well known to embassy staff, and the author indicated he or she had “no reason to question their reliability”. Cable 3 was published by WikiLeaks on 25 May 2014 as part of the “Carter Cables” collection. It is attached as **(Public) Attachment 17**.

127. Cable 3 contains details of a report provided to diplomats by two resistance leaders describing resistance to the CPK. They reported several groups of 80-400 resistance fighters operating along the Thai-Cambodian border. Some were “former Khmer Rouge soldiers who have defected to the resistance.” The resistance leaders also reported internal conflicts within the CPK:

Sources described an extensive and lethal purge which transpired in July. Plot centred in Battambang province, but extended to the top of the administration in Phnom Penh. Those guilty in the coup plot, as it was termed, were executed in July.

128. The resistance leaders also made note of a “recent leadership struggle” within the CPK.
129. Finally, Cable 3’s author concluded that the resistance leaders’ report appeared credible, and corroborated other reports received by the embassy:

This relatively direct account of troubles in Battambang and in the central leadership makes more credible earlier, essentially similar reports indicating that the Khmer Rouge leadership “may not be stable.”

130. **Cable 4 (“Thai-Cambodian Relations: Fonman Uppadit Visit to Phnom Penh”, 9 February 1978):** The eighteenth piece of evidence that the Defence seeks to admit is a diplomatic cable from the US Embassy in Bangkok to the US Secretary of State and US ambassadors in China, France, Indonesia, Japan, Laos, the Philippines, Russia and Singapore, with the subject “Thai-Cambodian Relations: Fonman Uppadit Visit to Phnom Penh”, and is dated 9 February 1978 (“Cable 4”).<sup>392</sup> Cable 4 reports on the visit of Thai Foreign Minister Uppadit to Phnom Penh on Jan 30 1978 to resolve border disputes. Cable 4 was published by WikiLeaks on 25 May 2014 as part of the “Carter Cables” collection. It is attached as **(Public) Attachment 18**.

<sup>391</sup> US Diplomatic Cable: *Cambodia-Conversations with the Resistance*, US Embassy Bangkok, 29 Sep 1977.

<sup>392</sup> US Diplomatic Cable: *Thai-Cambodian Relations: Fonman Uppadit visit to Phnom Penh*, US Embassy Bangkok, 9 Feb 1978.

131. Cable 4 quotes a source from the Thai Ministry of Foreign Affairs who described the cooperative air at meetings between Foreign Minister Uppadit and Ieng Sary:

The Cambodians stressed that Phnom Penh, since the inception of the regime, had desired good relations with Thailand. Cambodians emphasized that they had been under attack from the Vietnamese from the start in 1975. Under the circumstances, Cambodians said border difficulties with Thailand made no sense.<sup>393</sup>

132. The talks concluded with both sides agreeing to improve relations by “do[ing] everything possible to end Thai-Cambodian border problems.” The Cambodian government also expressed interest in immediately resuming border trade and establishing an embassy in Bangkok.

133. The Thai Foreign Ministry source reported the explanations given by Pol Pot and Ieng Sary to the Thai delegation as to the cause of recent Thai-Cambodian border disputes:

[Pol Pot] alluded to involvement by a ‘third hand’ in the border problem. He did not identify the third hand.

[Ieng Sary said that] troubles were caused by three forces: (A) Cambodian traitors, (B) CIA agents, and (C) the third man backers of the “Ongkan Siam” (the Siam organisation – Thai communists trained in Cambodia), which Ieng Sary clearly implied were Vietnamese.<sup>394</sup>

134. Cable 4’s author concluded that the “Cambodian allegations regarding Vietnamese activities [were] interesting.” He or she also noted that the Thai Ministry of Foreign Affairs had stressed that the above information was extremely sensitive and asked that it not be discussed outside the U.S. government.

135. Finally, the Thai Ministry of Foreign Affairs source acknowledged to the U.S. embassy that Cambodian “traitors” and Khmer Serai resistance were operating on Cambodia’s western border, although he or she did not elaborate further.

136. **Cable 5 (“Cambodian and Lao Resistance: Recruitment [sic] Campaigns in Thailand”, 15 February 1978):** The nineteenth piece of evidence that the Defence seeks to admit is a diplomatic cable from the U.S. Embassy in Bangkok to the U.S. Secretary of State and U.S. ambassadors in China, France, and Laos, with the subject “Cambodian and Lao Resistance: Recruitment [sic] Campaigns in Thailand”, and is dated 15 February 1978 (“Cable 5”).<sup>395</sup> Cable 5 reports on the recruitment of resistance forces from among the

<sup>393</sup> Emphasis added.

<sup>394</sup> Emphasis added.

<sup>395</sup> US Diplomatic Cable: *Cambodian and Lao Resistance: Recruitment [sic] Campaigns in Thailand*, US Embassy Bangkok, 15 Feb 1978.

Cambodian and Laotian refugees at refugee camps in Thailand. Cable 5 was published by WikiLeaks on 25 May 2014 as part of the “Carter Cables” collection. It is attached as **(Public) Attachment 19**.

137. Cable 5 relayed reports that since October 1978, “resistance recruitment campaigns may have been underway in some of the Laotian and Cambodian refugee camps”. It identified the Aranyapreathet Cambodian refugee camp and two other Laotian refugee camps as confirmed recruitment locations. The recruits allegedly undertook “forays into [...] Cambodia [...] reportedly for reconnaissance work”, with subsequent attacks undertaken against “civilian installations, not military targets”. The resistance forces had also apparently “taken heart from the Cambodian-Vietnamese border fighting, which [was] seen as offering renewed opportunity to topple the Phnom Penh regime.”
138. Finally, Cable 5’s author noted that the information concerning the recruitment of refugees had been passed to them from “a trusted American” who had in turn, gathered reports from “reliable non[-]Khmer/non-Lao sources” about the recruitment campaigns.
139. **Cable 6 (“Foreign Diplomat’s Observations of Alleged US Bombing of Siem Reap”, 8 March 1976):** The twentieth piece of evidence that the Defence seeks to admit is a diplomatic cable from the US Embassy in Paris to the US Secretary of State, the US State Department, and US ambassadors in Afghanistan, China, Denmark, Egypt, Serbia, Sweden, Thailand, and Tunisia, and is dated 8 March 1976 (“Cable 6”).<sup>396</sup> Cable 6 summarises a conversation with a French diplomat from “Quai” – the French Ministry of Foreign Affairs – regarding the alleged US bombing of Siem Reap in February 1976. Cable 6 was published by WikiLeaks on 7 April 2013 as part of the “Kissinger Cables” collection. It is attached as **(Public) Attachment 20**.
140. According to Cable 6, the French government “did not in any way question denials” from the US of any involvement in the Siem Reap bombing. Indeed, the cable showed that the US Embassy in Paris appeared unaware of the true cause of the bombing:

The French asked us to provide our official views of what might have taken place as soon as we have more information [...] We believe it important in denying U.S. involvement to offer some cogent explanation of what had indeed happened.”

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<sup>396</sup> US Diplomatic Cable: *Foreign Diplomat’s Observations of Alleged US Bombing of Siem Reap*, US Embassy Paris, 8 Mar 1976.

141. Cable 6 detailed the US Embassy in Paris's analysis of Chinese and Vietnamese state media reaction to the alleged bombing. They concluded that this media coverage discredited the DK government's accusations of US involvement in the attack:

[It is] significant that Hanoi immediately denounced not only the US, but also Thailand whereas the PRC [China] waited several days before excoriating the U.S. The nature of the press treatment in itself therefore cast strong doubts on the reliability of the allegations.

142. Cable 6 also describes other causes of the attack which had been reported in the press:

We cited some of the speculations which had appeared in the press such as bombing from Thailand by Cambodian dissidents, explosion of an ammunition dump either by insurgent attacks or accident or communist internal conflict or bombing by south Vietnam or Lao based Vietnamese aircraft perhaps masquerading as "U.S. planes".<sup>397</sup>

143. **Cable 7 ("Incident at Siem Reap: Soviet Line", 16 March 1976):** The twenty-first piece of evidence that the Defence seeks to admit is a diplomatic cable from the US Embassy in Bangkok to the US Secretary of State, the US State Department, US ambassadors in China, France, Laos, and Russia, and the Commander-in-Chief of the US Pacific Command, with the subject "Incident at Siem Reap: Soviet Line", and is dated 16 March 1976 ("Cable 7").<sup>398</sup> Cable 7 summarises a conversation between US diplomat and a "member of the Soviet embassy staff, Oleg Novikov" – an analyst for Southeast Asia – regarding the alleged bombing of Siem Reap by US aircraft in February 1976. Cable 7 was published by WikiLeaks on 7 April 2013 as part of the "Kissinger Cables" collection. It is attached as **(Public) Attachment 21**.

144. According to Mr. Novikov, "[t]he Soviets were as much in the dark about what happened" at Siem Reap as everyone else. Mr. Novikov explained his analysis that a MiG, Chinese, or North Vietnamese-based aircraft had been involved:

[T]he Soviet official took great pains to explain how he had examined the Mig theory and discarded it. First, he said, only a MiG-23 would have the range to go all the way to Siem Reap from Vietnam or China, and there are no MiG-23's in east Asia.

Second, a MiG-23 could not transport a bomb as large as one thousand pounds which, assuming the plane had been flying low, would have been required to make craters of the size and depth reported.

Finally, the Soviet official said that in order to avoid detection by American radar at Ramasun, the plane would have had to fly very low. The Soviet claimed that neither Chinese nor North Vietnamese pilots are proficient enough to execute such a maneuver. Only Soviet pilots could fly in such a fashion, and since there was no Soviet involvement, the MiG theory was without substance, he concluded.

<sup>397</sup> Emphasis added.

<sup>398</sup> US Diplomatic Cable: *Incident at Siem Reap: Soviet Line*, US Embassy Bangkok, 16 Mar 1976.



145. The U.S. Embassy in Bangkok, for its part, raised the possibility in Cable 7 that Lao-based aircraft had carried out the attack:

Comment. Apparently, the Soviet official made no mention of the possibility that a Mig aircraft based in nearby southern Laos could have made such bombing runs.

146. **Cable 8 (“Swedish Report Concerning Cambodia and Vietnam”, 16 March 1976):** The twenty-second and final piece of evidence that the Defence seeks to admit in this Request is a diplomatic cable from the U.S. Embassy in Paris to the U.S. Secretary of State, the U.S. State Department, and U.S. ambassadors in China, Sweden, and Thailand, and is dated 16 March 1976 (“Cable 8”).<sup>399</sup> Cable 8 summarises a conversation between U.S. embassy staff and Swedish diplomat Jean-Christophe Olberg regarding the alleged U.S. bombing of Siem Reap in February 1976. Cable 8 was published by WikiLeaks on 7 April 2013 as part of the “Kissinger Cables” collection. Cable 8 is attached as **(Public) Attachment 22**.
147. The author of Cable 8 summarised Mr. Olberg’s account of reports written by a Swedish delegation who had been invited by the DK government to visit the bombing site at Siem Reap. Ieng Sary told the Swedish visitors that “they were purposely playing down the Thai role in the U.S bombing”. The Swedes believed this was part of a policy “to handle the Thai very delicately as part of maintaining a Thai option to improve [Cambodia’s] bargaining position with Hanoi”. Based on their visit to the site, the Swedish visitors concluded that “the damage could not be definitely be established as either recent or caused by aerial attack.”
148. The Swedish intelligence corroborated the conclusions of the Swedish delegation, and suggested that the bomb damage “was not recent and probably caused by internal conflict.”

#### **E. Applicable Law**

149. Within the ECCC framework, the admission of new evidence on appeal is governed by ECCC Internal Rules 104(1) and 107(1). Pursuant to Rule 104(1), the Supreme Court Chamber “may itself examine evidence and call new evidence” to determine any appeal. Rule 108(7) provides, in relevant part, as follows:

Subject to Rule 87(3), the parties may submit a request to the Chamber for additional evidence provided it was unavailable prior to trial and could have been a decisive factor in reaching the decision at trial. The request shall clearly identify the specific findings of fact made by the Trial Chamber to which the additional evidence is directed.

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<sup>399</sup> US Diplomatic Cable: *Swedish Report Concerning Cambodia and Vietnam*, US Embassy Paris, 16 Mar 1976.

150. The Chamber has previously exercised its discretion to admit new evidence pursuant to Rules 104(1) and 108(7) in connection with the Appeal and pursuant to Rule 108(7) in connection with appeals filed against the trial judgement in Case 001.<sup>400</sup>

## F. Admissibility of the Additional Evidence

### (i) Findings of the Trial Chamber to Which the Additional Evidence Relates

151. As the Defence has already set out in Part II of this Request, the additional evidence sought in the instant Request relates to the Trial Chamber's findings as to the structure of the CPK and the role of the zones.<sup>401</sup> It relates to the Chamber's findings as to the definition of the CPK's common purpose, as to the criminal nature of the "Khmer Rouge" policies underlying the forced transfer of the population and the targeting of former Khmer Republic soldiers and officials at Tuol Po Chrey were criminal, and therefore its finding that a joint criminal enterprise ("JCE") had existed and involved not only Pol Pot and Nuon Chea but also others including Sao Phim, Ruos Nhim, Koy Thuon, Chou Chet, and Vorn Vet.<sup>402</sup> It further relates to the Chamber's findings that Nuon Chea was responsible through the JCE for the crimes against humanity of murder, political persecution, other inhumane acts (comprising forced transfer and attacks against human dignity), and extermination.<sup>403</sup> It relates to the Trial Chamber's findings that Nuon Chea exercised effective control – including *de jure* and *de facto* authority – over Zone secretaries, Party members, and members of the military, including commanders, and that accordingly, he could be held liable through the doctrine of superior responsibility for the crimes against humanity of murder, political persecution, other inhumane acts (comprising forced transfer, attacks against human dignity, and also enforced disappearances), and extermination, although no convictions would be entered against him on this basis.<sup>404</sup> Similarly, it relates to the Trial Chamber's finding that Nuon Chea could be held responsible for the crimes against humanity of murder, extermination, political persecution and the other inhumane acts of forced transfer and attacks against human dignity through the mode of responsibility

<sup>400</sup> F2/5, 'Decision on Part of NUON Chea's Requests to Call Witnesses on Appeal', 29 May 2015 ("SCC First Witnesses Decision"), paras. 19-26; Case 001/18-07-2007/ECCC/SC, *Prosecutor v. Kaing Guek Eav*, F2/5/1, 'Decision on Group 1 Civil Parties' Co-Lawyers' Supplementary Request to Admit Additional Evidence', 29 Mar 2011, ERNs 00657389-00657391; Case 001/18-07-2007/ECCC/SC, *Prosecutor v. Kaing Guek Eav*, F2/4, 'Decision on Requests by Co-Lawyers for Accused and Civil Parties Groups 1, 2, 3 to Admit Additional Evidence', 25 Mar 2011, ERNs 00656514-00656517.

<sup>401</sup> See, *supra*, para. 2.

<sup>402</sup> See, *supra*, paras. 3-4.

<sup>403</sup> See, *supra*, para. 4.

<sup>404</sup> See, *supra*, para. 5.

of ordering.<sup>405</sup> Finally, it relates to the Trial Chamber's finding that a CPK policy to re-educate and kill enemies had existed, that "enemy" was defined in a tactical way, intended to remain vague enough to allow various interpretations and to create an uncertain atmosphere", and with specific identified categories of enemies including "CIA, KGB and Vietnamese ("Yuong")" spies, "former soldiers and officers of the Lon Nol regime", and "those within the party who stood in the way of the "great leap forward", although the Chamber was sceptical that any enemies had in fact existed.<sup>406</sup>

**(ii) Importance of the Additional Evidence**

152. The additional evidence sought in the instant Request, taken together, could have "been a decisive factor" in respect of the abovementioned Trial Chamber findings. This evidence decisively supports the Defence's case, which is central to its appeal of the Judgement, that the CPK, far from being a disciplined and "pyramidal" hierarchy, was engulfed in constant internal turmoil; that different factions 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 interests of at least Vietnam, if not also the Soviet Union. The Defence has set out its core arguments in brief in Part III of this request, and in more detail in Part IV. Moreover, unlike much of the secondary evidence admitted at trial, the additional evidence sought for admission in the instant Request is primarily from live witnesses who were themselves involved in effecting "Plan A" and "Plan B". It not only corroborates and enhances the credibility of existing evidence ignored by the Trial Chamber but also provides significant additional details of those plans which were unavailable at trial and which, in the Defence's view, so tilted the evidentiary scale as to lead a reasonable trier of fact to reach a different verdict. Those additional details are summarised for the Chamber's convenience below, and the Defence has also included detailed cross-references throughout Part IV to indicate the precise relevance of each piece of additional evidence requested to specific contentions within the Defence's case.

153. The additional evidence requested provides details of Vietnam's "Plan A" to seize control in Cambodia through an internal rebellion, including its start at a meeting in May 1975 in Phnom Penh and various planning meetings thereafter,<sup>407</sup> and its demise in 1978 with Sao Phim's suicide.<sup>408</sup> It corroborates and substantiates existing evidence that widespread

<sup>405</sup> See, *supra*, para. 6.

<sup>406</sup> See, *supra*, paras. 7-8.

<sup>407</sup> See, *supra*, para. 31, fn. 103 (Keo Loeur and Sèm Hoeun).

<sup>408</sup> See, *supra*, para. 25, fn. 69 (Witness 5).

preparations for internal rebellion were underway, including the early preparation of a secret army;<sup>409</sup> stockpiling of weapons,<sup>410</sup> food,<sup>411</sup> and sandals;<sup>412</sup> holding clandestine meetings;<sup>413</sup> and releasing propaganda to foment an atmosphere of chaos,<sup>414</sup> and that early attempts to initiate rebellion were in fact made.<sup>415</sup> The additional evidence also corroborates and substantiates evidence as to the nature of “Plan A” to overthrow Pol Pot, Nuon Chea and the legitimate DK government,<sup>416</sup> including that it would have involved attacks on Steung Meanchey radio station,<sup>417</sup> an RAK artillery and armoured vehicle warehouse,<sup>418</sup> and Pochentong Airport;<sup>419</sup> that it may have involved the “Khmer Sar” (“White Khmer”) movement<sup>420</sup> and mobile units from the Northwest Zone;<sup>421</sup> and that it would – indeed, it did – involve an insurrection by Sao Phim, together with 8,000 traitorous East Zone troops.<sup>422</sup> The evidence also provides details as to the failure of “Plan A”, including the arrest of North Zone-affiliated Division 310 commander Oeun,<sup>423</sup> others in Division 310,<sup>424</sup> the suppression of East Zone forces who refused to surrender,<sup>425</sup> and the demise of Sao Phim.<sup>426</sup>

154. The additional evidence requested also corroborates and substantiates the Defence’s argument that upon the failure of “Plan A”, Vietnam shifted to implement “Plan B”: invading Cambodia directly. In this regard, the evidence provides details as to the involvement within KNUFNS and post-invasion Cambodian regime of key figures Hun Sen, Heng Samrin and Pen Sovan,<sup>427</sup> notes that Heng Samrin fled to the East Zone in 1978 with some 1,500 traitorous troops<sup>428</sup> and indicates that further troops may have been

<sup>409</sup> See, *supra*, para. 37, fn. 111 (Lat Suoy) and para. 37, fn. 128 (Ouk Bunchhoeun biography).

<sup>410</sup> See, *supra*, para. 38, fns. 130 (Witness 5), 131 (Sèm Hoeun and Keo Loeur), 132 (Sèm Hoeun), and 133 (Lat Suoy).

<sup>411</sup> See, *supra*, para. 38, fn. 136 (Keo Loeur).

<sup>412</sup> See, *supra*, para. 38, fn. 139 (Witness 6).

<sup>413</sup> See, *supra*, para. 39, fns. 140 (Keo Loeur and Sèm Hoeun) and 141 (Sèm Hoeun).

<sup>414</sup> See, *supra*, para. 42, fn. 145 (Cable 3) and 147 (Cable 2).

<sup>415</sup> See, *supra*, para. 42, fn. 152 (Ouk Bunchhoeun biography and Cable 1) and para. 43, fn. 160 (Cable 6, Cable 7 and Cable 8).

<sup>416</sup> See, *supra*, para. 47, fn. 176 (Keo Loeur, Sèm Hoeun and Witness 7).

<sup>417</sup> See, *supra*, para. 48, fn. 177 (Sèm Hoeun).

<sup>418</sup> See, *supra*, para. 48, fn. 178 (Sèm Hoeun).

<sup>419</sup> See, *supra*, para. 48, fns. 179 and 180 (Sèm Hoeun).

<sup>420</sup> See, *supra*, para. 48, fn. 181 (Sèm Hoeun).

<sup>421</sup> See, *supra*, para. 48, fn. 184 (Witness 6 and Witness 7).

<sup>422</sup> See, *supra*, para. 48, fn. 189 (Witness 5).

<sup>423</sup> See, *supra*, para. 50, fn. 196 (Keo Loeur).

<sup>424</sup> See, *supra*, para. 50, fn. 197 (Keo Loeur).

<sup>425</sup> See, *supra*, para. 53, fn. 210 (Witness 5).

<sup>426</sup> See, *supra*, para. 53, fn. 211 (Witness 5 and 2-TCW-918).

<sup>427</sup> See, *supra*, para. 60, fn. 238 (Hun Sen biography), para. 61, fn. 244 (Heng Samrin biography), and para. 65, fn. 260 (Pen Sovan biography).

<sup>428</sup> See, *supra*, para. 61, fn. 242 (2-TCW-918).

recruited at refugee camps in Thailand.<sup>429</sup> Finally, the evidence notes that unlike its relationship with Vietnam, Cambodia was able to restore and maintain good relations with Thailand in 1978, despite having experienced periodic border skirmishes.<sup>430</sup>

155. In light of the importance of the evidence to the Defence's appeal of the Judgement, the Defence requests Witnesses 5 and 6 – namely, those witnesses who have not testified before the Trial Chamber – to testify on appeal. It has not requested Witness 7 as it understands that Witness 7's health precludes him from testifying at the ECCC. Therefore, should the Defence be notified that Witness 7's health has improved, the Defence reserves the right to request Witness 7 to testify at that point.

**(iii) Admission of Evidence Pursuant to Rule 108(7)**

156. Rule 108(7) expressly contemplates a request for additional evidence before the Supreme Court Chamber provided such evidence “was unavailable at trial”, which the Chamber considers in this case to be up until 31 October 2013.<sup>431</sup> The WRI of Witness 5; Cables 1, 2, 3, 4 and 5; and the four Stasi biographies were unavailable to the Defence on this date. Therefore, they can clearly be considered evidence that was unavailable at trial for the purposes of Rule 108(7).

**(iv) Admission of Evidence Pursuant to Rule 104(1)**

157. Rule 104(1) also endows the Supreme Court Chamber with the power to “call new evidence” “where the interests of justice so require, taking into account the specific circumstances of the case”.<sup>432</sup> The Defence notes that in this regard, the Chamber recently cited the *Lubanga* Appeal Judgement and indicated that the ICC Appeals Chamber in that case “found that it enjoyed discretion to admit evidence on appeal despite a negative finding on one or more of the criteria governing the admissibility of evidence on appeal”.<sup>433</sup>

The Defence submits that even if any piece of evidence requested in the instant Request is

<sup>429</sup> See, *supra*, para. 61, fn. 249 (Cable 4 and Cable 5).

<sup>430</sup> See, *supra*, para. 74, fn. 255 (Cable 4).

<sup>431</sup> F2/5, ‘Decision on Part of Nuon Chea’s Request to Call Witnesses on Appeal’, 29 May 2015 (“SCC First Witnesses Decision”), note 67.

<sup>432</sup> F2/5, SCC First Witnesses Decision, para. 17.

<sup>433</sup> F2/5, SCC First Witnesses Decision, fn. 51. The Defence also notes that the Chamber should disregard the argument by the Lead Co-Lawyers for the Civil Parties (“LCLs”) that the ICC Appeals Chamber’s holding in *Lubanga* that should not be adopted lightly because it was made in the context of an overriding concern that the ICC appellate stage is of a “corrective nature” and that the SCC also assesses the “correctness” of (legal) findings: see, F2/6/1, ‘Civil Party Lead Co-Lawyers’ Response to Nuon Chea’s Fourth Request Re Appeal Against Trial Judgement in Case 002/01’, 26 Jun 2015, paras. 24-25. This argument is devoid of any merit as the LCLs confuse the “corrective nature” of appellate proceedings with assessing the “correctness” of legal findings. *Lubanga*<sup>433</sup> makes it clear that the ICC Appeals Chamber refers to “corrective nature” as one distinguishing appellate proceedings from trial/pre-trial proceedings: i.e. for correcting legal or factual errors. This is the same at the ECCC. The correctness of legal findings is, on the other hand, an unrelated matter.

deemed not to meet the requirements of Rule 108(7) and 87(3), which the Defence does not consider to be so, it should still be admitted under Rule 104(1) in the interests of justice.

158. With respect to Witness 5, the Defence refers to and adopts its arguments in paragraphs 3 and 62 of its Fifth Additional Evidence Request. With respect to the witnesses Keo Loeur, Sèm Hoeun and Lat Suoy, the Defence submits that it was their testimony during the Case 002/02 trial in recent months which elevated the significance of their evidence and prompted the Defence to request it. Similarly, the testimony of Witnesses 6, 7 and 2-TCW-918 was given new significance not only by the recent trial testimony of Lat Suoy but also by the additional evidence recently detailed in the Fifth Additional Evidence Request concerning fomenting rebellion and treason in the Northwest Zone.
159. Finally, with respect to the four Stasi biographies and Cables 6, 7 and 8, which were technically in the public domain prior to the close of trial, the Defence submits that it did undertake reasonable due diligence when obtaining those documents, not only in light of its significant resource limitations but because the significance of obtaining corroborating information from such sources did not become apparent until recent evidence emerged, particularly that which the Defence detailed in its First, Third and Fifth Additional Evidence Requests and which the filmmaker Rob Lemkin has recently elaborated upon.<sup>434</sup> Moreover, it did not consider it worthwhile to request the admission of WikiLeaks cables at trial given the Co-Prosecutors' two failed attempts to do so.<sup>435</sup>

## VI. RELIEF

160. The Defence hereby requests that the Supreme Court Chamber:

- (a) admit into evidence the 22 pieces of evidence detailed *supra* in this Request; and
- (b) summons Witness 5 and Witness 6 to testify before this Chamber.

CO-LAWYERS FOR NUON CHEA



SON Arun



Victor KOPPE

<sup>434</sup> See, F2/4/3/1, Lemkin WRI and F2/4/3/3.1, Lemkin's Notes.

<sup>435</sup> See, e.g., E282/2/1/2, 'Decision on the Co-Prosecutors' Request for Reconsideration of the Decision Regarding Admission of Newly Available United State Diplomatic Cables (E282/2/1) and KHIEU Samphan's Response (E282/2/1/1), 1 Aug 2013.