

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

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**CIVIL PARTY LEAD CO-LAWYERS' RESPONSE TO NUON CHEA'S SIXTH REQUEST
CONCERNING ADDITIONAL EVIDENCE ON APPEAL**

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Before:

Supreme Court Chamber

Judge KONG Srim, President
Judge A. KLONOWIECKA-MILART
Judge SOM Sereyvuth
Judge C.N. JAYASINGHE
Judge MONG Monichariya
Judge YA Narin
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I. INTRODUCTION

1. The Civil Party Lead Co-Lawyers (“Lead Co-Lawyers”) hereby respond to Nuon Chea’s Sixth Request to Consider and Obtain Additional Evidence in Connection with the Appeal Against the Trial Judgement in Case 002/01 (“Request”) hereinafter referred to as “Response”.¹

2. The Lead Co-Lawyers have an interest in responding to the merits of the Request to the extent that the Request affects the balance of rights of the parties, including Civil Parties. Therefore, the Lead Co-Lawyers respond to the merits of the Request but defer to the wisdom of the Supreme Court Chamber in ordering the relief sought.

II. PROCEDURAL BACKGROUND

3. On 7 August 2014, the Trial Chamber rendered its Judgement in Case 002/01 convicting Nuon Chea, *inter alia*, for crimes against humanity of murder, political persecution and other inhumane acts (comprising forced transfer and attacks against human dignity) during movement of population (phase one); political persecution and other inhumane acts (comprising forced transfer and attacks against human dignity) during movement of population (phase two); and murder and extermination at Tuol Po Chrey committed within the territory of Cambodia between 17 April 1975 and the end of 1977, sentencing him to life imprisonment.²

4. On 29 September 2014, the Co-Accused filed his notice of appeal against the Trial Judgement before the Supreme Court Chamber³ followed by the appeal brief on 29 December 2014.⁴ On 24 April 2015, the Co-Prosecutors filed their response brief (“OCP Response Brief”).⁵

5. On 26 December 2014, the Supreme Court Chamber granted in part the Lead Co-Lawyers’ request allowing them to file a consolidated response to the appeal briefs filed by

¹ Nuon Chea’s Sixth Request to Consider and Obtain Additional Evidence in Connection with the Appeal Against the Trial Judgement in Case 002/01, **F2/8**, 11 September 2015.

² Case 002/01 Judgement, **E313**, 7 August 2014, pp. 622-623 (“Judgement”). *See also ibid*, para. 940.

³ *See* Notice of Appeal against the Judgement in Case 002/01, **E313/1/1**, 29 September 2014 (“Nuon Chea Notice of Appeal”).

⁴ Nuon Chea’s Appeal against the Judgement in Case 002/01, **F16**, 29 December 2014 (“Nuon Chea Appeal Brief”).

⁵ Co-Prosecutors’ Response to Case 002/01 Appeals, **F17/1**, 24 April 2015 (“OCP Response Brief”).

the two defence teams confined to grounds directly affecting civil parties' rights and interests and endeavouring to avoid repetitiveness and overlap with issues already covered by the OCP Response Brief.⁶

III. APPLICABLE LAW

6. Internal Rule 21(1) provides that the "ECCC proceedings shall be fair and adversarial and preserve a balance between the rights of the parties" and that the "ECCC shall ensure that victims are kept informed and that their rights are respected throughout the proceedings". Internal Rule 21(4) provides that "[p]roceedings before the ECCC shall be brought to a conclusion within a reasonable time."

7. Internal Rule 12^{ter} (1) provides that the "Civil Party Lead Co-Lawyers shall ensure the effective organization of Civil Party representation during the trial stage and beyond, whilst balancing the rights of all parties and the need for an expeditious trial within the unique ECCC context." Further, under Internal Rule 12^{ter} (2), the Lead Co-Lawyers are mandated to promote "justice and the fair and effective conduct of proceedings".

8. On 30 June 2015, the Supreme Court Chamber held that Civil Parties "enjoy fair trial rights defined in Article 14(1) of the [International Covenant on Civil and Political Rights]" albeit having "specific and limited role in the proceedings, as set out in the ECCC's Internal Rules".⁷

9. In the *Duch* Appeal Judgement, the Supreme Court Chamber held that on appeal, "a party may not merely repeat arguments that did not succeed at trial, unless the party can demonstrate that the Trial Chamber's rejection of them constituted such an error as to warrant the intervention of the Appeals Chamber."⁸

10. Under Internal Rule 108(7), provides that "parties may submit a request to the Chamber for additional evidence provided it was unavailable at trial and could have been a decisive factor in reaching the decision at trial. The request shall clearly identify the specific

⁶ Decision on Civil Party Lead Co-Lawyers' Requests Relating to the Appeals in Case 002/01, **F10/2**, 26 December 2014, para. 17 ("Decision on LCL Request re Appeals"). See also Civil Party Lead Co-Lawyers' Requests Relating to the Appeals in Case 002/01, **F10**, 24 November 2014.

⁷ Decision on Co-Prosecutors and Civil Party Lead Co-Lawyers' Request for Additional Time for Examination of SCW-5, **F26/2/2**, 30 June 2015, para. 7.

⁸ *Duch* Appeal Judgement, para. 20; see also *Brđanin* Appeal Judgement, para. 16.

findings of fact made by the Trial Chamber to which the additional evidence is directed. The other parties affected by the request may respond within 15 (fifteen) days of the receipt of notification of the request.”

11. As per Internal Rule 104(1), “[t]he Supreme Court Chamber shall decide an appeal against a judgment or a decision of the Trial Chamber on the following grounds: a) an error on a question of law invalidating the judgment or decision; or b) an error of fact which has occasioned a miscarriage of justice.” Additionally, an immediate appeal against a decision of the Trial Chamber may be based on a discernible error in the exercise of the Trial Chamber’s discretion which resulted in prejudice to the appellant. For these purposes, the Supreme Court Chamber may itself examine evidence and call new evidence to determine the issue. By virtue of Internal Rule 104 *bis*, the Supreme Court Chamber has considered this power to call “new evidence” to be subject to the requirements of Internal Rule 87(4). Internal Rule 87(3) applies to both avenues – additional evidence requests under Internal Rule 104(1) and those under Internal Rule 108(7).

IV. SUBMISSION

12. The Lead Co-Lawyers respond to the Request on behalf of the consolidated group of Civil Parties under their mandate to promote fair and effective conduct of proceedings.⁹ Therefore, in the present response, the Lead Co-Lawyers do not seek specific relief from the Supreme Court Chamber in relation to the outcome of the Request save that it takes into consideration the cumulative concerns outlined below when making a determination on the merits of the Request.

13. The Lead Co-Lawyers argue that the Request concerns the composition of the JCE, which has not been challenged in the Nuon Chea Appeal Brief; and that the Nuon Chea Appeal Brief raises alleged errors in relation to superior responsibility, which has not been made the basis of the conviction of the Co-Accused. In light of these concerns, the Lead Co-Lawyers submit that the balance of rights of the parties will not be maintained if the Request is granted.

⁹ Internal Rule 12*ter* (2).

A. The Nuon Chea Appeal Brief does not challenge the membership of the Joint Criminal Enterprise

14. The Nuon Chea Appeal Brief challenges, *inter alia*, the characterisation of the CPK as a “unified, rigidly hierarchical and pyramidal entity”,¹⁰ Nuon Chea’s role in military policy, implementation, and internal security,¹¹ findings on policy concerning “smashing enemies”,¹² findings concerning Toul Po Chrey,¹³ definition of Joint Criminal Enterprise (“JCE”),¹⁴ definition of “CPK’s Joint Criminal Enterprise”,¹⁵ JCE policy of targeting Khmer Republic Officials,¹⁶ and Nuon Chea’s substantial contribution to the crimes charged.¹⁷ However, a challenge to the fact of membership and/or the composition of the JCE is conspicuously missing. The Nuon Chea Appeal Brief does not challenge that any of the JCE members, including Nuon Chea, were, in fact, part of it.

15. Whilst the Nuon Chea Appeal Brief cites to the dispositive portion of the Trial Judgement that defines the composition of the JCE, i.e. paragraph 777,¹⁸ the contents of the arguments do not contain arguments as to the *fact* of the composition of the JCE or the membership of Rhuos Nhim, Sao Phim and others. The Nuon Chea Appeal Brief challenges relate to findings on nature, definition and scope of the common purpose and do not concern the membership:

“This finding is furthermore both illogical and inconsistent with other findings in the Judgment. The Chamber did not find that the CPK sought to marginalize, persecute or terrorize the general Cambodian population but to achieve a socialist revolution among that population. That revolution involved collective agricultural work toward the goal of building the country. According to the Chamber, the purpose of the supposed enemies policy was to defend that very revolution. A policy of deliberately ‘creat[ing] an uncertain atmosphere’ by making it difficult to discern what constitutes prohibited conduct accordingly has no logical connection to any alleged CPK objective.”¹⁹ [...]

“The Trial Chamber following the Closing Order found that a plurality of persons, including Nuon Chea, ‘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” and that this common purpose ‘was not in itself necessarily or entirely criminal.’ The Defence concurs

¹⁰ Nuon Chea Appeal Brief, paras 225-249.

¹¹ Nuon Chea Appeal Brief, paras 250-267.

¹² Nuon Chea Appeal Brief, paras 268-283.

¹³ Nuon Chea Appeal Brief, paras 449-466.

¹⁴ Nuon Chea Appeal Brief, paras 484-493.

¹⁵ Nuon Chea Appeal Brief, paras 494-498.

¹⁶ Nuon Chea Appeal Brief, paras 526-615.

¹⁷ Nuon Chea Appeal Brief, paras 616-626.

¹⁸ Nuon Chea Appeal Brief, paras 282, 494.

¹⁹ Nuon Chea Appeal Brief, para. 282 (internal citations omitted).

that Nuon Chea participated in a common purpose with other CPK leaders to implement a rapid socialist revolution and to defend that revolution. However, the Chamber erred in law and fact in finding that the common purpose involved defence of the Party 'by any means necessary'. It failed to explain the content of this finding, the ordinary meaning of which is that no measure of any kind was beyond the scope of Party policy."²⁰

16. The Nuon Chea Appeal Brief does raise arguments that the CPK was a factional entity and has sought to support it by means of further arguments raised in the appeal brief as well as through the additional evidence requests on appeal. However, it has done that by building on the arguments that concern the errors alleged in the common purpose of the JCE²¹ rather than challenging the factual and legal findings on the composition of the JCE and the membership itself.

17. The Lead Co-Lawyers note that the Trial Judgement, when defining the composition of the Joint Criminal Enterprise, did not make the individuals' respective positions within the CPK as the basis of finding membership. These findings did not rest on whether or not the CPK could be characterised as a "unified, rigidly hierarchical and pyramidal entity", as argued in the Nuon Chea Appeal Brief. The legal finding reads:

"The Chamber is therefore satisfied that, at the latest, by 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. The evidence establishes that this common purpose to rapidly build and defend the country through a socialist revolution, based on the principles of secrecy, independence-sovereignty, democratic centralism, self-reliance and collectivisation, was firmly established by June 1974 and continued at least until December 1977."²²

²⁰ Nuon Chea Appeal Brief, para. 494.

²¹ The Nuon Chea Appeal Brief challenges the JCE through appeal grounds limited to the nature and definition of the common purpose i.e. to "implement rapid socialist revolution through a 'great leap forward' and defend the Party against internal and external enemies, by whatever means necessary" (Trial Judgment, para. 777). The Trial Judgement, not finding such a purpose inherently criminal, found that its implementation lead to and/or involved the commission of the crimes. The phrase that the Nuon Chea Appeal Brief draws attention to is "by whatever means necessary" to show that it could have encompassed all types of acts – criminal or otherwise (Nuon Chea Appeal Brief, para. 496). However, it ignores that it was also the implementation of a "rapid" socialist revolution, which incorporated by reference the criminal nature of the *implementation*, thereby acknowledging that the purpose of the socialist revolution must be viewed in the context of its intended pace.

²² Trial Judgement, para. 777 (emphasis added).

18. Further, the Lead Co-Lawyers add that the membership to a JCE does not presuppose a hierarchy nor does it imply a necessarily pyramidal structure of the organisation. From the factual and legal findings of the Trial Judgement, it is clear that the determination of the membership of the JCE was not intrinsically linked to the organisational structure of the CPK but rather the presence of those said members in meetings together.

19. The Trial Judgement, noting that the most significant participants joined the common purpose before 17 April 1975,²³ based its conclusion as to the legal findings on the membership to the JCE during the temporal jurisdiction – 17 April 1975 to December 1977. The Trial Chamber considered evidence and factual findings relating to the presence of the participants in the First Party Congress in September 1960,²⁴ Second Party Congress in February 1963,²⁵ meeting in January 1968²⁶ and October 1970,²⁷ Third Party Congress in 1971,²⁸ planning June 1974,²⁹ meetings between April-December 1975,³⁰ nature of

²³ Trial Judgement, para. 725.

²⁴ Trial Judgement, para. 726: “At the First Party Congress in September 1960, TOU Samuth (Secretary), NUON Chea (Deputy Secretary), POL Pot, SON Sen, IENG Sary, VORN Vet, SAO Phim and others adopted a three point programme fighting imperialism, ‘liberating’ the country and people, and conducting a successful revolution.”

²⁵ Trial Judgement, para. 727: “At the Second Party Congress in February 1963, POL Pot (now Party Secretary), NUON Chea (Deputy Secretary), IENG Sary, VORN Vet, ROS Nhim, Ta Mok, SAO Phim, likely SON Sen and others affirmed the line adopted at the First Party Congress, including political and armed revolution.” (internal citations omitted)

²⁶ Trial Judgement, para. 729: “In January 1968, NUON Chea convened a meeting in Phnom Penh with several Zone leaders, including SAO Phim, ROS Nhim and Ta Mok. Together, they discussed the need to begin armed struggle against those in power, namely the LON Nol faction which was then in charge of the government, in regions where they considered the latter were intensifying their ‘acts of suppression.’” (internal citations omitted)

²⁷ Trial Judgement, para. 732: “In October 1970, the Central Committee, including POL Pot, NUON Chea, IENG Sary, Ta Mok, SAO Phim, KOY Thuon and other Zone secretaries, discussed a plan to liberate Cambodia from the American imperialists and Khmer Republic and confirmed the Party’s policy of self-reliance and independence.” (internal citations omitted)

²⁸ Trial Judgement, para. 733: “At the Third Party Congress in 1971, NUON Chea, POL Pot, KHIEU Samphan (now a candidate member of the Central Committee), IENG Sary, KOY Thuon, KE Pauk, Doeun, SAO Phim, VORN Vet, Ta Mok, ROS Nhim and others decided to change the name of the Party to the CPK, created the Special Zone around Phnom Penh and reaffirmed the Party line from the First and Second Congresses, including commitment to the class struggle.” (internal citations omitted)

²⁹ Trial Judgement, para. 735: “In June 1974, the Central Committee, including members and candidate members POL Pot, NUON Chea, KHIEU Samphan, SAO Phim, KOY Thuon, Ta Mok, VORN Vet, ROS Nhim and SON Sen, pursuant to the principle of democratic centralism, planned the final offensive to liberate the country and evacuate the population of the cities to rural areas.” (internal citations omitted)

³⁰ Trial Judgement, para. 741: “Between April 1975 and December 1977, they included ROS Nhim (Northwest), SAO Phim (East), Ta Mok (Southwest), CHOU Chet (West), KOY Thuon (Central (old North) Zone, until 1975), KE Pauk (Central (old North) Zone, from 1975), CHANN Sam (North Zone, from its establishment around 1977), MEN San (Northeast), BOU Phat (Sector 103, until its incorporation into the North

membership and the composition of the Standing Committee,³¹ meeting in September 1975,³² membership to the People's Representative Assembly,³³ regular meetings in Phnom Penh,³⁴ meetings in zones and communications through telegrams.³⁵

20. The Lead Co-Lawyers submit that none of the challenges outlined in paragraph 14 of the present Response precluded the Nuon Chea Defence from challenging the composition of the JCE and/or his membership on appeal. However, by means of the Request, Nuon Chea contends that “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”.³⁶

Zone around 1977), YONG Yem (Sector 505, until 1976), and BORN Nan (Sector 505, from 1976).” (internal citations omitted)

³¹ Trial Judgement, para. 745: “Beginning around August 1975, the Standing Committee, consisting of full-rights members NUON Chea, POL Pot, IENG Sary, SAO Phim, Ta Mok VORN Vet (either a full-rights or candidate member) and SON Sen (a candidate or alternate member only), would meet about once a week, and more frequently in times of emergency.” (internal citations omitted)

³² Trial Judgement, para. 749: “IENG Sary confirmed that he was present at a September 1975 meeting of Party leaders, including KHIEU Samphan, POL Pot, NUON Chea, SAO Phim, SON Sen, Ta Mok, VORN Vet, ROS Nhim, KOY Thuon and a number of military commanders, at which defence, agriculture, “the water problem” and industry were discussed.” (internal citations omitted)

³³ Trial Judgement, para. 766: “The PRA then formally appointed the new government: KHIEU Samphan became president and SAO Phim and ROS Nhim were appointed vice-presidents in the State Presidium. KHIEU Samphan later explained that he accepted the presidency due to a sense of patriotic duty: he did not want to weaken the movement. POL Pot was appointed prime minister; NUON Chea, Chairman of the PRA Standing Committee; IENG Sary, Deputy Prime Minister of Foreign Affairs; SON Sen, Deputy Prime Minister of National Defence; VORN Vet, Deputy Prime Minister of Economics; HU Nim, Minister of Information and Propaganda; THIOUNN Thioun, Minister of Health; IENG Thirith, Minister of Social Action; TOCH Phoeun, Minister of Public Works; and YUN Yat, Minister of Culture, Training and Education.” (internal citations omitted)

³⁴ Trial Judgement, para. 772: “In addition to attending meetings of the Centre, Zone and Autonomous Sector secretaries and officials, such as ROS Nhim, also came to Phnom Penh on a regular basis to meet with Party leaders, including NUON Chea. Party leaders, including POL Pot, KHIEU Samphan and NUON Chea, led education sessions in Phnom Penh, beginning soon after 17 April 1975 and continuing throughout the DK era. They lectured Zone, Sector and District officials, as well as ordinary cadres, about the identification and elimination of enemies, continuation of the armed struggle establishment of cooperatives, building of dikes and canals, and completion of work and production quotas.” (internal citations omitted)

³⁵ Trial Judgement, para. 773: “Party leaders, including POL Pot, NUON Chea, KHIEU Samphan and IENG Thirith, also traveled to the Zones to observe the conduct of the socialist revolution and meet with Zone leaders and officials. According to Witness SAUT Toeung, NUON Chea would travel to Battambang to meet with ROS Nhim every three to four months. Further, several surviving telegrams from 1977-78 demonstrate that Zone secretaries and officials, such as ROS Nhim and SAO Phim, reported to Angkar or the leadership, copying POL Pot, SON Sen, VORN Vet, NUON Chea and/or Office 870, on former Khmer Republic officials and other enemy situations, and fighting on the border with Vietnam. They also asked for instructions.” (internal citations omitted)

³⁶ Request, para. 13.

21. This challenge should have been raised in their notice of appeal to seise the Supreme Court Chamber of those alleged errors and then subsequently should have developed, argued, and presented them in their appeal brief.

22. This challenge cannot be drawn before the Supreme Court Chamber through the means of additional evidence requests that obviate the very procedure and substance that seises the Supreme Court Chamber, especially since the judges have already entered deliberations on the merits of the appeals and responses before them.

23. Insofar as the additional evidence relates to the composition of the JCE and its membership, the Request does not fulfil the requirements of either Internal Rule 108(7) or 104(1). Therefore, the Lead Co-Lawyers submit that, without a reasoned challenge to the membership of the Joint Criminal Enterprise, arguing that the CPK was factional in nature while seemingly informative may only be relevant to the determination of superior responsibility as a mode of responsibility.

B. The Trial Judgement did not find the Co-Accused guilty as a Superior

24. The Nuon Chea Appeal Brief raises errors of law and fact against the findings that the Trial Chamber made in concluding that Nuon Chea exercised effective control over persons responsible for the crimes committed but does not challenge the sentence for the purpose of which these findings were considered.³⁷ In the Request, the Nuon Chea Defence “reiterate[s] and buil[ds]” on those arguments that it previously raised in their Closing Brief for Case 002/01.³⁸ The Request contends that “no reasonable trier of fact could have concluded that [...] Nuon Chea exercised effective control over those leaders’ civilian and military forces.”³⁹ The Request also characterises the findings relating to superior responsibility as an “alternate conviction”.⁴⁰

25. The Lead Co-Lawyers emphasize that the Trial Judgement found the Co-Accused *responsible* as a superior but did not enter convictions under superior responsibility as a

³⁷ Nuon Chea Appeal Brief, paras 681-697.

³⁸ Request, para. 9.

³⁹ Request, para. 13.

⁴⁰ Request, para. 13.

mode of liability.⁴¹ It considered the Co-Accused's superior position when deciding the aggravating circumstances related to sentencing.⁴²

26. Consequently, whether the Co-Accused acted as a superior or otherwise and/or what was the extent of his effective control over the subordinate is immaterial for the challenges relating findings of conviction on JCE. Therefore, for the Supreme Court Chamber to obtain and consider the additional evidence, without the Nuon Chea Appeal Brief challenging the membership or the sentence, would not further the ascertainment of the truth on appeal. For this reason, the Request does not fulfil the requirements of either Internal Rule 108(7) or 104(1).

27. Even if one were to assume that the Nuon Chea Appeal Brief makes the arguments concerning the extent of Nuon Chea's effective control over Sao Phim, Rhuos Nhim and others in the alternative, it must be noted that that would rest on the possibility of the Trial Judgement having convicted the Co-Accused in the alternative. As discussed above, the Trial Judgement is categorical in basing the conviction on JCE as a mode of responsibility and not superior responsibility.

28. The Lead Co-Lawyers concede that the Nuon Chea Defence is at liberty to select which factual and legal findings that they challenge on appeal. However, the Nuon Chea Appeal Brief does not reason why and how the alleged errors in the factual and legal findings relating to superior responsibility as an aggravating factor in sentencing invalidates the judgement of conviction based on JCE.

C. The Additional Evidence sought is beyond the temporal scope of the Trial Judgement

29. The Lead Co-Lawyers submit that a significant amount of the additional evidence requested to be obtained and considered by the Request relates to events and circumstances post-December 1977, which is beyond the temporal scope of the findings relating to JCE in the Trial Judgement in Case 002/01 and consequently, the current appeal before the Supreme

⁴¹ Trial Judgement, para. 941.

⁴² Trial Judgement, para. 1084: "NUON Chea's contribution to the crimes, including through his participation in the JCE, was undertaken in his official capacities, including as Deputy Secretary of the CPK throughout the DK period and a full rights member of both the CPK Central and Standing Committees. This constitutes an abuse of his position of authority and influence and thus aggravates his culpability." (internal citations omitted)

Court Chamber. What remained of the JCE and the common purpose post-December 1977, and if/and how the Co-Accused contributed to the common purpose is before the Trial Chamber in Case 002/02. Therefore, the Lead Co-Lawyers request that the Supreme Court Chamber remove from their consideration the evidence that dates post-December 1977.

30. The Lead Co-Lawyers also bring to the attention of the Supreme Court Chamber that the trial segments relating to Internal Purges, Nature of the armed conflict, and the Role of the Accused relating to the crimes charged therein are a subject of the evidentiary proceedings in Case 002/02 at present.⁴³ Therefore, the Lead Co-Lawyers request that the Supreme Court Chamber exercise their discretion so as to not prejudice the ongoing substantive proceedings and limit their appellate jurisdiction over the alleged errors in the factual and legal findings that the respective defence appeal briefs seises them of.

31. The Lead Co-Lawyers emphasize that often the Request seeks to supplant the arguments contained in the Nuon Chea Appeal Brief⁴⁴ and, at other times, repeats the arguments already made in Nuon Chea's Closing Brief at trial.⁴⁵ The Lead Co-Lawyers submit that neither of these actions is procedurally proper in the context of a motion to seek and present additional evidence on appeal.

32. In principle, the Lead Co-Lawyers have not opposed the admission and consideration of additional evidence on appeal that could further the ascertainment of the truth. However, the Lead Co-Lawyers refer to their arguments concerning the balance of parties elaborated in their response to the investigatory requests relating to Sam Sithy.⁴⁶ The Lead Co-Lawyers reiterate their concerns about the need for the additional evidence requests to maintain the balance of rights of parties. The Lead Co-Lawyers urge that the Supreme Court Chamber take those concerns into account when adjudicating upon the merits of this Request.

⁴³ Decision on Sequencing of Trial Proceedings in Case 002/02, **E315**, 12 September 2014, p. 6.

⁴⁴ See Request, paras 23-69.

⁴⁵ Request, para. 9.


⁴⁶ Civil Party Lead Co-Lawyers' Response to Nuon Chea's Investigatory Requests Relating to Sam Sithy, **F28/1**, 18 September 2015, paras 37-41.

V. RELIEF REQUESTED

WHEREFORE, the Civil Party Lead Co-Lawyers respectfully request that the Supreme Court Chamber:

- (1) **CONSIDER** the concerns outlined in the present Response when determining the grant of the Request.

Respectfully submitted,

Date	Name	Place	Signature
29 September 2015	PICH ANG Lead Co-Lawyer	Phnom Penh	
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