

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

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**NUON CHEA'S SECOND WITNESS REQUEST FOR THE CASE 002/02
SECURITY CENTRES AND "INTERNAL PURGES" SEGMENT
(LEADERSHIP)**

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I. INTRODUCTION

1. Pursuant to ECCC Internal Rules 91(1), 87(4) and 93, and the Trial Chamber's power to reconsider its decisions, the Co-Lawyers for Mr. Nuon Chea (the "Defence") submit this request (the "Request") in respect of eight leadership witnesses. The witnesses in question are either senior-surviving leaders of a treasonous rebellion led by defecting CPK cadres with Vietnamese support against the CPK and legitimate DK government, or they can testify as to the rebellion's leaders. Several of the witnesses also relate to leadership in a second sense: they are current top-ranking leaders in the Cambodian government.

2. Five of the requested witnesses – ██████████ (2-TCW-831), ██████████ (2-TCW-951), ██████████ (2-TCW-952), ██████████ (2-TCW-962), ██████████ (2-TCW-917), and Ka Dev (2-TCW-998) – are individuals who the Defence have previously proposed and who the Defence seeks to expedite pursuant to Internal Rule 91(1). One witness – ██████████ (Witness G¹) – is a new witness who was not previously proposed by the Defence and who the Defence now requests the Chamber to summons pursuant to Internal Rule 87(4) and to either permit the Defence to interview or to interview itself pursuant to Internal Rule 93. The last two witnesses – Hun Sen (2-TCW-1001) and Ka Dev (2-TCW-998) – are witnesses proposed by the Defence but rejected by the Chamber, in respect of whom the Defence now seeks the Trial Chamber's to reconsider pursuant to the Chamber's inherent power to do so. The Defence also requests that it be permitted to interview Ka Dev (2-TCW-998) or, in the alternative, that the Trial Chamber interview her pursuant to Internal Rule 93.

3. Finally, the Defence requests that all eight witnesses appear during the upcoming Case 002/02 trial segment on Security Centres and "Internal Purges" and prior to the appearance of Kaing Guek Eav *alias* Duch (2-TCW-916) – the key witness for S-21 Security Centre and a key witness in Case 002/02 overall.

II. BACKGROUND AND PROCEDURAL HISTORY

A. The Defence Case: Treasonous Rebellion and Vietnam

4. As the Defence indicated to the Trial Chamber in a September 2015 East Zone-related

¹ The Defence has assigned new pseudonyms sequentially, following the numbering assigned in its first and second witness requests for the Security Centres and "Internal Purges" segment (E391, 'Nuon Chea's First Rule 87(4) Request to Call Additional Witnesses and Rule 93 Request for Additional Investigations in Relation to the Case 002/02 Trial Segment on S-21 Security Centre and "Internal Purges"', 24 Mar 2016 ("First Witness Request (Division 310).")

witness request,² the heart of the Defence case is that the CPK, far from being a disciplined, unified and “pyramidal” hierarchy, was engulfed in constant internal turmoil; that different and equally strong factions (including one led by East Zone secretary Sao Phim and Northwest Zone secretary Ruos Nhim) pursued competing agendas intending to seek overall control of the Party and the country; and that one of those factions also sought to advance the interests of Vietnam, if not also the Soviet Union. A detailed overview of the Defence case is set out in one public filing before the Supreme Court Chamber.³

B. Updated Case 002/02 Witness List

5. On 8 and 9 May 2014, the Defence and the other parties respectively filed updated lists of proposed witnesses, civil parties and experts for Case 002/02.⁴ The Defence’s updated witness list (the “Updated Witness List”) included the following current government and Cambodian People’s Party (“CPP”) leaders who had served as high ranking Communist Party of Kampuchea (“CPK”) cadres in the East Zone during the Democratic Kampuchea (“DK”) period and later defected to Vietnam: [REDACTED] (2-TCW-831), the current [REDACTED];⁵ [REDACTED] (2-TCW-951), [REDACTED];⁶ and the now late Chea Sim, who was the President of the Cambodian Senate and the CPP President,⁷ but who subsequently died in June 2015.⁸ The Defence’s Updated Witness List also included [REDACTED] (2-TCW-952), a current [REDACTED]⁹ [REDACTED]
[REDACTED]
[REDACTED].¹⁰

² E370, ‘Nuon Chea’s Urgent and Consolidated Request to Expedite Two Already-Requested Witnesses and Summons Four Additional Witnesses Regarding the Treatment of the Cham’, 29 Sep 2015 (“East Zone Witness Request”), para. 25.

³ See, in particular, F2/8, ‘Nuon Chea’s Sixth Request to Consider and Obtain Additional Evidence in Connection with the Appeal Against the Trial Judgement in Case 002/01’, 11 Sep 2015 (“Sixth Appeal Additional Evidence Request”), paras. 23-69.

⁴ E305/4, ‘Updated Lists and Summaries of Proposed Witnesses, Civil Parties and Experts’, 8 May 2014; E305/5, ‘Témoins et experts proposés par la Défense de M. KHIEU Samphan pour le procès 002/02’, 9 May 2014; E305/6, ‘Co-Prosecutors’ Proposed Witness, Civil Party and Expert List and Summaries for the Trial In Case File 002/02 (With 5 Confidential Annexes I, II, IIA, III and IIIA)’, 9 May 2014; E305/7, ‘Civil Party Lead Co-Lawyers’ Rule 80 Witness, Expert and Civil Party Lists for Case 002/02 With Confidential Annexes’, 9 May 2014.

⁵ E305/4.2, ‘Annex B – Updated Summaries of Proposed Witnesses, Civil Parties and Experts (no protective measures sought)’, 8 May 2014 (“Updated Witness Summaries”), pp. 5-6.

⁶ E305/4.2, Updated Witness Summaries, p. 12.

⁷ E305/4.2, Updated Witness Summaries, pp. 1-2.

⁸ E370.1.1, Saing Soenthrith, ‘CPP President Chea Sim Dead’, *Cambodia Daily*, 8 Jun 2015; see, also, E370, East Zone Witness Request, para. 5, describing Chea Sim’s expected testimony and importance to Nuon Chea’s defence.

⁹ E305/4.2, Updated Witness Summaries, p. 13.

¹⁰ [REDACTED]

C. New Case 002/02 Witness List

6. On 24 July 2014, the Defence filed a list of new witnesses and experts for Case 002/02¹¹ (the “New Witness List”). Among the new witnesses in this list was [REDACTED] (2-TCW-962), the current [REDACTED]

[REDACTED]¹².

D. East Zone Witness Request

7. On 29 September 2015, the Defence filed an East Zone-related witness request (the “East Zone Witness Request”) in which it requested the Trial Chamber to expedite the appearance of [REDACTED] (2-TCW-831) and [REDACTED] (2-TCW-951) and to summons four new witnesses to testify during hearings on the Treatment of the Cham, in relation to the alleged treatment of the Cham in the East Zone. Three of the four new witnesses sought were Hun Sen (2-TCW-1001),¹³ the Prime Minister and CPP President and a former CPK military commander in the East Zone; [REDACTED] (2-TCW-917), the son and messenger of the former East Zone [REDACTED] secretary; and Ka Dev (2-TCW-998), the daughter of East Zone secretary and rebellion leader Sao Phim.

8. On 18 December 2015, the Trial Chamber announced its disposition vis-à-vis the East Zone Witness Request,¹⁴ followed over three months later by its reasoned decision issued on 25 March 2016.¹⁵ The Trial Chamber’s relevant decisions were as follows:

- (a) **In respect of [REDACTED] (2-TCW-831) and [REDACTED] (2-TCW-951)**, the Trial Chamber deferred its decision “until the appropriate later stages of the proceedings” on the basis that the Defence had submitted that these witnesses were most relevant to the segments on armed conflict, “internal purges”, and the role of Nuon Chea.¹⁶
- (b) **In respect of [REDACTED] (2-TCW-917)**, the Trial Chamber determined that it would decide on this witness “in due course”, noting that while his “knowledge of the facts does

¹¹ E307/4, ‘New Witness, Civil Party and Expert List for Case 002/02’, 24 Jul 2014.

¹² E307/4.3, ‘Annex B – New Witness, Civil Party and Expert Summaries for Case 002/02’, 24 Jul 2014 (“New Witness Summaries”), p. 2.

¹³ The Defence notes that the Trial Chamber referred to Hun Sen by name and pseudonym in the public document E370/3, ‘Decision on Nuon Chea Request to Expedite Two Previously Proposed Witnesses and Summons Four Additional Witnesses During the Case 002/02 Trial Topic on the Treatment of the Cham – with Written Reasons to Follow’, 18 Dec 2015 (“East Zone Witnesses Disposition”), and assumes that the Chamber has thereby waived to need to refer to Hun Sen by pseudonym.

¹⁴ E370/3, East Zone Witnesses Disposition.

¹⁵ E370/4, ‘Decision on Nuon Chea Request to Expedite Two Previously Proposed Witnesses and Summons Four Additional Witnesses During the Case 002/02 Trial Topic on the Treatment of the Cham and on National Co-Prosecutor’s Request to Admit Written Testimony in Lieu of In-Court Appearance’, 25 Mar 2016 (“East Zone Witnesses Reasoned Decision”).

¹⁶ E370/4, East Zone Witnesses Reasoned Decision, para. 18.

not appear sufficiently direct and relevant in order to assist the Chamber in ascertaining the truth regarding [the Treatment of the Cham] trial topic”, “his testimony could be relevant to other trial topics in Case 002/02”.¹⁷

- (c) **In respect of Hun Sen (2-TCW-1001)**, the Trial Chamber rejected the Defence’s witness request outright.¹⁸ In its reasoning, the Chamber explained that the Defence failed to exercise due diligence in requesting Hun Sen (2-TCW-1001) as part of its East Zone Witnesses Request.¹⁹ The Chamber further held that the Defence’s request was not in the interests of justice, since the request was predicated on information contained in a chapter in Human Rights Watch’s report *30 Years of Hun Sen* detailing Hun Sen’s (2-TCW-1001’s) role as a CPK East Zone cadre, a chapter which the Chamber had already excluded from evidence.²⁰
- (d) **In respect of Ka Dev (2-TCW-998)**, the Trial Chamber held that although the Defence’s request for this witness was timely,²¹ it rejected the request to call her since although she “may possess information relating to the arrest of some of her family members”, “[t]he assertion that the witness possesses relevant knowledge [on the Treatment of the Cham] is [...] based purely on speculation”.²²

E. Issues Emerging on Cross-Examination

9. On 9 March 2016, the Defence cross-examined Treatment of the Cham witness and current Hun Sen bodyguard Van Mat, also known as Sales Ahmat. Under cross-examination, Mr. Mat confirmed that in 1978, he had fought against the CPK alongside a force of up to 1,000 soldiers [REDACTED] (Witness G).²³ Mr. Mat further confirmed that at the time, [REDACTED] (Witness G) was a leader in the rebellion,²⁴ and is [REDACTED] [REDACTED].²⁵ However, Mr. Mat was unable to confirm what rank [REDACTED] (Witness G) had held within the CPK, prior to assuming a leading role in the treasonous rebellion.²⁶

¹⁷ E370/4, East Zone Witnesses Reasoned Decision, para. 22.

¹⁸ E370/3, East Zone Witnesses Disposition.

¹⁹ E370/4, East Zone Witnesses Reasoned Decision, para. 25.

²⁰ E370/4, East Zone Witnesses Reasoned Decision, para. 26.

²¹ E370/4, East Zone Witnesses Reasoned Decision, para. 23.

²² E370/4, East Zone Witnesses Reasoned Decision, para. 24.

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10. On 23 March 2016, the Defence began its cross-examination of Treatment of the Cham expert witness Ysa Osman. *Inter alia*, the Defence sought Mr. Osman's comments as to why his research on the treatment of the Cham people in Sector 21 in the East Zone omitted mention of the role played by certain high-ranking East Zone cadres who now hold high-ranking positions in the Royal Government of Cambodia, querying whether this may have been the result of fear.²⁷ Mr. Osman responded that his interviewees generally did not name names;²⁸ that his research had limits, including lack of government cooperation;²⁹ that he "object[ed] to answer[ing] the question"; and that he refused to answer any further questions on this topic, whether in open or closed hearing session.³⁰ Mr. Osman did not respond to a subsequent reminder from Judge Fenz as to the availability of protective measures.³¹ Instead, he attempted to shut down the line of questioning by advising International Co-Lawyer for Nuon Chea Victor Koppe that the individuals in question – namely and Hun Sen (2-TCW-1001) – were "living now. And if you wish to get clarification on that you should put a submission to the Chamber so the Chamber can call them for clarification."³²

F. Witnesses for S-21 Security Centre and "Internal Purges"

11. On 7 March 2016, the Trial Chamber issued a first list of nine people scheduled to appear before it either as a witness or civil party in respect of S-21 Security Centre.³³ Based on the current schedule, the first person on this list is expected to appear at the end of March 2016. In the same email, the Chamber indicated that "[t]he list of witnesses for the remaining sub-topic on "Internal Purges" will be notified to the parties in due course."

12. On 24 March 2016, the Defence filed its first witness request for the Security Centres and "Internal Purges" segment, seeking six witnesses whose testimony relates to North Zone-affiliated military division 310.³⁴

III. APPLICABLE LAW

A. Expediting Witnesses

13. Pursuant to Rule 91(1), it is within the Trial Chamber's discretion to "hear Civil Parties, witnesses and experts in the order it considers useful". The Chamber has previously used its

²⁷ Draft Transcript of Proceedings, 23 Mar 2016, p. 60, ln. 24 – p. 61, ln. 17 and p. 62, lns. 3-13.

²⁸ Draft Transcript of Proceedings, 23 Mar 2016, p. 61, lns. 19-22.

²⁹ Draft Transcript of Proceedings, 23 Mar 2016, p. 62, lns. 14-25.

³⁰ Draft Transcript of Proceedings, 23 Mar 2016, p. 64, lns. 14-16.

³¹ Draft Transcript of Proceedings, 23 Mar 2016, p. 66, lns. 13-22.

³² Draft Transcript of Proceedings, 23 Mar 2016, p.

³³ Email from Trial Chamber Senior Legal Officer to Parties, 7 Mar 2016.

³⁴ E391, First Witness Request (Division 310).

power under Rule 91(1) to expedite the testimony of Thet Sambath, when it considered it “prudent” to do so.³⁵

B. Summoning New Witnesses

14. Rule 87(4) enables the Chamber to, at its own initiative or on a party’s request, summon a person as a witness who “it deems conducive to ascertaining the truth”. The rule requires the Chamber to consider the request’s merits in accordance with criteria set out in Rule 87(3). The requesting party, for its part, must satisfy the Chamber that the testimony was unavailable before the opening of the trial.³⁶ The Chamber has held that where the relevance of a person’s testimony was revealed but by “minimal information” before the opening of the trial while more detailed information was only available after the opening of the trial, the testimony in question will be considered unavailable before the opening of the trial.³⁷ Where testimony was available before the opening of the trial, the Trial Chamber has held that it may nevertheless be admitted “where the interests of justice so require, in particular where it is exculpatory and requires evaluation in order to avoid a miscarriage of justice”³⁸ or where it “closely relate[s] to material already before the Chamber and ... the interests of justice require the sources to be evaluated together.”³⁹ To satisfy the requirements of Rule 87(3), evidence put before the Trial Chamber need only be *prima facie* relevant and reliable.⁴⁰

C. Reconsidering Decisions to Reject Witnesses

15. Requests for reconsideration are not contemplated by the Rules. However, the Trial Chamber has ruled that it will entertain such requests “where a fresh application justified by new evidence or new circumstances is made”.⁴¹ The Pre-Trial Chamber, following established ICTY Appeals Chamber jurisprudence, has adopted a broader test, ruling that its power to reconsider its decisions applies not only where there is a “change of circumstances” (which could result

³⁵ E335/3, ‘Decision on Co-Prosecutors’ Request to Call Thet Sambath as a Priority Witness’, 7 May 2015, paras. 7-9.

³⁶ The Chamber specified that the opening of the trial in Case 002 was the initial hearing, which started on 27 June 2011.

³⁷ T. 7 Dec 2015 (TC Ruling, E1/363.1), p. 49, Ins. 2-8.

³⁸ E307/1, ‘Decision on Parties’ Joint Request for Clarification Regarding the Application of Rule 87(4) (E307) and the Nuon Chea Defence Notice of Non-Filing of Updated Lists Evidence (E305/3)’, 11 Jun 2014, para. 3; *accord* E190, ‘Decision Concerning New Documents and Other Related Issues’, 30 Apr 2012 (“Decision on New Documents”), para. 36.

³⁹ E289/2, ‘Decision on Civil Party Lead Co-Lawyers’ Internal Rule 87(4) Request to Put Before the Chamber New Evidence (E289) and KHIEU Samphan’s Response (E289/1)’, 14 Jun 2013, para. 3; *accord* E190, Decision on New Documents, para. 32.

⁴⁰ E313, ‘Case 002/01 Judgement’, 7 Aug 2014, para. 26.

⁴¹ E238/11/1, ‘Decision on IENG Sary’s Request for Reconsideration of the Trial Chamber Decision on the Accused’s Fitness to Stand Trial and Supplemental Request’, 19 Dec 2012 (“Decision on Ieng Sary Fitness Reconsideration Request”), para. 7.

from “new facts or arguments”⁴²), but also where the Chamber “finds that the previous decision was erroneous or [...] caused an injustice”.⁴³

16. There was no reason for the Trial Chamber to depart from this broader test adopted by the Pre-Trial Chamber, which is the test commonly applied at the ICTY. The Trial Chamber’s rationale for setting a narrower test was that parties have the right to appeal its decisions.⁴⁴ However, at the ICTY, parties enjoy both the right of appeal (including an extensive right to file interlocutory appeals, which is not the case at the ECCC), and the right to request the ICTY’s Trial Chamber to reconsider its own decisions on the grounds highlighted above. The Defence accordingly submits that the correct standard for reconsideration at the ECCC covers not only “new evidence or new circumstances”, but also situations in which the Chamber “finds that the previous decision was erroneous or [...] caused an injustice”.

D. Additional Investigations

17. Rule 93 provides that where deemed necessary, the Chamber “may, at any time, order additional investigations”.

IV. ARGUMENT

A. Five Witnesses Proposed to be Expedited

(i) ██████████ (2-TCW-831) and ██████████ (2-TCW-951)

18. The first two witnesses whose appearance the Defence seeks to expedite to the Security Centres and “Internal Purges” segment are ██████████ (2-TCW-831) and ██████████ (2-TCW-951). As the Defence has previously indicated, not only was ██████████ (2-TCW-831) the most important witness in Case 002/01 in connection with both the evacuation of Phnom Penh and the crimes allegedly committed at Tuol Po Chrey⁴⁵ (and thus repeatedly requested in that case, including ██████████)⁴⁶ but he is also, “without a

⁴² Case 001/18-07-2007-ECCC/OCIJ (PTC 02), **D99/3/41**, ‘Decision on IENG Sary’s Motion for Reconsideration of Ruling on the Filing of a Motion in the Duch Case File’, 3 Dec 2008, para. 6; *Prosecutor v. Galić*, Case No. IT-98-29, ‘Decision on Defence Request for Reconsideration’, 16 Jun 2004 (“*Galić* Decision on Reconsideration”), 9th recital.

⁴³ **D164/4/9**, ‘Decision on Request to Reconsider the Decision for an Oral Hearing on the Appeals PTC 24 and PTC 25’, 20 Oct 2009 (“Pre-Trial Chamber Reconsideration Decision”), para. 12; **C22/I/68**, ‘Decision on Application for Reconsideration of Civil Party’s Right to Address Pre-Trial Chamber in Person’, 28 Aug 2008, para. 25; *Galić* Decision on Reconsideration, 8th recital.

⁴⁴ **E238/11/1**, Decision on Ieng Sary Fitness Reconsideration Request, para. 7, note 24.

⁴⁵ **F16**, ‘Nuon Chea’s Appeal of the Judgment in Case 002/01’, 29 Dec 2014 ██████████

⁴⁶ ██████████

shadow of a doubt, *the most important witness in Case 002/02 and Case 002 generally*”.⁴⁷ In short, he is in a completely different stratosphere than every other witness in the case. [REDACTED] (2-TCW-951) is perhaps the second-most important witness in Case 002/02 and would be able to offer testimony on the same wide range of key issues at dispute in Case 002/02⁴⁸ as [REDACTED] (2-TCW-831). In addition, both Judge Cartwright and Judge Lavergne previously agreed in respect of at least Case 002/01 that the testimony of [REDACTED] (2-TCW-831) and [REDACTED] (2-TCW-951) was likely to be unique and irreplaceable by the testimony of other witnesses.⁴⁹

19. The Defence has already provided a general overview in its Updated Witness List of the expected testimony of [REDACTED] (2-TCW-831) and [REDACTED] (2-TCW-951) across Case 002/02.⁵⁰ It has also provided particular detail as to the expected testimony of both witnesses, as top-ranking East Zone CPK cadres, in connection with the treatment of Cham in the East Zone⁵¹ given its earlier request to request the witnesses be expedited to appear during the Treatment of the Cham segment, and secured the admission into evidence of a short biography on [REDACTED] by Vietnamese intelligence agents, and a short autobiography [REDACTED] prepared for the Vietnamese, which appear in the archives of the German Democratic Republic Ministry of State Security (the “Stasi”).⁵² Given that the Defence now seeks to expedite the testimony of [REDACTED] (2-TCW-831) and [REDACTED] (2-TCW-951) to the current Security Centres and “Internal Purges” segment, it takes this opportunity to further elaborate below on the relevance of the witnesses’ expected testimony to this particular segment.

⁴⁷ [REDACTED]; *see, also*, E370, East Zone Witness Request, para. 18.

⁴⁸ E370, East Zone Witness Request, para. 19.

⁴⁹ [REDACTED]

⁵⁰ E305/4.2, Updated Witness Summaries, pp. 5-6, 12.

⁵¹ E370, East Zone Witness Request, paras. 18-25.

⁵² E3/9720, ‘Short Biographies from the German Democratic Ministry of State Security Archives’ (“Stasi Biographies”), [REDACTED]

[REDACTED]; *see, also*, E305/18, ‘Decision Admitting the NUON Chea Defence’s Proposed Document E307/5.2.8 Into Evidence’, 11 Mar 2016 (“Stasi Biographies Decision”).

20. The Closing Order identifies the East Zone as one of two key sites where so-called “internal purges” took place “from mid-1976” to “the end of the CPK regime”.⁵³ [REDACTED] (2-TCW-831) and [REDACTED] (2-TCW-951) are senior surviving East Zone CPK cadres. It is therefore obvious that they would be able to offer unparalleled, irreplaceable, eyewitness accounts of those “purges” and the subsequent imprisonment of their fellow East Zone cadres at security centres including S-21 Security Centre.

21. The Closing Order further alleges that the arrested individuals in the East Zone were “cadres and former cadres of the East Zone” who were arrested on the basis that they were “alleged traitors [...] supposedly implicated as CIA, KGB or Vietnamese agents”.⁵⁴ This allegation goes directly to the heart of the Defence case, *infra*.⁵⁵ The Defence’s submission is that many arrests initiated by CPK cadres were motivated by the arrestee’s treason, and in particular, his or her participation in developing a rebellion and coup d’état’s against the CPK and legitimate DK government. [REDACTED] (2-TCW-831) and [REDACTED] (2-TCW-951) – as prominent leaders of the treasonous rebellion – would again be able to offer unparalleled, irreplaceable, eyewitness accounts in this regard.

22. In his 1991 interview with Ben Kiernan, [REDACTED] (2-TCW-831) spoke at length of fomenting rebellion. *Inter alia*, he described how “[in] 1976-77, we had a struggle but a secret one”,⁵⁶ and described his pivotal role, under the immediate direction of Sao Phim, to implement a coup d’état:

When I heard that their plan was to rebel and stage a coup, I went and got him [Sao Phim]. He came. He was sick and went to hide with his wife’s relatives in [unclear Khmer words]. Before the coup I was with him. When he gave his orders to fight back against Pol Pot, I was with him. It was clear. He gave the order, and I was the person who gave the order directly to the military.⁵⁷

23. [REDACTED] (2-TCW-831) further describes how the so-called “internal purges” in the East Zone stemmed from an accusation from the CPK “centre” “against Ta Phim, accusing him including me of joining up with Vietnam”⁵⁸ and how Sao Phim “declared that we would fight back” at a meeting of 20 district secretaries and military commanders which [REDACTED] (2-TCW-831) personally attended. Moreover, [REDACTED] (2-TCW-831) described how he was

⁵³ D427, Closing Order, 15 Sep 2010 (“Closing Order”), paras. 199, 201; *see, also*, E301/9/1.1, ‘Annex: List of Paragraphs and Portions of the Closing Order Relevant to Case 002/02’, para. 2(iii).

⁵⁴ D427, Closing Order, para. 199.

⁵⁵ *See, supra*, at para. 4.

⁵⁶ E3/1568, ‘Retyped from a Handwritten Interview of Chea Sim, Phnom Penh, 3 Dec 1991, and [REDACTED], 2 Dec 1991’ (“Kiernan Chea Sim-[REDACTED] Interview”), ERN 00651889.

⁵⁷ E3/1568, Kiernan Chea Sim-[REDACTED] Interview, ERN 00651889 (emphasis added).

⁵⁸ E3/1568, Kiernan Chea Sim-[REDACTED] Interview, ERN 00651887.

personally involved in creating a resistance front in cooperation with Vietnam, explaining how “in September we met and made contact with Vietnam and then we requested Vietnam’s help”,⁵⁹ and offering details on how and where meetings with the Vietnamese took place and how they were spearheaded on the Cambodian side by the late Chea Sim.⁶⁰

24. According to his autobiography in the Stasi archives, on 25 May 1975, [REDACTED] (2-TCW-951) “left the reactionary organisation” (that is, the CPK) and “led the fight against the reactionary Pol Pot/Ieng Sary regime in Sector 21”.⁶¹ In addition, in his interview with Stephen Heder, [REDACTED] explained how they prepared for rebellion, describing how he and other rebels “stood up and struggled from the beginning until then”,⁶² how they “were [in] self-mastery. We had our own foods, and ammunitions”;⁶³ how they were careful to “assign our secret forces to each village to advise [the people] not to include the issue of party candidates in their person history or other works”;⁶⁴ how his forces “advise[d] new village chiefs to maintain village chiefs to maintain forces” and “advised people to unit[e] among themselves” and were ultimately able to successfully gather together their rebel forces.⁶⁵ He also identified and discussed several leaders in the rebellion, including [REDACTED] (2-TCW-831), the late Chea Sim, current CPP Senator and Politburo member Sim Ka, and [REDACTED] (2-TCW-962).⁶⁶

25. While [REDACTED] (2-TCW-831) and [REDACTED] (2-TCW-951) can also offer important testimony for the Armed Conflict and Role of the Accused trial segments, the Defence submits that due to the abovementioned relevance of their testimony, the most appropriate segment in which to schedule their appearance is the current Security Centres and “Internal Purges” segment. In addition, while the Defence accepts the Trial Chamber’s recently-expressed view that “ascertaining the truth need not require the testimony of an unlimited number of witnesses”,⁶⁷ it stresses that the testimony of [REDACTED] (2-TCW-831) and [REDACTED] (2-TCW-951) is unparalleled and irreplaceable, as Judges Cartwright and Lavergne had earlier accepted in the context of Case 002/01.⁶⁸ It therefore urges the Trial Chamber to make a final decision about the appearance of these witnesses at this stage and not to keep delaying this decision any further.

⁵⁹ E3/1568, Kiernan Chea Sim-[REDACTED] Interview, ERN 00651902.

⁶⁰ E3/1568, Kiernan Chea Sim-[REDACTED] Interview, ERN 00651887, 00651897.

⁶¹ E3/9720, Stasi Biographies, [REDACTED].

⁶² E3/387, ‘Transcript of Recorded Interview with [REDACTED] 04-08-1990’, (“Heder [REDACTED] Interview”), ERN 00350226.

⁶³ E3/387, Heder [REDACTED] Interview, ERN 00350226.

⁶⁴ E3/387, Heder [REDACTED] Interview, ERNs 00350226-00350227.

⁶⁵ E3/387, Heder [REDACTED] Interview, ERN 00350227.

⁶⁶ E3/387, Heder [REDACTED] Interview, ERNs 00350227-00350228.

⁶⁷ E370/4, East Zone Witnesses Reasoned Decision, para. 15.

⁶⁸ [REDACTED]

(ii) ██████████ (2-TCW-952) and ██████████ (2-TCW-962)

26. Similarly, the Defence requests the Trial Chamber to expedite the appearance of both ██████████ (2-TCW-952) and ██████████ (2-TCW-962) on the basis that both witnesses, like ██████████ (2-TCW-831) and ██████████ (2-TCW-951), may offer unique insight into preparations for rebellion and the participation and crackdown on East Zone cadres in this regard. As already indicated above, this closely relates to the subject matter of the Security Centres and “Internal Purges” segment.⁶⁹

27. The Defence supplements the earlier information provided about ██████████ (2-TCW-952) in the Defence’s Updated Witness List⁷⁰ with the following details. As the Trial Chamber will recall, International Co-Lawyer for Nuon Chea Victor Koppe had already highlighted the significance of ██████████ (2-TCW-952) during the Initial Hearings in Case 002 in June 2011, referring to him as “Mr. X” and stressing that he was “very important for ascertaining the truth; very important to understand the role of Vietnam.”⁷¹ As the Defence explained in its eighteenth request for investigative action filed on 10 December 2009, ██████████ had been “ultimately responsible” for leading the treasonous forces which invaded Cambodia in 1978 and initially had “impeccable pro-Vietnamese credentials”, although this relationship soured when he began to criticise the PRK.⁷² The Defence further notes that the Trial Chamber has recently admitted into evidence a short biography of ██████████ (2-TCW-952) prepared by Vietnamese intelligence agents and held within the Stasi archives into evidence in Case 002/02.⁷³ This biography suggests that ██████████ was providing intelligence to Vietnam from early on, “during his work at the FUNK radio station he often met with comrades in GP. 48 Department and informed them about the internal situation in Kampuchea and the attitude of Ieng Sary and his wife towards Vietnam”.⁷⁴

(iii) ██████████ (2-TCW-917)

28. The final witness whose appearance the Defence seeks to expedite to the Security Centres and “Internal Purges” segment is ██████████ (2-TCW-917). In its East Zone Witness Request, the Defence noted how during ██████████ (2-TCW-917’s) last conversation with his father – East ██████████ secretary ██████████ – his father instructed him not to “speak about previous things (in Sector 21”, and “to tell his [] subordinates not to say anything and to show

⁶⁹ See, *supra*, at paras. 20-21 (*mutatis mutandis*).

⁷⁰ On ██████████ (2-TCW-952), see, E305/4.2, Updated Witness Summaries, p. 13.

⁷¹ T. 30 Jun 2011 (Case 002 Initial Hearing, E1/7.1), p. 12, lns. 22-23.

⁷² D273, ‘Eighteenth Request for Investigative Action’, 10 Dec 2009, paras. 4-5.

⁷³ E3/9720, Stasi Biographies, ██████████; see, also, E305/18, Stasi Biographies Decision.

⁷⁴ E3/9720, Stasi Biographies, ██████████.

ignorance of Sector 21".⁷⁵ In requesting ██████████ (2-TCW-917) to be summonsed, the Defence argued in that request that the witness could offer particularly sensitive information concerning events that occurred in Sector 21, noting that while difficult to speculate, the very fact that the most senior cadre in the sector took precautions to ensure its secrecy demonstrates its relevance for the case.⁷⁶ The Defence submits that these instructions may relate to the curious apparent gap in expert witness Ysa Osman's knowledge of events in Sector 21 and the East Zone; namely, the role of current government leaders and former East Zone cadres, such as Hun Sen (2-TCW-1001), ██████████ (2-TCW-831) and ██████████ (2-TCW-951).⁷⁷ Finally, the Defence notes that the Co-Prosecutors also agree that ██████████ (2-TCW-917) should be called to testify during the "Internal Purges" segment, having listed him the first proposed witness for that segment.⁷⁸

B. One New Witness Proposed to be Summonsed: ██████████ (Witness G)

29. The new witness who the Defence seeks to call during the Security Centres and "Internal Purges" segment is ██████████ (Witness G). As witness Van Mat *alias* Sales Ahmat confirmed, ██████████ (Witness G) was previously a leader of the rebellion and is ██████████ ██████████.⁷⁹ The Defence submits that as an apparently high-ranking leader in the treasonous rebellion ██████████ ██████████ (Witness G) may offer unique insight into preparations for rebellion and the participation and crackdown on East Zone cadres in this regard. As already indicated above, this closely relates to the subject matter of the Security Centres and "Internal Purges" segment.⁸⁰ This testimony is also likely to be relevant to the Armed Conflict segment. Since ██████████ (Witness G) has not been interviewed, the Defence can only speculate as to the other potential relevance of his testimony. In particular, depending on ██████████ (Witness G's) actual position within the CPK East Zone prior to assuming his role as a treasonous rebellion leader, ██████████ (Witness G) may be able to provide information concerning East Zone structure and operations. He may also possess information of relevance to the Treatment of the Cham segment and the alleged treatment of the Cham in the East Zone, and particularly in Sector 21.

30. The Defence takes this opportunity to provide the following further information in respect of ██████████ (Witness G). According to ██████████ (Witness G) himself, during the DK period,

⁷⁵ E3/5531, 'Written Record of Interview of ██████████', 18 Dec 2009, ERN 00425894 (emphasis added).

⁷⁶ E370, East Zone Witness Request, para. 35.

⁷⁷ See, *supra*, at para. 10.

⁷⁸ E307/3/2.2, 'Annex I: Co-Prosecutors' Revised Combined, Witness, Civil Party and Expert List for Case 002/02 in Recommended Order of Trial Segments and Appearance (July 2014), ERN 01003004.

⁷⁹ See, *supra*, at para. 9.

⁸⁰ See, *supra*, paras. 20-21 (*mutatis mutandis*).

he served as district commerce staff for Tbong Kmom district in Kampong Cham,⁸¹ which would have been in Sector 21 of the East Zone. The judgement of the People's Revolutionary Tribunal created in 1979 to try Pol Pot and Ieng Sary identifies ██████████ (Witness G) as a ██████████ in that case.⁸² He reportedly received military training in Vietnam in 1979⁸³ and thereafter held positions including as deputy governor of both ██████████ (from 1983 to 1986) and ██████████ (from 1990 to 1997),⁸⁴ and as general affairs adviser to Hun Sen (2-TCW-1001) since 1998.⁸⁵

31. The Defence submits that the instant Request is not untimely. Mindful of the unfortunate reality that it is impractical to call every person who is mentioned in another witness's testimony, the Defence waited to confirm details of ██████████ (Witness G) during its cross-examination of witness Van Mat *alias* Sales Ahmat on 9 March 2016. It has submitted the instant Request at the earliest possible moment thereafter.

32. Given the potential for ██████████ (Witness G) to offer testimony on a wide range of topics, the Defence requests the Trial Chamber's permission to interview the witness itself. In the alternative, it requests the Trial Chamber to interview ██████████ (Witness G) pursuant to Internal Rule 93.

C. Two Witnesses Proposed to be Reconsidered: Hun Sen (2-TCW-1001) and Ka Dev (2-TCW-998)

(i) Hun Sen (2-TCW-1001)

33. The Defence requests that the Trial Chamber reconsider its decision to reject the Defence's earlier request for the appearance of Hun Sen (2-TCW-1001) on the basis that his appearance before this Chamber is in the interests of justice. The Defence first notes that the Trial Chamber's decision as to whether to admit Hun Sen focuses narrowly only the admissibility and relevance of the Human Rights Watch report, *30 Years of Hun Sen* (the "HRW Report"), and claims which that report made vis-à-vis Hun Sen's (2-TCW-1001's) alleged role in the crackdown on Cham rebellions in Sector 21 in the East Zone. However, as the Defence already noted in the East Zone Witness Request, the allegations in the HRW Report vis-à-vis

⁸¹ ██████████

⁸² 'Judgement of the Tribunal, August 19, 1979', in Howard J. De Nike, John Quigley, and Kenneth J. Robinson (eds.), *Genocide in Cambodia; Documents From the Trial of Pol Pot and Ieng Sary*, 2000, ██████████

⁸³ ██████████

⁸⁴ ██████████

⁸⁵ ██████████

Hun Sen (2-TCW-1001) were corroborated by a witness interview⁸⁶ admitted into evidence⁸⁷ – a witness who the Defence requested but the Chamber rejected.⁸⁸ Moreover, and as the Defence also noted in its East Zone Witness Request, the relevant part of the HRW Report and the accounts were consistent with in-court testimony⁸⁹ and an interview published by expert witness Ysa Osman in his book *The Cham Rebellion*.⁹⁰

34. In addition, and as the Trial Chamber is surely aware, there is further evidence on the case file which provides details as to Hun Sen's (2-TCW-1001's) roles and activities during the DK period. In particular, Hun Sen was reportedly a ranking leader in the treasonous rebellion, who had reportedly already defected in June 1977⁹¹ and had ridden a Vietnamese military tank into Cambodian territory on 22 December 1977.⁹² It is well-known that he had also served as a ranking member of the East Zone military. Therefore, and consistent with the arguments made by the Defence in the instant Request, Hun Sen (2-TCW-1001) may offer unique insight into preparations for rebellion and the participation and crackdown on East Zone cadres in this regard. As already indicated above, this closely relates to the subject matter of the Security Centres and "Internal Purges" segment.⁹³ In addition, the recent testimony of Ysa Osman and Van Mat appears to suggest that (at least some) witnesses may be reluctant to discuss Hun Sen's (2-TCW-1001's) roles and activities during the DK period. Therefore, his personal testimony is arguably irreplaceable.

(ii) Ka Dev (2-TCW-998)

35. The Defence requests that the Trial Chamber reconsider its decision to reject the Defence's earlier request for the appearance of Sao Phim's surviving daughter Ka Dev (2-TCW-998) on the basis that her appearance before this Chamber is in the interests of justice. As the Defence indicated in the East Zone Witness Request, Ka Dev provided details of Sao Phim's political career (identifying him as the #4 in the CPK), his family, and his suicide; she also provided an eyewitness account of the 1978 arrest in the Northwest Zone of her sister Si and Si's husband Cheal, who was the son of Northwest Zone secretary Ruos Nhim.⁹⁴ This is intrinsically intertwined with the Defence's contention that Sao Phim and Ruos Nhim were the

⁸⁶ E3/5261, 'Written Record of Interview of SAU Seimech', 12 Dec 2008.

⁸⁷ E370, East Zone Witness Request, para. 28.

⁸⁸ E370/3, East Zone Witnesses Disposition; E370/4, East Zone Witnesses Reasoned Decision, para. 21.

⁸⁹ See, E370, East Zone Witness Request, para. 28 and note 77.

⁹⁰ See, E370, East Zone Witness Request, para. 28 and note 78.

⁹¹ E3/9720, Stasi Biographies, ERN 01206275; E3/1593, Ben Kiernan, *The Pol Pot Regime*, ERN 01150102 (p. 210, note 115), ERN 01150192 (pp. 370-371).

⁹² E3/1593, Kiernan, *The Pol Pot Regime*, ERN 01150194 (p. 375).

⁹³ See, *supra*, paras. 20-21 (*mutatis mutandis*).

⁹⁴ E370, East Zone Witness Request, para. 36.

joint overall leaders of the rebellion, and that their relationship was facilitated by the familial relationship between Si and Cheal,⁹⁵ and, in turn, to the heart of the Defence's case.⁹⁶ Given the limited information in this regard and the possibility that Ka Dev (2-TCW-998) may possess additional valuable information in respect of such an important figure as Sao Phim, the Defence requests the Trial Chamber to reconsider its decision to reject the Defence's request to call Ka Dev (2-TCW-998); that the Chamber schedule her to appear for the Security Centres and "Internal Purges" segment; and that the Chamber either permit the Defence to interview Ka Dev (2-TCW-998) or do so itself pursuant to Internal Rule 93.

D. Schedule the Witnesses to Appear After Kaing Guek Eav *alias* Duch (2-TCW-916)

36. The Defence considers it critical to hear the testimony of all of the witnesses requested in the instant Request prior to the appearance of Kaing Guek Eav *alias* Duch (2-TCW-916) so that it will be in a position to seek Kaing Guek Eav *alias* Duch's (2-TCW-916's) reactions to the testimony provided by the witnesses, particularly vis-à-vis the allegations central to the Security Centres and "Internal Purges" segment of Case 002/02.

V. RELIEF

37. For the above reasons, the Defence requests that the Trial Chamber:

- (a) summons [REDACTED] (2-TCW-831), [REDACTED] (2-TCW-951), [REDACTED] (2-TCW-952), [REDACTED] (2-TCW-962), [REDACTED] (2-TCW-917), [REDACTED] (Witness G) Hun Sen (2-TCW-1001) and Ka Dev (2-TCW-998) to appear during the Security Centres and "Internal Purges" segment and prior to the appearance of witness Kaing Guek Eav *alias* Duch (2-TCW-916); and
- (b) permit the Defence to interview [REDACTED] (Witness G) and Ka Dev (2-TCW-998) or interview these witnesses itself.

CO-LAWYERS FOR NUON CHEA



SON Arun



Victor KOPPE

⁹⁵ E370, East Zone Witness Request, para. 37 and note 88; *see, also*, F2/8, Sixth Appeal Additional Evidence Request, paras. 33-34.

⁹⁶ *See, supra*, at para. 4.