

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

**FILING DETAILS**

**Case No:** 002/19-09-2007-ECCC/TC  
**Filing Party:** Nuon Chea Defence Team  
**Filed To:** Trial Chamber  
**Original Language:** English  
**Date of Document:** 22 June 2016



**CLASSIFICATION**

**Classification Suggested by the Filing Party:** PUBLIC REDACTED

**Classification of the Trial Chamber:** សាធារណៈ/Public

**Classification Status:**

**Review of Interim Classification:**

**Records Officer Name:**

**Signature:**

---

**NUON CHEA'S RULE 87(4) REQUEST FOR ADMISSION INTO EVIDENCE OF  
DOCUMENTS BY ROBERT LEMKIN (2-TCW-877) AND ANOTHER RELATED  
DOCUMENT PRIOR TO THE TESTIMONY OF  
WITNESS [REDACTED] (2-TCW-829)**

---

**Filed By**

**Nuon Chea Defence Team:**

SON Arun  
 Victor KOPPE  
 LIV Sovanna  
 Doreen CHEN  
 PRUM Phalla  
 Xiaoyang NIE  
 Marina HAKKOU  
 Léa KULINOWSKI  
 DY Socheata

**Distribution**

**Co-Lawyers for Khieu Samphân:**

KONG Sam Onn  
 Anta GUISSÉ

**Co-Prosecutors:**

CHEA Leang  
 Nicholas KOUMJIAN

**Co-Lawyers for the Civil Parties:**

PICH Ang  
 Marie GUIRAUD

## I. INTRODUCTION

1. Pursuant to Rule 87(4), the Co-Lawyers for Mr. Nuon Chea (the “Defence”) submit this request (“Request”) to have admitted into evidence the transcripts of four witness’ interviews conducted by Robert Lemkin (2-TCW-877) and Thet Sambath (2-TCW-885) for the purpose of their film “Enemies of the People”<sup>1</sup>, the Notes written by Robert Lemkin (2-TCW-877) related to these interviews,<sup>2</sup> the Written Record of Robert Lemkin (2-TCW-877)’s interview by the Delegates Judges of the Supreme Court Chamber on 18 May 2015<sup>3</sup> and an article published by the Cambodia Daily Weekend on 18 June 2016<sup>4</sup>. The Defence further requests that this material be admitted prior to the appearance of witness ██████████ (2-TCW-829), since the Defence intends to confront ██████████ (2-TCW-829) with all of the requested evidence.

## II. PROCEDURAL BACKGROUND

### A. Robert Lemkin (2-TCW-877)’s Evidence

2. On 1 September 2014, the Defence filed its first request before the Supreme Court Chamber to consider and obtain additional evidence in connection with the Appeal against the Trial Judgement in Case 002/01, focused on video footage of interviews by Robert Lemkin (2-TCW-877) and Thet Sambath (2-TCW-885) of the testimony of four witnesses.<sup>5</sup> The Supreme Court Chamber initiated an investigation into this footage.<sup>6</sup> During that investigation, the Delegate Judges of the Supreme Court Chamber interviewed Robert Lemkin (2-TCW-877) who offered to provide them with his Notes summarising the four witnesses’ interviews<sup>7</sup>:

What I can do, and I would be very happy to do this, would be to give you the excerpts of the material that I have written, which will be shortly in the public domain, to give

---

<sup>1</sup> F2/4/3/3/6.2, ‘Transcripts of Interviews Provided by Robert Lemkin (2-TCW-877)’, 2 Oct 2015 (“Lemkin (2-TCW-877) Transcripts”).

<sup>2</sup> F2/4/3/3.1, ‘Robert Lemkin (2-TCW-877)’s Unpublished Notes on Khmer Rouge Internal Conflict Investigation’, 29 May 2015 (“Lemkin (2-TCW-877)’s Notes”).

<sup>3</sup> F2/4/3/1, ‘WRI of Robert Lemkin [2-TCW-877]’, 18 May 2015 (“Lemkin (2-TCW-877)’s WRI”).

<sup>4</sup> ‘Cambodia Daily Weekend’, 18-19 June 2016 (**Attachment 2**), p. 4-7, <https://www.cambodiadaily.com/weekend1/factions-or-fiction-114272/>

<sup>5</sup> F2, ‘Request to Obtain and Consider Additional Evidence in Connection with the Appeal Against the Trial Judgment in Case 002/01’, 1 Sep 2014.

<sup>6</sup> F2/4/3, ‘Interim Decision on Part of NUON Chea’s First Request to Obtain and Consider Additional Evidence in Appeal Proceedings of Case 002/01’, 1 Apr 2015; *see, also*, F2/4/3/3/5, ‘Third Interim Decision on the Additional Investigation’, 20 Aug 2015 (“Third Interim Decision”).

<sup>7</sup> F2/4/3/3.1, Lemkin (2-TCW-877)’s Notes.

you an idea of the scope of what those four people say, which may assist you in identifying which bits you need.<sup>8</sup>

3. On 13 July 2015, the Defence requested the Supreme Court Chamber to admit into evidence Robert Lemkin (2-TCW-877)'s Notes.<sup>9</sup>
4. On 14 September 2015, Robert Lemkin (2-TCW-877) further provided the Supreme Court Chamber with 189 pages' long of transcriptions of those four witnesses' interviews ("Robert Lemkin (2-TCW-877)'s Transcripts").<sup>10</sup> The Supreme Court Chamber released those transcripts to the parties on 2 October 2015. On 8 October 2015, the Defence requested the Supreme Court Chamber to admit Robert Lemkin (2-TCW-877)'s transcripts into evidence.<sup>11</sup> One of the four individuals whose interview had been transcribed was eventually confirmed to be [REDACTED] (2-TCW-829),<sup>12</sup> who had already testified on appeal [REDACTED].<sup>13</sup>
5. On 21 October 2015, the Supreme Court Chamber issued a Decision on Pending Requests for Additional Evidence on Appeal [REDACTED]  
[REDACTED]  
[REDACTED] dismissing the requests related to the [REDACTED] witnesses' transcripts of interview as well as Robert Lemkin (2-TCW-877)'s Notes. The Supreme Court Chamber also denied the Defence's request to hear Robert Lemkin (2-TCW-877) or Thet Sambath (2-TCW-885) on appeal.<sup>15</sup> On 4 February 2016, the Defence requested the Supreme Court Chamber to reconsider its decision in respect of the appearance of Robert Lemkin (2-

<sup>8</sup> F2/4/3/1, Lemkin (2-TCW-877)'s WRI, ERN 01097188.

<sup>9</sup> F2/4/3/3/1, 'Nuon Chea's Response to Questions on the Supreme Court Chamber's Additional Investigation into Footage in the Possession of Filmmakers Rob Lemkin (2-TCW-877) and Thet Sambath (2-TCW-885)', 13 Jul 2015.

<sup>10</sup> F2/4/3/3/6.2, 'Lemkin (2-TCW-877) Transcripts', 15 Sep 2015.

<sup>11</sup> F2/4/3/3/6/1, 'Nuon Chea's Submissions on Robert LEMKIN (2-TCW-877) (2-TCW-877)'s Transcripts and the Significance of the "Rift" Within the CPK', 8 Oct 2015 ("Submissions on Lemkin's Transcripts and the CPK "Rift").

<sup>12</sup> F2/4/3/3/5, Third Interim Decision, ERN 01132012, fn. 15: "15 Electronic mail sent from Witnesses and Experts Support Unit ("WESU") to Greffiers of the Supreme Court Chamber, entitled "Fw: update on confidential Notes", on 11 August 2015 at 01:52 PM, on file with the Supreme Court Chamber ("E-mail of 11 August 2015") (forwarding an e-mail of 10 August 2015 from Robert Lemkin, in which he observes that the person referred to as "W2" in the Notes gave evidence before the Supreme Court Chamber, while the persons identified as "WI" and "W3" in the Notes are named in the book *Behind the Killing Fields*), see also F2/9, 'Decision on Pending Requests for Additional Evidence on Appeal and Related Matters – Disposition', 21 Oct 2015 ("Supreme Court Chamber Disposition"), p. 7.

<sup>13</sup> [REDACTED]  
<sup>14</sup> F2/9, 'Decision on Pending Requests for Additional Evidence on Appeal and related Matters', 21 October 2015 ("SCC Disposition on Defence Evidence Requests").

<sup>15</sup> F2/9, SCC Disposition on Defence Evidence Requests, p.7

TCW-877) and the admission of his Notes and Transcripts.<sup>16</sup> On 11 February 2016, the Supreme Court Chamber denied that request.<sup>17</sup>

6. On 9 March 2016, the Trial Chamber requested the Supreme Court Chamber to provide it with access to Robert Lemkin's (2-TCW-877's) Notes and Transcripts. On 24 March 2016, the Defence inquired as to the status of this request. The Supreme Court Chamber Senior Legal Officer advised the Defence that it was awaiting permission to be granted by Robert Lemkin (2-TCW-877) for the further disclosure of the information, and WESU had only relatively recently written to him. On 11 April 2016, the Greffiers of the Supreme Court Chamber issued an Interoffice Memorandum informing the Parties that it had granted the Trial Chamber access to Robert Lemkin (2-TCW-877's)'s evidence.<sup>18</sup>
7. On 18 June 2016, the Cambodia Daily issued a special weekend edition including a four pages long article dealing with Mr Nuon Chea's case and, in particular, compiling interviews and excerpts of research papers related to the existence of dissenting factions plotting against the CPK and acting independently from the Centre during the period of Democratic Kampuchea.<sup>19</sup>

## B. Witnesses for "Internal Purges"

8. On 8 April 2016, the Trial Chamber issued a first list of ten people scheduled to appear before it either as a witness or civil party or expert in respect of the "Internal Purges" trial segment including witness ██████████ (2-TCW-829)<sup>20</sup>. The same day, the Defence filed a motion requesting the expedition of Robert Lemkin (2-TCW-877), ██████████ ██████████ (2-TCW-959)<sup>21</sup> and ██████████ (2-TCW-961)'s<sup>22</sup> appearance during the Security Centres and "Internal Purges" trial segment<sup>23</sup>. On 11 May 2016, the Trial Chamber

<sup>16</sup> **F2/10**, 'Nuon Chea's Request for Reconsideration of the Supreme Court Chamber's Decision Not to Summons Heng Samrin and Robert Lemkin and to Admit Evidence Produced by Robert Lemkin on Appeal', 4 Feb 2016 ("Request for Reconsideration on Heng Samrin and Robert Lemkin").

<sup>17</sup> **F2/10/3**, 'Decision on NUON Chea's Request for Reconsideration of the Decision of 21 October 2015 on Requests for Additional Evidence', 11 Feb 2016.

<sup>18</sup> **E375/2/1**, 'Interoffice Memorandum', 11 April 2016.

<sup>19</sup> 'Cambodia Daily Weekend', 18-19 June 2016 (**Attachment 2**), p. 4-7, <https://www.cambodiadaily.com/weekend1/factions-or-fiction-114272/>.

<sup>20</sup> **E395/2.1.3**, Email from the Senior Legal Officer to the Parties, 8 April 2016.

<sup>21</sup> Identified as W3 in **F2/4/3/3/6.2**, 'Lemkin (2-TCW-877) Transcripts', see **F2/4/3/3/5**, Third Interim Decision, ERN 01132011, fn. 15 and **F2/4/3/3/6/1**, 'Submissions on Lemkin's Transcripts and the CPK "Rift", para 8.

<sup>22</sup> Identified as W1 in **F2/4/3/3/6.2**, 'Lemkin (2-TCW-877) Transcripts', see **F2/4/3/3/5**, Third Interim Decision, ERN 01132011, fn. 15 and **F2/4/3/3/6/1**, 'Submissions on Lemkin's Transcripts and the CPK "Rift", para 8.

<sup>23</sup> **E395**, 'Nuon Chea's Third Witness Request for the Case 002/02 Security Centres and "Internal Purges" Trial Segment (Evidence of Treasonous Rebellion)', 8 Apr 2016.

requested the Defence to make submissions in connection with that witness request explaining “How would the assessment of Nuon Chea’s criminal responsibility be affected by further evidence tending to prove the existence of conflicting factions or rebellions, whether supported by other countries or not?”<sup>24</sup> The Defence filed its submission on 10 June 2016. The Trial Chamber has not yet ruled on that witness request.

### III. APPLICABLE LAW

9. All evidence is admissible, unless otherwise provided in the Internal Rules.<sup>25</sup> The Chamber may reject a request for evidence where it finds that the evidence is irrelevant or repetitious; impossible to obtain within a reasonable time; unsuitable to prove the facts it purports to prove; not allowed under the law; or if it is intended to prolong proceedings or is frivolous.<sup>26</sup> To satisfy the requirements of Rule 87(3), the proposed evidence needs only be *prima facie* relevant and reliable.<sup>27</sup> Pursuant to Rule 87(4), at any stage during the trial a party may request the Chamber to “admit any new evidence which it deems conducive to ascertaining the truth”, subject to the general requirements of Rule 87(3).<sup>28</sup> While Rule 87(4) states that the requested evidence must not have been available before the opening of the trial, the Trial Chamber has interpreted it as also encompassing evidence which was available before the opening of the trial but which could not have been discovered earlier with the exercise of due diligence.<sup>29</sup>
10. In certain situations, evidence which did not “strictly speaking” satisfy this criterion has been admitted: where the evidence was closely related to material already before the Chamber and where the interests of justice required the sources to be evaluated together; where the proposed evidence was exculpatory and required evaluation to avoid a miscarriage of justice; or where the other parties did not object to the evidence.<sup>30</sup>

---

<sup>24</sup> **E395/1**, ‘Request for Briefing on Significance of Conflicting Factions within the DK Leadership’, 11 May 2016.

<sup>25</sup> Rule 87(1) of the Internal Rules.

<sup>26</sup> Rule 87(3) of the Internal Rules.

<sup>27</sup> **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. 26 (“Decision on Rule 87(4) Requests”).

<sup>28</sup> A year into the Case 002/02 trial, the TC held that the parties must submit Rule 87(4) Requests for documents which were on the case file but which had not been included in the list of documents admitted by the Trial Chamber, even if those had been disclosed by the Prosecution subsequently to the initial documents filings, *see* Draft Transcript of Proceedings, 26 Jan 2016, p. 24.

<sup>29</sup> **E313**, ‘Case 002/01 Judgement’, 7 Aug 2014, para. 25; **E289/2**, Decision on Rule 87(4) Requests, para. 3.

<sup>30</sup> **E289/2**, Decision on Rule 87(4) Requests, para. 3.

11. In an email of 2 June 2016, the Trial Chamber clarified to the parties that:

[Parties's formal Rule 87(4) requests] shall identify the specific documents and the fact that their admission is sought as prior statements of an individual testifying in Case 002/02. No further reasoning is required.<sup>31</sup>

#### IV. ARGUMENTS

##### A. The Documents Sought for Admission are *Prima Facie* Relevant and Reliable

12. The evidence tendered consists of transcripts of interviews recorded by Robert Lemkin (2-TCW-877) and Thet Sambath (2-TCW-885) for the purpose of their film "Enemies of the People"<sup>32</sup>, Robert Lemkin (2-TCW-877)'s Notes<sup>33</sup> and WRI<sup>34</sup> and an article published by the Cambodia Daily Weekend on 18 June 2016<sup>35</sup>. All this material relates chiefly to rebellion events occurring in the Northwest Zone in 1975–1979 and, as a result, is relevant for the examination of witness ██████████ (2-TCW-829).

##### (i) Robert Lemkin (2-TCW-877)'s Transcripts

13. The Defence submits that Robert Lemkin (2-TCW-877)'s Transcripts should be admitted into evidence in their entirety, as they contain key exculpatory evidence that is highly relevant to Nuon Chea's case. Further, the probative value of these transcripts is high. Indeed, the Transcripts are the written account of his numerous interviews with four crucial witnesses (W1, W2, W3, and W4), three of whom have been requested as Defence witnesses. Indeed, as stated above, Robert Lemkin specified that the person identified as W4 in his transcripts was ██████████ (2-TCW-829)<sup>36</sup>. Robert Lemkin (2-TCW-877) further advised WESU that the persons identified as "W1" and "W3" in the notes are named in the book *Behind the Killing Fields*.<sup>37</sup> Based on its review of Robert Lemkin (2-TCW-877)'s Transcripts and Robert Lemkin (2-TCW-877)'s Notes, the Defence submitted that W1 and W3 are two of the witnesses whose appearance the Defence requested in its list of new witnesses and experts for Case 002/02<sup>38</sup> (the "New

<sup>31</sup> Email from Trial Chamber Senior Legal Officer to the Parties, 2 Jun 2016 (**Attachment 1**).

<sup>32</sup> **F2/4/3/3/6.2**, Lemkin (2-TCW-877) Transcripts, 25 September 2015, *see also* **E186.1R**, 'Enemies of the People', Robert Lemkin (2-TCW-877) and Thet Sambath, 2009.

<sup>33</sup> **F2/4/3/3.1**, Lemkin (2-TCW-877)'s Notes.

<sup>34</sup> **F2/4/3/1**, Lemkin (2-TCW-877)'s WRI.

<sup>35</sup> 'Cambodia Daily Weekend', 18-19 Jun 2016 (**Attachment 2**), <https://www.cambodiadaily.com/weekend1/factions-or-fiction-114272/>.

<sup>36</sup> **F2/4/3/3/5**, Third Interim Decision, ERN 01132012, fn. 15.

<sup>37</sup> **F2/4/3/3/5**, Third Interim Decision, ERN 01132011, fn. 15.

<sup>38</sup> **E307/4**, 'New Witness, Civil Party and Expert List for Case 002/02', 24 Jul 2014.

Witness List”), namely ██████████ (2-TCW-961) and ██████████ (2-TCW-959)<sup>39</sup> respectively. On 8 April 2016, the Defence requested that these witnesses’ appearance be expedited during the Case 002/02 Security Centres and “Internal Purges” trial segment.<sup>40</sup> The Trial Chamber has not yet issued a decision with respect to these witness requests.

14. **Relevance of Robert Lemkin (2-TCW-877)’s Transcripts of ██████████ (2-TCW-829)’s Interview:** As stated above, the person identified as W2 in Robert Lemkin’s Transcript is actually ██████████ (2-TCW-829)<sup>41</sup>, a ██████████ witness who appeared before the Supreme Court Chamber ██████████.<sup>42</sup> Pursuant to the Trial Chamber’s last clarification about the use of Rule 87(4) requests, Robert Lemkin (2-TCW-877)’s Transcript of ██████████ (2-TCW-829)’s interview should be admitted into evidence as a previous statement of an upcoming witness<sup>43</sup>. Furthermore, the Defence wishes to stress that it has noticed major inconsistencies between ██████████ (2-TCW-829)’s interview with Robert Lemkin (2-TCW-877), his two WRIs,<sup>44</sup> and his live testimony before the Supreme Court Chamber on key issues. Therefore the admission into evidence of these Transcripts appear even more crucial for its questioning before the Trial Chamber. These discrepancies include:

██████████  
 ██████████  
 ██████████  
 ██████████  
 ██████████  
 ██████████  
 ██████████  
 ██████████

<sup>39</sup> E307/4.3, ‘Annex B – New Witness, Civil Party and Expert Summaries for Case 002/02’, 24 Jul 2014 (“New Witness Summaries”), pp. 1-2.

<sup>40</sup> E395, ‘Nuon Chea’s Third Witness Request for the Case 002/02 Security Centres and “Internal Purges” Trial Segment (Evidence of Treasonous Rebellion)’, 8 Apr 2016.

<sup>41</sup> F2/4/3/3/6/1, Submissions on Lemkin’s Transcripts and the CPK “Rift”, para 10.

<sup>42</sup> ██████████

<sup>43</sup> Email from Trial Chamber Senior Legal Officer to the Parties, 2 Jun 2016 (**Attachment 1**).

<sup>44</sup> E319.1.27, ‘Written Record of Interview of ██████████ [2-TCW-829]’, 10 Sep 2013 (“First ██████████ (2-TCW-829) WRI”); E319.1.28, ‘Written Record of Interview of ██████████ [2-TCW-829]’, 27 Nov 2013.

<sup>45</sup> ██████████

<sup>46</sup> F2/4/3/3/6.2, Lemkin (2-TCW-877)’s Transcripts, ERN 01151760-61 “██████████”

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(d) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

*See, also, F2/8, Sixth Additional Evidence Request, para. 34.*

<sup>47</sup> F2/4/3/3/6.2, Lemkin (2-TCW-877)'s Transcripts, ERN 01151766-67 "[REDACTED]"

<sup>48</sup> Concerning Hay Sau, *see, F2/8, Sixth Additional Evidence Request, paras. 31 and 62 and fn. 102.*

<sup>50</sup> F2/4/3/3/6.2, Lemkin (2-TCW-877)'s Transcripts, ERNs 01151762-63.

<sup>51</sup> F2/4/3/3/6.2, Lemkin (2-TCW-877)'s Transcripts, ERN 01151764.

<sup>53</sup> F2/4/3/3/6.2, Lemkin (2-TCW-877)'s Transcripts, ERN 01151765.

<sup>54</sup> F2/4/3/3/6.2, Lemkin (2-TCW-877)'s Transcripts, ERN 01151753. *See, also, F2/8, Sixth Additional Evidence Request, paras. 33 and 34.*

<sup>55</sup> E319.1.27, First [REDACTED] (2-TCW-829) WRI, ERN 00974014-15.

<sup>57</sup> F2/4/3/3/6.2, Lemkin (2-TCW-877)'s Transcripts, ERN 01151754.





TCW-829) with all four transcripts. Therefore, the Defence submits that Robert Lemkin (2-TCW-877)'s Transcripts should be admitted in their entirety.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

<sup>64</sup> F2/4/3/3/6.2, Robert Lemkin (2-TCW-877)'s Transcripts, ERN 01151684, emphasis added.

<sup>65</sup> F2/4/3/3/6.2, Robert Lemkin (2-TCW-877)'s Transcripts, ERN 01151685, emphasis added.

<sup>66</sup> F2/4/3/3/6.2, Robert Lemkin (2-TCW-877)'s Transcripts, ERN 01151689, emphasis added.

<sup>67</sup> F2/4/3/3/6.2, Robert Lemkin (2-TCW-877)'s Transcripts, ERN 01151696, emphasis added.

<sup>68</sup> F2/4/3/3/6.2, Robert Lemkin (2-TCW-877)'s Transcripts, ERN 01151699, emphasis added.

<sup>69</sup> F2/4/3/3/6.2, Robert Lemkin (2-TCW-877)'s Transcripts, ERN 01151705, emphasis added.

<sup>70</sup> F2/4/3/3/6.2, Robert Lemkin (2-TCW-877)'s Transcripts, ERN 01151710, emphasis added.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

21. **Relevance of Robert Lemkin’s Transcripts of W1, W3 and W4’s interview for the Defence’s Case in general:** The Defence further submits that Robert Lemkin’s Transcripts should be admitted in their entirety [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Therefore, those testimonies go straight to the heart of the Defence’s case and are relevant not only to the crimes charged in connection with the Security Centres and “Internal Purges” Trial Segment but also to Nuon Chea’s criminal responsibility for all crimes charged within the scope of the Case 002/02.<sup>75</sup>

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

<sup>71</sup> F2/4/3/3/6.2, Robert Lemkin (2-TCW-877)’s Transcripts, ERN 01151710

<sup>72</sup> [REDACTED]

<sup>73</sup> F2/4/3/3/6.2, Robert Lemkin (2-TCW-877)’s Transcripts, ERN 01151814.

<sup>74</sup> F2/4/3/3/6.2, Robert Lemkin (2-TCW-877)’s Transcripts, ERN 01151815.

<sup>75</sup> See E395/2, ‘Nuon Chea’s Submissions on the Relevance of Evidence of Treasonous Rebellion to his Individual Criminal Responsibility in Case 002/02’, 10 Jun 2015, para 17- 42.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

23. **Public Classification.** The Defence finally submits that if admitted, the Transcripts should be classified as public. Three of the four witnesses already publicly disclosed

<sup>76</sup> See, also, **F2/8**, Sixth Additional Evidence Request, para. 32.

<sup>77</sup> **F2/4/3/3/6.2**, Lemkin (2-TCW-877)'s Transcripts, ERN 01151695, [REDACTED]. In the Sixth Additional Evidence Request, the Defence also detailed evidence of various meetings to plan the rebellion: see, also, **F2/8**, Sixth Additional Evidence Request, para. 40.

<sup>78</sup> See, also, **F2/8**, Sixth Additional Evidence Request, para. 39.

<sup>79</sup> **F2/4/3/3/6.2**, Lemkin (2-TCW-877)'s Transcripts, ERN 01151787. See, also, **F2/8**, Sixth Additional Evidence Request, para. 41.

<sup>80</sup> **F2/4/3/3/6.2**, Lemkin (2-TCW-877)'s Transcripts, ERN 01151790.

<sup>81</sup> **F2/4/3/3/6.2**, Lemkin (2-TCW-877)'s Transcripts, ERN 01151818-19.

<sup>82</sup> **F2/4/3/3/6.2**, Lemkin (2-TCW-877)'s Transcripts, ERNs 011511801-26. See, also, **F2/8**, Sixth Additional Evidence Request, paras. 50 and 52.

<sup>83</sup> **F2/4/3/3/6.2**, Lemkin (2-TCW-877)'s Transcripts, ERN 01151718-19; see, also, **F2/8**, Sixth Additional Evidence Request, para. 42 (on the two thwarted assassination attempts) and paras. 46 and 50 (on Mean *alias* Chan Chakrei).

their identity in the published book *Behind the Killing Fields*, with one of those three witnesses also providing public testimony before the Supreme Court Chamber. Thus, any protection concerns in this regard have been nullified. As for the last individual identified in Robert Lemkin (2-TCW-877)'s Notes and transcripts as W4 and who has not yet publicly disclosed his identity, the Defence submits any protection issues with regard to that witness could be addressed by redacting any information in the Transcripts which may identify W4 by referring to W4 only by pseudonym. Moreover, the crucial importance of the evidence provided in those Transcripts not only for the Defence's case but also to the ascertainment of the truth also renders it in the interests of justice pursuant to Rule 104(1) to assign a public classification to them.

**(ii) Robert Lemkin (2-TCW-877)'s Notes**

24. Robert Lemkin (2-TCW-877)'s Notes summarise by topic his interviews of the four witnesses that took part in the rebellion in the Northwest Zone but also comprise information that are not included in the Transcripts<sup>84</sup> and that he likely obtained from different sources – such as other individual's interviews – since he stated that he interviewed many people for the purpose of his film.<sup>85</sup> The Defence also intends to confront ██████████ (2-TCW-829) with Robert Lemkin (2-TCW-877)'s Notes. Therefore, the Defence submits that Robert Lemkin (2-TCW-877)'s Notes complement the Transcripts and should also be admitted into evidence.
25. **Public Classification.** For the reasons stated above, the Defence further submits that the Notes should also be admitted as public evidence.

**(iii) Robert Lemkin (2-TCW-877)'s Written Record of Interview**

26. Robert Lemkin (2-TCW-877) was interviewed on 18 May 2015 by the Delegate Judges of the Supreme Court Chamber in the course of their additional investigation related to the footage of the film "Enemies of the People"<sup>86</sup>. The Defence submits that Robert Lemkin (2-TCW-877)'s WRI should be admitted into evidence since it provides information on, *inter alia*, Robert Lemkin (2-TCW-877)'s background<sup>87</sup>, his knowledge

<sup>84</sup> See, e.g., F2/4/3/3.1, Lemkin (2-TCW-877)'s Notes, ERN 01106928, ██████████ the information included in this section is not part of the Transcripts provided by Robert Lemkin (2-TCW-877) to the Supreme Court Chamber.

<sup>85</sup> F2/4/3/1, Lemkin (2-TCW-877)'s WRI, ERN 01097184.

<sup>86</sup> F2/4/3/1, Lemkin (2-TCW-877)'s WRI.

<sup>87</sup> F2/4/3/1, Lemkin (2-TCW-877)'s WRI, ERN 01097180.

of Cambodia in general and of the history of Democratic Kampuchea in particular<sup>88</sup>, and, on the methodology applied for interviewing the four witnesses;<sup>89</sup> and the Defence may also confront ██████████ (2-TCW-829) with this document.

27. The description of the methodology applied by Robert Lemkin (2-TCW-877) is crucial to enable the Chamber and the Parties to assess the accuracy of the transcripts of interviews sought for admission. In this regard, it appears that Robert Lemkin (2-TCW-877) and Thet Sambath (2-TCW-885) chose a sound methodology that included a series of safeguards to ensure the reliability of each testimony:

A20. The people were interviewed numerous times, more than 10 times. Their information were challenged repeatedly and efforts were made to triangulate or corroborate the information by asking other people about information that one person had given. We would ask other people if they knew anything about it. If that information appeared to be consistent then that was something that would lead towards that person being suitable to be included in the film.<sup>90</sup>

*(iv) Cambodia Daily Weekend Article 18 June 2016*

28. On Saturday 18 June 2016, the Cambodia Daily issued a special weekend edition. It contained an article entitled ‘Factions or Fictions?’ by George Wright dealing with Nuon Chea’s case and comprising excerpts of academic papers<sup>91</sup> as well as interviews of scholars and researchers – including Robert Lemkin (2-TCW-877) and ██████████ (2-TCE-87). They confirmed having found out that internal factions were indeed plotting against the CPK during the DK period and that the Centre, at that time, legitimately felt threatened by some of the Zone leaders, including Ruos Nhim and Sao Phim<sup>92</sup>. Therefore, the Defence submits that this article is highly relevant to Nuon Chea’s case and should be admitted into evidence in Case 002/02.
29. Robert Lemkin (2-TCW-877) told Georges Wright, *inter alia*:

Within a month of the takeover of power by the Khmer Rouge – Pol Pot, Nuon Chea and so on – senior leadership in the CPK were making separate plans for a separate military- backed administration and they were trying to work out how to achieve that (...) This was really a kind of civil war that was going on inside of Cambodia, but it was secret civil war because of the nature of the totalitarian state that they had created which had shut its borders to the rest of the world so the rest of the world couldn’t

<sup>88</sup> F2/4/3/1, Lemkin (2-TCW-877)’s WRI, ERN 01097181.

<sup>89</sup> F2/4/3/1, Lemkin (2-TCW-877)’s WRI, ERN 01097183-86.

<sup>90</sup> F2/4/3/1, Lemkin (2-TCW-877)’s WRI, ERN 01097184.

<sup>91</sup> See ‘Cambodia Daily Weekend’, 18-19 Jun 2016 (**Attachment 2**), p.5 quotes from Anthony Paul’s article in Asiaweek magazine on 26 Jan 1979, <https://www.cambodiadaily.com/weekend1/factions-or-fiction-114272/>.

<sup>92</sup> ‘Cambodia Daily Weekend’, 18-19 Jun 2016 (**Attachment 2**), p. 5-7, <https://www.cambodiadaily.com/weekend1/factions-or-fiction-114272/>.

know exactly what was going on (...) the likes of Ruos Nhim had considerable autonomy over their regions.<sup>93</sup>

30. [REDACTED] (2-TCE-87), [REDACTED] stated that, before he passed away, Ieng Sary told [REDACTED]:

Even Pol Pot and Nuon Chea, when they were in Sao Phim's Zone, the East Zone, they were afraid of Ta Phim (...) I went with them once, and I knew that and saw that. That is, pol pot himself did not dare go down below: He was afraid of Ta Phim (...) so, in that zone, if Sao Phim wanted to kill and wanted to do something, it was not necessary for him to ask [the] upper echelons. The organization was like that; each zone was independent, almost what would be called kill as you please do as you please.<sup>94</sup>

### **B. The Documents Sought for Admission Were Not Available Before the Opening of the Trial**

31. The Trial Chamber held that the trial in Case 002/02 commenced in June 2011.<sup>95</sup> Robert Lemkin (2-TCW-877)'s Notes has been made available to the Defence on 15 June 2015, the Transcripts on 2 October 2015 and his WRI on 18 May 2015. The Cambodia Daily Weekend Article has been published on 18 June 2016. Therefore, the material requested was not available to the Defence before the opening of trial and is therefore eligible for admission into evidence under Rule 87(4).
32. Furthermore the Defence notes that it enquired with the Supreme Court Chamber Legal Officer about the status of Robert Lemkin (2-TCW-877)'s Transcripts after the Trial Chamber has requested access to this material. On 11 April 2016, the Greffiers of the Supreme Court Chamber issued an Interoffice Memorandum informing the Parties that access to the evidence provided by Robert Lemkin (2-TCW-877) before the Supreme Court Chamber has been granted to the Trial Chamber<sup>96</sup>. Therefore, the Defence initially assumed that the Trial Chamber would have requested submissions from the Parties as to whether this material should be admitted into evidence in Case 002/02 prior to the appearance of [REDACTED] (2-TCW-829). According to the initial list of witnesses provided by the Trial Chamber for the "Internal Purges" Segment, [REDACTED]

<sup>93</sup> 'Cambodia Daily Weekend', 18-19 Jun 2016 (**Attachment 2**), p. 5-6, <https://www.cambodiadaily.com/weekend1/factions-or-fiction-114272/>.

<sup>94</sup> 'Cambodia Daily Weekend', 18-19 Jun 2016 (**Attachment 2**), p. 6-7, <https://www.cambodiadaily.com/weekend1/factions-or-fiction-114272/>.

<sup>95</sup> 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 of Evidence (E305/3)', 11 Jun 2014, para. 2; E307/1/2, 'Decision on Joint Request for *de novo* Ruling on the Application of Internal Rule 87(4)', 21 Oct 2014, para. 6.

<sup>96</sup> E375/2/1, 'Interoffice Memorandum', 11 Apr 2016.

██████ (2-TCW-829) is scheduled to testify in the coming weeks<sup>97</sup>. Therefore, the Defence submits that the present request is not untimely.

#### IV. RELIEF


33. For the reasons stated above, the Defence requests that the Trial Chamber admits into evidence in Case 002/02 pursuant to Rule 87(4) of the Internal Rules, prior the appearance of witness ████████ (2-TCW-829):

- (i) Robert Lemkin (2-TCW-877)'s Notes, Transcripts and WRI; and,
- (ii) The Cambodia Daily Weekend's article titled 'Factions or Fictions?' issued on 18 June 2016.

CO-LAWYERS FOR NUON CHEA



SON Arun



Victor KOPPE

<sup>97</sup> E395/2.1.3, Email from the Senior Legal Officer to the Parties, 8 Apr 2016.