

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

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**CO-PROSECUTORS' RESPONSE TO NUON CHEA DEFENCE FIRST AND SECOND
REQUESTS TO OBTAIN AND CONSIDER ADDITIONAL EVIDENCE IN CONNECTION
WITH THE APPEAL AGAINST THE TRIAL JUDGMENT IN CASE 002/01**

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I. INTRODUCTION

1. Pursuant to Internal Rule 108(7), the Co-Prosecutors hereby respond to two motions filed by the Nuon Chea Defence¹ and joined by the Khieu Samphan Defence² (collectively referred to herein as the “Requests”), which ask the Supreme Court Chamber to obtain and consider additional evidence in relation to an appeal of the Judgment in Case 002/01. The Co-Prosecutors submit that the Requests are premature and procedurally defective. To date, no appeal of the Case 002/01 Judgment has been filed. Thus, this Chamber is not yet seised of the Case File pursuant to Rule 108(1). Further, the Co-Prosecutors cannot fully respond to the Requests until notices of appeal and appeal briefs have been filed by the Defence which establish the scope of the appeal and substantiate the issues to which the requested evidence would relate. The Co-Prosecutors request that the Chamber establish a schedule or directions for the filing of Rule 108(7) motions and grant leave to the Co-Prosecutors to file complete responses to such motions after the Defence have filed their notices of appeal and appeal briefs. Finally, the Co-Prosecutors observe that *prima facie* the Requests fail to demonstrate that the Defence has any new evidence that would undermine the Trial Chamber’s legal or factual findings. None of the Requests meet the requirement of Rule 108(7), which only allows the admission of new evidence that could have been a “decisive factor” in the decision.

II. RESPONSE

A. The Defence Requests Are Premature, as No Appeal Has Yet Been Filed

2. While the title of the Requests state that they are made “in Connection with the Appeal Against the Trial Judgment in Case 002/001,” no appeal has yet been filed against that judgment. Internal Rule 108 establishes the procedure for appeals before the Supreme Court Chamber, and provides that the Case File shall be forwarded to the Greffier of this Chamber “[w]here an appeal is filed against a judgment of the Trial Chamber.”³ Rule 105(3) provides:

“A party wishing to appeal a judgment shall file a notice of appeal setting forth the grounds. The notice shall, in respect of each ground of appeal, specify the alleged errors of law invalidating the decision and alleged errors of fact which occasioned a miscarriage of justice. The appellant shall subsequently file an appeal brief setting out the arguments and authorities in support of each of the grounds ...”

3. Rule 108(7) itself also highlights the need for an appeal to have been filed, in requiring that such requests “clearly identify the specific findings of fact made by the Trial Chamber to which the

¹ F2 Request to Obtain and Consider Additional Evidence in Connection with the Appeal Against the Trial Judgment in Case 002/01, 1 September 2014; F2/1 Second Request to Consider Additional Evidence in Connection with the Appeal Against the Trial Judgment in Case 002/01, 2 September 2014.

² F2/1/1 Soutien de la Défense de M. Khieu Samphan aux Deux Premières Requête de la Défense de M. Nuon Chea aux fins d’Admission et d’Examen de Moyens de Preuve Supplémentaires en Appel, 8 September 2014.

³ Internal Rule 108(1).

additional evidence is directed,” and that the requested additional evidence “could have been a decisive factor in reaching the decision at trial.”

4. The Supreme Court Chamber is not presently seised with any appeal of the Case 002/01 Judgement. Until a notice of appeal is filed, there are no alleged ‘errors of law’ or ‘errors of fact’ to which new evidence can be directed, and until appeal briefs with complete arguments are filed by the Defence, it may not be possible to fully evaluate whether and how such new evidence would affect the appealed findings or decision. As such, the Co-Prosecutors submit that the Requests are premature and should be rejected by this Chamber.
5. The Nuon Chea Defence itself recognizes the premature nature of this filing. They describe their present submission as one that presents “truncated arguments,” and assert that the Defence will be able to “fully demonstrate the importance” of the proposed additional evidence “only as part of its appeal against the final judgment.”⁴

B. Preliminary Observations on the Merits of the Defence Requests to Admit Additional Evidence

Voice of America Interview of Thet Sambath

6. In regards to the request to admit the August 2014 Voice of America interview of Thet Sambath, the Co-Prosecutors observe that the Defence seek to rely upon personal opinions provided by Mr. Sambath regarding the guilt of Nuon Chea and Khieu Samphan that are neither reliable nor admissible, and which could not be considered a “decisive factor” that would alter the Trial Chamber’s Judgment.⁵ In the interview in question, Thet Sambath provides personal conclusions based on research he has conducted – e.g., that “Khieu Samphan did not have any power” because “everything was decided by only Pol Pot and Nuon Chea,”⁶ and that Nuon Chea was wrongly convicted of the crimes committed at Tuol Po Chrey because he did not order the executions of the Lon Nol soldiers at that site.⁷ However, Mr. Sambath does not provide any details regarding his sources of evidence or offer to make available the underlying interviews and evidence on which his opinions are purportedly based.
7. The Defence falsely suggest in their Request that the Trial Chamber made no effort to obtain Thet Sambath’s evidence. In fact, Mr. Sambath and his producer Rob Lemkin have repeatedly

⁴ F2 Request to Obtain and Consider Additional Evidence in Connection with the Appeal Against the Trial Judgment in Case 002/01, 1 September 2014, para. 13; F2/1 Second Request to Consider Additional Evidence in Connection with the Appeal Against the Trial Judgment in Case 002/01, 2 September 2014, para. 13.

⁵ See Internal Rule 108(7) (“Subject to Rule 87(3), the 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”).

⁶ F2 Request to Obtain and Consider Additional Evidence in Connection with the Appeal Against the Trial Judgment in Case 002/01, 1 September 2014, p. 4.

⁷ *Id.*, at p. 5.

refused to cooperate with this Court and make their evidence available.⁸ During the judicial investigation of Case 002, in response to an investigative request filed by the Co-Prosecutors,⁹ the Co-Investigating Judges wrote to Mr. Lemkin to request a copy of the interviews of Nuon Chea contained in the *Enemies of the People* film.¹⁰ After consulting with Thet Sambath, Mr. Lemkin responded that they were unwilling to provide a copy of the film to the Court because it had not yet been “generally released.”¹¹ Messr. Lemkin and Sambath failed to provide either the film or its interview footage to the Court after the release date, and it fell upon the Co-Prosecutors to purchase a commercial copy of the DVD in order for these highly inculpatory video-taped statements by Nuon Chea to be placed on the Case File and admitted into evidence.¹²

8. In the Case 002/01 trial, both the Co-Prosecutors and the Nuon Chea Defence requested that Thet Sambath appear as a trial witness,¹³ but Mr. Sambath was able to avoid efforts by the Court to contact him and has remained in the United States, outside the Court’s subpoena jurisdiction.¹⁴ He also failed to respond to requests from the Witness Support Unit (“WESU”) for contact information for the Khmer Rouge soldiers who participated in the Tuol Po Chrey executions and whose interviews were included in Mr. Sambath’s film *One Day at Po Chrey*.¹⁵ It is thus more than ironic that Thet Sambath now publicly criticizes the Court for failing to question the former CPK cadres Mr. Sambath located, and admonishes the ECCC to “summons anyone, no matter what position the person holds, to the tribunal and act accordingly.”¹⁶ Mr. Sambath should heed his own words, and make himself and his interview tapes available to the Trial Chamber in the ongoing Case 002 trial proceedings.

⁸ **D344/1** Order on Investigative Request Regarding the Film *Enemies of the People*, 9 April 2010, para. 8 (“The CIJs find it deeply regrettable that ... the filmmakers showed to be subsequently unwilling to cooperate upon being formally approached by the court and despite being given judicial assurances [of confidentiality]”); **E294/1** Decision on Nuon Chea Request to Admit New Documents, to Initiate an Investigation and to Summons Mr. Rob Lemkin, 24 July 2013, para. 16 & fn. 31 (“Mr. Lemkin’s behavior during the pre-trial phase clearly demonstrates a lack of cooperation. Both he and Mr. Thet Sambath have expressed ... a number of reasons justifying their refusal to handover relevant material to the ECCC. ... the Chamber is not persuaded of the value of calling a witness who *de facto* has constantly shown reluctance to assist the court”).

⁹ **D344** Co-Prosecutors’ Investigative Request Regarding Interviews of Nuon Chea and the Film *Enemies of the People*, 3 February 2010.

¹⁰ **D344/1.1** Letter from You Bunleng & Marcel Lemonde to Robert Lemkin, 3 February 2010.

¹¹ **D344/1.2** Email from Rob Lemkin to Marcel Lemonde to Robert Lemkin, 9 February 2010.

¹² **E186** Co-Prosecutors’ Disclosure of Documentary Film Entitled *Enemies of the People*, 17 April 2012; **E294/1** Decision on Nuon Chea Request to Admit New Documents, to Initiate an Investigation and to Summons Mr. Rob Lemkin, 24 July 2013, fn. 31.

¹³ **E9/4.3** Annex 3 to Co-Prosecutors’ Rule 80 Expert, Witness & Civil Party Lists (No. 215); **E9/4/4.4** Annex A: Proposed Witness List of Nuon Chea Defence Team (No. 456).

¹⁴ **E294/1** Decision on Nuon Chea Request to Admit New Documents, to Initiate an Investigation and to Summons Mr. Rob Lemkin, 24 July 2013, para. 14; **E292/1/2** WESU Memorandum entitled “Potential Witnesses – Unable to Locate,” 4 July 2013.

¹⁵ **E292/1/2** WESU Memorandum entitled “Potential Witnesses – Unable to Locate,” 4 July 2013.

¹⁶ **F2** Request to Obtain and Consider Additional Evidence in Connection with the Appeal Against the Trial Judgment in Case 002/01, 1 September 2014, p. 8.

9. As the Trial Chamber correctly noted in its July 2013 decision rejecting the Nuon Chea Defence request to call Rob Lemkin as a trial witness, “[t]he source material that may be in the possession of Messrs’ Lemkin and Thet Sambath would be more helpful than their testimony.”¹⁷ The Co-Prosecutors submit that, unless and until that underlying source material is made available to the Court, the opinions and characterisations of the legal significance of such material expressed in Mr. Sambath’s August 2014 Voice of America interview can be given little or no weight, and should not be admitted under Rule 108(7).
10. The Co-Prosecutors also note, in regards to the reliability and admissibility of Thet Sambath’s opinions, that the Defence have failed to disclose to this Chamber the close relationship between Mr. Sambath and Nuon Chea. The investigative skills of Thet Sambath cannot be questioned. In this case, however, he is far from a neutral, dispassionate journalist conducting research into Nuon Chea and the Khmer Rouge. Thet Sambath’s wife is a relative of Nuon Chea, who “frequently visits” with Nuon Chea’s wife.¹⁸ After Nuon Chea was arrested and detained at the ECCC in September 2007, Nuon Chea’s Defence Counsel helped Thet Sambath gain access to their client at the ECCC’s detention facilities by filing a false statement with the Court which identified Mr. Sambath as a “nephew” of their client.¹⁹ In his book *Behind the Killing Fields*, Thet Sambath admits visiting Nuon Chea a “few times while he was in prison,” but states that his name was struck from the list of permitted visitors when court authorities “found out who Sambath really was” (i.e., not the Accused’s nephew).²⁰ After that, Nuon Chea “still managed to pass messages [and letters] to Sambath through Ly Kimseang, Nuon Chea’s wife, saying he missed Sambath and worried about him.”²¹
11. At trial, Nuon Chea admitted that he wrote a book about himself and provided it to Thet Sambath, who suggested they publish the book in New York because it would be “more valuable” there than if published in Cambodia.²² It is not known at this time what the financial arrangements are between Thet Sambath and Nuon Chea with respect to the publication of that book – i.e., whether they have a business relationship, in addition to their personal relationship, pursuant to which Nuon Chea (or his family) is receiving a portion of the monetary proceeds earned from the book and the *Enemies of the People* film. Accordingly, while evidence Thet Sambath has obtained from the Accused and other CPK cadres would be admissible (to the

¹⁷ **E294/1** Decision on Nuon Chea Request to Admit New Documents, to Initiate an Investigation and to Summons Mr. Rob Lemkin, 24 July 2013, para. 16.

¹⁸ **E1/22.1** Case 002/01 Trial Transcript, 14 December 2011, at 11.47.45 [testimony of Nuon Chea].

¹⁹ **A43/6** Request for Permanent Permission for the Family of Charged Person Nuon Chea to Make Visits, 1 October 2007, para. 8 (listing “Mr. Thet Sambath, Cambodian national, age 38, nephew”).

²⁰ **E3/4202** Book by Thet Sambath & Gina Chon titled “Behind the Killing Fields,” p. 158 (ENG 00757558).

²¹ *Ibid.*

²² **E1/22.1** Case 002/01 Trial Transcript, 14 December 2011, at 12.00.04 to 12.02.48 [testimony of Nuon Chea].

extent those interviews are published or otherwise made available to the Court), Mr. Sambath cannot be considered an objective expert witness whose opinions about the role and responsibility of Nuon Chea can be relied upon in reaching a judgment.²³

12. The Co-Prosecutors further observe that Thet Sambath's opinion that Nuon Chea was unfairly convicted for Tuol Po Chrey is based on a misunderstanding of the legal basis of the Trial Chamber's decision. Mr. Sambath is not a lawyer, has no training in international criminal law and appears to have not even read the Judgment. He asserts that Nuon Chea was wrongly charged with "ordering" the executions at Tuol Po Chrey,²⁴ but appears to be unaware that the primary basis for Nuon Chea's conviction was that the Tuol Po Chrey executions were ordered and overseen by Northwest Zone Secretary Ros Nhim, a fellow member of the CPK Joint Criminal Enterprise.²⁵ Accordingly, even if the underlying evidence in the possession of Thet Sambath and Rob Lemkin implicates Northwest Zone cadres as the persons responsible for the Tuol Po Chrey executions, such evidence would only reinforce the Trial Chamber's Judgment.
13. With respect to the evacuation of Phnom Penh, Thet Sambath states that Nuon Chea "admitted his guilt,"²⁶ though he has not publicly released or provided to the Court the videotapes or documents in which such statements by Nuon Chea were recorded. With respect to other crimes, Mr. Sambath opines that Nuon Chea "must be held accountable and punished."²⁷ As such, even if Thet Sambath's opinions were admissible, they would not exonerate Nuon Chea and be a "decisive factor" in adjudicating the guilt or innocence of the Accused, as required by Rule 108(7).

Request to Summons Thet Sambath & Rob Lemkin

14. As noted above, both Thet Sambath and Rob Lemkin have repeatedly refused to cooperate with this Court and provide copies of their recorded interviews of the Accused and other CPK cadres. There is nothing in Mr. Sambath's August 2014 Voice of America interview that suggests his attitude has changed and that he is now willing to testify and provide his evidence to the Court.

²³ Nuon Chea's Defence team has also established a direct relationship with Rob Lemkin, such that when Mr. Lemkin had concerns about the accuracy of the evidence before the Trial Chamber relating to Tuol Po Chrey, he did not seek to contact the Court about those concerns, but instead emailed Nuon Chea's defence counsel, whom he addressed on a first name basis. See **E294** Nuon Chea Request to Admit New Evidence, Summons Rob Lemkin and Initiate an Investigation, 11 July 2013, para. 2.

²⁴ **F2** Request to Obtain and Consider Additional Evidence in Connection with the Appeal Against the Trial Judgment in Case 002/01, 1 September 2014, p. 5.

²⁵ **E313** Case 002/01 Judgement, 7 August 2014, para. 836 ("The Northwest Zone Committee ordered the assembly and execution of former Khmer Republic officials. Ros Nhim, Secretary of the Northwest Zone, presided over the meeting at which this directive was issued. ... The Chamber is therefore satisfied that the murders and extermination at Tuol Po Chrey can be imputed, at least to Ros Nhim, a participant in the JCE").

²⁶ **F2** Request to Obtain and Consider Additional Evidence in Connection with the Appeal Against the Trial Judgment in Case 002/01, 1 September 2014, p. 6.

²⁷ *Id.*, at p. 4.

The Co-Prosecutors very much hope that Thet Sambath will decide to assist this Court and make available his research, as has been done by DC-Cam, Stephen Heder, David Chandler, Philip Short, Elizabeth Becker, Henri Locard and virtually every other person and organization who has conducted research on the Khmer Rouge. The Co-Prosecutors are certain that, as was the case with the material released with the *Enemies of the People* film and *Behind the Killing Fields* book, the additional evidence in the possession of Messr. Sambath and Lemkin will be highly inculpatory in nature.

15. Given the premature nature of the Requests, the Co-Prosecutors submit that the Supreme Court Chamber should wait to see whether Thet Sambath agrees to appear and provide evidence in the Case 002/02 trial proceedings, which are expected to begin soon, before deciding on the Defence Request to summon him as part of any appeal hearings in Case 002/01. Both the Co-Prosecutors and Nuon Chea Defence have sought his appearance as a trial witness in Case 002. Mr. Sambath's evidence remains highly relevant to the issues to be adjudicated in the Case 002/02 trial, which include: internal purges of CPK cadres; the treatment of former officials and soldiers of the Lon Nol regime; and the role of the Accused.²⁸ If Thet Sambath provides evidence in the upcoming trial, the parties could then submit to this Chamber any such evidence they believe is warranted under Rule 108(7). On the other hand, if the Trial Chamber is unable to obtain evidence from Mr. Sambath, this Chamber can evaluate whether any further steps are warranted and likely to obtain a different result.
16. With respect to the request to summons Rob Lemkin, the Co-Prosecutors submit that his testimony would be of little or no value to this Court, for the same reasons cited by the Trial Chamber in its decision not to summons Mr. Lemkin during the Case 002/02 trial.²⁹ The Trial Chamber noted that it was Thet Sambath who "conducted all of the interviews" and thus was "best placed" to testify about such evidence.³⁰ In contrast, Mr. Lemkin has relatively little first-hand knowledge that he could provide as a fact witness (given that he only became involved in Thet Sambath's project near the end of his research in 2006, was not present for most of the interviews and does not speak or understand Khmer), and also lacks the "credentials required for qualification as an expert."³¹

²⁸ **E301/9/1** Decision on Additional Severance of Case 002 and Scope of Case 002/02, 4 April 2014, para. 35, 42, 44; **E315** Decision on Sequencing of Trial Proceedings in Case 002/02, 12 September 2014, para. 14.

²⁹ **E294/1** Decision on Nuon Chea Request to Admit New Documents, to Initiate an Investigation and to Summons Mr. Rob Lemkin, 24 July 2013, para. 14-16.

³⁰ *Id.*, at para. 14.

³¹ *Id.*, at para. 15.

Statements by Judge Cartwright at Aspen Institute

17. The Defence also seek admission of statements made by Judge Silvia Cartwright while participating in a discussion panel at the Aspen Institute in November 2013.³²
18. The Co-Prosecutors first observe that the Nuon Chea Defence has omitted key parts of Judge Cartwright's statements that are necessary to understand the true context and import of her statements. For example, the first two sections omitted by the Defence³³ show that her "no such thing as a totally fair trial" statement was made as part of a general discussion of the pros and cons of a hybrid court, and that Judge Cartwright noted that the same problems exist with other international tribunals (including the ICTY, ICTR and Sierra Leone tribunals), none of which were "perfect models" and "all" of which were "the product of the political and judicial environment."³⁴
19. The Defence assertion that "[a]ccording to Judge Cartwright, Cambodian judges growl in anger at testimony favorable to Nuon Chea, and react 'sadly' to exculpatory evidence"³⁵ is a gross mischaracterization of her statements. Judge Cartwright's comments were in regards to the emotional impact of evidence on Cambodian judges who had lived through the Khmer Rouge regime, and not about bias against the Accused.³⁶ Moreover, Judge Cartwright qualified her remarks by noting that she did not understand what the Cambodian judges were saying,³⁷ as she does not speak Khmer, and thus made clear that her interpretation of the expressions on the face of her Cambodian colleagues was largely speculative.
20. All judges bring with them personal experiences and opinions, but as professionals they are trained to put those experiences aside and reach decisions based on the evidence and law. The Nuon Chea Defence should understand this well, particularly National Co-Lawyer Son Arun. Despite his personal experience as a Lon Nol soldier who had to flee to Thailand to avoid execution after the Khmer Rouge took power in April 1975,³⁸ Son Arun vigorously defended his

³² **E305/12.38R.**

³³ See **F2/1** Second Request to Consider Additional Evidence in Connection with the Appeal Against the Trial Judgment in Case 002/01, 2 September 2014, page 2 (two omissions marked "[...]").

³⁴ The entirety of the first section omitted by the Defence is as follows: "So it's not a perfect model, but then I would suggest that none of the tribunals that have been established, Rwanda, Yugoslavia, Sierra Leone, are perfect models. They are all the product of the political and judicial environment."

³⁵ **F2/1** Second Request to Consider Additional Evidence in Connection with the Appeal Against the Trial Judgment in Case 002/01, 2 September 2014, para. 14.

³⁶ *Id.*, at pages 3-4 ("It's much easier for me and for my international colleagues than for my national colleagues, all of whom lived through this regime. ... So, their experiences, I don't know how they sit through some of it. And, the fact that I can hear them growling, they don't lose their impassive face ...").

³⁷ *Id.*, at page 3 ("I can't understand what they are saying, but I imagine it's ...").

³⁸ An interview with Son Arun titled "Devil's Advocates" that was published on 20 December 2013 in *The Diplomat* states: "In the early 1970s, Arun served as a major in Cambodia's U.S.-backed army, commanding a battalion of more than five hundred men in a losing war against Pol Pot's communists. ... Soon after the Khmer Rouge seized

client at trial and was part of a professional defence team that contested all the evidence relating to the CPK's targeting of former officials and soldiers of the Khmer Republic regime. The Defence cannot credibly argue that Cambodian judges are incapable of judging this case fairly and in accordance with the law and evidence, merely because they have personal experiences from the DK regime.

21. Most importantly, there is absolutely nothing in Judge Cartwright's remarks that suggests that any decision of the Trial Chamber was affected by personal experiences, bias or political influence. To the contrary, in another key section of her statement that was omitted by the Defence, Judge Cartwright discussed how the Cambodian and international judges had "worked together" very well at the Court and succeeded in arriving at reasoned decisions.³⁹ She also expressly states that the judges were "not influenced" by comments made by political leaders about the Court.⁴⁰
22. The Co-Prosecutors submit that the look on the face of a trial judge is not the basis of a meritorious appeal, and is certainly not evidence that could be a "decisive factor" under Rule 108(7) and grounds upon which to overturn a reasoned judgment of the Trial Chamber.

Marcel Lemonde Book

23. Finally, with respect to the Defence request to admit the Marcel Lemonde book *Un Juge face aux Khmer Rouges*, the Co-Prosecutors observe that this book does not constitute "new evidence" that is subject to admission under Rules 104 and 108(7). Rather, this is evidence that was proposed for admission by the Khieu Samphan Defence during trial, but rejected by the Trial Chamber.⁴¹ As such, the proper procedure for the Defence is not to file a Rule 108(7) motion, which only applies to evidence that was "unavailable at trial," but instead to address the issues regarding the admissibility and weight of this evidence as part of their appeal.
24. The Defence's reliance on alleged deficiencies during the judicial investigative phase of Case 002 is also likely to be barred by Rule 76(7), which provides that "the Closing Order shall cure

the capital in April 1975, Arun fled to Thailand. Had he stayed in Cambodia, he says, he would have surely been executed."

³⁹ The second section of Judge Cartwright's remarks that were omitted by the Defence from **E305/12.38R** include the following statements: "the fact that we reason our decisions has been a very good model for the local judiciary and I was very pleased to hear recently that some have actually started to give reasoning in their decisions which is very encouraging. We worked together very [well] in the Chambers, the Cambodians and the international judges, and I think that that has had its positive outcomes. The President has talked to me many times about the lessons he wants to take from the way we have run things back to the domestic jurisdiction."

⁴⁰ **F2/1** Second Request to Consider Additional Evidence in Connection with the Appeal Against the Trial Judgment in Case 002/01, 2 September 2014, page 3.



⁴¹ **E280/2** Further Request to Put Before the Chamber Extracts from Book Authored by Judge Marcel Lemonde, 8 May 2013; **E280/2/1** Decision on Khieu Samphan Second Request Pursuant to Internal Rule 87(4) to Admit Extracts of Former Co-Investigating Judge Lemonde's Book, 13 August 2013.

any procedural defects in the judicial investigation” and that “[n]o issues concerning such procedural defects may be raised before the Trial Chamber or the Supreme Court Chamber.” The Defence was able to raise issues concerning the judicial investigation in its prior appeals to the Pre-Trial Chamber. The Judgment in Case 002/01 was rendered by the Trial Chamber after almost two years of evidentiary hearings, and should the Defence wish to appeal that Judgment, the relevant issue would be the fairness of the trial proceedings and not alleged irregularities during the investigative phase.

III. RELIEF SOUGHT

25. For the reasons set forth above, the Co-Prosecutors request that the Supreme Court Chamber:
- 1) Deny as premature the Requests to obtain and consider additional evidence;
 - 2) Provide directions to the Parties on the appropriate time for filing requests for additional evidence pursuant to Rule 108(7); and
 - 3) Grant leave to the Co-Prosecutors to respond in full to such requests after the Defence have filed their notices of appeal and appeal briefs.

Respectfully submitted,

Date	Name	Place	Signature
16 September 2014	CHEA Leang Co-Prosecutor	Phnom Penh 	
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