

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

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**CIVIL PARTY LEAD CO-LAWYERS' RESPONSE TO NUON CHEA'S
INVESTIGATORY REQUESTS RELATING TO SAM SITHY**

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Before:

Supreme Court Chamber

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

1. The Civil Party Lead Co-Lawyers (“Lead Co-Lawyers”) hereby respond to the Nuon Chea Defence’s Request for Investigative Action into Events Described During the Testimony of Sam Sithy dated 7 September 2015.¹

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

II. PROCEDURAL BACKGROUND

3. On 7 August 2008, Sam Sithy was interviewed by the Co-Investigating Judges (“OCIJ”) on the events that took place during the Democratic Kampuchea regime.² The OCIJ Written Record of Interview (“WRI”) was received by the parties on 20 January 2009.³

4. On 25 July 2013, the Nuon Chea Defence requested the Trial Chamber to call Sam Sithy as one of the witnesses relevant to the alleged policy of targeting Khmer Republic officials.⁴ On 15 August 2013, the Trial Chamber held that:

“NUON Chea’s decision not to propose these witnesses earlier, despite being on notice that their statements may be admitted in place of oral testimony since April 2011, does not constitute reasonable diligence in discovering and proposing this evidence, particularly at this late stage of the trial. NUON Chea therefore fails to stratify the requirements of Internal Rule 87(4). The Chamber denies this request.

39. [...] Where statements, such as these, satisfy certain conditions, the Chamber has already determined that it is in the interest of justice and expeditious proceedings that they be admitted in place of oral testimony thus permitting the Chamber to dispense with the appearance of their authors.”⁵

¹ Request for Investigative Action into Events Described During the Testimony of Sam Sithy, **F28**, 7 September 2015 (“Request”).

² See E3/5201 Written Record of Interview (“WRI”) of Witness Sam Sithy.

³ E3/5201, p. 1.

⁴ Request to Summons Witnesses in Respect of Alleged Policy of Targeting Khmer Republic Officials, **E291/2**, 25 July 2013, para. 5; *see further* Annex A: Witnesses Cited by the CUs and Co-Prosecutors in Connection with Alleged Policy to Target Lon Nol Soldiers and Officials for Execution, **E291/2.1**.

⁵ Decision on Objections to the Admissibility of Witness, Victim and Civil Party Statements and Case 001 Transcripts Proposed by the Co-Prosecutors and Civil Party Lead Co-Lawyers, **E299**, 15 August 2013, paras 38-39.

5. On 7 August 2014, the Trial Chamber in Case 002/01 issued its Judgement against the Co-Accused.⁶ Sam Sithy's WRI was footnoted in paragraph 511 of the Trial Judgement twice. Both of those instances are clarified hereunder.⁷

6. When discussing the evidence on facts concerning the treatment of officials and soldiers of the Khmer Republic officials, the Trial Judgement referred to Sam Sithy's WRI on one occasion to enter a factual conclusion that:

"In the days following the evacuation, the Khmer Rouge announced by radio and via loudspeaker in several areas around Phnom Penh that Khmer Republic officials should turn themselves in, reveal their former ranks and either return to Phnom Penh to collaborate or join the Khmer Rouge army."⁸

The First Reference is derived from the following excerpt of Sam Sithy's WRI:

"at Wat Chhak Sdek the Khmer Rouge made loudspeaker announcements looking for LON Nol regime officials and inviting the brothers and sisters who did any work in the past to return to their former work".⁹

7. The Trial Chamber also cited Sam Sithy's WRI when discussing relevant evidence concerning soldiers that heeded the calls by radio and via loudspeakers:

"There is evidence that Khmer Republic soldiers who heeded these calls were executed at various locations in or around Phnom Penh, including a place west of Preaek Pnov and in Tuol Kork, or disappeared."¹⁰

This Second Reference is derived from the following excerpt of Sam Sithy's WRI:

"after registering the people who came forward after loudspeaker announcements at Wat Chhak Sdek and distributing rice to them, the people were divided into small groups and taken away by the Khmer Rouge; the group in which SAM was were [*sic*] led away and shot to death, although he, a child at the time, survived".¹¹

8. With respect to the legal findings of murder during the Movement of Population (Phase One), the Trial Judgment concluding, *inter alia*, that "numerous victims who were identified as soldiers or civilian officials of the Khmer Republic during the course of the

⁶ Case 002/01 Judgment, E313, 7 August 2014, ("Trial Judgment").

⁷ Mention of "paragraph(s)" in the body of the present response is used to refer to the paragraphs of the Trial Judgement, unless otherwise indicated.

⁸ Trial Judgement, para. 511 fn. 1528 ("First Reference").

⁹ Trial Judgement, fn. 1528 citing "SAM Sithy Interview Record, E3/5201, 7 August 2008, p. 3, ERN (En) 00275139".

¹⁰ Trial Judgement, para. 511 fn. 1530 ("Second Reference").

¹¹ Trial Judgement, fn. 1530 citing "SAM Sithy Interview Record, E3/5201, 7 August 2008, p. 3, ERN (En) 00275139".

evacuation were taken aside for execution elsewhere”,¹² found that “the Chamber is satisfied that the perpetrators acted with intent to kill these victims”.¹³ Therefore, the dispositive part of the *legal findings* on the “intent” of murder as a crime against humanity during the Population Movement (Phase One) was based on the discussion of evidence and factual conclusions reached in paragraphs 503, 508, 511, 513-515, 474, 486, 490, and 507 respectively.¹⁴

9. With respect to the legal findings on other inhumane acts of attacks against human dignity, the Trial Judgement considered various factual findings (paragraph 563) and contextual findings (paragraph 564) when considering one of the elements, i.e. “serious bodily and mental harm” (paragraph 565).¹⁵ Paragraph 511 containing the references to Sam Sithy’s WRI is referred to in paragraph 564 to consider that “many people still do not know the fate of those family members who were taken away.”¹⁶ Therefore, the dispositive part of the *legal findings* on the serious bodily and mental harm relevant to the crime of other inhumane acts of attacks against human dignity was based on the discussion of evidence and factual conclusions reached in paragraphs 464, 468, 471-474, 465-466, 486, 489-491, 497-498, 488, 487, 495-496, 466, 492, 511, 513-514, and 522-524 respectively.¹⁷

10. With respect to the legal findings on Political Persecution, the Trial Judgement considered that “Khmer Rouge soldiers actively sought out members of the fallen Khmer Republic throughout Phnom Penh, at checkpoints, by means of radio announcements duping

¹² Trial Judgement, para. 553 referring to Section 10: Movement of Population (Phase One), paras 508, 511, 513-515.

¹³ Trial Judgement, para. 553: “Those high-ranking military and civilian officials who had been publicly earmarked for certain death prior to the taking of Phnom Penh and who had not fled were killed. Furthermore, numerous victims who were identified as soldiers or civilian officials of the Khmer Republic during the course of the evacuation were taken aside for execution elsewhere. Lastly, numerous victims who refused to leave their homes in Phnom Penh, as well as those who did not immediately follow the instructions of Khmer Rouge soldiers during the march out of the city were shot and killed on the spot. There was also substantial evidence of the individual killing of victims both in Phnom Penh and during the course of the evacuation for no discernible reason. Given that the foregoing executions often occurred at point blank range, or pursuant to a concerted effort to identify the victims before transferring them elsewhere for execution, the Chamber is satisfied that the perpetrators acted with intent to kill these victims.” (internal citations omitted)

¹⁴ Trial Judgement, fns 1652-1655.

¹⁵ Trial Judgement, para. 565: “The Chamber thus finds that the violent circumstances surrounding the evacuation of the city, the severity of the conditions experienced by the evacuees, intensified by the length of their journeys to their home villages, and their ill-treatment by Khmer Rouge soldiers throughout constituted serious attacks against human dignity and caused the victims serious bodily and mental harm.”

¹⁶ Trial Judgement, para. 564 *citing* Section 10: Movement of the Population (Phase One), paras 511, 513-514.

¹⁷ See Trial Judgement, fns 1672-1680.

them into identifying themselves, before arresting or executing them, and that they were considered the enemy” to find that “the arrest and murders of former Khmer Republic officials were committed with the intent to discriminate on political grounds”.¹⁸ Therefore, the dispositive part on the *legal findings* of “intent” of political persecution was based on the evidence and factual conclusions reached in paragraphs 504 (fn. 1511), and 511-515 respectively.¹⁹

11. With respect to the legal findings of *mens rea* of the crime of Extermination, the Trial Judgement held that:

“561. [...] As concerns the killings of those former Khmer Republic officials identified after searches within Phnom Penh, at various checkpoints or in response to radio announcements, the only reasonable conclusion the Chamber can reach on the basis of the evidence is that there was a deliberate, organised, large-scale operation to kill former officials of the Khmer Republic, even if not all such officials shared this fate. In view of this large-scale operation, the Chamber is satisfied that Khmer Rouge soldiers intended to kill Khmer Republic officials on a massive-scale, and through these acts, committed extermination.”²⁰

12. With respect to the *factual findings* on Joint Criminal Enterprise, the Trial Judgement found, *inter alia*, that during the Democratic Kampuchea, there existed a policy to target former Khmer Republic officials.²¹ This finding was based specifically on the conclusions that, *inter alia*,: (i) “[f]ollowing liberation, Khmer Republic officials, military officers and ‘secret agents’ were *targeted* and sought for arrest and execution”,²² and (ii) “before they had a chance to carry out their secret ‘plan’ [“alleged coup plan”], Khmer Republic officials and soldiers were identified, including at checkpoints, arrested, some led away and others killed on the spot.”²³ In each of these two conclusions, the Trial Judgement contains internal references to paragraph 511, in which references to Sam Sithy’s WRI can be found. In respect of (ii), it can be safely assumed that Sam Sithy’s WRI was indirectly referred to

¹⁸ Trial Judgement, para. 571 *citing* Section 10: Movement of the Population (Phase One), paras 504 (fn. 1511), 511-515.

¹⁹ See Trial Judgement, fn. 1693.

²⁰ Trial Judgement, para. 561.

²¹ Trial Judgement, paras 815-834.

²² Trial Judgement, para. 823 fn. 2596 referring to Trial Judgement, paras 503-513 (emphasis added).

²³ Trial Judgement, para. 831 fn. 2626 referring to Trial Judgement, paras 505, 507-509, 511, 513-515.

conclude that Khmer Republic officials were “identified” and “some led away” as he does not talk about checkpoints,²⁴ arrests²⁵ and being killing on the spot.²⁶

13. The Nuon Chea Defence filed its appeal brief against the Trial Judgement in Case 002/01 on 29 December 2011,²⁷ in which they challenge, *inter alia*, the Trial Chamber’s findings on the policy of the CPK to target former Khmer Republic soldiers and officials.²⁸

14. The Nuon Chea Appeal Brief raises challenges against the use of Sam Sithy’s WRI in the Trial Judgement in relation to the alleged errors of law and fact concerning the pattern of killing Khmer Republic soldiers and officials that existed on or after 17 April 1975,²⁹ alleging specifically that the evidence failed to “support the Trial Chamber’s findings of fact”,³⁰ namely that the “Chamber found that the CPK killed Khmer Republic soldiers on a ‘deliberate, organized, large-scale’ basis.”³¹

15. The Nuon Chea Appeal Brief elaborates that the “only WRI which contains of any significance is the interview of Sam Sithy; who supposedly describes in detail being led off during the evacuation with other families connected to the Khmer Republic, being shot at, surviving by playing dead and escaping.”³² The Nuon Chea Appeal Brief made a reasoned request to summons Sam Sithy, arguing that “reliance on his WRI notwithstanding its refusal to summons him constitutes an error of both law and fact.”³³ The Co-Prosecutors responded on 24 April 2015.³⁴ The Lead Co-Lawyers did not respond to this request.

16. On 29 May 2015, the Supreme Court Chamber decided to call Sam Sithy *proprio motu* “in the interests of justice” finding it “conducive to ascertaining the truth” and

²⁴ Trial Judgement, paras 512, 515.

²⁵ Trial Judgement, para. 513.

²⁶ Trial Judgement, paras 513-514.

²⁷ Nuon Chea’s Appeal against the Judgement in Case 002/01, **F16**, 29 December 2014 (“Nuon Chea Appeal Brief”).

²⁸ Nuon Chea Appeal Brief, paras 526-599.

²⁹ See Nuon Chea Appeal Brief, Ground 208, paras 581-599.

³⁰ Nuon Chea Appeal Brief, paras 592-596.

³¹ Nuon Chea Appeal Brief, para. 592. The Lead Co-Lawyers note that the phrase “deliberate, organized, large-scale” has been used in paragraph 561 of the Trial Judgement in relation to the legal findings on the “*mens rea* of the perpetrators” for the crimes of Extermination relevant to Movement of Population (Phase One).

³² Nuon Chea Appeal Brief, para. 595.

³³ Nuon Chea Appeal Brief, para. 595; see also *ibid*, para. 730.

³⁴ Co-Prosecutors’ Response to Case 002/01 Appeals, **F17/1**, 24 April 2015, para. 62.

considering it important to hear the witness in person.³⁵ Sam Sithy testified on 3 July 2015 as SCW-3.

III. APPLICABLE LAW

17. Under Internal Rule 104(1), the Supreme Court Chamber may “call new evidence” to decide the appeal *proprio motu* where the interests of justice so require, taking into account the specific circumstances of the case.³⁶

18. By virtue of Internal Rule 104*bis*,³⁷ the Supreme Court Chamber has considered this power to call “new evidence” to be subject to the requirements of Internal Rule 87(4). Therefore, in exercising this discretion, the Chamber will consider whether the evidence is “conducive to ascertaining the truth”.³⁸

19. Internal Rule 104*bis* read with Internal Rule 87(4) also subjects such evidence to the requirements of Internal Rule 87(3), which reads:

“[...] The Chamber may reject a request for evidence where it finds that it is:
a. irrelevant or repetitious;
b. impossible to obtain within a reasonable time;
c. unsuitable to prove the facts it purports to prove;
d. not allowed under the law; or e. intended to prolong proceedings or is frivolous.”

20. Internal Rule 93(1) provides that the Chamber may order additional investigations where it considers that “new investigation is necessary”. As per Internal Rule 93(2), the judges of the Chamber are subjected to the same conditions as that of the Co-Investigating Judges to, *inter alia*, “a) go anywhere within the territorial jurisdiction of the ECCC; b) interview witnesses; c) conduct searches; d) seize any evidence”.

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

³⁵ Decision on Part of Nuon Chea’s Requests to Call Witnesses on Appeal, F2/5, 29 May 2015, para. 23.

³⁶ Decision on Part of Nuon Chea’s Requests to Call Witnesses on Appeal, F2/5, 29 May 2015, para. 17.

³⁷ Internal Rule 104*bis*: “In the absence of any specific provision, the rules that apply to the Trial Chamber shall, *mutatis mutandis*, also apply to the Supreme Court Chamber.”

³⁸ Decision on Part of Nuon Chea’s Requests to Call Witnesses on Appeal, F2/5, 29 May 2015, para. 17.

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

23. On 30 June 2015, the Supreme Court Chamber held that Civil Parties “enjoy fair trial rights defined in Article 14(1) of the [International Covenant on Civil and Political Rights]” albeit having “specific and limited role in the proceedings, as set out in the ECCC’s Internal Rules”.³⁹

IV. SUBMISSION

24. The Lead Co-Lawyers respond to the Request on behalf of the consolidated group of Civil Parties under the mandate to promote fair and effective conduct of proceedings in their interest.⁴⁰ The Lead Co-Lawyers emphasize that they have not previously opposed the reasoned requests by the Nuon Chea Defence to call additional witnesses on appeal nor have they, in principle, opposed the *de novo* consideration of additional evidence that could further the ascertainment of the truth by the Supreme Court Chamber. The Lead Co-Lawyers consider that making such requests in the interest of their client is the prerogative of the Defence. Therefore, in the current response, the Lead Co-Lawyers do not seek any specific relief from the Supreme Court Chamber in relation to the outcome of the Request save that it takes into consideration the cumulative concerns outlined below when making a determination on the merits of the Request.

25. Generally, for the ease of discussion, the Lead Co-Lawyers have distinguished between the First Reference and the Second Reference for reasons that, from the language used in the Trial Judgement, it is unequivocal that the First Reference leads to a factual conclusion i.e. “[i]n the days following the evacuation, the Khmer Rouge announced by radio and via loudspeaker in several areas around Phnom Penh that Khmer Republic officials should turn themselves in, reveal their former ranks and either return to Phnom Penh to

³⁹ Decision on Co-Prosecutors and Civil Party Lead Co-Lawyers’ Request for Additional Time for Examination of SCW-5, **F26/2/2**, 30 June 2015, para. 7.

⁴⁰ Internal Rule 12^{ter} (2).

collaborate or join the Khmer Rouge army.”⁴¹ Whereas the Second Reference amounts to the discussion of evidence that the Trial Chamber considered relevant for the charges before it: “[t]here is evidence that Khmer Republic soldiers who heeded these calls were executed at various locations in or around Phnom Penh, including a place west of Preak Pnov and in Tuol Kork, or disappeared.”⁴²

26. Lastly, despite the fact that the quality and alleged inconsistencies of Sam Sithy’s testimony and the merits of the consequent investigatory requests has become an additional forum for the Nuon Chea Defence to make pleadings that they have already made in their Appeal Brief, the Lead Co-Lawyers do not respond in respect of the merits of their appeal. The observations contained in Part IV (A)-(B) of the present response are solely for the purposes of weighing the concerns of the Defence as against the interests of the Civil Parties elaborated in Part IV(C).

27. Notwithstanding that the Nuon Chea Appeal Brief misrepresents the findings in the Trial Judgment that the CPK killed Khmer Republic soldiers on a “deliberate, organized, large-scale”,⁴³ the Lead Co-Lawyers submit that the large part of the characterisation and emotive nature of the Request arises from the misplaced significance that the Nuon Chea Defence places on Sam Sithy’s testimony.

A. The Co-Accused is not Charged or Convicted of the Massacre Described by Sam Sithy

28. The Lead Co-Lawyers add that the Co-Accused was never charged or convicted in the first instance with the specific massacre described in Sam Sithy’s WRI or testimony. Paragraph 511 containing references to Sam Sithy’s WRI has been cited to make (i) legal findings on the intent to commit murder;⁴⁴ (ii) legal findings on the elements of serious and bodily mental harm insofar as Sam Sithy’s WRI touches on many people not knowing the

⁴¹ Trial Judgement, para. 511 fn. 1528 (“First Reference”).

⁴² Trial Judgement, para. 511 fn. 1530 (“Second Reference”).

⁴³ The Lead Co-Lawyers notes that the phrase “deliberate, organized, large-scale” was used in the Trial Judgement in relation to findings relating to the *mens rea* element of the legal findings on the crime of Extermination during the Population Movement (Phase One). This legal finding was based on the factual finding that “former Khmer Republic officials identified after searches within Phnom Penh, at various checkpoints or in response to radio announcements” (Trial Judgement, para. 561).

⁴⁴ Trial Judgement, para. 553 referring to Section 10: Movement of Population (Phase One), paras 508, 511, 513-515.

fate of family members who were taken away;⁴⁵ (iii) legal findings on the intent to discriminate on political grounds;⁴⁶ (iv) legal findings of *mens rea* of Extermination; (v) factual findings on the policy relevant to Joint Criminal Enterprise to the extent that the Khmer Republic officials were targeted and sought for arrest and execution⁴⁷ after being “identified” or “led away”.⁴⁸

29. The Trial Judgement does not rely on Sam Sithy’s WRI to enter factual findings in relation to murder but rather discusses his evidence when considering evidence relevant to the treatment of officials and soldiers of the Khmer Republic,⁴⁹ and then later relies, *inter alia*, on evidence contained in paragraph 511 to reach *legal findings* in relation to the intent of murder.⁵⁰

B. Limited Reliance on Sam Sithy’s WRI for Policy of Targeting Khmer Republic officials

30. The Trial Judgement places very limited reliance on Sam Sithy’s WRI to conclude that there existed a policy to target Khmer Republic officials. This is clear from the two occasions that paragraph 511 is cited (alongside eight other paragraphs) to show that “Khmer Republic officials [...] were *targeted* and *sought* for arrest and execution”⁵¹ and that “Khmer Republic officials and soldiers were identified, including at checkpoints, arrested, some led away and others killed on the spot”.⁵²

31. The finding on the *fact* of targeting i.e. that “the Chamber is satisfied that Khmer Rouge soldiers were either arrested and thereafter disappeared, *or* were killed in the days following 17 April 1975”⁵³ is based on the evidence considered in paragraphs 512-515 which

⁴⁵ Trial Judgement, para. 564 *citing* Section 10: Movement of the Population (Phase One), paras 511, 513-514.

⁴⁶ Trial Judgement, para. 571 *citing* Section 10: Movement of the Population (Phase One), paras 504 (fn. 1511), 511-515.

⁴⁷ Trial Judgement, para. 823 fn. 2596 referring to Trial Judgement, paras 503-513 (emphasis added).

⁴⁸ Trial Judgement, para. 831 fn. 2626 referring to Trial Judgement, paras 505, 507-509, 511, 513-515.

⁴⁹ See Trial Judgement, paras 501-511.

⁵⁰ Trial Judgement, para. 553 referring to Section 10: Movement of Population (Phase One), paras 508, 511, 513-515.

⁵¹ Trial Judgement, para. 823 fn. 2596 referring to Trial Judgement, paras 503-513 (emphasis added).

⁵² Trial Judgement, para. 831 fn. 2626 referring to Trial Judgement, paras 505, 507-509, 511, 513-515.

⁵³ Trial Judgement, para. 515 (emphasis added).

contain evidence provided by Civil Parties live in court on facts subject to adversarial debate.⁵⁴ The Lead Co-Lawyers refer to their response on appeal on this aspect.⁵⁵

32. Therefore, from a close reading of the Trial Judgement, it is clear that Sam Sithy's WRI has not been relied upon to find that Khmer Republic officials were executed on a "deliberate, organized, large-scale" basis and the Request should be viewed in that context.

33. To the extent that the Trial Judgment does refer to Sam Sithy's WRI, a document admitted in lieu of oral testimony, the *reliance* is meagre and appropriate within the framework of the appellate standards applicable before the ECCC, noting that the WRI does not go into the acts and conducts of the Co-Accused.⁵⁶

34. With respect to the First Reference where the Trial Judgement did draw factual conclusions, i.e. that "the Khmer Rouge announced by radio and via loudspeaker in several areas around Phnom Penh that Khmer Republic officials should turn themselves in, reveal their former ranks and either return to Phnom Penh",⁵⁷ his oral testimony is internally consistent⁵⁸ and consistent with his account in the WRI.⁵⁹

⁵⁴ See Trial Judgement, fns 1531-1544.

⁵⁵ Civil Party Lead Co-Lawyers' Response to Defence Appeals Against Trial Judgement in Case 002/01, **F17/2**, 25 May 2015, paras 70-104.

⁵⁶ Decision on the Co-Prosecutors' Rule 92 Submission Regarding the Admission of Witness Statements and Other Documents Before the Trial Chamber, **E96/7**, 20 June 2012, paras 21-22. See also Decision on Objections to the Admissibility of Witnesses, Victim and Civil Party Statements and Case 001 Transcripts Proposed by the Co-Prosecutors and Civil Party Lead Co-Lawyers, **E299**, 15 August 2013, paras 17-19.

⁵⁷ Trial Judgement, para. 511 fn. 1528 ("First Reference").

⁵⁸ T. 3 July 2015, **F1/2.1**, p. 18: "A. Upon my arrival there was an announcement that they wanted to search for the former civil servants so that they could go back to work"; p. 15: "announced that we could get rice after we registered our names and everyone could go back to work in our own previous positions"; p. 11-12: "I was forced to vacate my house to a mountainous area and upon reaching Wat Chrak Sdech pagoda, I heard an announcement that former public servants, soldiers or students could go and get rice distribution and that they could return to their previous work place"; p. 19: "A. On that day, there was a loud speaker, an announcement was made over the loud speaker to search for former soldiers and civil servants and the announcement was aimed to search for former officials and officers so that they could get rice and while the announcement was being made, names of people were registered in the list and we -- they told lies to all of us that we could go back to work"; p. 73: "they made announcement for people who would come to register as former civil servants in exchange for rice and the working group composed of armed people and militia"; p. 74: "They made an announcement to look for civil servants and military personnel to come and register their names in exchange for rice so that they would be sent to be restated in their previous positions. [...] From what I heard, it seems that they didn't look for any innocent or ordinary people; they were searching for civil servants and military personnel."

⁵⁹ E3/5201, p. 3: "at Wat Chrak Sdek the Khmer Rouge made loudspeaker announcements looking for LON Nol regime officials and inviting the brothers and sisters who did any work in the past to return to their former work".

35. With respect to the Second Reference, which, in the view of the Lead Co-Lawyers amounts to discussion of evidence rather than factual findings or conclusions, it is added that the extent of reliance on Sam Sithy's WRI to make *factual findings* was limited to those concerning the overall policy of the CPK to target Khmer Republic officials. Not to mention, that this factual finding was not based on a singular reference to his WRI but to the evidence and factual conclusions arrived at in paragraphs 503-515. The Nuon Chea Appeal Brief does not challenge the reference or reliance to Sam Sithy's WRI in relation to the legal findings.

36. Even assuming that the determination of the Supreme Court Chamber can extend beyond the challenges contained and reasoned in the appeal briefs, the Lead Co-Lawyers submit that these challenges ought to be viewed not only in the context of the appellate standard that prescribes that findings on fact cannot be lightly disturbed on appeal,⁶⁰ but also in the context of the following circumstances.

C. Interests of the Consolidated Group

37. The Lead Co-Lawyers represent a consolidate group of Civil Parties which was numbered at a total of 3,869 at the time of the Trial Judgement. A significant number of these Civil Parties are of advanced age and have been participating in the proceedings as early as 2010. A large number of these Civil Parties had made their applications to participate as early as 2007.

38. The Lead Co-Lawyers and the Civil Parties are also mindful of the advance age of the Co-Accused and Internal Rules 23*bis* and of the fact that the death of the accused also ends all Civil Party proceedings against them at the ECCC.⁶¹

39. The Lead Co-Lawyers are conscious of the fact a Trial Judgement becomes "final" only upon the rejection of appeals.⁶² On the same note, the Lead Co-Lawyers stress that both the Accused and the Victims enjoy a right to legal certainty according to the fundamental

⁶⁰ *Duch* Appeal Judgement, para. 17 relying on *Furundžija* Appeal Judgement, para. 37.

⁶¹ See also Article 7(1) of the Cambodian Code of Criminal Procedure as cited in *Termination of the Proceedings Against the Accused Ieng Thirith*, E359/1, 27 August 2015, para. 10.

⁶² Internal Rule 111(6).

principles of the ECCC.⁶³ Safeguarding the interests of both the “Accused and Victims” is one of the fundamental principles of the ECCC.⁶⁴

40. Needless to say, the need for an expeditious trial and balance of rights of *all* parties has been expressly recognised in the Internal Rules.⁶⁵ The Lead Co-Lawyers would like to emphasize that the Civil Parties have been respectful of the fair trial rights of the Defence since the beginning of the trial and on appeal. However, the assertion of the right of the civil parties to obtain a timely verdict and expediency of proceedings, like the accused,⁶⁶ as part of fair trial rights recognised by the Supreme Court Chamber⁶⁷ can hardly be emphasized.

41. Lastly, a Chamber has the discretion to rely on a portion of the evidence even if the rest of the evidence from the same author is considered unreliable.⁶⁸ Without showing that the limited reliance in the Trial Judgement on the factual and legal findings citing to Sam Sithy’s WRI constitute errors that invalidate the judgement or occasion a miscarriage of justice,⁶⁹ the Lead Co-Lawyers plead that the grant of the Request does not respect the balance of rights of all parties and would siphon the time and resources of the Chamber towards fact-fishing as the Civil Parties await the verdict.

V. RELIEF REQUESTED

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

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

Respectfully submitted,

⁶³ Internal Rule 21(1).

⁶⁴ Internal Rule 21(1)(a).

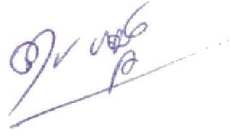
⁶⁵ Internal Rules, Rule 12^{ter} (1).

⁶⁶ International Covenant on Civil and Political Rights, Article 14(1) reads: “[a]ll persons shall be equal before the courts and tribunals.”

⁶⁷ Decision on Co-Prosecutors and Civil Party Lead Co-Lawyers’ Request for Additional Time for Examination of SCW-5, **F26/2/2**, 30 June 2015, para. 7.

⁶⁸ *Čelebići* Appeal Judgement, para. 497; *Kupreškić* Appeal Judgement, para. 156; *Musema* Appeal Judgement, para. 89.

⁶⁹ Internal Rule 104(1).

Date	Name	Place	Signature
18 September 2015	PICH ANG Lead Co-Lawyer	Phnom Penh	
	Marie GUIRAUD International Lead Co-Lawyer	Phnom Penh	