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EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

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**CO-PROSECUTORS' RESPONSE TO NUON CHEA'S SIXTH REQUEST TO
CONSIDER AND OBTAIN ADDITIONAL EVIDENCE IN CONNECTION WITH
THE APPEAL AGAINST THE TRIAL JUDGMENT IN CASE 002/01**

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I. Introduction

1. The Co-Prosecutors hereby respond to Nuon Chea's Sixth Request to Consider and Obtain Additional Evidence in Connection with the Appeal Against the Trial Judgment in Case 002/01¹ ("Sixth Additional Evidence Request"). Nuon Chea seeks to admit 22 additional documents and summon two additional witnesses on appeal. The Co-Prosecutors submit that Nuon Chea has failed to carry his burden to demonstrate that any of these documents, or any testimony from the requested witnesses, could have been a decisive factor in the Case 002/01 Judgment within the meaning of Rule 108(7), nor do the interests of justice require their admission pursuant to Rule 104(1). The Chamber should deny the entirety of the Sixth Additional Evidence Request.
2. The Sixth Additional Evidence Request is entirely untethered from any reasonable conception of the exceedingly limited categories of evidence that may be admitted on appeal as identified in the Internal Rules and relevant jurisprudence. These requested documents have no plausible connection to the crimes for which Nuon Chea was convicted in the Case 002/01 Judgment.
3. As will be explained further below, many of the documents that are the subject of this request were available before and/or during trial in Case 002/01, so are not "new" evidence at all. Moreover, in the process of putting these documents forward, Nuon Chea frequently misleads the Chamber as to their content and omits conflicting evidence provided by the same witnesses. His submissions are, at base, entirely speculation, conjecture, and innuendo.
4. More importantly, however, even if these documents reflected what Nuon Chea would like them to—which they do not—none would have any impact whatsoever on the findings of the Trial Chamber in Case 002/01. As such, the Sixth Additional Evidence Request is frivolous, and does nothing but delay the issuance of final judgment in Case 002/01.
5. Nuon Chea is self-conscious enough to take the time to protest that his Sixth Additional Evidence Request is not: "an unhinged lunatic conspiracy theory designed to obfuscate the issues and avoid the question of criminal responsibility."² Whether Nuon Chea is "convinced that Vietnam, together with internal factions within the CPK, played a

¹ F2/8 Nuon Chea's Sixth Request to Consider and Obtain Additional Evidence in Connection with the Appeal Against the Trial Judgment in Case 002/01, 11 September 2015 ("Sixth Additional Evidence Request") (notified in Khmer on 25 September 2015).

² F2/8 Sixth Additional Evidence Request, at para. 17.

decisive role”,³ he makes no showing that Vietnam or factional infighting within his party played any role in the crimes for which he was convicted in Case 002/01. To justify admission of new evidence on appeal of a lengthy trial (which was itself preceded by a lengthy investigation in which Nuon Chea took part), Nuon Chea must substantiate conspiracy claims with facts that withstand scrutiny, and show how they are relevant to his liability for the crimes for which he has been convicted. This he has entirely failed to do.

6. Nuon Chea seeks sympathy by referencing vacuous statements he has made regarding his “moral responsibility”.⁴ The ECCC, however, is a court of law. As Nuon Chea is well aware, it does not decide moral responsibility, it decides criminal responsibility, and in that regard Nuon Chea has been clear as to his position. As he stated in the closing arguments in Case 002/01 “it is clearly indicated that I was not engaged in any commission of the crimes as alleged by the Co-Prosecutors. In short, I am innocent in relation to those allegations.”⁵
7. The Trial Chamber, over a year ago, (and rightly, in the view of the Co-Prosecutors) found otherwise. The Co-Prosecutors respectfully request this Chamber to summarily dismiss this dilatory request, meant to delay this Chamber from issuing its own judgment as to Nuon Chea’s criminal guilt or innocence.

II. Procedural History

8. On 7 August 2014, the Trial Chamber issued its Judgment in Case 002/01,⁶ convicting Khieu Samphan and Nuon Chea of the crimes against humanity of extermination (encompassing murder), persecution on political grounds, and other inhumane acts (comprising forced transfer, enforced disappearances and attacks against human dignity). These convictions were based on the charges in the Closing Order in relation to the movements of the population (phase 1 and 2) and the executions of former Khmer Republic officials at Tuol Po Chrey.
9. On 29 September 2014, Nuon Chea filed his Notice of Appeal against the Trial Judgment,⁷ and on 29 December Nuon Chea filed his Appeal Brief, which included requests for calling five additional witnesses.⁸ The Co-Prosecutors filed their response

³ F2/8 Sixth Additional Evidence Request, at para. 17.

⁴ F2/8 Sixth Additional Evidence Request, at para. 17.

⁵ E1/237.1 Trial Transcript, 31 October 2013, at 09.05.37.

⁶ E313 Case 002/01 Judgment, 7 August 2014.

⁷ E313/1/1 Notice of Appeal Against the Judgment in Case 002/01, 29 September 2014.

⁸ F16 Nuon Chea’s Appeal Against the Judgment in Case 002/01, 20 December 2014.

on 24 April 2015.⁹ Since filing his Appeal Brief, and prior to the Sixth Additional Evidence Request, Nuon Chea has filed five additional evidence requests.¹⁰

10. On 12 August 2015, Nuon Chea made a request for 30-page extension for his prospective Sixth Additional Evidence Request.¹¹ On 17 August 2015, the Chamber granted Nuon Chea's request.¹² Nuon Chea subsequently filed his Sixth Additional Evidence Request in English only on 11 September 2015, and in Khmer on 25 September 2015.¹³
11. On 30 September 2015 the Co-Prosecutors made a request to the Supreme Court Chamber for a 15-page extension for their response to Nuon Chea's Sixth Additional Evidence Request,¹⁴ and on 5 October 2015 the Supreme Court Chamber granted the Request.¹⁵

III. Applicable Law

12. Nuon Chea seeks to admit the evidence identified in the Sixth Additional Evidence Request pursuant to Rule 108(7) and/or Rule 104(1).¹⁶ In applying Internal Rule 108(7), the Supreme Court Chamber ("SCC") has established a three-pronged test, pursuant to which the moving party must establish that the new evidence proposed for admission on appeal: (i) was unavailable at trial despite the exercise of due diligence; (ii) could have been a decisive factor in reaching the decision under appeal; and (iii) pertains to specific findings of fact by the Trial Chamber.¹⁷ In relation to the third prong, it is

⁹ F17/1 Co-Prosecutors' Response to Case 002/01 Appeals, 24 April 2015.

¹⁰ 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; F2/4 Third Request to Consider and Obtain Additional Evidence in Connection with the Appeal Against The Trial Judgment in Case 002/01, 25 November 2014; F2/6 Nuon Chea's Fourth Request to Consider Additional Evidence in Connection with the Appeal Against the Trial Judgement in Case 002/01, 15 June 2015; F2/7 Nuon Chea's Fifth Request to Consider and Obtain Additional Evidence in Connection with the Appeal Against the Trial Judgement in Case 002/01, 25 June 2015.

¹¹ F27 Nuon Chea's Urgent Request for an Extension of the Page Limit for its Forthcoming Sixth Request to Consider and Obtain Additional Evidence in Connection with the Appeal Against the Trial Judgement in Case 002/01, 12 August 2015.

¹² F27/1 Decision on NUON Chea's Request for an Extension of the Page Limit for his Prospective Sixth Request for Additional Evidence, 17 August 2015.

¹³ F2/8 Sixth Additional Evidence Request.

¹⁴ F2/8/2 Co-Prosecutors' Request for Additional Pages and to File in One Language in Response to Nuon Chea's Sixth Additional Evidence Request, 30 September 2015.

¹⁵ F2/8/2/1 Decision on the Co-Prosecutors' Request for Page Extension for Their Prospective Response to Nuon Chea's Sixth Request for Additional Evidence, 5 October 2015.

¹⁶ Paragraph 149 of the Sixth Additional Evidence Request states "Within the ECCC framework, the admission of new evidence on appeal is governed by ECCC Internal Rules 104(1) and 107(1)." The reference to Rule 107(1) appears to be an error, as that Rule governs time limits for immediate appeal.

¹⁷ F2/5 Decision on Part of Nuon Chea's Requests to Call Witnesses on Appeal, 29 May 2015 ("SCC Witness Decision"), at para. 16.

important to note that, pursuant to the plain language, relevance must be to the findings of fact of the Trial Chamber, not of a party's arguments on appeal. The SCC has emphasized that the demonstration that the evidence was not available at trial despite the exercise of due diligence "is vital to avoid disruptive and inefficient litigation strategies."¹⁸ The SCC has indicated that the relevant date for unavailability for trial pursuant to Rule 108(7) was 31 October 2013, the date of the conclusion of Closing Statements in Case 002/01.¹⁹

13. This rule establishes a high standard for admitting new evidence on appeal. Rather than mere relevance, the evidence must be of such weight and significance that it could have been "a decisive factor in reaching the decision at trial." Such a high standard is crucial to avoid the appeal deteriorating into a second trial, unduly prolonging proceedings, and promoting inefficient litigation.²⁰ Rule 108(7) also emphasizes that all evidence admitted pursuant to it must satisfy Rule 87(3), and therefore, as such, must not be, *inter alia*, "irrelevant or repetitious", "unsuitable to prove the facts it purports to prove", or "intended to prolong proceedings or is frivolous." The SCC has confirmed that that the rules governing the admissibility of evidence generally under 87(3) apply to the SCC's consideration of calling and administering evidence before it.²¹
14. The SCC has also found that it has discretionary power pursuant to Rule 104(1) to admit new evidence "where the interests of justice so require, taking into account the specific circumstances of the case."²² "In making this determination, the Chamber will consider whether the evidence is conducive to ascertaining the truth."²³ The Co-Prosecutors submit that the "interests of justice" and the "specific circumstances of the case" would perforce include consideration of the three factors the SCC has identified to be relevant to consideration of new evidence pursuant to Rule 108(7). Moreover, it stands to reason that it would be counterproductive to use this discretionary power to such an extent that it obviates the gatekeeping purposes for which such a high standard for admitting new evidence was set in Rule 108(7), *i.e.*, to have the exception swallow the rule. Reflecting that view, the ICTY Appeals Chamber has found that:

¹⁸ F2/5 SCC Witness Decision, at para. 16.

¹⁹ F2/5 SCC Witness Decision, at para. 67.

²⁰ *Prosecutor v. Kupreškić et al.*, IT-95-16-A, Decision on the Motions of Drago Josipović, Zoran Kupreškić and Vlatko Kupreškić to Admit Additional Evidence Pursuant to Rule 115 and for Judicial Notice to be Taken Pursuant to Rule 94(B), 8 May 2001, at para. 3.

²¹ 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 April 2015, at para. 16.

²² F2/5 SCC Witness Decision, at para. 17.

²³ F2/5 SCC Witness Decision, at para. 17.

The admission of evidence is in the “interests of justice” if it is relevant to a material issue, if it is credible and it is such that it would probably show that the conviction or sentence was unsafe. The Appeals Chamber has interpreted this latter criterion to mean that had the Trial Chamber had such evidence before it, it probably would have come to a different result.²⁴

15. The burden of proving that new evidence should be admitted on appeal rests squarely with the moving party.²⁵ As the ICTY Appeals Chamber has found, “the applicant bears the burden of identifying with precision the specific finding of fact made by the Trial Chamber to which additional evidence is directed, and of specifying with sufficient clarity the impact additional evidence could have had upon the Trial Chamber’s decision.”²⁶ In the absence of such a showing by the moving party, this Chamber may summarily deny the request.²⁷
16. Even once new evidence is admitted on appeal, the normal standard of review on appeal applies. Therefore, that evidence must be of such weight relevant to other evidence that was before the Trial Chamber on that issue, and go to such a crucial issue in the Judgment, that no reasonable trier of fact could have reached the conclusion reached in the Judgment.

IV. Response

17. Nuon Chea seeks to admit 22 documents and call two witnesses. Nuon Chea fails to carry his burden of showing that any of the documents meet the standard for admission of new evidence on appeal, or of justifying the calling of either witness. The Co-Prosecutors will respond to each of the documents below. It is first necessary, however, to address a number of preliminary points.

A. Nuon Chea’s Attempt to Rewrite the History of the Khmer Rouge in his Favour is Unpersuasive

18. Almost half of Nuon Chea’s submission is a section entitled “The Head and Tail of the Crocodile” which has little to do with his request to admit new evidence or call

²⁴ *Prosecutor v Kupreskic et al.*, IT-95-16-A, Decision on the Admission of Additional Evidence Following Hearing of 30 March 2001, 11 April 2001, para 6.

²⁵ **F2/5** SCC Witness Decision, at para. 16; *Prosecutor v. Kvočka et al.*, IT-98-30/1-A, Decision on Appellants’ Motions to Admit Additional Evidence Pursuant to Rule 115, 16 February 2004 (noting that “Appellant Prcac has not established that [the evidence] could have been a decisive factor in reaching the decision at trial”).

²⁶ *Prosecutor v. D. Milosevic*, IT -98-29/1-A, "Decision on Dragomir Milosevic's Third Motion to Present Additional Evidence", 8 September 2009, para. 11.

²⁷ *Prosecutor v. D. Milosevic*, IT -98-29/1-A, "Decision on Dragomir Milosevic's Third Motion to Present Additional Evidence", 8 September 2009, para. 11.

additional witnesses. Rather, it is an attempt to put forth in a public filing his own selective and distorted version of history in order to excuse the crimes of his regime. So dubious are the historical facts asserted that the submission resorts to citing as evidence the Khmer Rouge's own paranoid propaganda,²⁸ and evidence originally contained in S-21 "confessions".²⁹ An example of the distortions is Nuon Chea's central claim that "we know that these plans are true because they actually happened. Sao Phim did attempt a coup d'etat."³⁰ The statement is not footnoted and totally unsupported. Other sources cited in this section contradict the claim. Even as his own men were being purged by Centre forces, Sao Phim naively refused to believe he was being targeted by Pol Pot and Nuon Chea and set off for Phnom Penh with only six bodyguards. Surrounded and shot by Centre forces, Phim committed suicide. Then, typical of what Nuon Chea's submission calls the "measured approach"³¹ of Pol Pot and Nuon Chea towards their perceived enemies, Sao Phim's wife and children were murdered.³²

19. More importantly, even were all of Nuon Chea's paranoid assertions true and the merciless and murderous Khmer Rouge leadership had been riddled with internal rivalries and conspiracies, this would have no impact on the criminal charges at issue in this case. Nowhere in this submission does Nuon Chea even attempt to claim that the inhumane First and Second forced transfers were not a Centre policy—indeed, he has previously³³ conceded it was a policy he supported—nor does he address in this section the Centre policy of targeting Lon Nol officers and high officials throughout Cambodia: the policies that are the subject of this appeal. Nuon Chea's ultimate goal is to show that there was an insurgency in Democratic Kampuchea. But even Nuon Chea does not

²⁸ To prove the existence of the Khmer Rouge's imaginary conspiracy the submission cites four times to the CPK's own propaganda—a press release ludicrous on its face listing names of cadres already purged and that of Son Ngoc Minh, the one-time leader of Pol Pot's and Nuon Chea's party who had died in China in 1972. **F2/8 Sixth Additional Evidence Request**, at fns. 110, 112, 114 and 211; *see also* *ibid.* at fn. 99, citing the "Press Communiqué of the Spokesman of the Ministry of Propaganda and Information of the Democratic Kampuchea on the Annihilation of the New Plan of Coup d'Etat Fomented by the Socialist Republic of Vietnam Aiming at Overthrowing Democratic Kampuchea", 25 June 1978.

²⁹ **F2/8 Sixth Additional Evidence Request**, at para. 45.

³⁰ **F2/8 Sixth Additional Evidence Request**, at para. 25.

³¹ **F2/8 Sixth Additional Evidence Request**, at para. 51.

³² **E3/1593 Kiernan, The Pol Pot Regime**, pages 397-400, at ENG 01150205-01150207.

³³ *See, e.g.*, **E1/237.1 Transcript**, 31 October 2013, at 10.39.16 ("In summary, the CPK has clear reasons for the evacuation of people. The evacuation was to ensure their safety and to liberate them from slavery and injustice."); **E1/14.1 Transcript**, 22 November 2011, at 15.28.03 ("[T]he meeting made the following decision unanimously: one, in case Phnom Penh is liberated, we have to evacuate the people from Phnom Penh and from city centres temporarily in order to analyze the situation for a period of time; in particular to analyze the actual attitude of Vietnam.")

claim that any of the crimes for which he was convicted in Case 002/01 were committed as part of that insurgency.

20. It is not surprising that people resist a dictatorial regime targeting them for death, destroying their religion and family life, and offering instead nothing but misery and terror. Clearly, many Cambodians resisted Pol Pot's regime when they could. But Nuon Chea's attempts to blame those resisting his crimes for the crimes themselves is utterly unsupported by any facts in the Sixth Additional Evidence Request.
21. Nuon Chea's attempts to show the relevance of the evidence subject to this request are rife with conjecture and misrepresentations. For example, Nuon Chea seeks to rely on the evidence of Toat Thouen to support his conspiracy theory,³⁴ even though Toat Thouen, who Nuon Chea described as "the best placed witness to test Nuon Chea's key overarching defence in both segments of Case 002"³⁵ testified before this Chamber that in regards to any plan to rebel involving Ruos Nhim, Sao Phim and others he "cannot say whether it was correct or not."³⁶ Nuon Chea again relies on Toat Thoeun's evidence for the claim that weapons were collected and stored to aid in a rebellion,³⁷ even though Toat Thoeun testified before this Chamber that no such purpose existed:

[Counsel for Nuon Chea]: Was that the original intention? To hide these weapons so that Nhim, you and others could start an armed rebellion against Pol Pot?

[SCW -5]: There was no such rationale behind.³⁸

...

[SCW -5]: The weapons were not stored secretly to start a rebellion against Pol Pot at the outset.³⁹

22. At times Nuon Chea's story breaks free of any factual anchor whatsoever. For example he asserts, without any evidence, that "[t]he Defence's view is that the Siem Reap explosion was coordinated by long-time North Zone secretary Koy Thoun together with Region 106 secretary Soth..."⁴⁰ Elsewhere he feels it proper to unapologetically provide his preferred version of events, without citation:

The Defence believes the likely explanation for [early attempts at rebellion] is that the Kampuchean' Workers' Party decided that zone leaders should initially act on their own initiative and take every

³⁴ F2/8 Sixth Additional Evidence Request, at paras. 32, 38 .

³⁵ F2/6 Nuon Chea's Fourth Request to Consider Additional Evidence in Connection with the Appeal Against the Trial Judgement in Case 002/01, 15 June 2015, at para. 24 (emphasis in original).

³⁶ F1/3.1 Transcript, 6 July 2015, at 11.03.04.

³⁷ F2/8 Sixth Additional Evidence Request, at para. 38.

³⁸ F1/3.1 Transcript, 6 July 2015, at 10.48.07.

³⁹ F1/3.1 Transcript, 6 July 2015, at 10.56.01.

⁴⁰ F2/8 Sixth Additional Evidence Request, at para. 44.

responsibility available to them to foment unrest, chaos and internal rebellion within the country. However, in anticipation of the possible failure of these individual attempts, the zones would also prepare for the possible eventual coordination and escalation of their efforts. This grander plan, in the Defence's view, was ultimately Vietnam's 'Plan A'. ... Most importantly, however, the Defence's view is that 'Plan A' could only be implemented when Vietnam gave the green light.⁴¹

To be clear, Nuon Chea included not a single citation to support any of the claims in that paragraph.

23. This speculation and story-telling continues elsewhere, with Nuon Chea asserting that "certain details of 'Plan A' are shadowy and limited"⁴² but not letting that stop him from asserting in the same paragraph: "The Defence's view is that these plans, which each intended to undertake an attack in distinct ways, were likely intended to form a comprehensive, coordinated, large-scale attack to encircle and crush Pol Pot and the DK government."⁴³ Again, he provides no citations to support these views, and yet he claims it is unfair that "an air of controversy and conspiracy"⁴⁴ surrounds his theories.

B. Nuon Chea Impermissibly Relies on Evidence Not Admitted or Requested to be Admitted

24. In the course of attempting to substantiate his revisionist Khmer Rouge history, Nuon Chea impermissibly relies on a large number of evidentiary documents that are not on the Case File and that he has not sought to have admitted at any stage in Case 002/01.⁴⁵ He does not bring this to the attention of this Chamber or try to explain it in any way. These documents include newspaper articles,⁴⁶ book chapters,⁴⁷ a dissertation,⁴⁸ a

⁴¹ F2/8 Sixth Additional Evidence Request, at para. 46.

⁴² F2/8 Sixth Additional Evidence Request, at para. 47.

⁴³ F2/8 Sixth Additional Evidence Request, at para. 47.

⁴⁴ F2/8 Sixth Additional Evidence Request, at para. 21.

⁴⁵ See F2/8 Sixth Additional Evidence Request, at fns. 61, 63, 70, 71, 72, 76 82, 83, 84, 95, 97, 122, 129, 143, 148, 152, 154, 155, 181, 182, 183, 198, 199, 216, 222, 231 243, 247, 248, 257.

⁴⁶ F2/8.1.26 Attachment 26: Kuch Naren, 'PM Orders Senator's Arrest Over Facebook Post', Cambodian Daily, 14 Aug 2015, 11 September 2015 (fn. 76); F2/8.1.24 Attachment 24: Nayan Chanda, 'The Timetable for a Takeover' Far Eastern Economic Review, 23 February 1979, 11 September 2015, (fns 63, 72, 222, 243, 247, 248); F2/8.1.29 Attachment 29: Anthony Paul, 'Plot Details Filter Through', Far Eastern Economic Review, 19 May 1978, 11 September 2015, (fns 143, 148, 152, 155, 182, 183, 198, 199); F2/8.1.30 Attachment 30: James Fenton, 'Cambodia: Communism Alters Lifestyle', Washington Post, 24 Nov 1974, (fn. 181); F2/8.1.32 Attachment 32: Nayan Chanda, 'Cambodia: Fifteen Days that Shook Asia', in Far Eastern Economic Review, 19 Jan 1979, 11 September 2015 (fn. 257).

⁴⁷ F2/8.1.23 Attachment 23: Hoang Van Hoan, A Drop in the Ocean: Hoang Van Hoan's Revolutionary Reminiscences 1988 (extracts), 11 September 2015 (fns 70, 82, 231); F2/8.1.28 Attachment 28: Margaret Slocumb, The People's Republic of Kampuchea, 1979-1989: The Revolution after Pol Pot, 2003 (extracts), 11 September 2015 (fns 95, 97, 122); F2/8.1.31 Attachment 31: Huang Hua, 'Problems with Indochina, Albania and Yugoslavia', in King C. Chen (ed.), China and the Three Worlds, 1979 (extract), 11 September 2015 (fn. 216).

conference paper,⁴⁹ a Human Rights Watch report,⁵⁰ a U.S. congressional debate,⁵¹ and an untranslated document.⁵²

25. Despite the fact that all, except three,⁵³ of these documents were available at trial, Nuon Chea did not seek to have them put before the Trial Chamber in Case 002/01; nor has he requested their admission in any of the six requests for additional evidence he has filed in the appeal thus far. In fact, the majority of these documents were not only available during trial, they were also available during the investigation, and in fact since the 1980s. Nuon Chea clearly failed to make timely requests during the investigation or trial to have these documents admitted, and he is now attempting to surreptitiously remedy that failure belatedly on appeal.
26. Moreover, in relying on these documents that are not on the case file, Nuon Chea repeatedly misrepresents their content both in substance and context. For example, Nuon Chea relies on a dissertation as the sole support for the claim that Vietnam “cobbled Cambodian defectors and refugees”⁵⁴ together into a military front beginning in the summer of 1978. Reference to the cited page of the dissertation reveals no such evidence. Instead, the author merely states that in late 1977 “the Vietnamese withdrew from Cambodia bringing many Khmer refugees with them.”⁵⁵ Not only does this predate Nuon Chea’s asserted timetable by six months, there is absolutely no mention of the refugees becoming part of any military group.
27. Unfortunately this misrepresentation is not an isolated event in regards to these documents not on the Case File. Nuon Chea misrepresents a source again in the very

⁴⁸ **F2/8.1.25** Attachment 25: Jon James Alexiou, ‘The Foreign Policy of the People’s Republic of China Towards the Socialist Republic of Vietnam, 1975-1979’ 1982 (extracts), 11 September 2015 (fns 71, 234).

⁴⁹ **F2/8.1.22** Attachment 22: Christian Oesterheld ‘East-German Socialism and the Khmer Rouge Revolution: Insights from the GCR’s Diplomatic Archives’, Vienna 10th International Academic Conference, 3 June 2014, pp. 559-547, 11 September 2015 (fn. 61)

⁵⁰ **E347.3** Human Rights Watch, *30 Years of Hun Sen: Violence, Repression, and Corruption in Cambodia*, 9 April 2015 (fn. 129).

⁵¹ **F2/8.1.27** Attachment 27: U.S. Policy Towards Indochina Since Vietnam’s Occupation of Kampuchea: Hearings Before the Subcommittee on Asian and Pacific Affairs of the Committee on Foreign Affairs, House of Representatives’, 15, 21, 22 Oct 1981 (extracts), 11 September 2015 (fns. 83, 84).

⁵² **F2/8.1.21** Attachment 21: ‘Tweed Karner der Staten – Generaal’, no. 587, 1976-1977, pp. 1171-1172, 11 September 2015 (fn. 61)

⁵³ **F2/8.1.22** Attachment 22: Christian Oesterheld ‘East-German Socialism and the Khmer Rouge Revolution: Insights from the GCR’s Diplomatic Archives’, Vienna 10th International Academic Conference, 3 June 2014, pp. 559-547, 11 September 2015; **E347.3** Human Rights Watch, *30 Years of Hun Sen: Violence, Repression, and Corruption in Cambodia*, 9 April 2015; **F2/8.1.26** Attachment 26: Kuch Naren, ‘PM Orders Senator’s Arrest Over Facebook Post’, *Cambodian Daily*, 14 Aug 2015, 11 September 2015.

⁵⁴ **F2/8** Sixth Additional Evidence Request, at para. 25, fns. 71, 234.

⁵⁵ **F2/8.1.25** Jon James Alexiou, ‘The Foreign Policy of the People’s Republic of China Towards the Socialist Republic of Vietnam, 1975-1979’ 1982 (extracts), 11 September 2015, para. 92.

next citation, where Nuon Chea references as the sole support for the claim that the military front thus purportedly created by Vietnam from refugees was made with the intent that it “could participate in the invasion and then be installed as a new Vietnamese-controlled puppet government in Phnom Penh.”⁵⁶ The cited article states nothing of the sort. It merely conveys secondary hearsay of one “Hanoi-trained Kampuchean communist” in a refugee camp in Vietnam “discuss[ing] the question of a new government in Kampuchea”.⁵⁷

C. Nuon Chea’s Sixth Additional Evidence Request Represents a New Milestone in his Attempt to Devolve the Appeal in Case 002/01 into an Entirely New Trial

28. It is apparent that Nuon Chea hopes to turn the Case 002/01 Appeal into an entirely new trial where he will get a second attempt to construct what in his view is a plausible defence, while diverting attention from the approximately 25,000 pages of transcript and thousands of documents already on the record in Case 002/01 which proved his guilt. The Sixth Additional Evidence Request is a further step towards that goal. Nuon Chea’s additional evidence requests have, in almost every iteration, sought to have evidence admitted on the basis of increasing degrees of attenuation from the issues and facts that are the subject of the Case 002/01 Judgment.
29. Nuon Chea has already sought to introduce evidence on appeal premised on the most general of connections to Case 002/01, for example in relation to the fact that Ruos Nhim was arrested and killed in 1978, or that the evidence addresses the administrative structure of the Northwest Zone, or that Southwest Zone troops were used to purge the Northwest Zone. As the Co-Prosecutors have noted however, “no amount of additional information on any of these irrelevant topics would change the Judgment.”⁵⁸ Nuon Chea has also sought to admit new evidence on appeal not on the basis that it is related directly to the Case 002/01 Judgment, but on the basis that it is related to other new evidence that is already admitted or that he is seeking to have admitted.⁵⁹ The Co-Prosecutors have noted that “[t]his goes far beyond the highly stringent standards for

⁵⁶ F2/8 Sixth Additional Evidence Request, at para. 25.

⁵⁷ F2/8.1.24 Nayan Chanda, ‘The Timetable for a Takeover’ Far Eastern Economic Review, 23 February 1979, 11 September 2015, p. 34.

⁵⁸ F2/7/1 Co-Prosecutors’ Response to Nuon Chea’s Fifth Request to Consider and Obtain Additional Evidence in Connection with the Appeal Against the Trial Judgment in Case 002/01, 13 July 2015, para. 10.

⁵⁹ F2/7/1 Co-Prosecutors’ Response to Nuon Chea’s Fifth Request to Consider and Obtain Additional Evidence in Connection with the Appeal Against the Trial Judgment in Case 002/01, 13 July 2015, para. 11.

new evidence on appeal that this Chamber has rightly imposed.”⁶⁰ Furthermore, when this Chamber has granted Nuon Chea’s request to hear additional witnesses on appeal, Nuon Chea has exploited it as an opportunity to request extensive additional investigation concerning a witness who appeared.⁶¹

30. In the Sixth Additional Evidence Request, Nuon Chea no longer even claims that any individual piece of evidence he is putting forward is relevant or weighty enough to have affected the Judgment in Case 002/01. Instead, he is relegated to claiming that “[c]umulatively, it could have served as a decisive factor in key Trial Chamber findings... .”⁶² It is clear, therefore, that Nuon Chea will not place any limits on his own submissions in an attempt to abide by this Chamber’s jurisprudence regarding the narrow categories of evidence that are newly admissible on appeal.
31. Beyond even that, however, Nuon Chea also makes the claim in the Sixth Additional Evidence Request that the baseline requirements for evidence to be admitted at the ECCC contained in Rule 87(3) should not apply now that he is seeking to introduce new evidence on appeal. Nuon Chea argues that even if this Chamber finds that evidence is not admissible pursuant to Rule 87(3), “it should still be admitted under Rule 104(1) in the interests of justice.”⁶³ While this Chamber has found that Rule 104(1) allows it to admit evidence that does not meet the requirements of Rule 108(7), it does not allow for an exception to the minimum standards for admission laid out in Rule 87(3), as this Chamber has recognized.⁶⁴

D. Nuon Chea’s Sixth Additional Evidence Request is Mostly an Impermissible Attempt to Supplement his Appellate Argument

32. The Sixth Additional Evidence Request goes far beyond submitting a request for new evidence. It includes, in addition to the fanciful history already addressed: submissions on Nuon Chea’s perceptions regarding the burden of proof;⁶⁵ feverish ruminations on “an air of controversy and conspiracy surrounding the Defence’s arguments”;⁶⁶ opinion

⁶⁰ F2/7/1 Co-Prosecutors’ Response to Nuon Chea’s Fifth Request to Consider and Obtain Additional Evidence in Connection with the Appeal Against the Trial Judgment in Case 002/01, 13 July 2015, para. 11.

⁶¹ F28 Request for Investigative Action into Events Described During the Testimony of Sam Sithy, 7 September 2015.

⁶² F2/8 Sixth Additional Evidence Request, at para. 114.

⁶³ F2/8 Sixth Additional Evidence Request, at para. 157.

⁶⁴ 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 April 2015, at para. 16.

⁶⁵ F2/8 Sixth Additional Evidence Request, at para. 18.

⁶⁶ F2/8 Sixth Additional Evidence Request, at para. 21.

on Cambodian relations with Vietnam over the last 1,000 years;⁶⁷ and discussion of the Russian invasion of the Ukraine in 2014.⁶⁸

33. Nuon Chea requested,⁶⁹ and was granted,⁷⁰ an extension of 30 pages for his Sixth Additional Evidence Request. In making this request, Nuon Chea assured this Chamber that “the Defence has endeavoured to be succinct in drafting the request” and that “the mere summary of the most relevant parts of some, not all, of the documents that the Defence intends to introduce has already taken up 25 pages. There are still more WRIs and transcripts of approximately five witnesses not yet summarized.”⁷¹ The Co-Prosecutors note that in the Sixth Additional Evidence Request, no more than 20 pages is devoted to summaries of the totality of the documents suggested to be admitted.⁷² Under normal page limits, this would leave 10 pages for “background introduction, the discussion of law and the submissions.”⁷³ Almost the entirety of the extension granted is instead devoted to Nuon Chea’s misguided version of Khmer Rouge history, with the remainder, and then some, dedicated to attempting to buttress and supplement his arguments on appeal.
34. As the Co-Prosecutors have noted, and anticipated, in their response to Nuon Chea’s page extension request,

[B]ased on his previous five additional evidence requests, it is predictable that Nuon Chea will devote a substantial amount of text in the sixth additional evidence request to arguing how the additional evidence advances his position on appeal. ... [G]iven that a substantial part of each of these additional evidence filings is essentially devoted to supplementary appellate argument, it may be useful to place the extension in the context of the appeal as a whole.⁷⁴

The Co-Prosecutors then noted that, including the 60 pages of the Sixth Additional Evidence Request, at that time Nuon Chea had filed approximately 135 pages of

⁶⁷ F2/8 Sixth Additional Evidence Request, at para. 26.

⁶⁸ F2/8 Sixth Additional Evidence Request, at para. 57.

⁶⁹ F27 Nuon Chea’s Urgent Request for an Extension of the Page Limit for its Forthcoming Sixth Request to Consider and Obtain Additional Evidence in Connection with the Appeal Against the Trial Judgement in Case 002/01, 12 August 2015.

⁷⁰ F27/1 Decision on Nuon Chea’s Request for an Extension of the Page Limit for His Prospective Sixth Request for Additional Evidence, 17 August 2015.

⁷¹ F27 Nuon Chea’s Urgent Request for an Extension of the Page Limit for its Forthcoming Sixth Request to Consider and Obtain Additional Evidence in Connection with the Appeal Against the Trial Judgement in Case 002/01, 12 August 2015, para. 7.

⁷² See F2/8 Sixth Additional Evidence Request, at paras. 70-149.

⁷³ F27 Nuon Chea’s Urgent Request for an Extension of the Page Limit for its Forthcoming Sixth Request to Consider and Obtain Additional Evidence in Connection with the Appeal Against the Trial Judgement in Case 002/01, 12 August 2015, para. 7.

⁷⁴ F27/2 Co-Prosecutors’ Response to Nuon Chea’s Request for Page Limit Extension F27, 17 August 2015, para. 3.

additional evidence requests, a substantial part of which is essentially additional appellate argument.⁷⁵

35. Following that filing, Nuon Chea filed his request to investigate a witness that appeared before this Chamber on Nuon Chea's request, Sam Sithy.⁷⁶ That filing comprised an additional 16 pages of an attempt to disparagingly characterize on appeal the damaging evidence of Sam Sithy, thinly disguised as an investigatory request. Thus, through these filings alone, which do not comprise all of the filings that Nuon Chea has made regarding new evidence on appeal, he has filed approximately 150 pages of argument since his appeal brief. This is over seventy percent of the original 210 pages granted to Nuon Chea for his entire appellate argument, and over fifty percent of the 270-page limit ultimately imposed on Nuon Chea for his entire appeal after his page extension request was granted. Allowing Nuon Chea to proceed in this fashion thoroughly distorts the equality of arms regarding appellate arguments, allowing Nuon Chea not only to add and buttress appellate arguments, well beyond the filing deadline and page limits originally imposed, and to do so as a *de facto*, unauthorized reply to the Co-Prosecutors' Response.
36. Nevertheless, despite the extensive additional appellate argument in the Sixth Additional Evidence Request; the significant additional appellate argument in the previous additional evidence requests and other Nuon Chea filings; the more than a year that has passed since the Trial Judgment was issued; and the almost 10 months that have passed since Nuon Chea submitted his 270 page appeal brief, Nuon Chea has yet to demonstrate a precise or viable connection between his defence theory that he seeks to substantiate, and his convictions in Case 002/01. The Co-Prosecutors agree with the Supreme Court Chamber's view recently expressed on 2 October 2015 that even after all of his filings Nuon Chea has thus far failed to

precisely specify the exact import of the alleged rift within the CPK and of the activities to overthrow Pol Pot and Nuon Chea's leadership of the CPK on his individual criminal responsibility, namely, which factual findings of the Trial Chamber would be affected, and why, if they were to be overturned on appeal, this would invalidate, in whole or in part,

⁷⁵ **F27/2** Co-Prosecutors' Response to Nuon Chea's Request for Page Limit Extension F27, 17 August 2015, para. 4.

⁷⁶ **F28** Request for Investigative Action into Events Described During the Testimony of Sam Sithy, 7 September 2015.

Nuon Chea's conviction in relation to specific crimes and modes of liability.⁷⁷

37. Given the ample opportunity that Nuon Chea has already had to meet his burden in this regard, in the view of the Co-Prosecutors the consideration of all of the additional evidence requests Nuon Chea has submitted to date (as well as any future ones submitted for the same purposes), should end there. Nevertheless, even if Nuon Chea is able to remedy this failure, his defence theory fails on its merits.

E. Selective Admission of Evidence on Appeal Results in an Inherently Skewed Perspective of Reality

38. The Co-Prosecutors are compelled to reiterate a point they have made previously,⁷⁸ that it is not in the interests of justice nor conducive to ascertaining the truth to admit selective new evidence proposed by one party only in regards to issues on appeal, because the new evidence admitted as a result of such a process will provide an inherently skewed perspective of reality. Should the Chamber decide that it is in the interests of justice to reopen factual findings of the Trial Chamber, all parties should be invited to submit additional evidence relevant to the point under dispute.
39. In the Sixth Additional Evidence Request the distortion is heightened, because as shown below, Nuon Chea not only seeks to admit selective evidence regarding certain facts and issues in Case 002/01, but further seeks to cull the selected evidence so that only his viewpoint is admitted and any context or contradictions within that evidence is not considered. As just one of numerous examples, and as further addressed below, Nuon Chea seeks admission of the DC-Cam statement and one trial transcript of Lat Suoy, while failing entirely to note or bring to this Chamber's attention two additional days of transcript where Lat Suoy also testified, and a Written Record of Interview taken from Lat Suoy by the OCIJ.⁷⁹
40. Should such evidence be admitted, this Chamber must then consider the new evidence in the context of the entire evidentiary record, avoiding the natural inclination to give greater weight to testimony it heard or admitted itself over evidence on the same topic

⁷⁷ F2/4/3/3/6 Decision Requesting Submissions, 2 October 2015, at p. 3.

⁷⁸ See F2/7/1 Co-Prosecutors' Response to Nuon Chea's Fifth Request to Consider and Obtain Additional Evidence in Connection with the Appeal Against the Trial Judgment in Case 002/01, 13 July 2015, at para. 23; F2/6/2 Co-Prosecutors' Response to Nuon Chea's Fourth Request to Consider and Obtain Additional Evidence in Connection with the Appeal Against the Trial Judgment in Case 002/01, 30 June 2015, paras. 2, 14.

⁷⁹ See the discussion of how this skews Lat Suoy's evidence *infra*, responding to Nuon Chea request to admit DC-Cam Statement and trial transcript of Lat Suoy.

that was heard or admitted by the Trial Chamber. Moreover, the Co-Prosecutors submit, if any new evidence *is* admitted, the principle of fundamental fairness dictates that the other parties must be given a fair opportunity to rebut the new evidence. It would be incongruous to the interests of ascertaining the truth to admit a piece of new evidence proposed by one party but then deny the admission of further evidence from an adverse party that is directly relevant to the same factual finding and contradicts the other party's newly admitted evidence. For this reason, the ICTY, ICTR, and SCSL all directly provide in their respective Rules that parties affected by the admission of new evidence during the appellate phase of proceedings may present rebuttal evidence,⁸⁰ and the ICC Appeals Chamber has held that principle to be applicable in proceedings before that body as well.⁸¹

F. Nuon Chea's Sixth Additional Evidence Request Delays the Issuance of Final Judgment in Case 002/01

41. It is understandable that Nuon Chea would seek to forestall the issuance of a final judgment in Case 002/01 as long as possible. The Sixth Additional Evidence Request attempts to make strides towards accomplishing that goal, as have the previous additional evidence requests and requests to conduct further investigation of additional evidence admitted.⁸² Considering and ruling on the Sixth Additional Evidence Request will necessarily draw the time and attention of the Judges and staff of the Supreme Court Chamber away from final judgment deliberations and drafting. Additionally, should the Chamber grant any requests to hear additional witnesses on appeal, such hearings will further draw the attention of the Chamber away from work related to completing the final judgment.
42. As noted above, where the moving party has failed to carry its burden to justify the admission of additional evidence on appeal, this Chamber is entitled to summarily dismiss such requests.⁸³ As Nuon Chea has failed in this regard in relation to the Sixth Additional Evidence Request, and in regards to all outstanding additional evidence requests, the Co-Prosecutors respectfully submit that this Chamber should summarily

⁸⁰ The ICTY, ICTR and SCSL all directly provide in their respective Rules 115 that parties affected by the admission of new evidence during the appellate phase of proceedings may present rebuttal evidence.

⁸¹ *Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction*, ICC Appeals Chamber, 1 December 2014, ICC-01/04-01/06-3121-Red, para. 64.

⁸² **F28** Request for Investigative Action into Events Described During the Testimony of Sam Sithy, 7 September 2015.

⁸³ *Prosecutor v. D. Milosevic*, IT -98-29/1-A, "Decision on Dragomir Milosevic's Third Motion to Present Additional Evidence", 8 September 2009, para. 11.

dismiss all of the outstanding requests so that its attention and resources are not needlessly diverted further from the issuance of a final judgment in Case 002/01. As this Chamber has recognized “appeal proceedings must be concluded within a reasonable period”.⁸⁴

G. *Nuon Chea Fails to Carry His Burden of Proving that Any of the Additional Documents should be Admitted on Appeal, or that Either of the Requested Witnesses Should be Heard*

43. In the Sixth Additional Evidence Request, Nuon Chea seeks to admit 22 documents as new evidence and to have this Chamber summons two witnesses to testify. He seeks to admit the Written Record of Interview (WRI) of Witness 5;⁸⁵ two Case 002/02 trial transcripts of Witness Keo Loeur; two Case 002/02 trial transcripts of Witness Sem Hoeng; a Case 002/02 trial transcript of Witness Lat Suoy; one DC-Cam statement each of Witnesses 6, 7, Lat Suoy, and 2-TCW-918; four biographies claimed to be from the archives of the German Democratic Republic Ministry of State Security; and eight United States government diplomatic cables (entitled Cables 1-8). He seeks to have Witnesses 5 and 6 testify. The Co-Prosecutors will address each of these documents and proposed witnesses individually below, but first will make some generally applicable observations.
44. As will be shown, Nuon Chea’s submissions regarding the individual documents fail to accurately represent the content of the documents and are replete with speculation. Moreover, he often seeks to exclude from this Chamber’s consideration additional relevant and contradictory evidence provided by the very same witnesses whose transcripts and statements he seeks to have admitted.
45. None of the documents meet the standard for admission of new evidence on appeal, as none provide evidence that “could have been a decisive factor” in reaching the Judgment, nor would it be in the interests of justice to admit them at this stage. Indeed, this evidence has only the most attenuated relationship to the events addressed in the Case 002/01 Judgment, and relies on speculation built on conjecture. Temporally, none of the evidence proposed by Nuon Chea correlates to the period of the Tuol Po Chrey murders, or forced transfers for which Nuon Chea has been convicted in Case 002/01,

⁸⁴ 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 April 2015, para. 18; *see also* Internal Rule 108(4).

⁸⁵ For clarity, the Co-Prosecutors use the pseudonyms used by Nuon Chea in the Sixth Additional Evidence Request.

and thus none of it could have been a decisive factor in reaching the Judgment. Topically, Nuon Chea points to no evidence in any of the documents regarding Tuol Po Chrey; no exculpatory evidence regarding the policy to target former Lon Nol officials and soldiers or the forced transfers; and no evidence rebutting the finding that the hierarchical power structure was firmly in place during the events at Tuol Po Chrey for which Nuon Chea and Khieu Samphan have been convicted in Case 002/01.

46. Nuon Chea does not even attempt to assert that any of these pieces of submitted evidence, individually, could meet the standard for admission of new evidence on appeal. Instead, as noted above, he attempts to claim that “cumulatively” they could have been a decisive factor,⁸⁶ erroneously believing that relieves him of the obligation of demonstrating the import of any one piece of evidence.
47. Furthermore, even if this Chamber were to find that Nuon Chea has substantiated some connection between the proposed documents and the Case 002/01 Judgment, it would not be significant enough to overcome the extensive evidence available to the Trial Chamber of the effective hierarchical structure of the CPK. In relation to that, the Co-Prosecutors refer this Chamber to the portions of their response to the Nuon Chea Appeal Brief demonstrating the strength of the hierarchical power structure generally and between the Northwest Zone and the Centre.⁸⁷ Indeed, even previous witnesses that Nuon Chea has requested on appeal and which this Chamber has heard have only confirmed that Ruos Nhim dutifully sent messages and arrestees to the Party Centre.⁸⁸

i. WRI and Request to Call Witness 5

48. The Co-Prosecutors oppose Nuon Chea’s request to admit a WRI⁸⁹ from Witness 5 and to have him called to testify.⁹⁰
49. The WRI of Witness 5 could not have been a decisive factor in the Judgment nor should it be admitted on appeal in the interests of justice. First, the WRI is plainly irrelevant to the findings of fact contained in the Trial Judgment. It does not touch at all on the events at Tuol Po Chrey, the Centre’s effective hierarchical control over the Northwest Zone, or the forced movements that are the subject of Case 002/01. Moreover, evidence of resistance hastily organised by Sao Phim for reasons of self-preservation in late 1978 does not undermine the findings of Sao Phim’s role from the beginning of the CPK or

⁸⁶ F2/8 Sixth Additional Evidence Response, at para. 14.

⁸⁷ F17/1 Co-Prosecutors’ Response to Case 002/01 Appeals, 24 April 2015, paras. 293-300, 569-571.

⁸⁸ F1/3.1 Transcript, 6 July 2015, at 16.11.43.

⁸⁹ E319/13.3.39 Written Record of Interview of [Witness 5], 11 October 2013 (“Witness 5 WRI”).

⁹⁰ F2/8 Sixth Additional Evidence Request, at para. 71.

how he sought and loyally reported to and followed instructions from the CPK leadership.⁹¹ It has even less impact on the effective hierarchical nature of the Khmer Rouge structure in relation to the forced movements and events at Tuol Po Chrey in the Northwest Zone in 1975. The Trial Chamber also found that in 1978, Sao Phim had been “declared [an] internal enem[y] of the Party to be purged”,⁹² further demonstrating the consistency of the WRI to the Judgment’s findings on the structure of the CPK, the role of the Zones, and Nuon Chea’s personal responsibility.

50. Second, the WRI is unsuitable to prove the facts Nuon Chea purports it to prove. Nuon Chea claims that the WRI proves that Vietnam planned to overthrow the CPK regime via a *coup d’état* led by Sao Phim⁹³ and that there was “a degree of preparation to the revolt”.⁹⁴ This is a flagrant misrepresentation of the contents of the WRI. The WRI provides information on a nameless revolt led by Sao Phim that arose “quickly and spontaneously” only after the forces were already “surrounded by aircraft, tanks, and infantry” from the Centre,⁹⁵ and that “SAO Phim just gathered the forces and started it immediately”.⁹⁶ It provides evidence that Pol Pot considered the East Zone to be aligned with Vietnam, not that it actually was. Indeed, even in the passages quoted by Nuon Chea in the Sixth Additional Evidence Request, Witness 5 makes clear that the group he joined led by Sao Phim was created because Pol Pot “started to kill the East Zone people”, not vice-versa.⁹⁷ This was therefore a fight for survival, and not, as Nuon Chea misleadingly represents to this Chamber, “a push from the east against CPK forces” as part of an orchestrated plan.⁹⁸ Even less so does the WRI describe an attempted “coup d’etat” as Nuon Chea disingenuously claims it does.⁹⁹
51. Elsewhere, Nuon Chea implicitly suggests that weapons had been stockpiled in preparation for the revolt.¹⁰⁰ When read in context, the quote relied on merely notes that weapons were kept in a warehouse by the CPK at the Zone level,¹⁰¹ something expected of any military force. Additionally, Nuon Chea refers to “8,000 traitorous East Zone

⁹¹ See, e.g., E313 Trial Judgment, para. 773. See also, paras. 87, 89, 133, 203, 219, 309, 726-727, 729, 732-733, 735, 739, 741, 745, 749, 766, 777, 807-808, 810.

⁹² E313 Trial Judgment, para. 340.

⁹³ F2/8 Sixth Additional Evidence Request, at paras. 24-25, 52-53, 153.

⁹⁴ F2/8 Sixth Additional Evidence Request, at para. 73.

⁹⁵ E319/13.3.39 Witness 5 WRI, at A15-A25.

⁹⁶ F2/8 Sixth Additional Evidence Request, at para. 72, quoting Witness 5 WRI, at A17-A18.

⁹⁷ F2/8 Sixth Additional Evidence Request, at para. 72, quoting Witness 5 WRI, at A18.

⁹⁸ F2/8 Sixth Additional Evidence Request, at para. 48.

⁹⁹ F2/8 Sixth Additional Evidence Request, at para. 25 fn. 69.

¹⁰⁰ F2/8 Sixth Additional Evidence Request, at para. 73.

¹⁰¹ F2/8 Sixth Additional Evidence Request, at para. 72, quoting Witness 5 WRI, at A19.

troops”,¹⁰² though there is no basis in the WRI for the assertion that the group was all soldiers.¹⁰³

52. The Defence does not identify a single specific finding of the Judgment to which the proposed evidence relates.¹⁰⁴ This complete lack of specificity is not resolved by the section of the Request purporting to describe the “Importance of the Additional Evidence” in general terms.¹⁰⁵ Broad reference to how the evidence in totality “supports the Defence’s case” is patently insufficient.¹⁰⁶ This transparent attempt to circumvent the applicable criteria for admission of evidence on appeal should be rejected outright.
53. As there is no basis upon which to admit the evidence, there is consequently no reason to call Witness 5 to testify on appeal.

ii. Case 2/2 Transcripts of Keo Loeur and Sem Hoeun

54. The Co-Prosecutors oppose the request to admit the transcripts of the live testimony of witnesses Keo Loeur and Sèm Hoeun from Case 002/02.¹⁰⁷
55. The trial transcripts of these witnesses fail to meet the requisite criteria for evidence to be put before the Chamber on appeal, as they could not have affected the Judgment, nor is it in the interests of justice that they be admitted. First, the transcripts of both witnesses are irrelevant to the Case 002/01 Judgment. The limited evidence of a purportedly planned coup of Battalion 310 led by Oeun in the North Zone does not undermine any relevant findings in the Trial Judgment regarding the structure of the CPK, the role of the Zones or the individual responsibility of Nuon Chea. Nor does it impact upon the finding that Oeun had implemented Khmer Rouge policies.¹⁰⁸
56. The transcripts are also repetitive of the respective DC-Cam statements of the witnesses, which the Defence acknowledge are both on the Case 002/01 file¹⁰⁹ and therefore were before the Trial Chamber in drafting the Judgment. Nuon Chea misleadingly claims that the transcripts of witness Keo Loeur’s testimony provide “much more detailed evidence” on the purported planned coup than in his DC-Cam interview.¹¹⁰ In fact, the main points of his testimony, namely that: the alleged planned

¹⁰² F2/8 Sixth Additional Evidence Request, at para. 153; *see also*, *ibid.* para. 53.

¹⁰³ E319/13.3.39 Witness 5 WRI, at A17.

¹⁰⁴ F2/8 Sixth Additional Evidence Request, at paras. 71-75.

¹⁰⁵ F2/8 Sixth Additional Evidence Request, at paras. 152-155.

¹⁰⁶ F2/8 Sixth Additional Evidence Request, at paras. 152.

¹⁰⁷ F2/8 Sixth Additional Evidence Request, at paras. 77, 85.

¹⁰⁸ *See, e.g.*, E313 Trial Judgment, para. 470, fn. 1382.

¹⁰⁹ F2/8 Sixth Additional Evidence Request, at paras. 77, 85.

¹¹⁰ F2/8 Sixth Additional Evidence Request, at para. 78.

coup had some level of organization,¹¹¹ including weapons¹¹² and troops;¹¹³ the witness was asked to prepare food;¹¹⁴ there was no certainty that fighting would take place;¹¹⁵ the arrest of commander Oeun;¹¹⁶ and, that Oeun's confession was played to the soldiers at a 'study session'¹¹⁷ are already contained in his DC-Cam statement. Far from containing "limited information",¹¹⁸ Keo Loeur's DC-Cam statement contains all pertinent evidence that Nuon Chea now claims the transcripts of testimony have brought to light.

57. Similarly, Nuon Chea's characterisation of witness Sèm Hoeun's transcripts as "providing additional and more detailed evidence"¹¹⁹ than the DC-Cam statement on the alleged planned coup is misplaced. Indeed, Nuon Chea acknowledges that while testifying, "Sèm Hoeun confirmed his DC-Cam testimony in relation to a military coup attempt".¹²⁰ The witness's DC-Cam statement contains the same main points as in his testimony, namely: the witness's connection to 'traitorous networks' in 1975;¹²¹ the

¹¹¹ Compare **F2/8** Sixth Additional Evidence Request, at para. 79 ["he and 'the entire division' had been called to attend a meeting [...] where Oeun told them that: the regular soldiers would be sent to the front"] and **E3/5658** DC-Cam Statement of Keo Loeur, at 00863305 ["The troops were truly organized [...] I was ordered to organize the troops [...] They said that we had to prepare"].

¹¹² Compare **F2/8** Sixth Additional Evidence Request, at para. 80 ["while he did not personally see the weapons there, he did hear Oeun and 'the senior cadres speaking among themselves that the weapons had been brought in'"] and **E3/5658** DC-Cam Statement of Keo Loeur, at 00863305 ["They said that we had to prepare the weapons"].

¹¹³ Compare **F2/8** Sixth Additional Evidence Request, at para. ["Oeun told them that 'the regular force soldiers would be sent to the front battlefield'"] and **E3/5658** DC-Cam Statement of Keo Loeur, at 00863305 ["They said that we had to prepare the [...] troops"].

¹¹⁴ Compare **F2/8** Sixth Additional Evidence Request, at paras. 79, 81 ["As to the role of K-4 in the coup plot, Keo Loeur testified that "we would lend our hand in packaging food"] and **E3/5658** DC-Cam Statement of Keo Loeur, at 00863305 ["I prepared the food supplies"].

¹¹⁵ Compare **F2/8** Sixth Additional Evidence Request, at para. 82 ["According to Keo Loeur, 'no precise indication' was given for when the rebellion would begin"] and **E3/5658** DC-Cam Statement of Keo Loeur, at 00863305 ["I was assigned to do that though the fighting would break out or not"].

¹¹⁶ Compare **F2/8** Sixth Additional Evidence Request, at para. 82 ["two days after [Oeun] had been arrested"] and **E3/5658** DC-Cam Statement of Keo Loeur, at 00863288 ["They said that the division was traitorous. The Division Chairman [Oeun] [...] [was] arrested"].

¹¹⁷ Compare **F2/8** Sixth Additional Evidence Request, at para. 82 ["the soldiers in the division were called to a 'study session' 'where [Oeun's] confession on tape was [] played"] and **E3/5658** DC-Cam Statement of Keo Loeur, at 00863288 ["I used to study, and it was the division who trained me directly [...] After the Division Committee consisting of Ta Oeun, Ta Kim and Ta Yean was arrested [...] those in my unit [Batallion] were called subsequently [...] When we entered the school, there were presenters who played a recording for us to listen. It was the recording of Ta Kim and Ta Oeun [...] It was the description of their biographies [...] until the period of their traitorous activities"].

¹¹⁸ **F2/8** Sixth Additional Evidence Request, at para. 79.

¹¹⁹ **F2/8** Sixth Additional Evidence Request, at para. 86.

¹²⁰ **F2/8** Sixth Additional Evidence Request, at para. 86. The witness affirmed the contents of his DC-Cam statement when they were read back to him during testimony on a number of occasions, *see* **E1/319.1** Transcript, 22 June 2015 (Sèm Hoeun), p. 78, ln. 5; p. 82, lns 21-22.

¹²¹ Compare **F2/8** Sixth Additional Evidence Request, at para. 92 ["It started from 1975 that I was accused of being linked with traitorous network and I was under that accusation from 1975 up to 1977"] and **E3/7516** DC-Cam Statement of Sèm Hoeun, at 00876492-00876493 ["The Authority then sent me to be based in

witness transporting a convoy of trucks containing weapons to Kampong Cham upon Oeun's orders;¹²² the organisation and involvement of the battalion forces;¹²³ the apparent involvement of other zones in the planned rebellion;¹²⁴ and, the existence of the "Khmer Sar" organised by Oeun.¹²⁵ Moreover, the main details of the planned rebellion cited by Nuon Chea in the Sixth Additional Evidence Request come from Sèm Hoeun's DC-Cam statement on the case file, with the Defence acknowledging: "[a]s to the specifics of the coup itself, Sèm Hoeun had explained to DC-Cam".¹²⁶

58. Second, the transcripts are unsuitable to prove the facts that the Defence purports they prove. Nuon Chea asserts that the witnesses' transcripts "corroborate[] and substantiate[] evidence as to the nature of 'Plan A' [an alleged internal coup d'état sponsored by Vietnam] to overthrow Pol Pot, Nuon Chea and the legitimate DK government".¹²⁷ However, the transcripts fail to support this broad argument. The witness Keo Loeur acknowledged his lack of knowledge of the *coup d'état* plan,¹²⁸ testifying that he "saw the military trucks with the weapons on board [...] and when I asked about it, I was warned to mind my own business".¹²⁹ The witness Sèm Hoeun, when asked if he knew whether Oeun was collaborating with the Vietnamese or others, testified "I didn't know that if at any stage he was involve[d] in those alleged political

Preaek Phnov [...] Because I was a Chief of Battalion under Oeun's leadership, I was accused of being a traitorous string [...] It was in the year 1975."].

¹²² Compare F2/8 Sixth Additional Evidence Request, at paras 94-95 ["according to Sèm Hoeun, on one occasion, he followed an order from Division 310 commander Oeun and led a platoon which transported six trucks of stockpiled weapons to Kampong Cham"] and E3/7516 DC-Cam Statement of Sèm Hoeun, at 00876520 ["[Oeun] gave me a platoon to lead and six 55-trucks to transport weapons to hide in Kampong Cham [...] I did transport weapons to Kampong Cham"].

¹²³ Compare F2/8 Sixth Additional Evidence Request, at para 91 ["Sèm Hoeun explained that 'all members from regiment and battalion were called into the meeting'"] and E3/7516 DC-Cam Statement of Sèm Hoeun, at 00876520 ["We were ordered to stand by for further orders; when the time came, we were to [...] attack and seize Pôchentong Airport [...] Another battalion was ordered to get ready to attack the Radio Station. However, the plot was revealed"].

¹²⁴ Compare F2/8 Sixth Additional Evidence Request, at para. 87 ["Sèm Hoeun also appeared to suggest that other zones were involved"] and E3/7516 DC-Cam Statement of Sèm Hoeun, at 00876520 ["When all the leaders [of the planned rebellion] such as Oeun and Thuch [Koy Thuon was leader of the North Zone] were arrested"].

¹²⁵ Compare F2/8 Sixth Additional Evidence Request, at para. 97 ["Sèm Hoeun testified that he 'heard the phrase "Khmer Sar" after the arrest of Oeun'"] and E3/7516 DC-Cam Statement of Sèm Hoeun, at 00876520 ["Chief Oeun had his own nationalist conscience as well. He tried to build up internal forces called 'Khmer White' to struggle against the Khmer Rouge regime"].

¹²⁶ F2/8 Sixth Additional Evidence Request, at para. 88.

¹²⁷ F2/8 Sixth Additional Evidence Request, at para. 153; *see also*, *ibid.* at paras. 38, 39, 47.

¹²⁸ E1/317.1 Testimony of Keo Loeur, 16 June 2015, p. 9, lns. 2-3.

¹²⁹ E1/317.1 Testimony of Keo Loeur, 16 June 2015, p. 10, lns. 11-13. *See*, p. 10, ln. 24 [clarifying that he "saw only one truck"].

activities,”¹³⁰ and “I did not know about the plan that Oeun had [...] I did not know whether he had any plan to betray Angkar”.¹³¹

59. Nuon Chea highlights aspects of the witnesses’ transcripts which the Defence say support their theory, while singularly failing to address where both witnesses directly contradict themselves on important issues.¹³² The Defence misleadingly seeks to adduce two transcripts of testimony for each witness, when the total testimony of each witness contains three transcripts.¹³³ This is pertinent where, for example, during his first day of testimony (not put forward by Nuon Chea) Sèm Hoeun testifies that the arrest of Oeun “happened towards the end of 1975”.¹³⁴ This date undermines the witness’s subsequent testimony that he transferred weapons upon an order from Oeun in 1976 and 1977¹³⁵ and that Oeun was arrested in late 1977.¹³⁶ Additional inconsistencies are also ignored. Nuon Chea states that “according to Sèm Hoeun [...] he followed an order from Division 310 commander Oeun and led a platoon”,¹³⁷ while failing to mention that the witness also testified to having “never receive[d] any direct order from [Oeun].”¹³⁸
60. Similarly, Nuon Chea relies heavily on the testimony of witness Keo Loeur regarding a meeting in which plans were purportedly formulated for a rebellion,¹³⁹ despite the clearly ambiguous information the witness provided. The witness testified, more than once, “I did not know the details of that meeting. I only knew, as I said earlier, about the transportation of the weapons and when I asked I was told to mind my own business and that’s all I know”.¹⁴⁰ Additionally, Nuon Chea quotes the witness Keo Loeur as testifying that “the disabled soldiers unit of K-4 was tasked to assist in packing the food”.¹⁴¹ However, Nuon Chea omits that Keo Loeur also testified, “I do not know

¹³⁰ **E1/319.1** Testimony of Sèm Hoeun, 22 June 2015, p. 21, Ins. 23-24.

¹³¹ **E1/319.1** Testimony of Sèm Hoeun, 22 June 2015, p. 53, Ins. 23-p.54, ln. 1.

¹³² *See, e.g.*, **E1/320.1** Testimony of Sèm Hoeun, 23 June 2015, p. 38, ln. 18-p. 39, ln. 25. Compare **E1/319.1** Testimony of Sèm Hoeun, 22 June 2015, p. 23, ln. 7 to **E1/319.1** Testimony of Sèm Hoeun, 22 June 2015, p. 81, Ins. 2-3.

¹³³ *See*, **E1/315.1** Testimony of Keo Loeur, 12 June 2015; **E1/318.1** Testimony of Sèm Hoeun, 17 June 2015.

¹³⁴ **E1/318.1** Testimony of Sèm Hoeun, 17 June 2015, p. 98, Ins. 6-9.

¹³⁵ **E1/319.1** Testimony of Sèm Hoeun, 22 June 2015, p. 78, Ins. 1-5; **E1/320.1** Testimony of Sèm Hoeun, 23 June 2015, p. 16, Ins. 11-13.

¹³⁶ **E1/320.1** Testimony of Sèm Hoeun, 23 June 2015, p. 9-10, Ins. 1, 4.

¹³⁷ **F2/8** Sixth Additional Evidence Request, at para. 94.

¹³⁸ **E1/319.1** Testimony of Sèm Hoeun, 22 June 2015, p. 23, ln. 7.

¹³⁹ **F2/8** Sixth Additional Evidence Request, at paras. 31, 39, 79, 80, 152.

¹⁴⁰ **E1/317.1** Testimony of Keo Loeur, p. 9, ln. 14.

¹⁴¹ **F2/8** Sixth Additional Evidence Request, at para. 81.

about any food supply storage”, evidence which was elicited by the Nuon Chea Defence in court.¹⁴²

61. Instead, the Defence implausibly suggest that the testimony of these two witnesses “elevated the significance of their evidence and prompted the Defence to request it”.¹⁴³ The reality is that the core of this evidence was already available to Nuon Chea during trial in Case 002/01 and the Defence chose not to use it. To try and do so now, on appeal, is both too late and a blatant attempt to prolong the appeal process unnecessarily.
62. Nuon Chea also fails to identify any finding in the Judgment to which the evidence is purported to relate.¹⁴⁴ The potential to adduce evidence on appeal does not allow Nuon Chea to make broad assertions generally disagreeing with the Trial Judgment’s findings while indiscriminately dumping evidence on the record he claims supports his position. Neither the parties nor the Chamber are required to guess which “specific findings” in the Trial Judgment a particular piece of proposed additional evidence challenges.¹⁴⁵
63. The Co-Prosecutors also note that the Case 002/01 case file contains two additional statements of the witness Sèm Hoeun,¹⁴⁶ which have been on the case file since the beginning of the Case 002/01 trial, both of which contain information on the arrest of Oeun and his confession,¹⁴⁷ and which Nuon Chea fails to bring to the attention of this Chamber.

iii. DC-Cam Statements

64. Nuon Chea seeks to admit the DC-Cam Statements of four individuals as well as a Case 002/02 Trial Transcript of one of those individuals. The Co-Prosecutors oppose these requests. All four DC-Cam statements were available during trial in Case 002/01, as they were created in May and June 2011 and maintained at DC-Cam, a publicly available source of information. Nuon Chea has therefore failed to exercise due diligence in bringing them forward.

¹⁴² E1/317.1 Testimony of Keo Loeur, 16 June 2015, p. 4, ln. 14.

¹⁴³ F2/8 Sixth Additional Evidence Request, at para. 158.

¹⁴⁴ F2/8 Sixth Additional Evidence Request, at paras. 76-97.

¹⁴⁵ See, Rule 108(7).

¹⁴⁶ E3/5152 OCIJ statement of Sèm Hoeun, 7 March 2008; E3/5280 OCIJ statement of Sèm Hoeun, 10 March 2009. Both statements are referred to in the Trial Judgment. See, e.g., E313 Trial Judgment, paras. 460, fn. 1363; 505, fn. 1514.

¹⁴⁷ See, E3/5280 OCIJ statement of Sèm Hoeun, 10 March 2009, referred to in E313 Trial Judgment, paras. 148, fn. 429; 149, fn. 437; 460, fn. 1363.

65. Indeed, not only could Nuon Chea conduct research at DC-Cam, but during the course of Case 002/01 he affirmatively informed the Trial Chamber in Case 002/01 that he intended to do so in regards to 2,384 materials obtained from DC-Cam.¹⁴⁸ He also noted in that filing that he “has been in contact with DC-Cam on several occasions, and that DC-Cam has been helpful in answering certain other ... queries”.¹⁴⁹ The Trial Chamber responded to Nuon Chea’s notice informing him that where he “is in possession of material in the public domain which [he] believes to be relevant to the Chamber’s assessment of the reliability, authenticity or probative value of documents before the Chamber, [he] has a number of options available to [him] under the Internal Rules... for example...seek the admission of additional material pursuant to Internal Rule 87(4)”¹⁵⁰ Moreover, as early as 2009 during the Case 002 investigation, the Co-Investigating Judges informed the parties that “[i]t is important to recall that the parties are entirely free to review any document from any public source in their search for evidence.”¹⁵¹
66. None of the evidence contained in any of the DC-Cam statements or the transcript could have been a decisive factor in the Judgment, nor should they be admitted in the interests of justice. None of them refer to the events at Tuol Po Chrey, the Centre’s effective hierarchical control over the Northwest Zone at the time of the Tuol Po Chrey murders, or the forced movements that are the subject of Case 002/01. On this basis alone they should be rejected. Furthermore, they also do not substantiate the claims for which Nuon Chea puts them forward.

1. DC-Cam Statement and Request to Call Witness 6

67. Nuon Chea seeks to admit the DC-Cam statement of Witness 6 and to call him as a witness.¹⁵² The Co-Prosecutors oppose both requests. As noted, this DC-Cam statement was available during trial in Case 002/01 as it was created on 16 June 2011, but Nuon Chea did not seek to have it admitted during trial or at any time in the more than four years since it was created.

¹⁴⁸ **E211** Notice to the Trial Chamber Regarding Research at DC-Cam, 19 June 2012, at para. 13 (informing the Trial Chamber that he intended to “approach DC-Cam in order to properly verify the chain of custody and relevance of documents that the OCP intends to rely upon, as described in Document No. E-161.1”. E161.1 is a list of 2,384 materials obtained from DC-Cam.)

¹⁴⁹ **E211** Notice to the Trial Chamber Regarding Research at DC-Cam, 19 June 2012, fn. 12.

¹⁵⁰ **E211/2** Trial Chamber Memorandum: Nuon Chea Defence Notice to the Trial Chamber Regarding Research at DC-Cam (E211), 13 August 2012, at para. 4.

¹⁵¹ **D164/2** Order on the Request for Investigative Action to Seek Exculpatory Evidence in the SMD, 19 June 2009, para. 14; *see also* **D365/2/10** Decision on Co-Prosecutors’ Appeal Against the Co-Investigating Judges Order on Request to Place Additional Evidentiary Material on the Case File Which Assists in Proving the Charged Persons’ Knowledge of the Crimes, 15 June 2010.

¹⁵² **F2/8** Sixth Additional Evidence Request, at paras. 99-102.

68. Nuon Chea puts forward the DC-Cam statement as “detail[ing] the Northwest Zone’s treasonous plot against Pol Pot coordinated by [Witness 6’s] superiors, Sector 5 secretary Ta Hoeng and mobile unit chief Ta Val”.¹⁵³ This claim regarding Witness 6’s evidence is demonstrably false. Witness 6 says nothing about a “treasonous plot” by the “Northwest Zone”. Witness 6 makes claims about the statements and actions of a single Sector secretary (Ta Hoeng) and a single mobile unit chief (Ta Val), neither of whom were located in the Northwest Zone Sector where the Case 002/01 events at Tuol Po Chrey took place. He provides no evidence regarding a broader “Northwest Zone” plot. In his desperation to insinuate such a “Northwest Zone” plot, Nuon Chea attempts to infuse meaning into the following three unremarkable statements that Witness 6 makes regarding Ruos Nhim: (1) that he was a close friend of So Phim; (2) that he visited a major construction site within his Zone; and (3) that he brought sandals for the mobile unit workers from the East Zone.¹⁵⁴ These are hardly actions confirming a treasonous plot.
69. Thus, at most, Witness 6 provides evidence that Ta Hoeung and Ta Val at some time after the beginning of 1977¹⁵⁵ had an ill-defined “plan”. But all of the events that were the subject of convictions in Case 002/01 took place before 1977.
70. The Co-Prosecutors further note that Witness 6 was also interviewed by the Office of the Co-Investigating Judges and his WRI is on the case file,¹⁵⁶ a fact that Nuon Chea fails to bring to the Chamber’s attention. There can be no doubt that Nuon Chea was aware that there is a WRI from this individual on the case file at the time he submitted the Sixth Additional Evidence Request, as he recently requested that this individual be called to testify in Case 002/02 and stated to the Trial Chamber that he “became aware of [Witness 6]’s WRI once it was disclosed by the Co-Prosecutors on 18 March 2015”.¹⁵⁷ Nuon Chea’s failure to bring this WRI to the attention of the Chamber is further problematic because the WRI clearly states that its purpose is to make further inquiry into the matters addressed in the very DC-Cam statement that Nuon Chea is putting forward. The WRI notes that the investigator informed Witness 6 that “the

¹⁵³ F2/8 Sixth Additional Evidence Request, at para. 100.

¹⁵⁴ F2/8 Sixth Additional Evidence Request, at para. 101.

¹⁵⁵ E3/9076 DC-Cam Statement of [Witness 6], ENG ERN 00731157.

¹⁵⁶ E319/19.3.18 Written Record of Interview of [Witness 6].

¹⁵⁷ E368 Nuon Chea’s Rule 87(4) Request to Hear One Additional Witness for the First Case 002/02 Trial Segment on the Trapeang Thma Dam, 22 September 2015, para. 14.

purpose of today's interview is that we will interview you about the answers that you provided to the Documentation Center of Cambodia".¹⁵⁸

71. On review of the WRI it becomes evident why Nuon Chea would not want this Chamber to have a complete picture of this witness's evidence that is on the case file. The evidence in the WRI undermines Nuon Chea's attempt to rely on Witness 6's DC-Cam interview. Nuon Chea seeks to imply that Witness 6's statements to DC-Cam regarding a meeting where Ta Val allegedly stated "you are all captains" was preparation for an armed rebellion.¹⁵⁹ Witness 6's WRI shows that Witness 6 there attributes that statement not to Ta Val, but to Ta Hoeng.¹⁶⁰ His WRI also shows he was not entirely sure of the meaning of the vague statement that "you are all captains". Witness 6 could only speculate: "I thought he was talking about the arrangement for us to become soldiers to fight the Khmer Rouge."¹⁶¹
72. More importantly, Witness 6's WRI also directly contradicts Nuon Chea's assertions regarding Witness 6's statement to DC-Cam. Relying on selected passages from Witness 6's DC-Cam statement, Nuon Chea asserts that "the plan was discovered when the Southwest zone cadres transferred to the Northwest, confirming that the replacement of Northwest Zone cadres by those from the Southwest was a direct consequence of the discovery of the plot."¹⁶² However, Witness 6's WRI shows that when Witness 6 was asked directly about the reasons for Southwest Zone's arrest of cadres from the Northwest and East Zones he states: "I did not know about the clear reason for arresting the people in the Northwest Zone and the East Zone..."¹⁶³
73. The Co-Prosecutors also note that in regards to matters in the Northwest Zone that are temporally and topically relevant to the Case 002/01 Judgment, Witness 6 had this to state in his WRI:

[Investigator]: When the Khmer Rouge arrived in your village in April 1975, did the Khmer Rouge take revenge on the former LON Nol soldiers?

[Witness 6]: At that time, the Khmer Rouge searched for the people who had been Lon Nol soldiers and, at that time, some families who had been involved with Lon Nol soldiers were very terrified.

¹⁵⁸ E319/19.3.18 Written Record of Interview of [Witness 6], p. 3.

¹⁵⁹ F2/8 Sixth Additional Evidence Request, at para. 100.

¹⁶⁰ E319/19.3.18 Written Record of Interview of [Witness 6], at A49.

¹⁶¹ E319/19.3.18 Written Record of Interview of [Witness 6], at A49.

¹⁶² F2/8 Sixth Additional Evidence Request, at para. 102.

¹⁶³ E319/19.3.18 Written Record of Interview of [Witness 6], at A52.

[Investigator]: Did the Khmer Rouge take revenge on the former Lon Nol soldiers?

[Witness 6]: ...the people who were evacuated from Preah Netr Preah District suffered under the Khmer Rouge.

[Investigator]: Were those people killed?

[Witness 6]: Yes. For example I knew that one person, a former chairman of Paoy Samroang Village named Pheum, and another person named Rei who had been a captain in Lon Nol era, were evacuated to my village, and arrested and killed by the Khmer Rouge here.¹⁶⁴

2. DC-Cam Statement of Witness 7

74. Nuon Chea seeks to admit the DC-Cam statement of Witness 7.¹⁶⁵ The Co-Prosecutors oppose this request. As noted, this DC-Cam statement was available during the Case 002/01 trial, as it was created on 16 June 2011, but Nuon Chea did not seek to have it admitted during trial or at any time in the more than four years since it was created.
75. Nuon Chea puts forward this evidence for events starting in 1977,¹⁶⁶ well after the events at issue in Case 002/01, to support the allegation that there was a traitorous plan. But Witness 7 himself admits he would not be a good or reliable source of information on the matter, stating: “I did not know exactly what their so called traitorous plan was about.”¹⁶⁷
76. Nuon Chea again fails to apprise this Chamber of all of the evidence from Witness 7 on the Case File. Nuon Chea fails to inform this Chamber of Witness 7’s WRI, which has been on the Case 002 Case File since March 2015, and which, as the WRI states at the outset, “is based on the witness’ interview with the Documentation Center of Cambodia on 16 June 2011”.¹⁶⁸ On reviewing the WRI, it becomes clear why Nuon Chea would not want this WRI considered by this Chamber, as it undermines the purposes for which Nuon Chea puts forward the DC-Cam statement. For instance, in the Sixth Additional Evidence Request, Nuon Chea cites Witness 7’s DC-Cam statement to assert that Witness 7 “was in charge of 300 people”,¹⁶⁹ no doubt seeking to augment Witness 7’s perceived importance. Yet in his WRI, Witness 7 clarifies: “I supervised only 30 people, not 300 people.”¹⁷⁰

¹⁶⁴ E319/19.3.18 Written Record of Interview of [Witness 6], at A6-A8 (emphasis added).

¹⁶⁵ F2/8 Sixth Additional Evidence Request, at paras. 103-106.

¹⁶⁶ F2/8 Sixth Additional Evidence Request, at para. 104.

¹⁶⁷ E3/8991 DC-Cam Statement of [Witness 7], 16 June 2011, at ENG 00969893.

¹⁶⁸ E319/19.3.46 Written Record of Interview of [Witness 7], at p. 3.

¹⁶⁹ F2/8 Sixth Additional Evidence Request, at para. 104.

¹⁷⁰ E319/19.3.46 Written Record of Interview of [Witness 7], at A20.

77. Witness 7 also clarifies in his WRI that the basis of his answers in his DC-Cam statement as to Ruos Nhim being involved in a “failed traitorous plot”, which Nuon Chea quotes in the Sixth Additional Evidence Request, was merely an accusation, based entirely on hearsay, learned after Ruos Nhim’s arrest by the Southwest Zone Cadres:

[Investigator]: On page 8 of the written record of your interview with the Documentation Center of Cambodia (ERN 00730224), you mentioned Ta Nhim and said he was a traitor. Can you further elaborate on this?

[Witness 7]: Ta Nhim was Northwest Zone Committee. When the Southwest group came, I heard that he had been accused of being a traitor, had been arrested and taken away, and had disappeared.¹⁷¹

78. The Co-Prosecutors additionally note, however, that in relation to the policies that are at issue in Case 002/01, Witness 7’s DC-Cam Statement confirms evidence of the implementation of the policy targeting former Lon Nol soldiers and officials, stating: “During Ta Val’s time many evacuated people were killed. ... [T]hey searched for former regime soldiers and civil workers. They investigated the people’s backgrounds.”¹⁷²

3. DC-Cam Statement and Transcript of Lat Suoy

79. Nuon Chea seeks to admit the DC-Cam Statement and Case 002/02 Trial Transcript of Lat Suoy.¹⁷³ The Co-Prosecutors oppose both requests. As noted, this DC-Cam statement was available during trial in Case 002/01 as it was created on 18 May 2011, but Nuon Chea did not seek to have it admitted during trial or at any time in the more than four years since it was created. The trial transcript was not created until 12 August 2015, and therefore was not available during trial in Case 002/01. Regardless, neither document would have been a decisive factor in the Judgment nor do they contain evidence that would require they be admitted in the interests of justice.
80. Lat Suoy’s evidence is put forward for events beginning in late 1977 or early 1978,¹⁷⁴ long after the events at issue in Case 002/01. Even on its own terms the evidence is deficient. As Nuon Chea admits, Lat Suoy provides no evidence of actual disloyalty by Northwest Zone leaders, instead he provides evidence that they had been “accused of ‘betrayal’ and ‘disloyalty’”.¹⁷⁵ Nuon Chea’s failure to appreciate the distinction between being accused of being disloyal and actually being disloyal pervades Nuon

¹⁷¹ E319/19.3.46 Written Record of Interview of [Witness 7], at A22.

¹⁷² E3/8991 DC-Cam Statement of [Witness 7], 16 June 2011, ENG 00969909.

¹⁷³ F2/8 Sixth Additional Evidence Request, at paras. 107-109.

¹⁷⁴ F2/8 Sixth Additional Evidence Request, at para. 108.

¹⁷⁵ F2/8 Sixth Additional Evidence Request, at para. 108 (emphasis added).

Chea's Sixth Additional Evidence Request. Indeed, Lat Suoy, in the transcript that Nuon Chea seeks to have admitted, states that he is unaware of any legitimate basis for being accused of being traitors by the Southwest Zone, stating: "They accused Ta Val of being traitors. And actually the accusation applied to the whole group – that is, to the northwest group. And I was wondering what they meant when they accused us of being traitors. For me I did not understand at the time. I did not know about the policy of this later group."¹⁷⁶ Lat Suoy also states: "On the accusation by the southwest group, I did not know the reason."¹⁷⁷

81. Moreover, Lat Suoy's evidence, even taken on its face, is not as Nuon Chea portrays it. Nuon Chea seeks to imply that Lat Suoy's statements regarding soldiers moving to the forest was in preparation for a rebellion.¹⁷⁸ However Lat Suoy's actual evidence is that soldiers moving to the forest was a reaction to arrests and killings by the Southwest Zone, not a rebellion that was suppressed by the Southwest Zone. Lat Suoy states "First there were arrests in the Eastern Zone. ... When the Eastern Zone arrests happened, Ta Nhim understood [the situation] and that's why, [he] told Ta Hoeng to mobilize troops and fled to the forest."¹⁷⁹ In his testimony Lat Suoy once again makes clear that the escape to the forest was a reaction to the purges and an attempt to avoid arrest: "When Ta Val and his cadres were arrested, we were all frightened and we consulted with each other that we had to flee into the jungle. Because if he were arrested, we would be executed. Then we were very vigilant at that time and we tried to escape and to be – and avoid being arrested."¹⁸⁰ For the avoidance of doubt, Lat Suoy clarifies, "I never said anything about establishing a revolution."¹⁸¹
82. Nuon Chea misleads when he states that Lat Suoy's evidence is that Northwest Zone leaders were arrested by Southwest Zone cadres because they "had been accused of 'betrayal' and 'disloyalty', for instance because they printed and used currency and paid salaries."¹⁸² Lat Suoy specifically denied in his DC-Cam statement that the alleged printing of currency was the reason for Ruos Nhim's arrest, and instead attributed it to the killing of a Chinese diplomat in the Eastern Zone:

¹⁷⁶ E1/329.1 Transcript, 12 August 2015, at 14.15.35.

¹⁷⁷ E1/329.1 Transcript, 12 August 2015, at 14.17.21.

¹⁷⁸ F2/8 Sixth Additional Evidence Request, paras. 108-109.

¹⁷⁹ E3/9060 DC-Cam Statement of Lat Suoy, 18 May 2011, at ENG 00728739.

¹⁸⁰ E1/329.1 Transcript, 12 August 2015, at 13.44.10.

¹⁸¹ E1/329.1 Transcript, 12 August 2015, at 114.24.55.

¹⁸² F2/8 Sixth Additional Evidence Request, at para. 108.

[DC-Cam]: So, was the arrest [of Ruos Nhim] related to the printing of currency?

[Lat Suoy]: No.

[DC-Cam]: The reason was the shooting of the Chinese diplomat?

[Lat Suoy]: Yes.¹⁸³

83. Similarly misleading, Nuon Chea states that Lat Suoy testified that “his team had hidden weapons in the Kaung Khleang forest.”¹⁸⁴ In fact, Lat Suoy clearly explained in answer to a question from Nuon Chea’s own counsel in his testimony that no weapons had been hidden in the forest, and what he meant is that soldiers had gone to the forest with their weapons:

[Counsel for Nuon Chea]: ... Do you recall what kind of weapons were being hid in the forest?

[Lat Suoy]: The weapons were not buried in the undergrounds, but actually because the troops were stationed in the forest and then they actually keep those weapons in the forest. When we talk about hiding the weapons, we mean that they actually hid themselves together [with] the weapon in the jungle.¹⁸⁵

84. Lat Suoy’s testimony in the Trial Chamber also contradicts Nuon Chea’s submissions to this Chamber on a number of other points. Nuon Chea claims that Lat Suoy stated that the Northwest Zone printed currency, whereas Lat Suoy testified that the currency he saw “was printed in Phnom Penh.”¹⁸⁶ Nuon Chea states that Lat Suoy testified that he was first shown the currency in “late 1977”,¹⁸⁷ while failing to mention that elsewhere in the same transcript Lat Suoy testified that he saw the currency “about two months before the arrival of the Vietnamese”,¹⁸⁸ and, significantly, that by the time he had seen the currency “the northwest group had all been arrested by the southwest, and the money was organised by the latter group.”¹⁸⁹ A member of the Trial Chamber bench then asked Lat Suoy to clarify this statement, resulting in this exchange:

[Trial Chamber]: ... Do you mean that it was the cadres from the southwest who organised the circulation of currency in the Northwest Zone?

[Lat Suoy]: I do not have the full knowledge. However, I heard from my peer that he got the note from the elder brother. And by that time,

¹⁸³ **E3/9060** DC-Cam Statement of Lat Suoy, 18 May 2011, at ENG 00728746.

¹⁸⁴ **F2/8** Sixth Additional Evidence Request, at para. 109.

¹⁸⁵ **E1/329.1** Transcript, 12 August 2015, at 13.52.00; *see also* **E1/330.1** Transcript, 13 August 2015, at 09.15.08 (“There was no weapon warehouse at the Trapeang Thma Dam. The sector soldiers transported the weapons to the area and they were preparing themselves in the forest and the weapons were never hidden or buried under the ground.”).

¹⁸⁶ **E1/329.1** Transcript, 12 August 2015, at ENG 01131074.

¹⁸⁷ **F2/8** Sixth Additional Evidence Request, at para. 108.

¹⁸⁸ **E1/329.1** Transcript, 12 August 2015, at 10.58.24.

¹⁸⁹ **E1/329.1** Transcript, 12 August 2015, at 11.00.50.

allow me to stress, all cadres in the Northwest Zone had been rounded up and arrested and the area was under the control of the southwest cadres.¹⁹⁰

85. Furthermore, Nuon Chea fails to apprise this Chamber that Lat Suoy testified on two other days in addition to the day of transcript that Nuon Chea seeks to have admitted on appeal. On review of those transcripts, it becomes clear why Nuon Chea would not want those transcripts considered by this Chamber. Lat Suoy's 11 August 2015 testimony provides the sole portion of his evidence that is relevant to Case 002/01, and is supportive of the implementation of the Khmer Rouge policy of targeting former Lon Nol soldiers and officials in the Northwest Zone. In that transcript, Lat Suoy states: "On the 17 of April 1975, they came to all the village and commune. And then they screen those who had relatives who were the former Lon Nol soldiers. They would take them away and executed them."¹⁹¹
86. Meanwhile, Lat Suoy's 13 August 2015 testimony, also not brought to the Chamber's attention, clarifies that in relation to the soldiers in the forest which Nuon Chea highlights in Lat Suoy's testimony, he never actually saw them while they were in the forest because "[w]e were not allowed to enter the area that they stationed."¹⁹²
87. Nuon Chea also fails to apprise this Chamber of a WRI taken from Lat Suoy, which has been on the Case 002 Case File since March 2015.¹⁹³ Nuon Chea was clearly aware of this WRI as it was referred to during the testimony of Lat Suoy that Nuon Chea proposes to have admitted here,¹⁹⁴ including by Nuon Chea's own counsel.¹⁹⁵ Lat Suoy's WRI provides information relevant to Case 002/01 because of its relevance to the implementation of the Khmer Rouge policy to target former Lon Nol soldiers and officials in the Northwest Zone, where he provides evidence that: "soon after the Khmer Rouge arrived in the village, they arrested the commune chief, the deputy and those involved with Lon Nol soldiers and Lon Nol officials to be killed."¹⁹⁶

¹⁹⁰ E1/329.1 Transcript, 12 August 2015, at 11.00.50 (emphasis added).

¹⁹¹ E1/328.1 Transcript 11 August 2015, at 13.47.52; *see also* *ibid.* at 14.28.50 ("Chhuoy was in the village mobile unit. Then he was reassigned to work at the sector mobile unit. His implication was that he had a connection with the former Lon Nol army and that was the main reason for his arrest.").

¹⁹² E1/330.1 Transcript, 13 August 2015, at 09.10.23.

¹⁹³ E319/19.3.20 Written Record of Interview of Lat Suoy.

¹⁹⁴ *See, e.g.*, E1/329.1 Transcript 12 August 2015, at 09.17.07.

¹⁹⁵ *See, e.g.*, E1/329.1 Transcript, 12 August 2015, at 11.14.05.

¹⁹⁶ E319/19.3.20 Written Record of Interview of Lat Suoy, at A10.

88. In his WRI, Lat Suoy also explains that he “did not know the reason well”¹⁹⁷ in regards to “why all the Southwest cadres arrested the Northwest cadres and replaced them with the Southwest cadres.”

4. DC-Cam Statement of 2-TCW-918

89. Nuon Chea seeks to admit the DC-Cam statement of 2-TCW-918.¹⁹⁸ The Co-Prosecutors oppose this request. As noted, this DC-Cam statement was available during trial in Case 002/01 as it was created on 18 June 2011, but Nuon Chea did not seek to have it admitted during trial or at any time in the more than four years since it was created.
90. Even according to Nuon Chea, this witness’s evidence is being put forward for events beginning in late 1976,¹⁹⁹ long after the forced transfer from Phnom Penh and between zones had been implemented and over a year after the massacre at Tuol Po Chrey. Moreover, this witness’s testimony actually contradicts Nuon Chea’s defence theory. Nuon Chea describes and quotes in the Sixth Additional Evidence Request this witness’s testimony to the effect that he “was once told by Ta Hoeng and Ta Val of a secret plot to arm ‘all mobile forces, when they went to cut down cotton in Kang Va Mountain, planted cotton farms’ and ‘run to Thailand’”.²⁰⁰ Nuon Chea misleadingly fails to mention, however, that this “traitorous act” against the Khmer Rouge was suppressed by none other than the individual that Nuon Chea claims was one of the traitors against the Khmer Rouge: Ruos Nhim, along with his son, Ta Chiel. Directly following the passage that Nuon Chea quotes in the Sixth Additional Evidence Request, the witness continues:

[2-TCW-918]: ...As Moul Sambath aka Ta Nhim and Ta Chiel knew the plan, the looking beyond us. These people wanted to arrest Ta Vall.

[DC-Cam]: Oh, really?

[2-TCW-918]: Yes, it was not the Southwest cadres.

[DC-Cam]: Not the Southwest cadres?

[2-TCW-918]: No, it was their own group.²⁰¹

91. Later, 2-TCW-918 was asked again about the arrest of Ta Val:

[DC-Cam]: [S]o those who arrested Ta Vall were from Ta Chiel’s group, the group of Ta Nhim, Moul Sambath?

¹⁹⁷ E319/19.3.20 Written Record of Interview of Lat Suoy, at A90.

¹⁹⁸ F2/8 Sixth Additional Evidence Request, at paras. 110-112.

¹⁹⁹ F2/8 Sixth Additional Evidence Request, at para. 111.

²⁰⁰ F2/8 Sixth Additional Evidence Request, at para. 111, quoting E3/9094 DC-Cam Statement of [2-TCW-918], 18 June 2011, at ENG 00728683.

²⁰¹ E3/9094 DC-Cam Statement of [2-TCW-918], 18 June 2011, at ENG 00728683

[2-TCW-918]: Yes, not the Southwest people. Maybe the Southwest cadres could not help on time.²⁰²

Therefore, this witness's evidence is that Ruos Nhim continued to loyally serve the Centre by faithfully suppressing anyone that opposed the Khmer Rouge long after the events at issue in Case 002/01.

92. Nuon Chea is similarly misleading regarding the only other point for which he puts this witness's DC-Cam statement forward. Nuon Chea quotes a passage from the witness's DC-Cam statement and claims that it is the witness "describ[ing] what happened to Sao Phim, Ruos Nhim and Heng Samrin when the Vietnamese entered the country".²⁰³ Reference to the DC-Cam statement makes clear, however, that the witness is describing what he was told by Southwest Zone cadres at a meeting convened by Southwest Zone officials Ta Rin and Yeay Chim, following the purge of the Northwest Zone.²⁰⁴
93. Nuon Chea once again fails to apprise this Chamber of three additional statements by this same witness that are on the case file.²⁰⁵ In these, 2-TCW-918 confirms multiple times that according to him "[t]he order to arrest Ta Val came from Ta Nhim."²⁰⁶

iv. Foreign Government Documents

94. Nuon Chea seeks to admit four alleged biographies.²⁰⁷ He claims that these biographies have been extracted from the "publicly accessible official records of the State Security Service of the former German Democratic Republic" ("Stasi Biographies").²⁰⁸ The Co-Prosecutors oppose all four requests.
95. Nuon Chea's request to admit the Stasi Biographies is highly problematic. The request reveals a lack of due diligence and timeliness, dubious reliability, and falls well short of meeting the substantive criteria for the admission of new evidence at the appeal stage.
96. Nuon Chea's request to admit the Stasi Biographies is untimely under Rule 108(7). Taking Nuon Chea at his word, he came into possession of these documents on 17 July

²⁰² E3/9094 DC-Cam Statement of [2-TCW-918], 18 June 2011, at ENG 00728686.

²⁰³ F2/8 Sixth Additional Evidence Request, at para. 112.

²⁰⁴ E3/9094 DC-Cam Statement of [2-TCW-918], 18 June 2011, at ENG 00728699.

²⁰⁵ E319/12.3.11 Written Record of Interview of [2-TCW-918]; E319/19.3.58 Written Record of Interview of [2-TCW-918]; E319/19.3.17 Written Record of Interview of [2-TCW-918].

²⁰⁶ E319/12.3.11 Written Record of Interview of [2-TCW-918], at A4; *see also* *ibid.* at A23.

²⁰⁷ F2/8 Sixth Additional Evidence Request, paras. 114 – 117 ("Biography of Ouk Bunchhoeun"; "Biography of Heng Samrin"; "Biography of Hun Sen"; "Biography of Pen Sovan").

²⁰⁸ E307/5.2.8 'Compilation of 21 Kurzbiographies Produced by the German Democratic Republic Ministry of State Security.

2014.²⁰⁹ He subsequently sought their admission into evidence in Case 002/02 on 24 July 2014,²¹⁰ by which time he sufficiently knew the contents of the documents to provide a summary of them and indicate the portions of the Closing Order to which he claimed they relate.²¹¹ Nuon Chea has had considerable time and ample opportunity to request to admit these documents: since July 2014 and prior to the present request, Nuon Chea has filed five requests to obtain and consider additional evidence.

97. Moreover, according to Nuon Chea these documents are “publicly accessible”²¹² and were “technically in the public domain prior to trial”,²¹³ but Nuon Chea did not seek to put them before the Trial Chamber in Case 002/01. As such these documents do not satisfy Rule 108(7)’s requirement that documents must have been unavailable at trial despite the exercise of due diligence. Seeking the admission of these documents only on appeal, despite their availability at trial, is a paradigmatic example of the “disruptive and inefficient litigation strategies” that this Chamber has held it will not countenance.²¹⁴ For these reasons the interests of justice do not require their admission under Rule 104(1)—in fact, the interests of justice require their exclusion.
98. Furthermore, these documents are unsuitable to prove the facts they purport to prove under Rule 87(3)(c). Because they are unsuitable to prove the facts purported, or should be afforded so little weight, and because their content (based on Nuon Chea’s summaries) does not pertain to specific findings of fact by the Trial Chamber, none of these documents solely or cumulatively could have been a decisive factor in reaching the decision under appeal under Rule 108(7), nor do the interest of justice require their admission under Rule 104(1).
99. First, Nuon Chea fails to carry his burden to show that these documents are *prima facie* reliable and authentic.²¹⁵ In regards to their provenance, he claims that they were “extracted from publicly-accessible official records of the State Security Service of the former German Democratic Republic”²¹⁶ but fails to provide any description of how he

²⁰⁹ F2/8 Sixth Additional Evidence Request, at para. 113.

²¹⁰ E307/5 Initial Document List for Case 002/02, 24 July 2014.

²¹¹ E307/5.2 Initial Document List for Case 002/02, Annex A, 24 July 2014, entry no. 8.

²¹² F2/8 Sixth Additional Evidence Request, at para. 113.

²¹³ F2/8 Nuon Chea’s Sixth Request to Consider and Obtain Additional Evidence in Connection with the Appeal Against the Trial Judgment in Case 002/01, 11 September 2015, para. 159.

²¹⁴ F2/5 Decision on Part of Nuon Chea’s Requests to Call Witnesses on Appeal, 29 May 2015, para. 16.

²¹⁵ See, e.g., E333 Trial Chamber Memorandum: The Trial Chamber Places a New Document on Case File on its Own Motion, 9 January 2015, para. 2 (Rule 87(3) encompasses *prima facie* standards of relevance, reliability, and authenticity).

²¹⁶ F2/8 Sixth Additional Evidence Request, at para. 113.

came into possession of them. He indicates, however, that his counsel was not directly involved in obtaining these documents from the “publicly-accessible official records”, as he states that “[t]hese documents were provided to the Defence on 17 July 2014.”²¹⁷ He chooses not to disclose who provided these documents to him, nor how that person obtained them. He further does not know how they arrived in the archives themselves, speculating that they were “likely obtained by the State Security Service from Vietnam”.²¹⁸

100. Second, Nuon Chea admits that these documents “are German translations of documents originally written in Vietnamese”.²¹⁹ However he does not provide the Vietnamese originals, nor does he provide any information about who conducted the translation from Vietnamese to German (assuming they were translated directly from one language to the other), nor the qualifications of the translator(s). Since he does not provide the documents in their original language, it is impossible to assess whether these translations accurately reflect the original documents.²²⁰
101. Third, Nuon Chea provides no information regarding who in Vietnam produced the biographies, where or how they obtained their information, or the circumstances under which, or reasons that, the documents were first produced.²²¹
102. Finally, as to the content of the documents provided, Nuon Chea admits they have not been made available to the parties and this Chamber “in any ECCC working languages”.²²² The Co-Prosecutors are therefore not in a position at present to evaluate the contents of these documents and respond to them. The Co-Prosecutors cannot do so on the basis of purported summaries and selective extracts provided by Nuon Chea. Therefore, should the Chamber not reject these documents on other grounds, the Co-Prosecutors reserve their right to respond to the substance of the documents once translations in the official ECCC languages are available.

²¹⁷ F2/8 Sixth Additional Evidence Request, para. 113 (emphasis added).

²¹⁸ F2/8 Sixth Additional Evidence Request, para. 113.

²¹⁹ F2/8 Sixth Additional Evidence Request, para. 113.

²²⁰ *The Prosecutor v. Bagosora et al.*, ICTR -98-41-T, Trial Chamber, Decision on Admission of Tab 19 of Binder Produces in Connection with Appearance of Witness Maxwell Nkole, 13 September 2004, para. 8 (“The moving party must further provide indications that the document is authentic – that is, that the document is actually what the moving party purports it to be”).

²²¹ All of these observations are also applicable to these documents in relation to Nuon Chea’s request to have them admitted to the Case File in Case 002/02. For a variety of reasons, including the differing standards for admission of evidence at trial versus appeal, the Co-Prosecutors did not, and do not currently, oppose their admission in that Trial, although they continue to await their translations into official ECCC languages to assess them fully.

²²² F2/8 Sixth Additional Evidence Request, para. 113.

103. Nonetheless, even on the basis of Nuon Chea's summaries, these documents are further inadmissible under Rule 108(7) and Rule 104(1) because the evidence contained within them would not have been a decisive factor in the Judgment and would not be conducive to ascertaining the truth. None of the four documents requested discuss Tuol Po Chrey or the forcible transfers of populations that are the subject of Case 002/01; and none of the documents provide exculpatory evidence regarding either the policy to target former Lon Nol officials or the findings that a hierarchical power structure was firmly in place during the events at Tuol Po Chrey for which Nuon Chea and Khieu Samphan have been convicted.

v. U.S. Government Cables

104. The Co-Prosecutors oppose the request to admit eight U.S. government diplomatic cables ("Cables") dating from 1976 to 1978.²²³
105. The Request should be denied as it fails to meet the standard under Rule 108(7) for admission of new evidence on appeal and it is not in the interests of justice to have it admitted. First, the Defence concedes that some of the Cables were available at trial.²²⁴ Nonetheless, Nuon Chea misleadingly claims that the Cables were "published in the public domain" by Wikileaks between 2013 and 2015. This misleading assertion ignores the critical fact that the Cables were previously publicly released by the U.S. National Archives, in some instances, nine years ago. Cable 1,²²⁵ Cable 2,²²⁶ Cable 3,²²⁷ Cable 4,²²⁸ Cable 5,²²⁹ Cable 6,²³⁰ Cable 7,²³¹ and Cable 8²³² were all publicly available

²²³ F2/8 Sixth Additional Evidence Request, para. 118.

²²⁴ F2/8 Sixth Additional Evidence Request, para. 159.

²²⁵ Compare, F2/8 Sixth Additional Evidence Request, para. 119 citing the publication of Cable 1 as 27 May 2015 to US National Archives, Access to Archival Databases, available at <http://aad.archives.gov/aad/createpdf?rid=204792&dt=2694&dl=2009>, which shows that **Cable 1 was released on 20 March 2014**.

²²⁶ Compare, F2/8 Sixth Additional Evidence Request, para. 124 citing the publication of Cable 2 as 25 May 2014 to US National Archives, Access to Archival Databases, available at <http://aad.archives.gov/aad/createpdf?rid=38728&dt=2694&dl=2009>, which shows that **Cable 2 was released on 20 March 2014**.

²²⁷ Compare, F2/8 Sixth Additional Evidence Request, para. 126 citing the publication of Cable 3 as 25 May 2014 to US National Archives, Access to Archival Databases, available at <http://aad.archives.gov/aad/createpdf?rid=228502&dt=2532&dl=1629>, which shows that **Cable 3 was released on 22 May 2009**.

²²⁸ Compare, F2/8 Sixth Additional Evidence Request, para. 130 citing the publication of Cable 4 as 25 May 2014 to US National Archives, Access to Archival Databases, available at <http://aad.archives.gov/aad/createpdf?rid=32142&dt=2694&dl=2009>, which shows that **Cable 4 was released on 20 March 2014**.

²²⁹ Compare, F2/8 Sixth Additional Evidence Request, para. 136 citing the publication of Cable 5 as 25 May 2014 to US National Archives, Access to Archival Databases, available at <http://aad.archives.gov/aad/createpdf?rid=37318&dt=2694&dl=2009>, which shows that **Cable 5 was released on 20 March 2014**.

before the date Nuon Chea claims. Cables 3, 6, 7, and 8 were all available before the start of trial in Case 002/01. Cables 1, 2, 4, and 5 have all been available for a year and a half. That Cables such as these were available via the U.S. National Archives database was made clear during the course of Case 002/01.²³³ Moreover, the Defence's claim to have chosen not to adduce the Cables at trial²³⁴ eminently demonstrates that the request is simply not credible.

106. Second, the Cables could not have been a decisive factor in the Judgment. The majority of the Cables are outside the temporal scope of the Trial Judgment²³⁵ and none of the Cables are relevant to the substance of the Judgment. Three of the eight cables relate to purported border skirmishes between Cambodia and Thailand;²³⁶ three pertain to an alleged bombing in Siem Reap;²³⁷ and one relates to purported recruitment of resistance fighters in refugee camps in Thailand.²³⁸ None of these topics impact upon the Trial Chamber's findings. Indeed, they do not merit a single mention in Nuon Chea's Appeal Brief²³⁹ or closing arguments at trial.²⁴⁰ One cable upon which Nuon Chea puts particular emphasis speculates that Sao Phim was leading a rebellion against Pol Pot in the Easter Zone—but Nuon Chea omits to mention that the cable is dated 18 August 1978, over two months after Sao Phim's death.²⁴¹ As outlined above, such evidence manifestly fails to undermine the Trial Chamber's findings on Sao Phim's role, his loyal following of instructions from the CPK, and his eventual characterisation as an internal enemy in 1978.²⁴² Individually and collectively, the Cables are irrelevant to the

²³⁰ Compare, F2/8 Sixth Additional Evidence Request, para. 139 citing the publication of Cable 6 as 7 April 2013 to US National Archives, Access to Archival Databases, available at <http://aad.archives.gov/aad/createpdf?rid=227912&dt=2082&dl=1345>, which shows that **Cable 6 was released on 04 May 2006**.

²³¹ Compare, F2/8 Sixth Additional Evidence Request, para. 143 citing the publication of Cable 7 as 7 April 2013 to US National Archives, Access to Archival Databases, available at <http://aad.archives.gov/aad/createpdf?rid=226437&dt=2082&dl=1345>, which shows that **Cable 7 was released on 04 May 2006**.

²³² Compare, F2/8 Sixth Additional Evidence Request, para. 146 citing the publication of Cable 8 as 7 April 2013 to US National Archives, Access to Archival Databases, available at <http://aad.archives.gov/aad/createpdf?rid=226427&dt=2082&dl=1345>, which shows that **Cable 8 was released on 04 May 2006**.

²³³ See E282/2/1 Co-Prosecutors' Request for Reconsideration of the Decision Regarding Admission of Newly Available United States Diplomatic Cables, 25 June 2013.

²³⁴ F2/8 Sixth Additional Evidence Request, para. 159.

²³⁵ F2/8 Sixth Additional Evidence Request, paras. 119, 124, 126, 130, 136 referring to Cables 1, 2, 3, 4 and 5, all relating to events in 1978.

²³⁶ F2/8 Sixth Additional Evidence Request, paras. 124-138 referring to Cables 2, 3 and 4.

²³⁷ Cables 6, 7, 8.

²³⁸ F2/8 Sixth Additional Evidence Request, paras. 136-138 referring to Cable 5.

²³⁹ F16 Nuon Chea's Appeal Against the Judgment in Case 002/01, 29 December 2014.

²⁴⁰ E1/232.1 Transcript of Trial Proceedings, 22 October 2013; E1/233.1 Transcript of Trial Proceedings, 24 October 2013; E1/237.1 Transcript of Trial Proceedings, 31 October 2013.

²⁴¹ F2/8 Sixth Additional Evidence Request, paras. 119-123 referring to Cable 1.

²⁴² See, e.g., E313 Trial Judgment, paras. 340, 773. See also, paras. 87, 89, 133, 203, 219, 309, 726-727, 729, 732-733, 735, 739, 741, 745, 749, 766, 777, 807-808, 810.

Trial Chamber's findings on the hierarchical structure of the Khmer Rouge, forced movements and events at Tuol Po Chrey.

107. The Cables are also unsuitable to prove the facts that Nuon Chea purports they prove. While the precise findings in relation to which the Cables are being adduced is unclear, it appears they are intended to support assertions of potential internal revolt and the notion of Vietnam's purported grand plan to invade Cambodia.²⁴³ However, the Cables are inapposite given they fall outside the relevant time period of the Judgment. The request to admit the Cables is also frivolous. The claim that the Defence "did not consider it worthwhile to request the[ir] admission" at trial because admission of unrelated cables were denied is testament to the frivolous nature of the request.²⁴⁴ In that instance, the Trial Chamber found that the specific cables put forward did not meet the criteria for admission under Rule 87(3).²⁴⁵ Accepting Nuon Chea's absurd rationale would mean that admission of evidence is no longer governed by an assessment of an individual piece of evidence, but purely on the general category of evidence to which it belongs.
108. Third, as with the other parts of the Request, the Defence fails to identify the specific findings in the Judgment that the Cables are purported to contradict. In the absence of any reference to the Judgment, it is assumed that purported evidence of potential internal revolt is supposed to go to the hierarchical nature of the CPK and role of the Zones. Nuon Chea's failure to pinpoint the underlying elements he takes issue with when challenging broad sections of the judgment is transparently an attempt to hide the baseless nature of the request.

IV. Conclusion


109. For the reasons set forth above, the Co-Prosecutors respectfully request that the Supreme Court Chamber:
- 1) **DENY** Nuon Chea's request to admit additional documents on appeal; and
 - 2) **DENY** Nuon Chea's request to call additional witnesses on appeal.

Respectfully submitted,

²⁴³ See, e.g., F2/8 Sixth Additional Evidence Request, paras. 40, 42, 43, 61.

²⁴⁴ F2/8 Sixth Additional Evidence Request, para. 159.

²⁴⁵ See, E282/2 Decision on the Co-Prosecutors' and KHIEU Samphan's Internal Rule 87(4) Requests concerning US Diplomatic Cables (E282 and E282/1; E290 and E290/1), 13 June 2013; E282/2/1/2 Decision on the Co-Prosecutors' Request for Reconsideration of the Decision Regarding Admission of Newly Available United States Diplomatic Cables (E282/2/1) and KHIEU Samphan's Response (E282/2/1/1), 01 August 2013.

Date	Name	Place	Signature
14 October 2015	CHEA Leang Co-Prosecutor	Phnom Penh	
	Nicholas KOUMJIAN Co-Prosecutor		