

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

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**NUON CHEA'S FOURTH WITNESS REQUEST FOR THE CASE 002/02
SECURITY CENTRES AND "INTERNAL PURGES" SEGMENT
(S-21 OPERATIONS AND DOCUMENTARY EVIDENCE)**

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I. INTRODUCTION

1. Pursuant to Internal Rules 91(1) and 87(4), the Co-Lawyers for Mr. Nuon Chea (the “Defence”) submit this request (the “Request”) in respect of ten witnesses who can offer evidence regarding key contested issues in the current Case 002/02 trial segment on Security Centres and “Internal Purges”.
2. The Defence respectfully requests the Trial Chamber to expedite the testimony of seven witnesses who were previously proposed by the Defence and who can provide crucial and unique evidence regarding S-21 and internal purges. Two of them, ██████████ (2-TCW-864) and¹ ██████████ (2-TCW-854),² were working at S-21 at the time of the events. The third proposed witness, ██████████ (2-TCW-956),³ was detained in S-21. ██████████ (2-TCW-870)⁴ and ██████████ (2-TCW-814)⁵ worked for the Tuol Sleng museum shortly after the fall of the Democratic Kampuchea regime, while ██████████ (2-TCW-946)⁶ is the author of the documentary ██████████, which has been admitted into evidence. These three persons can provide crucial and unique evidence with regard to the original documentation found at S-21 a few months after the fall of the regime.
3. Furthermore, the Defence requests the Trial Chamber to call three additional witnesses pursuant to Rule 87 (4) of the Internal Rules: ██████████ (Witness 1) and ██████████ (Witness 2), who prepared the OCIJ list of S-21 prisoners, as well as ██████████ (Witness 3), who provided a number of alleged S-21 photographs to DC-Cam. They are able to provide critical evidence for the current Case 002/02 trial segment on Security Centres and “Internal Purges” in respect of key documentary evidence on the case file regarding S-21 Security Centre.
4. The Defence’s position is that the vast majority of individuals allegedly registered at S-21 were not detained in S-21 and/or executed. To the contrary, it submits that the vast majority of the individuals who appear on the so-called S-21 prisoner lists were only registered in S-21, and were then sent to Prey Sar⁷ (which forms part of the ‘S-21

¹ E305/4.2, ‘Annex B – Updated Summaries of Proposed Witnesses, Civil Parties and Experts (no protective measures sought)’, 8 May 2014, (“Updated Witness Summaries”), p. 10, #18.

² E305/4.2, Updated Witness Summaries, p. 11, #21.

³ E305/4.2, Updated Witness Summaries, p. 9, #17.

⁴ E305/4.2, Updated Witness Summaries, p. 3, #5.

⁵ E305/4.2, Updated Witness Summaries, p. 2, #4.

⁶ E305/4.2, Updated Witness Summaries, p. 6, #10.

⁷ ██████████, Written Record of Interview of ██████████, ██████████.

complex', according to the OCIJ),⁸ to the Kampong Chang Airfield,⁹ to other re-education centers,¹⁰ or released.¹¹ The Defence further notes that the evidence on the case file appear to demonstrate that around 5000 individuals were executed in S-21. About 6,000 negatives of photographs allegedly taken at S-21 were found in 1994.¹² About 4,300 biographies have been found, according to David Chandler, who is considered a leading expert on S-21.¹³ Geng Biao, China's Vice-Premier and Minister of Defense in January 1979, referred to "more than 4,000 people" being arrested in a 1981 report.¹⁴ Last but not least, in the compiled lists of S-21 prisoners prepared by the OCIJ, an execution date is included for 5,512 individuals out of the 15,101 individuals listed therein.¹⁵

5. As a result, the evidence to be provided by the witnesses who form the subject of the present request goes to the heart of the Defence case. This instant request is the fourth instalment in a series of witness requests the Defence has filed in relation to this segment.¹⁶

II. BACKGROUND AND PROCEDURAL HISTORY

6. As the Defence indicated to the Trial Chamber in its September 2015 East Zone-related witness request,¹⁷ the heart of the Defence case is that the CPK, far from being a disciplined, unified and "pyramidal" hierarchy, was engulfed in constant internal turmoil; that different and equally strong factions (including one led by East Zone secretary Sao Phim and Northwest Zone secretary Ruos Nhim) pursued competing agendas intending to seek overall control of the Party and the country; and that one of those factions also sought

⁸ **D427**, Closing Order, para. 415.

⁹ See e.g. **E3/7532**, DC-Cam Statement of ██████████, ERN 00329478.

¹⁰ See e.g. **E3/7664**, Written Record of Interview of ██████████, ERN 00163804; E3/7543, DC Cam interview Top Ri, ERN 00324274-75.

¹¹ See e.g. **E393.2**, OCIJ S-21 Prisoners List 31 March 2016, entries 7390, 7396, 7397, 7399, 7405, 7406, 7409, 7412, 7421, 7443, 7445, 7450, 7453, 7460, 7469, 7475, 7479.

¹² **E3/1684**, Book by DAVID Chandler entitled: "Voices from S-21 - Terror and History in Pol Pot's Secret Prison", EEN: 00192676; E3/3088R, The Work Secret of S-21, at 02.17-02.32; E3/8639 contains 5,186 alleged S-21 photographs. While the Defence is aware that the Prosecution tendered 1,405 photographs which it obtained from DC-Cam, the Defence submits that no evidence has been provided regarding their provenance or authenticity, and that further, they may contain duplicates of the negatives initially found. See **E394**, Co-Prosecutors' Request to Add S-21 Photographs to the Corresponding List Admitted as E3/9214, 11 Apr 2016.

¹³ **E3/1684**, Book by DAVID Chandler entitled: "Voices from S-21 - Terror and History in Pol Pot's Secret Prison", ERN: 00192674, 00192685.

¹⁴ **E3/7325**, Geng Biao's Report on the Situation of the Indochinese Peninsula, ERN 01001623.

¹⁵ **E393.2**, OCIJ S-21 Prisoners List 31 March 2016, Column 14, Blank Entries.

¹⁶ See, *infra*, at para. 9.

¹⁷ **E370**, 'Nuon Chea's Urgent and Consolidated Request to Expedite Two Already-Requested Witnesses and Summons Four Additional Witnesses Regarding the Treatment of the Cham', 29 Sep 2015 ("East Zone Witness Request"), para. 25.

to advance the interests of Vietnam, if not also the Soviet Union. A detailed overview of the Defence case is set out in one public filing before the Supreme Court Chamber.¹⁸

A. Case 002/02 Witness Lists

7. On 8 and 9 May 2014, the Defence and the other parties respectively filed updated lists of proposed witnesses, civil parties and experts for Case 002/02.¹⁹ The Defence's updated witness list (the "Updated Witness List") included [REDACTED] (2-TCW-814),²⁰ [REDACTED] (2-TCW-870),²¹ [REDACTED] (2-TCW-946),²² [REDACTED] (2-TCW-864),²³ and [REDACTED] (2-TCW-854).²⁴
8. On 24 July 2014, the Defence filed a list of new witnesses and experts for Case 002/02²⁵ (the "New Witness List"). The Defence's New Witness List included [REDACTED] (2-TCW-963).²⁶

B. Witnesses for Security Centres and "Internal Purges"

9. On 7 March 2016, the Trial Chamber issued a first list of nine people scheduled to appear before it either as a witness or civil party in respect of the S-21 Security Centre.²⁷ The first person appeared on 18 April 2016, and seven have appeared so far (six witnesses and one civil party). In the same email, the Chamber indicated that "[t]he list of witnesses for the remaining sub-topic on "Internal Purges" will be notified to the parties in due course."
10. On 24 March 2016, the Defence filed its first witness request for the Security Centres and "Internal Purges" segment, seeking six witnesses whose testimony relates to North Zone-affiliated military division 310.²⁸ On 1 April 2016, the Defence filed its second witness request for the Security Centres and "Internal Purges" segment, seeking eight witnesses

¹⁸ See, in particular, F2/8, 'Nuon Chea's Sixth Request to Consider and Obtain Additional Evidence in Connection with the Appeal Against the Trial Judgement in Case 002/01', 11 Sep 2015 ("Sixth Appeal Additional Evidence Request"), paras. 23-69.

¹⁹ E305/4, 'Updated Lists and Summaries of Proposed Witnesses, Civil Parties and Experts', 8 May 2014; E305/5, 'Témoins et experts proposés par la Défense de M. KHIEU Samphan pour le procès 002/02', 9 May 2014; E305/6, 'Co-Prosecutors' Proposed Witness, Civil Party and Expert List and Summaries for the Trial In Case File 002/02 (With 5 Confidential Annexes I, II, IIA, III and IIIA)', 9 May 2014; E305/7, 'Civil Party Lead Co-Lawyers' Rule 80 Witness, Expert and Civil Party Lists for Case 002/02 With Confidential Annexes', 9 May 2014.

²⁰ E305/4.2, Updated Witness Summaries, p. 2, #4.

²¹ E305/4.2, Updated Witness Summaries, p. 3, #5.

²² E305/4.2, Updated Witness Summaries, p. 6, #10.

²³ E305/4.2, Updated Witness Summaries, p. 10, #18.

²⁴ E305/4.2, Updated Witness Summaries, p. 11, #21.

²⁵ E307/4, 'New Witness, Civil Party and Expert List for Case 002/02', 24 Jul 2014.

²⁶ E307/4, 'New Witness, Civil Party and Expert List for Case 002/02', 24 Jul 2014

²⁷ E391.1.1, Email from Trial Chamber Senior Legal Officer to Parties, 7 Mar 2016.

²⁸ E391, First Witness Request (Division 310).

whose testimony relates to leadership of the rebellion.²⁹ On 11 April 2016, the Defence filed its third request for the Security Centres and “Internal Purges” segment, asking the chamber to expedite the appearance of four witnesses and seeking seven witnesses whose testimonies relates to the rebellious movement in the Northwest Zone, the East Zone and the Northeast Zones.³⁰

11. The Chamber has yet to rule on these three witness requests. Furthermore, on 11 May 2016, the Chamber issued a memorandum requiring the Defence to offer further information on the relevance of those previously requested witnesses’ testimonies with respect to the scope of Case 002/02, and, in particular:

How the existence of conflicting factions could provide a defence to the charges in the Closing Order or could be considered to be a mitigating circumstance”.³¹

C. OCIJ S-21 Prisoner List

12. On 5 May 2016, the Parties were informed that the OCIJ had been working for two years on creating an updated list of individuals detained at S-21 (“the OCIJ List”). The list contains 15,101 names – or 2,828 individuals more than the S-21 prisoner list prepared by the OCP.³² According to the OCIJ, it reviewed 13,383 documents, including S-21 prisoners’ entry logs, biographies, S-21 staff logs, interrogation lists and execution logs.³³ Out of these 13,383 documents, 871 were relied upon by the OCIJ in preparing its list.³⁴ Following oral submissions by the parties as to the admissibility of these documents,³⁵ on 10 May 2016, the Chamber sent a courtesy copy of a memorandum admitting all the documents underlying the OCIJ List and an attached excel table listing the relevant E3 numbers for all documents relied upon in the Prisoner list which were already in the Case File 002/02 and assigning new E3 numbers to those documents which have now been admitted.³⁶
13. On 28 April 2016, the Defence requested the Trial Chamber to order an adjournment – without any court hearing – of four weeks in order to protect Mr Nuon Chea’s

²⁹ E392, ‘Second Witness Request (Leadership), 1 Apr 2016.

³⁰ E395, ‘Third Witness Request (Rebellion Evidence)’, 8 Apr 2016.

³¹ E395/1, ‘Request for briefing on significance of conflicting faction within the DK leadership’, 11 May 2016, ERN 01240207.

³² E393.2, ‘OCIJ S-21 Prisoners List’, 31 Mar 2016.

³³ E393.1, ‘Interoffice Memorandum Considering the “OCIJ S-21 Prisoner List and Explanation of the Applied Methodology”, 30 Mar 2016.

³⁴ E393/1.1, Table of Documents Underlying S21 Prisoners List, 30 Mar 2016.

³⁵ Draft Transcript, 2 May 2016, from 13.44.58.

³⁶ Email of the Trial Chamber Senior Legal Officer to the Parties, 11 May 2016.

fundamental fair trial rights, and particularly his rights to prepare for the examination of witnesses and to present evidence. The Request was based on the trial and witness scheduling changes, newly disclosed documents – including the OCIJ list - as well as the amount of materials to be reviewed in preparation of the then-remaining S-21 witnesses (HIM Huy, Suos Thy and Duch).³⁷ The Trial Chamber rendered its decision orally on 3 May 2016,³⁸ and provided reasons in writing on 12 May 2016,³⁹ partially granting the Request.

14. On 19 May 2016, the Defence requested the Trial Chamber to reconsider its Decision and to order that witnesses Suos Thy (2-TCW-906) and Duch only be examined by the Co-Prosecutors within the currently scheduled time frame, and to remand their examination by the Defence until three weeks after the end of the Co-Prosecutors' examination of Duch, with no additional witness being heard in the meantime.⁴⁰ The request was partially based on the fact that the Defence's preliminary analysis raised a number of concerns regarding the authenticity and reliability of the documents underlying the OCIJ list.⁴¹ On 23 May 2016, the Trial Chamber partially granted the request and adjourned the proceedings until 2 June 2016.⁴²

III. APPLICABLE LAW

A. Expediting Witnesses

15. Pursuant to Rule 91(1), it is within the Trial Chamber's discretion to "hear Civil Parties, witnesses and experts in the order it considers useful". The Chamber has previously used its power under Rule 91(1) to expedite the testimony of Thet Sambath, when it considered it "prudent" to do so.⁴³ The question as to whether the evidence may be conducive to ascertaining the truth is essential in determining whether to prioritise a witness.⁴⁴
16. Pursuant to Article 35 New of the Law on the Establishment of the ECCC, Defendants have the fundamental right to obtain the presentation and examination of evidence on their behalf under the same conditions as evidence against them. It is the duty of the Trial

³⁷ E402, 'Nuon Chea's Urgent Request for Additional Time to Prepare for the Examination of the Remaining S-21 Witnesses in Order to Safeguard his Fundamental Fair Trial Rights', 28 Apr 2016 ('Initial Request').

³⁸ T. 3 May 2016 (Oral Decision on E402, Day 407), at 13.31.08.

³⁹ E402/1, 'Decision on Nuon Chea Defence Request for an Adjournment (E402)', 12 May 2016.

⁴⁰ Email from the Defence to the Trial Chamber,

⁴¹ T. 23 May 2016 (Nuon Chea Defence's Oral Arguments), pp. 5-7.

⁴² T. 23 May 2016 (TC Ruling), p. 48, at 13.38.14.

⁴³ E335/3, 'Decision on Co-Prosecutors' Request to Call Thet Sambath as a Priority Witness', 7 May 2015 ("Expediting Sambath Decision"), paras. 7-9.

⁴⁴ E335/3, Expediting Sambath Decision, para. 9.

Chamber to protect those rights, to ensure that trials are fair and expeditious and are conducted with full respect for the rights of the accused and for the protection of victims and witnesses.⁴⁵ In particular, the President of the Chamber shall guarantee the free exercise of the Defence rights.⁴⁶

B. Summoning New Witnesses

17. Rule 87(4) enables the Chamber, at its own initiative or on a party's request, to summons a person as a witness whose evidence "it deems conducive to ascertaining the truth". The rule requires the Chamber to consider the request in accordance with criteria set out in Rule 87(3). The requesting party, for its part, must satisfy the Chamber that the testimony was unavailable before the opening of the trial.⁴⁷ The Chamber has held that where the relevance of a person's testimony was revealed but by "minimal information" before the opening of the trial while more detailed information was only available after the opening of the trial, the testimony in question will be considered unavailable before the opening of the trial.⁴⁸ Where testimony was available before the opening of the trial, the Trial Chamber has held that it may nevertheless be admitted "where the interests of justice so require, in particular where it is exculpatory and requires evaluation in order to avoid a miscarriage of justice"⁴⁹ or where it "closely relate[s] to material already before the Chamber and ... the interests of justice require the sources to be evaluated together."⁵⁰ To satisfy the requirements of Rule 87(3), evidence put before the Trial Chamber need only be *prima facie* relevant and reliable.⁵¹

IV. ARGUMENT

18. The Defence submits that all the proposed witnesses are directly relevant to the S-21 and internal purges segment, and can provide evidence which, while closely related to evidence already before the Trial Chamber, is of a unique character. Duch described the essence of S-21 Security Centre to the OCIJ in the following terms: "[t]he upper echelon

⁴⁵ Article 33 new of the Law on the Establishment of the ECCC.

⁴⁶ Rule 85 of the IR.

⁴⁷ The Chamber specified that the opening of the trial in Case 002 was the initial hearing, which started on 27 June 2011.

⁴⁸ T. 7 Dec 2015 (TC Ruling, E1/363.1), p. 49, Ins. 2-8.

⁴⁹ **E307/1**, 'Decision on Parties' Joint Request for Clarification Regarding the Application of Rule 87(4) (E307) and the Nuon Chea Defence Notice of Non-Filing of Updated Lists Evidence (E305/3)', 11 Jun 2014, para. 3; *accord* **E190**, 'Decision Concerning New Documents and Other Related Issues', 30 Apr 2012 ("Decision on New Documents"), para. 36.

⁵⁰ **E289/2**, 'Decision on Civil Party Lead Co-Lawyers' Internal Rule 87(4) Request to Put Before the Chamber New Evidence (E289) and KHIEU Samphan's Response (E289/1)', 14 Jun 2013, para. 3; *accord* **E190**, Decision on New Documents, para. 32.

⁵¹ **E313**, 'Case 002/01 Judgement', 7 Aug 2014, para. 26.

had stated that the Vietnamese had sent agents into Cambodia, and this was the reason S-21 was appointed to search for those agents through the confessions”.⁵² In other words, and as he testified before the Chamber in the Case 002/01 trial, S-21 was “a unit to fulfil its anti-espionage task.”⁵³ The evidence of the nine requested witnesses may provide additional, unique insight on the true nature of the operations at S-21 or on the veracity of the underlying evidence thereto. This evidence goes directly to the heart of the Defence’s case.⁵⁴ In combination with evidence of treasonous rebellion against the CPK and the legitimate, widely-recognised government of the DK,⁵⁵ the evidence sought in this Request would cast many of the facts at issue in the segment in a different light. This would not only alter the Chamber’s factual findings in respect of Security Centres and “Internal Purges”, it would also absolve Nuon Chea in whole or in part of criminal responsibility for several of the crimes charged in the Closing Order in relation to this segment.⁵⁶

19. Considering the direct link between those ten witnesses and the witnesses already selected by the Chamber with regard to S-21 Security Centre, the Defence requests that they appear following the testimony of Kaing Guek Eav *alias* Duch and prior to the appearance of the bulk of witnesses scheduled to testify in respect of “internal purges” generally, in order to provide the Trial Chamber and the parties with a comprehensive picture of the facts.

A. Contemporaneous Witnesses

(i) Former S-21 Staff (██████████2-TCW-864; ██████████2-TCW-854)

20. The Defence reiterates its previous submissions in respect of these two witnesses⁵⁷ and suggests that given the focus of their evidence on S-21, it is most appropriate to hear these witnesses’ testimony in the ongoing Security Centres and “Internal Purges” segment. Hearing these two individuals during the present segments would not only be logical as S-21 is the subject matter of their evidence, but it would also be conducive to ascertaining the truth.

⁵² E3/451, ‘Written Record of Interview of Kaing Guek Eav *alias* Duch’, 5 May 2009, ERN 00204341.

⁵³ T. 9 Apr 2012 (Kaing Guek Eav *alias* Duch, E1/62.1), p. 107, lns. 2-3.

⁵⁴ *See, supra*, at para. 8.

⁵⁵ *See, E391*, ‘Nuon Chea’s First Rule 87(4) Request to Call Additional Witnesses and Rule 93 Request for Additional Investigations in Relation to the Case 002/02 Trial Segment on S-21 Security Centre and “Internal Purges”’, 24 Mar 2016; *E392*, ‘Nuon Chea’s Second Witness Request for the Case 002/02 Security Centres and “Internal Purges” Segment (Leadership)’, 1 Apr 2016; *E395*, ‘Nuon Chea’s Third Witness Request for the Case 002/02 Security Centres and “Internal Purges” Segment (Evidence of Treasonous Rebellion)’, 8 Apr 2016.

⁵⁶ *See, also*, the Defence’s forthcoming response to *E395/1*, ‘Request for briefing on significance of conflicting factions within the DK leadership’, 11 May 2016.

⁵⁷ *E305/4.2*, Updated Witness Summaries, pp.10-11, # 18 and 21.

21. In addition, the Defence submits that [REDACTED] (2-TCW-864)'s evidence is crucial in many ways. First, he was part of the interrogation unit at S-21 and was, [REDACTED] [REDACTED] – a matter of heightened importance now given that [REDACTED] has been one of the focal topics of the Case 002/02 hearings on S-21. [REDACTED] (2-TCW-864)'s testimony could provide the Chamber with unique insight in this regard.⁵⁸ [REDACTED]

[REDACTED] Thus, hearing his live testimony on [REDACTED] [REDACTED] is now of heightened importance as he will be able to shed light, *inter alia*, on its accuracy and chain of command and on the training received by the guards and interrogators at S-21. Finally, according to his written evidence, [REDACTED] (2-TCW-864) will also be able to provide critical exculpatory evidence related to the release of prisoners⁶¹ and the process of selecting people to be sent to Prey Sâr⁶² – issues which were extensively discussed during the hearings on S-21. Finally, according to Duch, [REDACTED] (2-TCW-864) interrogated and partially transcribed the confession of [REDACTED] (2-TCW-956), another witness whose appearance the Defence asks to be expedited.⁶³

22. [REDACTED] (2-TCW-854) [REDACTED], and was the first photographer to come to S-21.⁶⁴ According to his WRIs, he can provide evidence on a wide range of subjects related to S-21 on which other witnesses were not able to provide comparably detailed evidence. In particular, [REDACTED] (2-TCW-854) would be able to provide unique evidence regarding the fact that a number of individuals who were registered and photographed at S-21 were then sent to Prey Sâr.⁶⁵ This element is key to the allegation that all prisoners whose names are listed on

⁵⁸ [REDACTED], 'Written Record of Interview of [REDACTED] [2-TCW-864]', 14 Feb 2008 ("[REDACTED] (2-TCW-864 WRI)"), [REDACTED]

⁵⁹ [REDACTED]

⁶⁰ [REDACTED]

⁶¹ [REDACTED] (2-TCW-864) WRI,

⁶² [REDACTED] (2-TCW-864) WRI,

⁶³ See, *infra*, at para. 20.

⁶⁴ [REDACTED], 'Written Record of Interview of [REDACTED] (2-TCW-854)', 22 Oct 2007 ("2007 [REDACTED] (2-TCW-854) WRI"), [REDACTED]

⁶⁵ [REDACTED], 2007 [REDACTED] (2-TCW-854) WRI, [REDACTED]

[REDACTED] 2007 [REDACTED] (2-TCW-854) WRI, [REDACTED]

prisoners' lists were sent to S-21 and subsequently killed. In addition, [REDACTED] (2-TCW-854)'s evidence is relevant to the general process of photograph taking at S-21 and the use of photographs once they were taken, including by linking them with biographies and with lists allegedly prepared by SUOS Thy (2-TCW-816).⁶⁶

23. In his written testimony, [REDACTED] (2-TCW-854) also provides evidence conflicting with and able to corroborate or challenge the veracity of information provided by witness NHEM En on a number of subjects, including in particular:

- (a) NHEM En's arrival and role at S-21, and NHEM En's claim that [REDACTED]
- (b) the fact that photographs were taken for each prisoner;⁶⁸
- (c) the total number of prisoners photographed, which he estimated to be 2000-3000;⁶⁹
- (d) the arrest of S-21 staff, stating that 3-4 were arrested, including a medic who allegedly raped a prisoner;⁷⁰
- (e) the presence of children, as he stated he never saw any children;⁷¹ and,
- (f) The numbering system for prisoners photographed, and NHEM En's claim that it was done by his subordinates and that it was not a consecutive numbering system, but rather a random one.⁷²

24. Last but not least, according to NHEM En⁷³, [REDACTED] (2-TCW-854) was [REDACTED]
[REDACTED]
[REDACTED] (2-TCW-854) will be able to confirm NHEM Em's assertion and further to provide essential clarifications regarding the origin of these documents, their accuracy and, in particular, the numbering process applied.

⁶⁶ [REDACTED], 2007 [REDACTED] (2-TCW-854) WRI, [REDACTED]
⁶⁷ [REDACTED], WRI of [REDACTED] (2-TCW-854), 18 Jan 2008, [REDACTED]
⁶⁸ [REDACTED], 2007 [REDACTED] (2-TCW-854) WRI, [REDACTED]
⁶⁹ [REDACTED], 2007 [REDACTED] (2-TCW-854) WRI, [REDACTED]
⁷⁰ [REDACTED], 2007 [REDACTED] (2-TCW-854) WRI, [REDACTED]
⁷¹ [REDACTED], 2007 [REDACTED] (2-TCW-854) WRI, [REDACTED]
⁷² [REDACTED], 2007 [REDACTED] (2-TCW-854) WRI, [REDACTED]
⁷³ [REDACTED]

⁷⁴ E394, 'OCP Rule 87(4) Request to Add S-21 Photographs to the Corresponding List Admitted as E3/9214', 11 Apr 2016.

currently available to them. As a result, the Defence requests for them to be called during the S-21 segment.

(ii) *Author of ██████████, a ████████ Documentary on S-21 (██████████, 2-TCW-946)*

31. ██████████ (2-TCW-946) is a filmmaker who produced two documentaries dealing with the DK period.⁸⁸ One of them, ██████████ is unique since it was shot in great part within the compound of S-21, ██████████. In particular, this film shows in details parts of the original documentation discovered at S-21 ██████████. Insofar as the Defence is aware, while most of these documents constitute primordial evidence for the ongoing trial segment such as, for instance, an orange booklet compiling the daily records of prisoners,⁹⁰ they have never been seen again since the documentary, let alone have they been brought before the Chamber. ██████████ part of this original documentation disappeared, including a number of photographs found in 1979 and 1980.⁹¹ ██████████ (2-TCW-946) is therefore the only individual able to provide evidence as to these documents.

32. The Defence submits that ██████████ (2-TCW-946)'s testimony is critical regarding the ongoing trial segment since his film provides crucial insight in relation to the documentation found at S-21. In addition, when submitting its first Witness List for Case 002, the Defence informed the Chamber that this witness was already quite elderly and suggested that the Chamber expedite his appearance and potentially hear him through video-link.⁹² So far, no decision was rendered by the Trial Chamber on this matter. ██████████ (2-TCW-946) is now ██████████ and the Defence submits that his testimony should be heard at the earliest opportunity.

(iii) *Authors of the OCIJ Prisoner List (██████████ Witness 1; ██████████ Witness 2)*

33. On 5 April 2016, the Chamber admitted the OCIJ List of prisoners.⁹³ This list identifies 15,101 names of individuals who were allegedly detained at S-21 Security Centre.⁹⁴ Due

⁸⁸ ██████████

⁸⁹ ██████████

⁹⁰ ██████████

⁹¹ E3/1684, Chandler, *Voices from S-21*, Chapter 1, End Note 7, ERN 00192855.

⁹² E305/4.2, *Updated Witness Summaries*, p. 6, #10.

⁹³ E393, 'Trial Chamber Memorandum Entitled "Decision Admitting New OCIJ Prisoner List"', 5 April 2006.

⁹⁴ E393.2, 'OCIJ S-21 Prisoner List', 31 March 2016.

to time constraints, the Defence has only undertaken a superficial analysis of this document. Nonetheless, this review has already raised significant questions about the methodology used to compile the list – in particular regarding the use of the documentation and the organisation of data. For instance, the Defence has identified 406 individuals listed who have neither a date of entry, date of arrest nor date of execution.⁹⁵ Thus, the Defence is not in a position to verify the information relied upon by the investigators to identify those 406 individuals as S-21 prisoners. In addition, the Defence noticed that out of the 871 documents relied upon by the OCIJ investigators, only 32 appear to be original documents. The remaining documents appear to be copies or scan of copies. Furthermore, some of the documents used have a unusual format, some of them bear the logo of the National Police from a previous regime,⁹⁶ some other have annotations in different languages such as Vietnamese or French,⁹⁷ and last but not least, some documents are simply illegible to read since the writing is almost erased.⁹⁸

34. The Defence has already drawn the attention of the Chamber to some serious methodological issues in its Urgent Request for Additional Time to Prepare for the Examination of the Remaining S-21 Witnesses in order to Safeguard his Fundamental Fair Trial Rights.⁹⁹ The Defence now questions even more strongly the origin, the date and the general accuracy of the 871 documents relied upon by the OCIJ investigators. Accordingly, it submits that it is essential to hear [REDACTED] [REDACTED] (Witness 1), [REDACTED], and [REDACTED] (Witness 2), [REDACTED] [REDACTED]. These witnesses will be able to provide detailed explanations on, *inter alia*, the methodology applied, the nature of the original documentation they relied upon, and the selection of this documentation. The Defence highlights that these clarifications from [REDACTED] are even more important since the OCIJ List constitutes key evidence the Parties may rely on during the ongoing trial segment, the authenticity and reliability of which is essential for the ascertainment of the truth.

⁹⁵ E393.2, ‘OCIJ S-21 Prisoner List’, 31 March 2016, entries 14099, 14160, 14238, 14374, 14502, 14583, 14677, 14689, 14690 and 14938.

⁹⁶ E3/10399, ‘Name list of prisoner of Division 164’, E3/10400, ‘Name list of prisoner of Division 170’.

⁹⁷ See E3/10381, ‘Name list of people entry on 14/4/78’, E3/1700, ‘The list of prisoners from Office and another Ministries entered on 17 February to 12 March 1977’, E3/3185, ‘List of prisoners killed from 15-31/1/77’, E3/9845, ‘The list of prisoners entered in March 1977’.

⁹⁸ See E3/10103, E3/10457, E3/10495

⁹⁹ E402, ‘Nuon Chea’s Urgent Request for Additional Time to Prepare for the Examination of the Remaining S-21 Witnesses in Order to Safeguard his Fundamental Fair Trial Rights’, 28 April 2016.

¹⁰⁰ E393.1, ‘Interoffice Memorandum - The OCIJ S-21 Prisoner List and Explanation of the Applied Methodology’, 30 March 2016.

(iv) [REDACTED] ([REDACTED]
[REDACTED] *Witness 3*)

35. In their Document List filed on 13 June 2014, the Co-Prosecutors proposed for admission an index of a collection of S-21 photographs obtained by DC-Cam, which has been admitted by the Chamber as document [REDACTED].¹⁰¹ On 11 April 2016, the Co-Prosecutors filed a Request to Add S-21 Photographs to the Corresponding List admitted as [REDACTED].¹⁰² According to the information on the top of this list, [REDACTED] [REDACTED] (Witness 3) provided DC-Cam with those photographs on 9 August 2012.¹⁰³ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Therefore, the Defence submits that [REDACTED] (Witness 3) should be summonsed to testify in order to provide clarification on the authenticity and chain of custody of those photographs, both elements which are essential when determining the weight to be given to the evidence.

(v) *The Defence could not have Anticipated Calling the Three New Witnesses*

36. The anticipated testimony of those three witnesses is *prima facie* reliable and relevant and conducive to ascertaining the truth. As stated above, the Defence submits that it is in the interests of justice to hear the testimonies of [REDACTED] (Witness 1) and [REDACTED] (Witness 2) in the course of the Security Centres and “Internal Purges” trial segment since the Parties may widely rely on the OCIJ List for their preparation for and questioning of the witnesses selected to appear in relation to this trial segment. As the OCIJ List has been made available to the Parties on 5 April 2016, the Defence further submits that the instant Request is not untimely since the Defence could not have anticipated calling these individuals. The same applies with regards to [REDACTED] [REDACTED] (Witness 3).

V. RELIEF

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

- (i) summons [REDACTED] (2-TCW-864), [REDACTED] [REDACTED] (2-TCW-854), [REDACTED] (2-TCW-956), [REDACTED] (2-TCW-

¹⁰¹ E305/13.23, ‘Co-Prosecutors’ Rule 80(3)(d) Updated Document List’, Annex C2 - Documents not in Case File 002, No. 66, 13 June 2014.

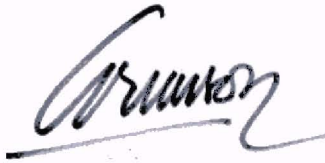
¹⁰² [REDACTED]
[REDACTED]

¹⁰³ [REDACTED]
[REDACTED]

946), [REDACTED] (2-TCW-870) and [REDACTED] (2-TCW-963) [REDACTED] [REDACTED] (2-TCW-81), to testify during the Security Centres and “Internal Purges” segment on an expedited basis; and,

- (ii) summons [REDACTED] (Witness 1), [REDACTED] (Witness 2) and [REDACTED] [REDACTED] (Witness 3) to testify pursuant to Rule 87 (4) of the Internal Rules, during the Security Centres and “Internal Purges” segment.

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