

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

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**CO-PROSECUTORS' RESPONSE TO KHIEU SAMPHAN'S REQUEST TO ADMIT
ADDITIONAL EVIDENCE (F51)**

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I. INTRODUCTION

1. Khieu Samphan's Request for Additional Evidence ("Admission Request") seeking to admit two Written Records of Investigation ("WRIs") and their corresponding audio recordings¹ should be dismissed as untimely and for failing to meet the stringent criteria to admit additional evidence during the appellate phase of proceedings, as discussed below. These criteria are necessarily high, as the proposed evidence must be assessed in the context of evidence given at the trial,² and appellate chambers are wary to review evidence *de novo*.³
2. Specifically, the Admission Request is untimely, as Khieu Samphan failed to avail himself of the opportunity presented by the Trial Chamber to raise this matter with it before it had reached judgment in the case. In addition, he fails to demonstrate pursuant to the admissibility criteria of Rule 108(7) that the WRIs could have been a decisive factor in the Trial Chamber's decision.⁴ Nor is there any interest of justice pursuant to Rule 104(1) which requires their admission.⁵ For these reasons, the Co-Prosecutors request that the Supreme Court Chamber ("SCC") dismiss the Admission Request.
3. This Response will not address Khieu Samphan's arguments that exceed the scope of a request to admit additional evidence, as they should be fully argued on appeal.⁶

¹ **F51** Khieu Samphan's Request for Admission of Additional Evidence, 8 October 2019 ("Admission Request").
² See, e.g. *Prosecutor v. Popović et al.*, IT-05-88-A, Appeals Chamber, Decision on Vujadin Popović's Motion for Admission of Additional Evidence on Appeal Pursuant to Rule 115, 20 October 2011, para. 39 ("the significance and potential impact of the tendered material must be assessed in the context of the evidence presented at trial."); *Prosecutor v. Simić*, IT-95-9-A, Appeals Chamber, Decision on Blagoje Simić's Motion for Admission of Additional Evidence, Alternatively for Taking of Judicial Notice, 1 June 2006, para. 14; *The Prosecutor v. Ntakirutimana and Ntakirutimana*, ICTR-96-10-A and ICTR-96-17-A, Appeals Chamber, Decision on Request for Admission of Additional Evidence, 8 April 2004, para. 5 ("The additional evidence must be considered in the context of the evidence which was given at the trial and not in isolation.").

³ See, e.g. **F36** Appeal Judgement, 23 November 2016 ("Case 002/01 AJ"), paras 29 ("the Supreme Court Chamber's role is to verify that the burden of establishing the elements of charges beyond reasonable doubt is fulfilled, without engaging in a *de novo* evaluation of the evidence"), 94; *Rutaganda v. The Prosecutor*, ICTR-96-3-A, Appeals Chamber, Judgement, 26 May 2003 ("*Rutaganda* AJ"), para. 505 ("It is settled case-law that an appeal is not a *de novo* review. Based on this principle, therefore, it does not fall to the Appeals Chamber to conduct a *de novo* trial of the Appellant [...] and/or to determine whether a different assessment of the evidence presented at trial would have sustained a finding [of] guilt.").

⁴ Extraordinary Chambers in the Courts of Cambodia, Internal Rules (Rev. 9) as revised on 16 January 2015 ("Internal Rules"), Rule 108(7).

⁵ Internal Rules, Rule 104(1).

⁶ See, e.g. **F51** Admission Request, paras 19 (regarding whether Khieu Samphan's alleged knowledge of the arrests of prominent Party leaders proves his knowledge of the crimes), 31-34 (regarding the reasonableness of the Chamber's reliance on a VOA interview and its failure to consider other plausible alternative interpretations

II. PROCEDURAL HISTORY

4. On 21 September 2016, the Trial Chamber issued its decision regarding deadlines for requests for new evidence, reaffirming the Co-Prosecutors' ongoing obligation to identify any potentially exculpatory material in their possession until the end of Case 002/02 and giving the Defence two weeks to file a Rule 87(4) request in response to disclosures of potentially exculpatory evidence made after 1 September 2016.⁷
5. On 28 February 2017, in connection with a case still under investigation, investigators from the Office of the Co-Investigating Judges ("OCIJ") interviewed Chuon Thy,⁸ who had previously testified in Cases 002/01 and 002/02.⁹ On 15 March 2017, OCIJ investigators interviewed Ek Hen,¹⁰ who had testified in Case 002/01 in 2013.¹¹
6. On 23 June 2017, the Trial Chamber (also "Chamber") declared the closure of the Case 002/02 evidentiary proceedings and withdrew to deliberate the verdict.¹²
7. On 27 June and 17 July 2017, the WRIs from Ek Hen's and Chuon Thy's interviews, respectively, became available on Zylab in English.¹³

of the evidence), 57 (arguing that the Chamber ignored the exculpatory trial testimony of Chuon Thy), 64 (complaining that the Chamber did not assess the trial testimony of Chuon Thy), 66 (regarding the Chamber's failure to draw "necessary inferences" from the testimony of other witnesses), 67-70 (arguing that Party principles set out in an issue of *Revolutionary Youth* contradict the Chamber's findings on the national marriage policy). Khieu Samphan even implies that he has strayed beyond the scope when he states: "All these arguments will obviously be developed in the Defence Appeal Brief." See **F51** Admission Request, fn. 139.

⁷ **E421/4** Decision on Requests Regarding Internal Rule 87(4) Deadlines, 21 September 2016 ("Deadline Decision"), paras 1, 9, 23-24, Disposition.

⁸ **E319/71.2.4** Chuon Thy WRI, which at that point in time was Case 003-**D114/303** Chuon Thy WRI. The corresponding audio recording is Case 003-**D114/303R**.

⁹ **E1/183.1** Chuon Thy, T. 24 April 2013; **E1/489.1** Chuon Thy (2-TCW-859), T. 25 October 2016; **E1/490.1** Chuon Thy (2-TCW-859), T. 26 October 2016. Chuon Thy's two prior statements were also admitted into evidence: **E3/4593** Chuon Thy WRI, 2 March 2010; **E3/10713** Chuon Thy WRI, 18 September 2015.

¹⁰ **E319/71.2.7** Ek Hen WRI, which at that point in time was Case 004-**D219/940** Ek Hen WRI. The corresponding audio recording is Case 004-**D219/940R**.

¹¹ **E1/217.1** Ek Hen, T. 3 July 2013. Ek Hen had also given two prior statements that were admitted into evidence: **E3/4635** Ek Hen DC-Cam Statement, 6 August 2003; **E3/474** Ek Hen WRI, 5 March 2008. See also **D94/8R**, which is the audio recording of the **E3/474** interview, and **D94/8.1**, which is the transcript of the audio recording.

¹² **E1/528.1** Closing Arguments, T. 23 June 2017, 11.09.45-11.11.13.

¹³ The Khmer version of Ek Hen's WRI (Case 004-**D219/940**) was available on Zylab on 15 March 2017, while the Khmer version of Chuon Thy's WRI (Case 003-**D114/303**) was available on 1 March 2017.

8. On 3 September 2018, the International Co-Prosecutor (“ICP”) disclosed eight statements¹⁴ that had been given by witnesses or civil parties who had testified in Case 002/01 and/or Case 002/02 and were later interviewed in connection with other cases.¹⁵ Included in the eight disclosed statements were the February and March 2017 WRIs from Chuon Thy and Ek Hen, respectively. The ICP placed the disclosed documents in a folder on the Court’s shared drive that was accessible to the Case 002 Defence teams and the Trial Chamber for review and any subsequent action deemed appropriate.¹⁶
9. On 16 November 2018, the Trial Chamber pronounced its verdict and sentence in Case 002/02, providing an oral summary of its findings and the disposition. The Chamber stated that the authoritative account of its findings would be made available in a written judgment in due course.¹⁷ That written judgment (“Judgment”) was subsequently issued in Khmer, English, and French on 28 March 2019.¹⁸
10. In response to extension requests from Nuon Chea and Khieu Samphan,¹⁹ the SCC gave all Case 002/02 parties until 1 July 2019 to file their notices of appeal.²⁰ On 21 June 2019, the Co-Prosecutors filed their notice, identifying one appellate ground.²¹ On 1 July 2019, Khieu Samphan filed his notice, alleging 1,824 Trial Chamber errors.²²

¹⁴ The documents were comprised of five WRIs, one civil party application, and two supplementary information forms. See **E319/71** International Co-Prosecutor’s Proposed Disclosure of Documents from Cases 003 and 004 (“Disclosure Notice”), para. 1.

¹⁵ **E319/71** Disclosure Notice, para. 1. As noted in **E319/71** Disclosure Notice, fn. 1, all but two of the documents were dated after the individual had testified in Case 002, and the two exceptions had spelled the Civil Party’s name differently from the name used in Case 002.

¹⁶ **E319/71** Disclosure Notice, para. 1, fn. 3 (designating the path as G:\OCP Proposed Disclosure\20180903 Proposed Disclosure).

¹⁷ **E1/529.1** Pronouncement of Judgment in Case 002/02, T. 16 November 2018, 09:34:35-09:36:02.

¹⁸ **E465** Case 002/02 Judgement, 16 November 2018 (“Case 002/02 TJ”).

¹⁹ **F39/1.1** Khieu Samphan Defence Request for Extension of Time and Number of Pages to File Notice of Appeal, 3 April 2019; **F40/1.1** Nuon Chea’s Urgent First Request for an Extension of Time and Page Limits for Filing his Notice of Appeal Against the Trial Judgement in Case 002/02, 3 April 2019.

²⁰ **F43** Decision on Nuon Chea and Khieu Samphan’s Requests for Extensions of Time and Page Limits on Notices of Appeal, 26 April 2019, paras 11, 13.

²¹ **E465/2/1** Co-Prosecutors’ Notice of Appeal of the Trial Judgment in Case 002/02, 21 June 2019.

²² **E465/4/1** Khieu Samphan’s Notice of Appeal (002/02), 1 July 2019.

11. On 8 October 2019, Khieu Samphan requested that the SCC admit the WRIs from Chuon Thy and Ek Hen that were disclosed on 3 September 2018, as well as their corresponding audio recordings (collectively, the “Proposed Evidence”).²³

III. APPLICABLE LAW

12. The general requirements for the admission of evidence are set out in Rule 87(3), which also provides that the Chamber may reject a request to admit evidence when it is:
- a. irrelevant or repetitious;
 - b. impossible to obtain within a reasonable time;
 - c. unsuitable to prove the facts it purports to prove;
 - d. not allowed under the law; or
 - e. intended to prolong proceedings or is frivolous.²⁴

13. Requests to admit additional evidence on appeal are further regulated by Rule 108(7), which provides in relevant part:

Subject to Rule 87(3), the parties may submit a request to the Chamber for additional evidence provided it was unavailable at trial and could have been a decisive factor in reaching the decision at trial. The request shall clearly identify the specific findings of fact made by the Trial Chamber to which the additional evidence is directed.²⁵

14. The SCC has found that in order to show that the requested piece of additional evidence could have been a *decisive factor*:

[...] the party proposing the evidence must demonstrate a realistic possibility that the evidence, had it been put before the Trial Chamber, could have led the Trial Chamber to enter a different verdict, in whole or in part. In making this assessment, the proposed additional evidence must be assessed in the context of the evidence that was put before the Trial Chamber in relation to a factual finding that was crucial or instrumental to the conviction or sentence. It is for the party proposing the additional evidence to demonstrate this impact of the proposed additional evidence.²⁶

²³ F51 Admission Request, paras 5, 78.

²⁴ Internal Rules, Rule 87(3).

²⁵ Internal Rules, Rule 108(7).

²⁶ F36 Case 002/01 AJ, para. 30.

15. Rule 104(1) states in relevant part that “the Supreme Court Chamber may itself examine evidence and call new evidence to determine the issue.”²⁷ The SCC has maintained that it “will not lightly disturb findings of fact by a Trial Chamber”, agreeing with the general approach of the ICTY that gives a margin of deference to factual findings reached by the trier of fact.²⁸ This approach recognises that “the task of hearing, assessing and weighing the evidence presented at trial is left primarily to the Trial Chamber” because the Chamber “has the advantage of observing witnesses in person and so is better positioned than the Appeals Chamber to assess the reliability and credibility of the evidence.”²⁹
16. Rule 53(4) states: “The Co-Prosecutors shall, as soon as practicable, disclose [...] any material that in the actual knowledge of the Co-Prosecutors may suggest the innocence or mitigate the guilt of the Suspect of the Charged Person or affect the credibility of the prosecution evidence.”³⁰

IV. SUBMISSIONS

A. THE ADMISSION REQUEST SHOULD BE DISMISSED BECAUSE IT IS UNTIMELY

17. The Admission Request is untimely as the Defence did not avail itself of the opportunity to seek admission of the Proposed Evidence after it was disclosed and before the Case 002/02 verdict was rendered. In its decision dated 21 September 2016, the Trial Chamber anticipated ongoing disclosures, indicated that it would allow parties to make submissions regarding

²⁷ Internal Rules, Rule 104(1).

²⁸ Case 001-F28 Appeal Judgement, 3 February 2012, para. 17 citing *Prosecutor v. Kupreškić et al.*, IT-95-16-A, Appeals Chamber, Appeal Judgement, 23 October 2001 (“*Kupreškić AJ*”), paras 30, 32; F36 Appeal Judgement, 23 November 2016 (“Case 002/01 AJ”), para. 89. See also *Prosecutor v. Blaškić*, IT-95-14-A, Appeals Chamber, Judgement, 29 July 2004, para. 17; *Prosecutor v. Krstić*, IT-98-33-A, Appeals Chamber, Judgement, 19 April 2004, para. 40.

²⁹ See, e.g. *Kupreškić AJ*, paras 30, 32; *Prosecutor v. Kvočka et al.*, IT-98-30/1-A, Appeals Chamber, Judgement, 28 February 2005, para. 427; *Rutaganda AJ*, para. 21; *Kajelijeli v. The Prosecutor*, ICTR-98-44A-A, Appeals Chamber, Judgement, 23 May 2005, para. 50; *The Prosecutor v. Munyakazi*, ICTR-97-36A-A, Appeals Chamber, Judgement, 28 September 2011, paras 118, 154.

³⁰ Internal Rules, Rule 53(4). See also F2/4/2 Decision on Part of Nuon Chea’s Third Request to Obtain and Consider Additional Evidence in Appeal Proceedings of Case 002/01, 16 March 2015 (“NC Third Request Decision”), para. 17.

admission of additional evidence, and imposed a reasonable time limit on such admissions, i.e. within two weeks of receiving the disclosed material.³¹

18. Specifically, the Chamber recalled that the Accused have “a fundamental right of access to potentially exculpatory material” while the Co-Prosecutors’ duty to disclose such material was “not subject to any deadlines” and would continue “until the end of Case 002/02”.³² The Chamber explicitly acknowledged that these factors “may trigger Rule 87(4) requests by the Defence after the 1 September 2016 deadline”³³ and if they did, “the Defence must respond to disclosures of potentially exculpatory evidence made *after* 1 September 2016 with Internal Rule 87(4) motions *within two weeks of receipt of the disclosures*.”³⁴
19. Thus, in direct contradiction of Khieu Samphan’s allegation that the Chamber wanted to convict Khieu Samphan at any cost and therefore deliberately breached its obligations by failing to reopen proceedings, the Trial Chamber provided a remedy, albeit one the Defence failed to take.³⁵ Indeed, the decision demonstrates the Chamber’s efforts to preserve both the fundamental rights of the Accused and equality of arms.³⁶ It also set an expectation for the Defence to act. It reminded the parties that “disclosed documents are not automatically admitted or put before the Chamber”,³⁷ the Defence is the “best placed to determine which documents they consider to be exculpatory”,³⁸ and “it is at the Defence’s discretion whether to seek the admission of [disclosed] documents pursuant to Internal Rule 87(4).”³⁹
20. The Defence failed to make any motion for admission of exculpatory material after the 3 September 2018 disclosure, despite receiving the material at issue over two months before the Trial Chamber pronounced its verdict. Nor did it ask the Trial Chamber to reopen proceedings due to exceptional circumstances or for the limited purpose of litigating the disclosed statements. Had the Defence made such a timely motion, the Trial Chamber would

³¹ E421/4 Deadline Decision, paras 15 (stating that it could not leave the current proceedings open to new evidence indefinitely but allowed for exceptions), 23-24.

³² E421/4 Deadline Decision, para. 9.

³³ E421/4 Deadline Decision, para. 19.

³⁴ E421/4 Deadline Decision, paras 23-24 (quote at para. 23, emphasis added).

³⁵ F51 Admission Request, paras 12, 14.

³⁶ See, e.g. E421/4 Deadline Decision, paras 9, 14, 19.

³⁷ E421/4 Deadline Decision, para. 9.

³⁸ E421/4 Deadline Decision, para. 10.

³⁹ E421/4 Deadline Decision, para. 11.

have had the opportunity to decide the matter before reaching its verdict and admit the documents for consideration if it deemed the admissibility test met. Despite this, Khieu Samphan now blames the Trial Chamber for not reopening proceedings when the *onus* was on the Defence to act or even alert the Trial Chamber to the fact that it viewed the Proposed Evidence to be significant.

B. THE ADMISSION REQUEST SHOULD BE DISMISSED BECAUSE THE PROPOSED EVIDENCE COULD NOT HAVE BEEN A DECISIVE FACTOR IN REACHING THE DECISION AT TRIAL

21. In addition to being untimely filed as discussed above, the Admission Request should be denied, as it fails to meet the stringent standards for admissibility of new evidence at the appellate stage.
22. Assuming, *arguendo*, the Proposed Evidence was not available at trial, the Admission Request should be denied as it fails to meet the criteria for admissibility of new evidence at the appellate stage. In the evidentiary context of this case, the Proposed Evidence could not have been a decisive factor in reaching the decision at trial as Khieu Samphan has not demonstrated a realistic possibility that had it been put before the Trial Chamber, it could have led the Chamber to enter a different verdict in whole or in part.

1. Ek Hen

a. Ek Hen's new WRI would not have been a decisive factor for the findings in which her evidence was directly cited

23. Khieu Samphan wrongly alleges that Ek Hen's new WRI confirms her lack of credibility and therefore the Trial Chamber should not have relied upon any of her evidence that supported numerous findings.⁴⁰ As noted above, Ek Hen's DC-Cam Statement, prior WRI, and Case 002/01 trial testimony were all admitted into evidence on Case File 002/02 before the Chamber deliberated.⁴¹ The Chamber therefore necessarily resolved the discrepancies presented by these three accounts against the totality of the evidence, accepting what it found

⁴⁰ F51 Admission Request, para. 16.

⁴¹ See fn. 11, *supra*.

to be reliable and rejecting what it did not.⁴² Whether the Chamber's assessment was reasonable is an appellate issue beyond the scope of this Response. What *is* relevant is whether the new WRI contradicts the findings which relied upon Ek Hen's prior evidence that was accepted by the Trial Chamber.⁴³

24. For example, the Judgment cited Ek Hen's trial testimony to find: "Throughout 1978 and early 1979, Pol Pot and Khieu Samphan continued stressing the importance of protecting and preserving the success of the revolution and the 'Kampuchean race' from Vietnamese 'expansionists' and 'annexationists'."⁴⁴ In her new WRI, Ek Hen was firm that the Borei Keila meeting led by Khieu Samphan took place in 1978, even when she was challenged by investigators.⁴⁵ Ek Hen also stated that "He [Khieu Samphan] said that we had to protect our territory so that it would not be taken by Yuon."⁴⁶ Ek Hen's new WRI so clearly agrees with the Chamber's finding that had it been before the Chamber, there is no realistic possibility it could have led the Chamber to enter a different verdict.
25. A similar analysis of the nine Judgment findings that cite Ek Hen's evidence on the meeting at Borei Keila confirms that the new WRI is compatible with all of them and therefore would not have been a decisive factor in reaching the verdict.⁴⁷

⁴² See, e.g. F51 Admission Request, paras 22-23, 26-27, 30. It is well established that credibility assessments involve numerous subjective determinations fully within the Trial Chamber's discretionary power. As the primary trier of fact, the Trial Chamber must resolve any inconsistencies that may arise within and/or amongst witnesses' testimonies. Rejecting fundamental features of the evidence does not prevent the Chamber from accepting other aspects, nor does it require the Chamber to reject the evidence in its entirety. See, e.g. *Prosecutor v. Popović et al.*, IT-05-88-A, Appeals Chamber, Judgement, 30 January 2015, paras 131-132, 136-137, 1228; *Nchamihigo v. The Prosecutor*, ICTR-2001-63-A, Appeals Chamber, Judgement, 18 March 2010, para. 47; *Nahimana et al. v. The Prosecutor*, ICTR-99-52-A, Appeals Chamber, Judgement, 28 November 2007, para. 194; *Rutaganda* AJ, paras 353, 443, 501; *Muvunyi v. The Prosecutor*, ICTR-2000-55A-A, Appeals Chamber, Judgement, 1 April 2011, para. 26; *Kupreškić* AJ, para. 31.

⁴³ F51 Admission Request, para. 24 (claiming there are "new contradictions" in the new WRI).

⁴⁴ E465 Case 002/02 TJ, para. 3406, fn. 11484.

⁴⁵ E319/71.2.7 Ek Hen WRI, A43-44, 46-47.

⁴⁶ E319/71.2.7 Ek Hen WRI, A51.

⁴⁷ **Finding 1:** E465 Case 002/02 TJ, para. 3406, fn. 11484, already detailed above. **Finding 2:** E465 Case 002/02 TJ, para. 607, fn. 1904 ("Participants ranging from combatants to CPK cadres and returnees from overseas, numbering in the tens to the thousands, were variously instructed on revolutionary principles, cooperatives, agricultural techniques and economic matters, with Khieu Samphan lecturing on identifying 'enemies' and uncovering 'traitors'.") compared with E319/71.2.7 Ek Hen WRI, A39-40 (regarding the number of workers attending the study session), A42 (instructing workers on the revolutionary principle of working hard to build the country into a developed nation). **Finding 3:** E465 Case 002/02 TJ, para. 3216, fn. 10825 ("Khieu Samphan also stressed the importance of protecting and preserving 'forever the fruits of the revolution and the Kampuchean race' during his speeches.") compared with E319/71.2.7 Ek Hen WRI, A42 (encouraging workers

b. Ek Hen's new WRI would not have been a decisive factor to the findings in which her evidence was relied upon as part of a larger picture

26. It logically follows that if Ek Hen's new WRI could not have affected the findings for which she was cited as demonstrated above, the larger findings that built upon these (unaffected) findings would also not be affected. Moreover, the Judgment makes clear that the Trial Chamber based its conclusions regarding Khieu Samphan's responsibility on the totality of the evidence, and the meeting at Borei Keila was just one part of a larger picture of his knowledge, his intent, and his participation. An analysis of the findings on Khieu Samphan's knowledge arising after the commission of the crimes illustrates this point.⁴⁸

to work hard to build the country into a developed nation), 49 (re. living in solidarity and not betraying each other), 51 (re. protecting the territory so it would not be taken). **Finding 4: E465** Case 002/02 TJ, para. 3390, fn. 11436 ("The Chamber heard testimony from a number of witnesses who indicated that, from 1976 through 1978, Pol Pot, Nuon Chea, Khieu Samphan and other senior CPK leaders lectured at or attended political training sessions at which the Vietnamese or Vietnamese 'agents' were labelled as enemies.") *compared with E319/71.2.7* Ek Hen WRI, A43-44, 46-47, 51. **Finding 5: E465** Case 002/02 TJ, para. 3390, fn. 11347 ("Witness Ek Hen, who was a worker in a garment unit under the authority of Office 870, testified that she attended, together with 400 to 500 participants, a training session conducted by Khieu Samphan, where he explained that 'Khmer had to be united and Khmer shall be free of Vietnamese or *Yuong*'.") *compared with E319/71.2.7* Ek Hen WRI, A39-40, 51. **Finding 6: E465** Case 002/02 TJ, para. 3739, fn. 12473 ("Pol Pot, Nuon Chea, Khieu Samphan and other senior leaders further lectured cadres at mass study sessions on the need to work harder, 'eat less' and 'rest less' and fulfil the Party's goals 'at all costs'.") *compared with E319/71.2.7* Ek Hen WRI, A42 (Khieu Samphan encouraged them to work hard to build the country into a developed nation and to work with solidarity). **Finding 7: E465** Case 002/02 TJ, para. 3916, fn. 13072 ("Both Nuon Chea and Khieu Samphan lectured cadres on meeting economic and production targets, while Nuon Chea furnished specific instructions to cadres on the management of cooperatives in order to ensure the fulfilment of quotas and to increase the amount of harvests per year.") *compared with E319/71.2.7* Ek Hen WRI, A42. **Finding 8: E465** Case 002/02 TJ, para. 3968, fn. 13205 ("Both Nuon Chea and Khieu Samphan specifically lectured cadres on the importance of introspection and refashioning through criticism and self-criticism sessions.") *compared with E319/71.2.7* Ek Hen WRI, no answers relevant to the finding; **Finding 9: E465** Case 002/02 TJ, para. 4272, fn. 13946 ("In mid-1978, Khieu Samphan presided over a political education meeting at Borei Keila, where he announced before 400 to 500 participants that Office S-71 Chairman Chhim Sam Aok *alias* Pang had been arrested and taken away 'because he was a traitor collaborating with the *Yuong*' and instructed that cadres 'should not follow what Pang did'.") *compared with E319/71.2.7* Ek Hen WRI, A39-40 (re. number of attendees), 43-44 ("that was in 1978 when he [Khieu Samphan] raised the subject of the Northern Zone cadres who betrayed them and later the betrayal spread to Office 870, where Pang was a chief. He said that Pang betrayed them. [...] It was in 1978, shortly before the 1979 [invasion]."), 45, 47, 50, 57.

⁴⁸ Khieu Samphan complains that the Trial Chamber's reliance on Ek Hen's testimony to conclude that Khieu Samphan had "attended and lectured at study sessions and mass rallies at which criminal conduct toward CPK enemies was discussed, encouraged and incited, including against the Vietnamese, former Khmer Republic officials, New People and other detractors of the revolution" was "so broad and general that the sources are difficult to identify." Despite this difficulty, he concludes that "it is clear that Ek Hen is one of the main sources corroborating this assertion", asserts that this factual finding was crucial to the Chamber's reasoning, and implies that the Chamber's finding that Khieu Samphan knew of the crimes after their commission somehow hinged on her evidence. *See F51 Admission Request*, paras 36-38; **E465** Case 002/02 TJ, para. 4253.

27. The Trial Chamber summarised⁴⁹ evidence demonstrating Khieu Samphan's knowledge of the policies, patterns of conduct, and specific crimes falling within the scope of Case 002/02, organising it into three categories: (i) evidence showing that Khieu Samphan was aware of the substantial likelihood that crimes *would be* committed,⁵⁰ (ii) evidence showing that he had knowledge of the crimes *at the time* they were committed,⁵¹ and (iii) evidence showing his knowledge of the crimes arising *after* they were committed.⁵² It was in the third category that Ek Hen's Borei Keila evidence was referenced,⁵³ but it is important to understand that it was just one piece of a mountain of evidence that the Trial Chamber considered before concluding that Khieu Samphan had the requisite knowledge for various modes of responsibility.
28. In sum, in the context of the evidence that was put before the Trial Chamber in relation to Khieu Samphan's knowledge, there was no realistic possibility that if Ek Hen's new WRI about the Borei Keila meeting had also been put before it, the Chamber could have entered

⁴⁹ In **F51** Admission Request, para. 37, Khieu Samphan complains about the amount of cross-referencing to other paragraphs. This practice is merely indicative of a large Judgment and the Trial Chamber's efforts to deliver it in an organised fashion that avoids repetition.

⁵⁰ **E465** Case 002/02 TJ, paras 4206-4208. The Chamber relied on, *inter alia*, evidence regarding policies that were planned, tested, and implemented in "liberated areas" after Khieu Samphan joined the CPK, including the execution of political opponents, purges within the ranks, persecution of Buddhist monks, arrangement of marriages, and incidents in which those affiliated with Vietnam were singled out for execution. It noted Khieu Samphan's positions of importance, attendance at meetings of the Standing Committee in which important matters were discussed and crucial decisions were made, and personal statements that he and other senior leaders made (and to which he was privy) in which the implementation of criminal policies was discussed.

⁵¹ **E465** Case 002/02 TJ, paras 4209-4249. The Chamber relied on, *inter alia*, evidence of Khieu Samphan's attendance at and participation in Standing Committee meetings, his close relationship with and proximity to Pol Pot and Nuon Chea, the fact that mass purges of Commerce cadres commenced and continued well into his tenure as overseer of the Ministry of Commerce's affairs, evidence that he was entrusted to conduct delicate investigations into whether or not specific officials were enemies, evidence of public statements in which he singled out the Vietnamese for discriminatory treatment, and evidence of his personal promotion of the Party policy to rapidly increase DK's population.

⁵² **E465** Case 002/02 TJ, paras 4250-4254. In addition to the Borei Keila evidence, the Chamber relied on, *inter alia*, a 1977 letter from Amnesty International expressing concern at reports of summary executions and the maltreatment of civilians; a 1978 letter from Amnesty International and the UN Commission on Human Rights renewing AI's 1977 appeal; Khieu Samphan's interviews, statements and publications demonstrating his contemporaneous knowledge of crimes, particularly in relation to internal purges and the establishment and operation of cooperatives and worksites; personal interviews after the DK regime in which Khieu Samphan acknowledged the deaths of alleged Vietnamese agents, organisers of coups, and innocent civilians; Khieu Samphan's access to CPK circulars, policy documents, speeches, and publications discussing the implementation of various CPK policies; and letters he would have received as the nominal head of state noting reports of atrocities against former Khmer Republic soldiers and officials.

⁵³ **E465** Case 002/02 TJ, fn. 13873 referring to paras 4271-4273 in which, again, Ek Hen's evidence was only part.

a different verdict in whole or in part. The same holds true for the other broader findings, such as his intent to commit the crimes at security centres and execution sites,⁵⁴ and his participation in a joint criminal enterprise.⁵⁵

2. Chuon Thy

29. Chuon Thy's 28 February 2017 WRI fails to meet the admissibility requirements of Rules 87(3) and 108(7). The new WRI should not be admitted because it is repetitious of evidence already considered by the Trial Chamber and therefore could not have been a decisive factor in convicting Khieu Samphan.

a. Chuon Thy's new WRI is repetitious of evidence that the Chamber already considered

30. Khieu Samphan argues that several portions of Chuon Thy's new WRI either contradict or call the Trial Chamber's conclusions into question.⁵⁶ He repeatedly complains that the Trial Chamber ignored the evidence of Chuon Thy and other witnesses, claiming that the new WRI confirms evidence that the Chamber ignored.⁵⁷ While complaints about the Chamber's treatment of admitted evidence should be disregarded because they exceed the scope of an additional evidence request, they nonetheless demonstrate that the new WRI is materially repetitive of evidence that the Chamber was obliged to consider in reaching its verdict. Pursuant to Rule 87(3), which is part of the criteria for admission of additional evidence under Rule 108(7), evidence that is repetitious may be rejected.
31. The new WRI states that couples in Chuon Thy's army unit were not matched by class and had the freedom to choose their partners.⁵⁸ This is largely repetitive of Chuon Thy's previous

⁵⁴ *Contra* F51 Admission Request, paras 18-29.

⁵⁵ *Contra* F51 Admission Request, paras 30-35.

⁵⁶ *See, e.g.* F51 Admission Request, paras 60, 64, 66, 69, 71, 73.

⁵⁷ *See, e.g.* F51 Admission Request, paras 57, 64, 66, 67-71, 73.

⁵⁸ F51 Admission Request, para. 59.

WRI and trial testimony⁵⁹ as well as the admitted evidence of Ek Hoeun and Sou Soeurn.⁶⁰ The Trial Chamber considered such evidence, making explicit reference to Sou Soeurn's testimony⁶¹ as well as Duch's evidence that "[i]n marriage affair[s], we [...] were not prohibited from getting married with any person."⁶² The Judges also considered evidence that male combatants and cadres often received special privileges in relation to choosing whom they would marry,⁶³ and some individuals were allowed to name the person they wanted to marry to their superior or supervisor for approval.⁶⁴ Chuon Thy's new WRI merely reinforces these points with anecdotal specifics.

32. The new WRI also states that individuals in Chuon Thy's army unit married according to their will and had the ability to refuse marriage without repercussions.⁶⁵ This too is repetitive of evidence that was before the Trial Chamber, including Chuon Thy's own prior statements.⁶⁶ Moreover, the Judgment demonstrates that the Chamber was mindful of the

⁵⁹ **E3/10713** Chuon Thy WRI, A24, 29, 31 ("Q: Did Pol Pot mention what categories of people could marry one another? A: I would like to tell you that in my unit, different categories of people were not mentioned; however, I do not know about other units."), 33; **E1/183.1** Chuon Thy, T. 24 April 2013, 09.59.13-10.01.15 ("your unit or you yourself could propose if you love someone"); **E1/489.1** Chuon Thy, T. 25 October 2016, 15.56.58-15.59.10 ("The relationships between men and women were not strict. People could interact with each other and if they fell in love with each other, they could propose to their respective unit leaders to arrange marriage for them and the marriage took place without any force."); **E1/490.1** Chuon Thy, T. 26 October 2016, 09.08.25-09.09.45.

⁶⁰ **E1/299.1** Ek Hoeun, T. 8 May 2015, 15.11.31-15.13.55 ("I did not hear any mentioning about the prohibition of the marriage between Old and New People but in the communes where I was, anyone could marry anyone if it was consented, regardless whether they were Old or New People."); **E1/310.1** Sou Soeurn, T. 4 June 2015, 15.20.56-15.22.58 ("Q: Was it authorized at the time to organize marriages between New People and Base People? A: I can say in some cases. And also, it happened in my district. If a commune made such a proposal to the district, and if the district considered that they were good people, then the district would approve the marriage.").

⁶¹ **E465** Case 002/02 TJ, para. 3578, *citing* **E1/310.1** Sou Soeurn, T. 4 June 2015, 15.20.56-15.22.58.

⁶² **E465** Case 002/02 TJ, para. 3577.

⁶³ **E465** Case 002/02 TJ, para. 3591.

⁶⁴ **E465** Case 002/02 TJ, paras 3599-3600, 3602.

⁶⁵ **F51** Admission Request, para. 62 (women arranged to marry disabled soldiers had the right to refuse the marriage without consequence). *See also* paras 64, 66-67, 69-70.

⁶⁶ **E1/183.1** Chuon Thy, T. 24 April 2013, 09.59.13-10.03.02 ("So, your unit or you yourself could propose if you love someone. [...] No one forced us to get married. [...] the marriages were arranged with consent from both sides, the brides and the grooms, so they were not forced to get married. We got married voluntarily or on our own volition."); **E1/489.1** Chuon Thy, T. 25 October 2016, 15.56.58-15.59.10; **E1/490.1** Chuon Thy, T. 26 October 2016, 09.08.25-09.11.42, 09.18.04-09.19.33 ("And for the arrangement, although we assigned the partner and if they did not like it, either a man or a woman could walk away from the arrangement."), 09.21.23-09.22.30 ("I heard that in some units, people were forced to get marriage and, for that reason, some people did not agree and asked what would happen to them. And they said that nothing happened. If they disagreed to the arrangement, they could return to their respective units. That's what I was told."); **E3/10713** Chuon Thy WRI, A22, 29, 43.

official CPK policy requiring the agreement of both parties and took into account the testimony of numerous CPK cadres who said that marriages were arranged based on the consent of the individuals.⁶⁷ The Judges carefully assessed these statements, including the testimonies of Riel Son, Or Ho, Pech Chim, and Meas Vooun.⁶⁸ They also cited the evidence of Em Phoeung and Sun Vuth, who refused marriages without negative consequences.⁶⁹ Chuon Thy's new WRI adds nothing material for the Chamber to consider in this regard.

33. Finally, Khieu Samphan contends that Chuon Thy's new WRI supplements his previous evidence that couples in his unit were not monitored to determine if they had consummated their marriages.⁷⁰ This is unpersuasive, as it is materially repetitive to Chuon Thy's trial testimony. The new WRI's detail regarding Chuon Thy's individual experience is understood to have been encompassed in his broader statement that couples in his unit were not monitored.⁷¹ It is also repetitive of evidence given by other former cadres who testified that monitoring did not occur in their specific areas.⁷²
34. In conclusion, although Chuon Thy's new WRI may arguably contain more "details on marriage regulation" than his previously admitted evidence,⁷³ the additions are largely anecdotal and materially the same as other evidence already put before the Chamber.

b. Chuon Thy's repetitive new WRI could not have been a decisive factor in the Chamber's decision

35. As Chuon Thy's new WRI is overwhelmingly repetitive of evidence already considered by the Trial Chamber, there is no realistic possibility that this WRI, had it been put before the Trial Chamber, could have led the Chamber to enter a different verdict in whole or in part.

⁶⁷ E465 Case 002/02 TJ, paras 3617, 3623. Khieu Samphan even acknowledges that the Chamber was "compelled" to identify these witnesses and their testimony (*see* F51 Admission Request, para. 66). His view that the Trial Chamber "did not draw the necessary inferences from these testimonies", however, is beyond the scope of an additional evidence request and more fitting for the appeal.

⁶⁸ E465 Case 002/02 TJ, para. 3617.

⁶⁹ E465 Case 002/02 TJ, para. 3625.

⁷⁰ F51 Admission Request, paras 71-72.

⁷¹ E1/490.1 Chuon Thy, T. 26 October 2016, 09.13.05-09.15.00 ("there was no process where those newlywed couples were monitored whether they consummated their marriage or not. It did not happen. And here, I specifically refer to my unit.").

⁷² *See, e.g.* E1/274.1 Neang Ouch, T. 10 March 2015, 10.45.57-10.51.22; E1/291.1 Pech Chim, T. 23 April 2015, 09.25.02-09.26.58; E1/296.1 Khoem Boeun, T. 4 May 2015, 16.05.03-16.07.53.

⁷³ F51 Admission Request, para. 75.

Because such a possibility is required to admit additional evidence under Rule 108(7), Chuon Thy's new WRI should not be admitted.

36. For example, Khieu Samphan asserts that Chuon Thy's new WRI should be admitted because it directly contradicts the Chamber's factual findings on the matching of couples by class.⁷⁴ He claims that if the evidence that "within the military there was no class categorization" and "everyone was free to choose their spouse" had been considered, "the Chamber should not have found that there was a homogenous practice throughout the country, let alone that there was a national policy adopted by the Party as described."⁷⁵ First, Khieu Samphan has overstated Chuon Thy's evidence. When properly assessed as a whole, Chuon Thy consistently maintained that he only knew about what happened in his own unit, not others, and definitely not the entire military as Khieu Samphan asserts.⁷⁶ Second, the Trial Chamber never found that there was a "homogenous practice throughout the country" to match couples by class.⁷⁷ To the contrary, the Chamber came to the nuanced conclusion that "*generally* people with similar backgrounds were matched to marry".⁷⁸ The use of the word "generally" indicates that the judges were aware of exceptional cases where this did not occur, similar to the situation described in Chuon Thy's new WRI and admitted evidence already discussed above.⁷⁹ As the new WRI is actually compatible with the Trial Chamber's

⁷⁴ F51 Admission Request, para. 59. *See also* para. 58, *citing* the findings that the WRI allegedly contradicts: "The Chamber is satisfied that biographies of individuals were screened before matching them to get married" (*see* E465 Case 002/02 TJ, para. 3576), "generally people with similar backgrounds were matched to marry", and "people with different backgrounds were also allowed to marry if the authorities considered that they were 'good people'" (*see* E465 Case 002/02 TJ, para. 3580).

⁷⁵ F51 Admission Request, paras 59-60.

⁷⁶ *See, e.g.* E3/10713 Chuon Thy WRI, A22, 31 ("Q: Did Pol Pot mention what categories of people could marry one another? A: I would like to tell you that in my unit, different categories of people were not mentioned; however, I do not know about other units."), 43; E319/71.2.4 Chuon Thy WRI, A19; E1/490.1 Chuon Thy, T. 26 October 2016, 09.11.42-09.13.05 (re. whether marriages were forced: "What I said initially is that I did not know about what happened in other units."), 09.13.05-09.15.00 (re. monitoring: "I specifically refer to my unit."), 09.15.48-09.18.04 (re. instructions to monitor: "I did not have any grasp regarding what happened at the base. But as I said, in my army unit, this kind of thing did not [happen].").

⁷⁷ *Contra* F51 Admission Request, para. 60, fn. 117. Khieu Samphan references E465 Case 002/02 TJ, para. 3543, but this paragraph discusses individuals who "had the possibility to submit to their superiors a request to marry somebody who would accord with their own feelings" and CPK instructions on choosing a spouse carefully. It does not contain a finding regarding a homogenous practice of matching couples by class.

⁷⁸ E465 Case 002/02 TJ, para. 3580 (emphasis added).

⁷⁹ *See* para. 31, *supra*.

finding, there is no realistic possibility that had it been put before the Trial Chamber, it could have led the Chamber to enter a different verdict.

37. On the issue of consent, Khieu Samphan contends that the new WRI's evidence of individuals in Chuon Thy's army unit marrying according to their will and refusing marriage without repercussions indicates that "people were not forced to marry or that, at least, it was not the policy adopted by the 'highest levels of the CPK'" as the Trial Chamber found.⁸⁰ However, Khieu Samphan skews the assessment of whether Chuon Thy's new evidence could have led to a different verdict by misleadingly referring to a mere portion of a specific finding while ignoring the parts that provide the "balance" he alleges is absent from the Chamber's conclusions.⁸¹ Specifically, he asserts that "the Chamber found that individuals 'were usually not consulted about the marriage and received little to no notice that they were to be married'".⁸² This assertion omits critical portions of the finding which clarify that this was not a strictly uniform practice. The entire finding states: "The Chamber finds that, *with the exception of some favoured individuals discussed above*, the individuals *who were matched to be married* were usually not consulted about the marriage and received little to no notice that they were to be married."⁸³ The term "favoured individuals" refers back to a section of the Judgment in which the matching of disabled soldiers, combatants, and cadres was discussed.⁸⁴ Clearly, Chuon Thy and his fellow combatants would have been categorised as "favoured individuals" who were excepted from this finding. There is therefore no realistic possibility that the new WRI could have led the Chamber to change its conclusion.
38. As for evidence on requiring the consent of both parties (including the potential spouses of disabled soldiers) and refusing marriage without repercussions, Chuon Thy's new WRI is also repetitive of admitted evidence given by former CPK cadres that under CPK policy, "it

⁸⁰ F51 Admission Request, para. 62 (women arranged to marry disabled soldiers had the right to refuse the marriage without consequence). *See also* paras 64, 66-67, 69-70 which essentially stand for the same proposition.

⁸¹ *See, e.g.* F51 Admission Request, paras 64 (arguing that consideration of the new WRI "should have led the Chamber to reach a more balanced finding [...], on the consent of the persons concerned"), 70.

⁸² F51 Admission Request, para. 65.

⁸³ E465 Case 002/02 TJ, para. 3616 (emphasis added). *See also* E465 Case 002/02 TJ, para. 3623 in which the Trial Chamber found that "certain individuals, such as combatants, cadres and disabled soldiers" may have been consulted on their marriage but that was not the general practice.

⁸⁴ *See* E465 Case 002/02 TJ, sections 14.3.4.4 Favoured individuals, 14.3.4.4.1 Disabled soldiers, and 14.3.4.4.2 Combatants and cadres.

was necessary to ensure that both parties consented to the marriage and nothing happened to those who refused.”⁸⁵ When the Trial Chamber assessed the totality of the evidence, it was mindful of this admitted evidence and noted that there were exceptional cases in which refusal had no repercussions, but “the *overwhelming majority* of the evidence shows that people could not refuse to marry without suffering consequences.”⁸⁶ It also acknowledged there were exceptions in which people genuinely consented, finding: “While *some individuals may genuinely have agreed* to marry a person whom they had selected or who had been proposed to them, a large number of witnesses and Civil Parties testified that they had no choice or right to refuse and believed that they had to respect the orders of *Angkar*.”⁸⁷ Because the new WRI is repetitious of admitted evidence, falls under one or both of the exceptions noted by the Chamber, and is limited in scope to the practice in Chuon Thy’s military unit,⁸⁸ there is no realistic possibility that it could have overcome the overwhelming evidence supporting the Trial Chamber’s findings on consent that would have led the Chamber to change its verdict.

39. Khieu Samphan’s submission regarding the authorisation to marry is confusing, as the findings he cites relate to the process of seeking permission to marry from higher-level authorities, but his argument seems to focus on the freedom to refuse an authority’s offer to marry and the issue of consent.⁸⁹ In any event, Chuon Thy’s new WRI states that when he and his wife wanted to marry, they had to make a request to the upper level for their marriage.⁹⁰ It also states that when 10 couples made a request to Chuon Thy’s unit for marriage, he had to forward the request to the upper level.⁹¹ This evidence aligns with the authorisation findings identified by Khieu Samphan,⁹² including the finding: “all marriages, whether *proposed by individuals* or matched by authorities, required approval by a higher

⁸⁵ F51 Admission Request, para. 66 citing E465 Case 002/02 TJ, para. 3617. See also para. 32, *supra*.

⁸⁶ E465 Case 002/02 TJ, para. 3625 (emphasis added).

⁸⁷ E465 Case 002/02 TJ, para. 3619 (emphasis added).

⁸⁸ See, e.g. E1/490.1 Chuon Thy, T. 26 October 2016, 09.11.42-09.13.05 (re. whether marriages were forced: “What I said initially is that I did not know about what happened in other units.”).

⁸⁹ F51 Admission Request, paras 63-64.

⁹⁰ E319/71.2.4 Chuon Thy WRI, A108.

⁹¹ E319/71.2.4 Chuon Thy WRI, A49.

⁹² F51 Admission Request, para. 63 citing E465 Case 002/02 TJ, paras 3594-3598, 3602, 3608.

authority.”⁹³ As such, there is no realistic possibility that had the new WRI been put before the Trial Chamber, the Chamber could have been led to enter a different verdict.

40. Finally, Khieu Samphan wrongly asserts that the evidence in Chuon Thy’s new WRI regarding the absence of monitoring after he and his wife were married calls the Trial Chamber’s findings on consummation monitoring into question.⁹⁴ The Trial Chamber’s qualified finding that “after wedding ceremonies, couples were *commonly* monitored to ensure that they had consummated their marriages”⁹⁵ does not contradict Chuon Thy’s new WRI. Rather, it allows that there were less common occasions in which no monitoring occurred. This qualified finding demonstrates that the Trial Chamber favoured the weight of the evidence stating that monitoring took place, but it also took into account the parties’ submissions regarding regional variations and witness testimony that no monitoring occurred.⁹⁶ Similarly, the Judgment allows that not all couples had sex out of fear of reprisals.⁹⁷ The Chamber carefully qualified its finding, stating: “*Some* individuals engaged in sexual intercourse with their spouses for fear of the consequences if they did not.”⁹⁸ Accordingly, Chuon Thy’s new WRI is compatible with the Trial Chamber’s findings and is similar to other admitted evidence, so there is no realistic possibility that the Chamber could have been led to a different verdict if the new WRI had been before it.

C. THE ADMISSION REQUEST USES OVERLY EMOTIVE AND VITRIOLIC LANGUAGE

41. The Co-Prosecutors express concern over the overly emotive and, at least in reference to the Trial Chamber, vitriolic language used by the Defence in the Admission Request.⁹⁹ In particular, the Co-Prosecutors are concerned by the allegation that the Trial Chamber engaged in professional misconduct in its carriage of this case. Specifically, Khieu Samphan

⁹³ See **F51** Admission Request, para. 63, fn. 122 *citing* **E465** Case 002/02 TJ, para. 3602 (emphasis added).

⁹⁴ **F51** Admission Request, paras 71-72.

⁹⁵ **E465** Case 002/02 TJ, para. 3644 (*emphasis added*).

⁹⁶ The Trial Chamber was presented with evidence from the Co-Prosecutors and the Defence that regional variations existed in the monitoring of consummation and a number of witnesses negated this as a practice. *See, e.g.* **E457/6/1** Co-Prosecutors’ Closing Brief in Case 002/02, 2 May 2017 (“OCP Closing Brief”), para. 586; **E457/6/4/1** Khieu Samphan’s Closing Brief (002/02), 2 May 2017 as amended on 2 October 2017 (“KS Amended Closing Brief”), paras 2392-2395; **E457/6/3/1** Nuon Chea’s Amended Closing Brief in Case 002/02, 28 September 2017 (“NC Amended Closing Brief”), para. 1180.

⁹⁷ *Contra* **F51** Admission Request, para. 71.

⁹⁸ **E465** Case 002/02 TJ, para. 3646.

⁹⁹ **F51** Admission Request, paras 12-14.

alleges that the Trial Chamber “deliberately” refrained from reopening the proceedings after the documents were disclosed,¹⁰⁰ preventing the Defence “from discussing the contents of the exculpatory statements or the credibility of certain witnesses who testified against Khieu Samphan”¹⁰¹ because the Chamber wanted to “convict Khieu Samphan at any cost”.¹⁰² These allegations not only ignore the Trial Chamber’s concern for the rights of the Accused and the Defence’s failure to take the relief offered, but attack the integrity and judicial conduct of the Trial Chamber.

42. The Defence also emotively characterises the ICP’s disclosure as a “blatant lack of diligence”.¹⁰³ The disclosures were made “as soon as practicable”¹⁰⁴ when the workload and personnel limitations allowed; in any event, over two months before the verdict was issued. During the time period in question, the entire Prosecution staff was engaged in meeting pressing deadlines for significant submissions in Case 002/02 as well as four other active cases,¹⁰⁵ and it was only after these commitments were satisfied that the ICP could conduct a meaningful review¹⁰⁶ of the 571 documents that had accumulated for potential disclosure in Case 002/02.¹⁰⁷

¹⁰⁰ F51 Admission Request, paras 13-14.

¹⁰¹ F51 Admission Request, para. 13.

¹⁰² F51 Admission Request, para. 14.

¹⁰³ F51 Admission Request, para. 10.

¹⁰⁴ Internal Rules, Rule 53(4). *See also* F2/4/2 NC Third Request Decision, para. 17.

¹⁰⁵ Between March 2017 when the WRIs became available on Zylab (in Khmer) and 3 September 2018 when the ICP disclosed them, the OCP not only handled regular pleadings in all its cases but was also required to: **1.** Draft the Case 002/02 closing brief (801 pages - *see* E457/6/1 OCP Closing Brief); **2.** Review the Case 002/02 Defence closing briefs and prepare the OCP’s response for 9 days of oral arguments (1,115 pages of Defence briefs without counting the table of contents - *see* E457/6/3 Nuon Chea’s Closing Brief in Case 002/02, 2 May 2017, amended by E457/6/3/1 NC Amended Closing Brief; E457/6/4/1 KS Amended Closing Brief; E1/520.1 T. 13 June 2017, E1/521.1 T. 14 June 2017, E1/522.1 T. 15 June 2017, E1/523.1 T. 16 June 2017, E1/524.1 T. 19 June 2017, E1/525.1 T. 20 June 2017, E1/526.1 T. 21 June 2017, E1/527.1 T. 22 June 2017, E1/528.1 T. 23 June 2017); **3.** Draft written and oral appellate submissions in Case 004/1 (beginning with Case 004/1-D308/3/1/1 International Co-Prosecutor’s Appeal of Closing Order (Reasons), 9 August 2017, and ending with Case 004/1-D308/3/1/19/1.2 Appeal Hearings, T. 11 December 2017; Case 004/1-D308/3/1/19/2.1 Appeal Hearings, T. 12 December 2017); **4.** Draft the Case 004/2 Final Submission (587 pages, not counting the table of contents - *see* Case 004/2-D351/5 International Co-Prosecutor’s Rule 66 Final Submission, 21 August 2017); **5.** Draft the Case 003 Final Submission (936 pages, not counting the table of contents - *see* Case 003-D256/7 International Co-Prosecutor’s Rule 66 Final Submission, 14 November 2017); and **6.** Draft the Case 004 Final Submission (704 pages, not counting the table of contents - *see* Case 004-D378/2 International Co-Prosecutor’s Rule 66 Final Submission against Yim Tith, 4 June 2018).

¹⁰⁶ The ICP not only identified documents from witnesses who had testified but also carefully reviewed all the documents for potentially exculpatory information that would be unfair to disregard.


¹⁰⁷ The 571 documents were comprised of 135 WRIs and 436 Civil Party documents (applications, supplementary information forms, application reports).

43. While advocates may zealously argue their positions on issues, their submissions must always take into account the dignity of the Court and the solemnity of the proceedings before it. The Co-Prosecutors submit that this overly emotive and, in some instances, vitriolic language, is inappropriate and unacceptable in pleadings before this Court. While it would be appropriate to sanction counsel, we suggest that counsel be cautioned that such language and allegations will not be tolerated in future pleadings.

V. RELIEF REQUESTED

44. For all of the foregoing reasons, the Co-Prosecutors request the Supreme Court Chamber to reject the admission of the Proposed Evidence and dismiss Khieu Samphan's Admission Request.

Respectfully submitted,

Date	Name	Place	Signature
24 October 2019	CHEA Leang National Co-Prosecutor	Phnom Penh	
	Brenda J. HOLLIS International Co-Prosecutor		