

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

**FILING DETAILS**

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**NUON CHEA'S REQUEST TO RECALL WITNESS PRAK KHAN**

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## I. INTRODUCTION

1. Pursuant to Internal Rule 92, the Co-Lawyers for Mr. Nuon Chea (the “Defence”) file the instant request to recall witness Prak Khan to testify in the trial segment in relation to S-21 Security Centre.

## II. BACKGROUND

2. On 27, 28 April and 2 May 2016, witness Prak Khan testified before the Trial Chamber. During the testimony of Prak Khan, the Defence requested the Trial Chamber to grant it additional time to cross-examine Prak Khan due to the amount of issues the Defence intended to explore with the witness.<sup>1</sup> The Trial Chamber rejected the request and only granted the Defence an additional 15 minutes in compensation for the time taken up by the discussion on the legal issues related to the use of “confessions”.<sup>2</sup>

## III. APPLICABLE LAW

### A. Recalling Witness

3. The Internal Rules are silent in terms of recalling a witness to testify. However, the international criminal tribunals have developed jurisprudence that allows a party to recall a witness when good cause is demonstrated.<sup>3</sup> In determining whether good cause is demonstrated, a chamber must take into consideration “the purpose of the evidence that the requesting party expects to elicit from the witness, as well as the party’s justification for not eliciting that evidence when the witness originally testified”.<sup>4</sup> Mindful of the right of the accused to be tried without undue delay as well as judicial economy, the international criminal tribunals held that a request to recall a witness “should not be granted lightly and only when the evidence is of significant probative value and not cumulative in nature”.<sup>5</sup>

### B. Reconsideration

4. Reconsideration by a chamber of its decisions is not stipulated in the Internal Rules. However, the Trial Chamber has held that it will entertain requests for reconsiderations

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<sup>1</sup> T. 2 May 2016 (Prak Khan, **Draft Transcript**), p. 27, lns. 9-24; p. 43, lns. 8-22.

<sup>2</sup> T. 2 May 2016 (Prak Khan, **Draft Transcript**), p. 44, lns. 6-13.

<sup>3</sup> For a summary of the jurisprudence, see, e.g., *Prosecutor v. Karadžić*, ‘Decision on Accused’s Motion to Recall KDZ080 and for Rescission of Protective Measures’, Case No. IT-95-5/18-T, 3 Jul 2013, para. 10. Public redacted version of the decision was made available on 12 Mar 2015.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

“where a fresh application justified by new evidence or new circumstances is made”.<sup>6</sup> The Pre-Trial Chamber, following established ICTY jurisprudence, has adopted a broader test, ruling that a chamber’s power to reconsider its decisions applies not only where there is a “change of circumstances” (which could result from “new facts or arguments”<sup>7</sup>), but also where the Chamber “finds that the previous decision was erroneous or [...] caused an injustice”.<sup>8</sup>

5. When the impugned decision is discretionary in nature, the factors relevant to the determination of whether there is a discernible error in the decision include, *inter alia*, whether the decision is “so unfair or unreasonable as to constitute an abuse of the trial chamber’s discretion”.<sup>9</sup> Consideration shall also be given to whether the chamber in reaching its discretionary decision “has given weight to extraneous or irrelevant considerations or has failed to give weight or sufficient weight to relevant considerations”.<sup>10</sup>

### C. Trial Management

6. Internal Rule 85(1) provides, in relevant part, that:

The President of the Chamber shall preside over the proceedings, and [...] shall guarantee the free exercise of defence rights. In consultation with the other judges, the President may exclude any proceedings that unnecessarily delay the trial, and are not conducive to ascertaining the truth. (emphasis added)

7. Internal Rule 91(3) provides that:

The Co-Prosecutors and all the other parties and their lawyers may object to the continued hearing of the testimony of any witnesses, if they consider that such testimony is not conducive to ascertaining the truth. In such cases, the President shall decide whether to take the testimony. (emphasis added)

<sup>6</sup> E238/11/1, ‘Decision on IENG Sary’s Request for Reconsideration of the Trial Chamber Decision on the Accused’s Fitness to Stand Trial and Supplemental Request’, 19 Dec 2012, para. 7.

<sup>7</sup> Case 001, D99/3/41, ‘Decision on IENG Sary’s Motion for Reconsideration of Ruling on the Filing of a Motion in the Duch Case File’, Case 001/18-07-2007-ECCC/OCIJ, 3 Dec 2008, para. 6; *Prosecutor v. Galić*, ‘Decision on Defence Request for Reconsideration’, Case No. IT-98-29, 16 Jun 2004 (“*Galić* Decision on Reconsideration”), 9<sup>th</sup> recital.

<sup>8</sup> D164/4/9, ‘Decision on Request to Reconsider the Decision for an Oral Hearing on the Appeals PTC 24 and PTC 25’, 20 Oct 2009, para. 12; C22/I/68, ‘Decision on Application for Reconsideration of Civil Party’s Right to Address Pre-Trial Chamber in Person’, 28 Aug 2008, para. 25; *Galić* Decision on Reconsideration, 8<sup>th</sup> recital.

<sup>9</sup> *Prosecutor v. Lukić & Lukić*, ‘Judgement’, Case No. IT-98-32/1-A, 4 Dec 2012 (“*Lukić & Lukić* Judgement”), para. 17.

<sup>10</sup> *Ibid.*

8. The trial management measures taken by the chambers must be consistent with the fundamental principles of the Court, which comprise, *inter alia*, the principles enshrined in Internal Rule 21(1)(a):

ECCC proceedings shall be fair and adversarial and preserve a balance between the rights of the parties. [...]

The measures must also be consistent with the principles reflected in Article 33 *new* of the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea (“ECCC Law”):

The Extraordinary Chambers of the trial court shall ensure that trials are fair and expeditious and are conducted in accordance with existing procedures in force, with full respect for the rights of the accused and for the protection of victims and witnesses. [...]

The Extraordinary Chambers of the trial court shall exercise their jurisdiction in accordance with international standards of justice, fairness and due process of law, as set out in Articles 14 and 15 of the 1966 International Covenant on Civil and Political Rights.

9. Article 14 of the International Covenant on Civil and Political Rights (“ICCPR”) provides, *inter alia*, that:

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

[...]

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

[...]

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; [...].

#### IV. ARGUMENT

##### A. The Conditions for Recalling a Witness Are Satisfied in the Case of Prak Khan

###### (i) *The Expected Evidence Is Conducive to Ascertaining the Truth and Not Cumulative*

10. The Defence intends to elicit from Prak Khan evidence on the following subjects that are relevant and conducive to ascertaining the truth: the alleged blood drawing,<sup>11</sup> rape,<sup>12</sup> killing of a Vietnamese baby,<sup>13</sup> interrogators' reports and annotations,<sup>14</sup> the detailed and specific circumstances of interrogation of three detainees interrogated by Prak Khan,<sup>15</sup> and the "Khmer Rumdoh", "Khmer Sar" and "Khmer Serei" movements.<sup>16</sup>
11. The relevance and the significance of most of these subjects are straightforward as set out above through the references to the Closing Order. In addition, the Defence has the following clarifications to make.
12. First, a clear understanding of the system of interrogators' reports and annotations can assist the Chamber in assessing the relevant superiors' knowledge, if any, of the alleged crimes such as torture and other ill-treatment at S-21.
13. Second, the detailed circumstances of specific interrogations will assist the Chamber in deciding whether torture or other ill-treatment falling short of torture took place in those incidents. As opposed to sweeping and general statements about whether "torture" took place at S-21, detailed and specific evidence gives the Chamber an opportunity to assess genuinely the level of severity of the alleged ill-treatment by taking into consideration *all the circumstances* including the specific features of the alleged victim such as age, gender, and the state of health.<sup>17</sup> Moreover, questioning a witness on details of the circumstances of specific interrogations may give rise to evidence sufficient to rebut the presumption of a real risk that the alleged victim's statement was obtained through torture in those specific cases.<sup>18</sup> The Trial Chamber and the Supreme Court Chamber

<sup>11</sup> See, e.g., **D427**, 'Closing Order', 15 Sep 2010 ("Closing Order"), paras. 473-474.

<sup>12</sup> See, e.g., **D427**, Closing Order, para. 459.

<sup>13</sup> See, e.g., **D427**, Closing Order, paras. 433, 471.

<sup>14</sup> See, e.g., **D427**, Closing Order, para. 456.

<sup>15</sup> See, e.g., **D427**, Closing Order, paras. 448-456. The three detainees were Meas Nhean *alias* Dou (**E3/1863**), Suong Kem (**E3/3575**), and Em Min *alias* Sen (**E3/4260**).

<sup>16</sup> See, e.g., **D427**, Closing Order, para. 455.

<sup>17</sup> See, e.g., *Case of El-Masri v. The Former Yugoslav Republic of Macedonia*, 'Judgement', ECtHR, App. No. 39630/09, 13 Dec 2012, para. 196 (**Attachment 1**).

<sup>18</sup> Both the Trial Chamber and the Supreme Court Chamber have held that there is a *rebuttable* presumption of a real risk that statements made at S-21 Security Centre were obtained through torture, hence must not be invoked as evidence pursuant to Article 15 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT"). **E350/8**, 'Decision on Evidence Obtained through Torture', 5 Feb 2016

have both acknowledged that the parties proposing to invoke such statements as evidence are entitled to introduce evidence to rebut the said presumption of a real risk.<sup>19</sup>

14. Third, evidence on the “Khmer Rumdoh”, “Khmer Sar” and “Khmer Serei” movements is, in general, relevant to the Defence case that there were conflicting factions within the Communist Party of Kampuchea (“CPK”) during the material time and that some opposing factions endeavoured to overthrow the legitimate and widely recognised government of Democratic Kampuchea (“DK”).<sup>20</sup> Evidence in this regard can be relevant to, *inter alia*, Nuon Chea’s knowledge of certain alleged crimes in the regions governed by opposing factions and his control over the alleged perpetrators who belonged to opposing factions. Furthermore, such evidence may relate to the charges of a crime against humanity of imprisonment,<sup>21</sup> which entails *arbitrary* deprivation of liberty.<sup>22</sup> Arbitrariness in this regard refers, *inter alia*, to the lack of legal basis.<sup>23</sup> Accordingly, any evidence that may suggest the existence of a legal basis for the deprivation of liberty, such as legitimate suspicions that the alleged victim was involved in the crime of treason, is relevant to the case.
15. The expected evidence is not only relevant and significant but also not cumulative in nature. Indeed, as will be demonstrated below, most of the expected evidence cannot be obtained from sources other than Prak Khan. First, Prak Khan was the only purported eyewitness of the alleged blood drawing and the alleged killing of a Vietnamese baby at S-21. Second, Prak Khan was the sole interrogator that interrogated the three individuals mentioned above.<sup>24</sup> Third, Prak Khan was one of the two witnesses – the other being Lach Mean – who appear to possess information on the alleged rape incident involving an interrogator named Touch.<sup>25</sup> Fourth, Prak Khan was one of the only two former interrogators scheduled to testify in relation to S-21, and he served as an interrogator much longer than the other witness – Lach Mean – did, hence he can

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(“TC Decision”), para. 79; **F26/12**, ‘Decision on Objections to Document Lists: Full Reasons’, 31 Dec 2015 (“SCC Decision”), paras. 56-58.

<sup>19</sup> **E350/8**, TC Decision, paras. 36, 79; **F26/12**, SCC Decision, para. 58.

<sup>20</sup> The Defence will make detailed submissions on its case regarding the factions in its written submissions as requested by the Trial Chamber. See, **E395/1**, ‘Request for Briefing on Significance of Conflicting Factions within the DK Leadership’, 11 May 2016.

<sup>21</sup> **D427**, Closing Order, paras. 1402-1407.

<sup>22</sup> See, e.g., *Prosecutor v. Krnojelac*, ‘Judgement’, Case No. IT-97-25-T, 15 Mar 2002 (“*Krnojelac* Trial Judgement”), para. 115.

<sup>23</sup> *Krnojelac* Trial Judgement, para. 115. The Closing Order charges that “[t]ens of thousands of people detained in security centres were intentionally and arbitrarily held without any legal basis.” See, **D427**, Closing Order, para. 1404 (emphasis added).

<sup>24</sup> See, *supra*, para. 10, fn. 15.

<sup>25</sup> **D427**, Closing Order, para. 459, fn. 1998.

testify to the situation covering a broader period of which Lach Mean has no direct knowledge. Fifth, Prak Khan told the ECCC investigators that he joined the “Khmer Rumdoh” in 1973.<sup>26</sup> There is evidence that “Khmer Rumdoh” and “Khmer Sar” were related in the early 1970s<sup>27</sup> and that a branch of “Khmer Rumdoh” supported by Vietcong was in conflict with “Khmer Rouge” troops at least since the end of 1973.<sup>28</sup>

16. In summary, the evidence that the Defence intends to further elicit from Prak Khan is relevant and significant to ascertaining the truth and is not cumulative in nature.

**(ii) *The Failure to Elicit the Expected Evidence during Original Testimony Is Justified***

17. As aforementioned,<sup>29</sup> during Prak Khan’s testimony, the Defence acted in due diligence and made a reasonable request for additional time to cross-examine Prak Khan when it became clear to the Defence that the time allotted was inadequate for a comprehensive and meaningful cross-examination. In making this request, the Defence indicated some, albeit not all, of the subjects it intended to explore with Prak Khan.<sup>30</sup> This request, however, was erroneously rejected by the Trial Chamber, as will be demonstrated in detail below in relation to the request for reconsideration. Accordingly, the failure to elicit the expected evidence at the time of Prak Khan’s original testimony was not due to any mistakes on the part of the Defence.
18. Based on the foregoing, the Defence submits that conditions to recall Prak Khan are satisfied.

**B. The Discernible Errors in the Trial Chamber’s Decision not to Grant the Defence’s Request for Additional Time to Cross-Examine Prak Khan Justify Reconsideration**

19. In rejecting the Defence’s request for additional time, the Trial Chamber did not specify the reasons behind its decision.<sup>31</sup> However, during the testimony of Prak Khan, the President of the Trial Chamber indicated some considerations that the Chamber might have taken in reaching its decision:

And let me clarify that the Chamber usually balance[s] the time that allotted to parties, and for parties who put questions which are irrelevant and which are not to ascertain the truth, then the Chamber can cut off the floor. [...]

<sup>26</sup> E3/5156, ‘Written Record of Interview with Prak Khan’, 21 Sep 2007, EN 00161570-71.

<sup>27</sup> E3/1593, B. Kiernan, *The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge, 1975-79*, p. 68, EN 01150031.

<sup>28</sup> E3/2376, N. Chanda, *Brother Enemy*, pp. 66, 72, EN 00192251, 00192257.

<sup>29</sup> See, *supra*, para. 2.

<sup>30</sup> T. 2 May 2016 (Prak Khan, **Draft Transcript**), p. 43, lns. 13-22.

<sup>31</sup> T. 2 May 2016 (Prak Khan, **Draft Transcript**), p. 44, lns. 6-13.

The time should be equal to all parties. Usually one party cannot have extra minutes more than the other party.<sup>32</sup>

20. Indeed, the Trial Chamber has discretion in determining measures related to trial management. However, as set out above,<sup>33</sup> in exercising its discretion in this regard, the Trial Chamber must ensure the fairness of the trial, the full respect for the rights of the accused, and the free exercise of defence rights.<sup>34</sup> Mindful of these considerations, the President, in consultation with the other judges, may exclude proceedings that “*unnecessarily* delay the trial, *and* are not conducive to ascertaining the truth”.<sup>35</sup>
21. As has been demonstrated,<sup>36</sup> the evidence the Defence intended to elicit from Prak Khan was significant for ascertaining the truth and not cumulative in nature, and additional time was necessary in obtaining such evidence. Further cross-examination of Prak Khan by the Defence, therefore, does not constitute unnecessary delay of the trial.
22. Moreover, as will be demonstrated in detail, the Trial Chamber, in exercising its discretion to reach the impugned decision, has given weight to irrelevant considerations while failing to give proper weight to each of the relevant considerations.<sup>37</sup>

**(ii) *Balance Between the Fairness and the Expediency of the Trial***

23. While expediency is a relevant consideration in trial management, it shall not outweigh the fairness of a trial. As the Human Rights Committee pointed out:

The right of an accused person to have adequate time and facilities for the preparation of his defence is an important element of the guarantee of a fair trial and a corollary of the principle of equality of arms.<sup>38</sup>

24. In the *Papadakis* case, the European Court of Human Rights (“ECtHR”) found that the inadequate time given to the applicant to challenge witnesses against him “placed the applicant in a position where he was effectively deprived of a real chance of challenging the reliability of the decisive evidence against him”.<sup>39</sup> The concerns that extension of time would prolong the proceedings, in the ECtHR’s opinion, “cannot justify the serious

<sup>32</sup> T. 28 May 2016 (Prak Khan, **Draft Transcript**), p. 36, lns. 11-14; p. 104, lns. 19-21.

<sup>33</sup> *See, supra*, paras. 6-9.

<sup>34</sup> ECCC Law, Article 33 *new*; Internal Rules 21 (1) (a) and 85 (1).

<sup>35</sup> Internal Rule 85 (1), *emphasis added*; *see also*, Internal Rule 91(3).

<sup>36</sup> *See, supra*, paras. 10-18.

<sup>37</sup> *See, supra*, para. 5, referencing *Lukić & Lukić* Judgement, para. 17.

<sup>38</sup> *Little v. Jamaica*, Communication No. 283/1988, U.N. Doc. CCPR/C/43/D/283/1988 (1991), 1 Nov 1991, para. 8.3 (**Attachment 2**).

<sup>39</sup> *Case of Papadakis v. The Former Yugoslav Republic of Macedonia*, ‘Judgement’, ECtHR, App. No. 50254/07, 26 May 2013 (“*Papadakis v. Macedonia*”), para. 94 (**Attachment 3**).

limitations of the applicant's defence rights" because "the right to the fair administration of justice holds so prominent a place in a democratic society that it cannot be sacrificed to expediency".<sup>40</sup> The ECtHR held, accordingly, that in the circumstances of that case, "the constraints affecting the applicant's exercise of his defence rights were irreconcilable with the fair trial guarantees".<sup>41</sup>

25. The Supreme Court Chamber has taken the same position on the proper balance between efficiency and fundamental values of law. In relation to the Trial Chamber's decision to sever Case 002, the Supreme Court Chamber held:

The Supreme Court Chamber considers the Trial Chamber's reliance on the ECCC's financial malaise to be irrelevant and inappropriate in the present decision-making process. While Judges are at all times certainly obligated to be mindful of the efficiency of proceedings, they must always act within the *sacrum* sphere of the law, the tenets of which cannot be overridden by the *profanum* of budgetary savings.<sup>42</sup>

26. The Defence submits, therefore, that the Trial Chamber, in letting expediency outweigh fairness, failed to give proper weight to each relevant considerations, hence committed a discernible error in its discretionary decision not to grant additional time to the Defence.

**(ii) Time Management and Equality of Arms**

27. Equality of arms is indeed a relevant consideration in trial management. However, as pointed out by the Appeals Chamber of the ICTY in the *Orić* case, equality of arms does not entail precisely the same amount of time for both the prosecution and the defence. Indeed, it is "a principle of basic proportionality, rather than a strict principle of mathematical equality, [that] generally governs the relationship between the time and witnesses allocated to the two sides".<sup>43</sup> In determining the basic proportionality, a chamber should consider, *inter alia*, the general functions as well as the specific strategies of the prosecution and the defence in a particular case.<sup>44</sup>
28. In the current instance, the International Deputy Co-Prosecutor intentionally chose to rely, to some extent, upon evidence and discussions in Case 001 in place of live testimony of Prak Khan in Case 002/02.<sup>45</sup> In contrast, the Defence's strategy was to

<sup>40</sup> *Papadakis v. Macedonia*, para. 94.

<sup>41</sup> *Papadakis v. Macedonia*, para. 95.

<sup>42</sup> E284/4/8, 'Decision on Immediate Appeals against Trial Chamber's Second Decision on Severance of Case 002', 25 Nov 2013, para. 75.

<sup>43</sup> *Prosecutor v. Orić*, 'Interlocutory Decision on Length of Defence Case', Case No. IT-03-68-AR73.2, 20 Jul 2005 ("Orić Decision"), para. 7.

<sup>44</sup> *Orić* Decision, para. 7.

<sup>45</sup> T. 27 Apr 2016 (Prak Khan, **Draft Transcript**), p. 57, lns. 9-16; p. 59, lns. 11-19.

question Prak Khan in detail on all aspects and to elicit evidence in support of the Defence's case. Considering the specific strategies chosen by the two sides, the same amount of time would not satisfy the basic proportionality required by equality of arms. The Defence accordingly submits that it is entitled to more time in this particular case.

29. Furthermore, as rightly observed by the ICTY Appeals Chamber, a trial chamber's authority to limit the time allocated to the defence must always be subject to the general requirement that the rights of the accused are fully respected:

Thus, in addition to the question whether, relative to the time allocated to the Prosecution, the time given to the Accused is reasonably proportional, a Trial Chamber must also consider whether the amount of time is objectively adequate to permit the Accused to set forth his case in a manner consistent with his rights.<sup>46</sup>

30. According to the ICTY Appeals Chamber, the question is, therefore, whether "taking into account the complexity of the remaining issues", the amount of time allocated to the defence are both "reasonably proportional" to the prosecution's allocation and "sufficient to permit [the accused] a fair opportunity to present his case."<sup>47</sup>
31. In the instant case, as has been demonstrated above,<sup>48</sup> additional time was necessary for the Defence to enjoy a fair opportunity to mount a meaningful and effective defence.
32. Based on the above, the Defence submits that the Trial Chamber committed a discernible error in the impugned decision by giving undue weight to irrelevant considerations, such as the mathematical equality of the allotted time, while not affording sufficient weight to the proportionality and objective adequacy of the time to which the Defence was entitled.

***(iii) The Defence's Usage of the Previously Allotted Time Was Legitimate***

33. The Defence notes that the need for additional time resulted from the genuine and objective inadequacy of the time allotted, given the large amount of issues the Defence intended to explore with Prak Khan. It was not a result of illegitimate use of the allotted time on the part of the Defence. All the subjects covered by the Defence during its cross-examination of Prak Khan were relevant and conducive to ascertaining the truth.

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<sup>46</sup> Orić Decision, para. 8 (emphasis added).

<sup>47</sup> Orić Decision, para. 9.

<sup>48</sup> See, *supra*, paras. 10-18.

34. The International Deputy Co-Prosecutor contended that the Defence wasted its time by deliberately ignoring the decision of the Trial Chamber not to allow the invocation of the content of the statement of S-21 detainees where there was an unrebutted real risk that the said statement was obtained through torture.<sup>49</sup> Contrary to this contention, however, the Defence was cautiously abiding by the Trial Chamber's decision regarding torture-tainted evidence while questioning Prak Khan.<sup>50</sup> The only time that the Defence implicitly referred to the content of a detainee's statement was during an interaction with the judges of the Trial Chamber when the Defence was attempting to explain to the Chamber the nature of a question it put to Prak Khan.<sup>51</sup>
35. The question that the Defence put to Prak Khan was whether a specific detainee, Chhon, provided the information in his statement "spontaneously", that is, on his own, or whether Prak Khan as the S-21 interrogator fed the information to Chhon.<sup>52</sup> As acknowledged by Judge Fenz,<sup>53</sup> this question in itself was completely legitimate. It relates directly to the allegations in the Closing Order that:

The 'truth' that these confessions were supposed to reveal was, in many respects, defined beforehand, since the interrogators, who had been instructed by Duch to establish the existence of links with the CIA, the KGB and/or the Vietnamese, forced detainees to provide pre-determined answers.<sup>54</sup>

36. Evidence on this subject also relates to the alleged arbitrariness of the deprivation of liberty of certain detainees – an element of the crime against humanity of imprisonment with which the accused persons of Case 002/02 are charged in relation to S-21 Security Centre.<sup>55</sup>
37. The Defence submits, therefore, that its usage of the previously allotted time was in compliance with the law and the rights of the accused.

## V. RELIEF

38. For the above reasons, the Defence requests that the Trial Chamber:
- a) reconsider its decision not to grant the Defence additional time to question Prak Khan;

<sup>49</sup> See, T. 2 May 2016 (Prak Khan, **Draft Transcript**), p. 28, lns. 3-8.

<sup>50</sup> See, e.g., T. 28 Apr 2016 (Prak Khan, **Draft Transcript**), p. 37, lns. 1-5; p. 71, lns. 24-25.

<sup>51</sup> T. 28 Apr 2016 (Prak Khan, **Draft Transcript**), p. 85, ln. 17 – p. 86, ln. 1.

<sup>52</sup> T. 28 Apr 2016 (Prak Khan, **Draft Transcript**), p. 83, lns. 16-17; p. 84, lns. 10-14.

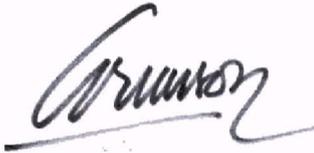
<sup>53</sup> T. 28 Apr 2016 (Prak Khan, **Draft Transcript**), p. 84, lns. 16-22.

<sup>54</sup> **D427**, Closing Order, para. 455 (emphasis added).

<sup>55</sup> **D427**, Closing Order, paras. 1402-1407; see also, *supra*, para. 14.

- b) recall Prak Khan to testify in relation to S-21 Security Centre; and
- c) grant the Defence three sessions to finish its cross-examination of Prak Khan.

## CO-LAWYERS FOR NUON CHEA



SON Arun



Victor KOPPE