

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

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**NUON CHEA'S FIFTH WITNESS REQUEST FOR THE CASE 002/02 SECURITY CENTRES AND "INTERNAL PURGES" SEGMENT
(EVIDENCE OF TREASONOUS REBELLION, ALLEGED ARBITRARINESS OF ARREST AND S-21 SECURITY CENTRE)**

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I. INTRODUCTION

1. Pursuant to Rule 87(4) of the Internal Rules, the Co-Lawyers for Mr. Nuon Chea (the “Defence”) submit the instant request (the “Request”) to hear eleven new witnesses who can offer evidence regarding key contested issues in the current Case 002/02 trial segment on Security Centres and “Internal Purges”. The Defence further requests five DC-Cam statements related to the requested witnesses to be admitted into evidence (the “Documents”).¹

II. BACKGROUND AND PROCEDURAL HISTORY

2. On 7 March 2016, the Trial Chamber issued a first list of nine people scheduled to appear before it either as witnesses or civil parties in respect of the S-21 Security Centre.² All of them have appeared. On 8 April 2016, the Trial Chamber issued a list of ten people scheduled to testify in relation to the “Internal Purges” trial segment.³ One of them, who was also a Defence witness, passed away a few days before its scheduled appearance and another one has been unreachable.⁴ Four people have appeared so far (one civil party, two witnesses and one expert). 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 310.⁵ On 1 April 2016, the Defence filed its second witness request for the segment, seeking to call eight witnesses whose evidence relates to leadership of the internal rebellion against the CPK.⁶ On 11 April 2016, the Defence filed its third witness request for the segment, asking the Chamber to expedite the appearance of four witnesses and seeking to call seven witnesses whose testimonies relate to the rebellious movement in the Northwest Zone, the East Zone and the Northeast Zone.⁷ On 8 June 2016, the Defence filed its fourth witness request requesting the Chamber to expedite the appearance of seven persons and to summons three new witnesses whose evidence relates to the

¹ For the convenience of the Chamber and the Parties, the documents requested by the Defence have been placed on the Shared Materials Drive.

² **E391.1.1**, Email from Trial Chamber Senior Legal Officer to Parties, 7 Mar 2016.

³ Email from Trial Chamber Senior Legal Officer to Parties, 8 Apr 2016 (**Attachment 1**)

⁴ Email from Trial Chamber Senior Legal Officer to Parties, 26 Jul 2016 (**Attachment 2**)

⁵ **E391**, First Witness Request (Division 310), 24 Mar 2016.

⁶ **E392**, Second Witness Request (Leadership), 1 Apr 2016.

⁷ **E395**, Third Witness Request (Rebellion Evidence), 8 Apr 2016.

contemporaneous documentation and the functioning of S-21 Security Centre.⁸ The Chamber has yet to rule on these four witness requests.

3. 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".⁹ The Defence file its submission in response on 10 June 2016.¹⁰
4. Since then, the Defence has identified eleven new witnesses who may be able to provide evidence relevant to the Defence's case in relation to the Security Centres and "Internal Purges" trial segment.

III. APPLICABLE LAW

A. Summoning New Witnesses and Admission into Evidence of Witnesses' Statements

5. All evidence is admissible, unless otherwise provided in the Internal Rules.¹¹ The Chamber may reject a request for evidence where it finds that the evidence is irrelevant or repetitious; impossible to obtain within a reasonable time; unsuitable to prove the facts it purports to prove; not allowed under the law; or if it is intended to prolong proceedings or is frivolous.¹² 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.¹³ 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

⁸ E412, 'Fourth Witness Request (S-21 Operations and Documentary Evidence)', 7 Jun 2016.

⁹ E395/1, 'Request for briefing on significance of conflicting faction within the DK leadership', 11 May 2016, ERN 01240207.

¹⁰ E395/2, 'Nuon Chea's Submissions on the Relevance of Evidence of Treasonous Rebellion to his Individual Criminal Responsibility in Case 002/02', 10 Jun 2016 ("NC Submissions on Relevance of Rebellion Evidence").

¹¹ Rule 87(1) of the Internal Rules.

¹² Rule 87(3) of the Internal Rules.

¹³ The Chamber specified that the opening of the trial in Case 002 was the initial hearing, which started on 27 June 2011.

question will be considered unavailable before the opening of the trial.¹⁴ 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”¹⁵ or where it “closely relate[s] to material already before the Chamber and ... the interests of justice require the sources to be evaluated together.”¹⁶ To satisfy the requirements of Rule 87(3), evidence put before the Trial Chamber need only be *prima facie* relevant and reliable.¹⁷

B. Additional Investigations

6. Rule 93 enables the Chamber to order additional investigations during the course of the trial when it “considers that a new investigation is necessary”. The judges appointed by the Chamber for that purpose “may, under the same conditions as the Co-Investigating Judges: (a) go anywhere within the territorial jurisdiction of the ECCC; (b) interview witnesses; (c) conduct searches; (d) seize any evidence; or (e) order expert opinions”.
7. Based on this Chamber’s previous jurisprudence, the necessity to initiate a new investigation:

must be justified by the interests of justice. Likewise, the Trial Chamber’s discretion must be understood in the context of the ECCC legal framework which guarantees the Accused’s right to a fair trial and grants the President the discretion to exclude any proceedings that unnecessarily delay the trial¹⁸.

¹⁴ T. 7 Dec 2015 (TC Ruling, **E1/363.1**), p. 49, lns. 2-8.

¹⁵ **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.

¹⁶ **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.

¹⁷ **E313**, ‘Case 002/01 Judgement’, 7 Aug 2014, para. 26.

¹⁸ **E294/1**, ‘Decision on Nuon Chea request to Admit New Documents, to initiate an Investigation and to Summons Mr. Rob LEMKIN’, 24 Jul 2013, para. 11.

IV. ARGUMENT

A. The Defence Case regarding the Security Centres and Internal Purges segments

(i) *Treasonous Rebellion and Vietnam*

8. As the Defence explained at length in several motions previously filed before the Trial Chamber and before the Supreme Court Chamber,¹⁹ 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 to advance the interests of Vietnam, if not also that of the Soviet Union. This faction received significant support from Vietnam to foment rebellion and treason against the legitimate and widely-recognised DK government, beginning right after the liberation of Phnom Penh on 17 April 1975.

(ii) *Arbitrariness of the Arrests*

9. This account of the events that unfolded at the material time is 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. Further, such evidence has a direct impact on the assessment of Nuon Chea’s criminal responsibility under the modes of liability of joint criminal enterprise and superior responsibility for crimes that occurred in those regions.²⁰
10. Such evidence may also substantiate the Defence’s case that a substantial number of the arrests and detentions were not arbitrary but rather grounded on legitimate suspicions of treason and espionage.²¹

(ii) *The Death Toll at S-21*

11. The Closing Order, referencing solely Duch’s evidence, alleges that:

¹⁹ **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; **E395/2**, NC Submissions on Relevance of Rebellion Evidence; *see also* **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, para. 25; *see also* **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, paras. 23-69.

²⁰ *See* **E395/2**, NC Submissions on Relevance of Rebellion Evidence, para. 34-38.

²¹ *See* **E395/2**, NC Submissions on Relevance of Rebellion Evidence, para. 18-23.

More than 12,273 S-21 detainees were executed at Choeng Ek, within the S-21 complex or nearby, or died as a result of the detention conditions at S-21. In the Duch Judgement, the Trial Chamber noted that "*none of the detainees held within the S-21 complex were to be released as they were all due to be executed in accordance with the CPK policy to "smash" all enemies*". Duch states that prisoners could be executed either on the orders of his superiors, in particular for mass executions, or on the basis of a decision by Duch pursuant to the general Party line, which was that all prisoners were to be executed.²²

12. On the contrary, grounded on various sources,²³ the Defence's position is that the majority of individuals allegedly registered at the S-21 Security Centre were not necessarily detained in the S-21 compound and were not systematically executed. Indeed, a substantial number of individuals who appear on the so-called 'S-21 prisoner lists' were only registered in S-21, and were, later on, either sent to different locations such as Prey Sar²⁴ or the Kampong Chhnang Airfield,²⁵ or were released.²⁶ Therefore, the Defence submits that the number of prisoners who have been detained in the S-21 premises in Phnom Penh amounts to 5,000 to 6,000.

B. Two New Witnesses to Testify on Conflicting Internal Factions in the Northwest Zone in Relation to the 'Internal Purges' Segment

(i) W4

13. W4 is an individual who has been interviewed by Robert Lemkin and Thet Sambath for the purpose of their film *Enemies of the People*. [REDACTED]

²² **D427**, Closing Order, para 460-461; *see also* **D427**, Closing Order, fn 2000 (emphasis in original).

²³ *See* **E3/8639**, '5,186 Photos of S-21 Prisoners from OCP', 7 Apr 2008; **E3/1684**, *Voices From S-21*, David Chandler, 1999, EN 00192676-77 (David Chandler refers to around six thousands negatives discovered at S-21), EN 00192685 and 00192691 (David Chandler refers to "roughly 4,300" confessions found at S-21 after the fall of the regime and some dozens more in 1995); **E3/7325**, Geng Biao's Report on the Situation of the Indochinese Peninsula, 1979, EN 01001622 (Geng Biao, then Secretary General of the Communist Party of China's Military Commission stated that, in January 1979, "4,000 people who, if not put to death, were imprisoned"); **E393.2**, 'OCIJ S-21 Prisoners List', 31 Mar 2016 (5,512 individuals are listed with a possible date of execution); **E404/4/2.2**, "Skull by Skull Team Catalogue Khmer Rouge Killings", Cambodia Daily, 6 Feb 2016 (an ongoing forensic investigation conducted refers to 6,426 skulls investigated at Choeung Ek).

²⁴ **E3/7639**, Written Record of Interview of NIM Kim Sreang, ERN EN 00162733-2734, 00162736; **E3/7664**, Written Record of Interview of Sokh Sophat, ERN 00163804; **E3/7543**, DC Cam interview Top Ri, ERN 00324274-75.

²⁵ *See e.g.* **E3/7532**, DC-Cam Statement of [REDACTED], ERN 00329478.

²⁶ *See e.g.* **E393.2**, OCIJ S-21 Prisoners List 31 Mar 2016, entries 7390, 7396, 7397, 7399, 7405, 7406, 7409, 7412, 7421, 7443, 7445, 7450, 7453, 7460, 7469, 7475, 7479.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

14.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

15. **Protective Measures.** W4's testimony is not included in Thet Sambath's book³³ and this individual has requested strict confidentiality.³⁴ However, the ECCC framework provides a wide range of measures to ensure protection and full confidentiality to potential witnesses "whose appearance before the Chamber is liable to place their life or health or that of their family members or close relatives in serious danger."³⁵ Accordingly, the Defence requests the Chamber to ask WESU to conduct a risk assessment pursuant to Rule 29(3) of the Internal Rules and to further provide W4 with any protective measure deemed necessary to enable him to provide testimony before the Chamber.

(ii) [REDACTED] (2-TCW-971)

16. [REDACTED] (2-TCW-971) has been the deputy chairman of the Tram Kak district commerce office from the beginning of 1977 until 1 January 1978.³⁶ He was later on sent to work in the Northwest Zone to help improving people's living conditions. His description of the situation he encountered when arriving in the Northwest Zone is consistent with Ieng Thirith's account³⁷ and with [REDACTED].³⁸

A4: They had me stay in Doun teav District to look after the place where they had mistreated people. [...] Ta Ti Chay ordered me to supervise Doun teav because they had previously intended to kill people in the cooperative. They had me help resolve the problems of foodstuffs and lighten the workload for the people who were starving [...] Then when events happened in Thma Koul, they sent me to Thma Koul. The events happening there were that the 17 April people and the people in the mobile unit who

³² [REDACTED]
³³ E3/4202, Behind the Killing Fields, Thet Sambath and Gina Chon, 2010.

³⁴ [REDACTED]

³⁵ See E293, 'Disposition of all Requests for Protective Measures sought in Case 002/01 and Response to Co-Prosecutors' Request for the Recall of Civil Party SAR Sarin and an Order for a Formal Assessment of the Need for Protective Measures (E286)', 28 Jun 2013, EN 00922987-88, paras. 6-7; see also Rule 29 of the Internal Rules (Rev.9)

³⁶ E3/9593, 'WRI of [REDACTED]', 26 Nov 2013, EN 00978766, A1.

³⁷ E3/659, 'Interview of Ieng Thirith with Elisabeth Becker', EN 00182322-23.

³⁸ [REDACTED]

were working in the vicinity of Veal trea did not have food to eat, and some of them were sick. They had me go to help resolve this and find something for them to eat.³⁹

A22: [...] Ta Mok [...] said that the situation in the Northwest Zone was not good, so it was necessary to select people to go help.

A23: the people did not have food to eat; people were divided into two or three groups; some leaders had conflicts with each other; it was difficult for people; and some were detained in detention offices. [...]

A63: [...] This was the reason that we had been sent to see who had overworked the people without adequate food: we were to eliminate all of those acts. But the Vietnamese arrived when we had not done that yet. When we arrived in the Northwest Zone, we saw rice and sugar abandoned in storage and clothes left tattered and mouldy. They had reported that the food supplies were abundant, and both rice and sugar remained. When we arrived some did remain, but the people had no rice to eat. Battambang was rich in rice, but why didn't the people have any rice to eat? So I understood that there were certainly those groups who wanted to burn the outside to a crisp, but pull it out while the inside is still raw".

17. Therefore, the Defence submits that ██████████ (2-TCW-971) can provide critical and unique insight regarding the consequences of the policies implemented by the former Northwest Zone cadres on the people's living conditions, the discrepancies between those policies and the Party line, the directives he received from the Centre to rapidly improve the situation, and the "purges" that took place in the Zone.

C. Five New Witnesses to Testify on on Treasonous Rebellion by East Zone Cadres

(i) ██████████ (Witness A)

18. ██████████ (Witness A) was a medical staff in Division 703. He describes an event that took place in 1975 when there was a near-breakout of conflict between the East Zone and the Southwest Zone during the anniversary of the party at the Olympic Stadium. He further states that the upper echelon prevented it on time.⁴⁰ He further provides an interesting account of the "rebellion" between the Southwest Zone, supportive of Pol Pot, and the East Zone in 1977 and relates that "It was the fight for the country, the fight for power"⁴¹

(ii) ██████████ (Witness B)

19. ██████████ (Witness B) was a soldier of Battalion 127, in the Artillery Unit of Division 703. He provides evidence on the existence of internal factions competing as of April

³⁹ E3/9593, 'WRI of ██████████', 26 Nov 2013, EN 00978768, A4.

⁴⁰ 'Documentation Centre of Cambodia's Interview of ██████████ (Witness A)', 27 Mar 2001 ('██████████ (Witness A) DC-Cam Interview'), EN 01303922.

⁴¹ ██████████ (Witness A) DC-Cam Interview, EN 01303921-22.

1976. Indeed, while he was tasked to stand guard at the Olympic Stadium during the Victory Day Anniversary in 1976, he was ordered to protect people against a potential imminent attack led by Sao Phim:

The Victory Day Anniversary. There was an internal struggle with the East Zone. I heard they said that Sao Phim was attacking Olympic Stadium, so they sent some soldiers from inside the stadium to help protect from the outside. We gathered to protect against an offensive attack from traitors.⁴²

20. In addition, [REDACTED] (Witness B) states that, after having completed his guard duty in Phnom Penh, he was sent to work at Prey Sar for five to six months in 1975.⁴³ As such, he may be able to provide an interesting account of the functioning of the Prey Sar worksite (S-24).

(iii) [REDACTED] (Witness C)

21. [REDACTED] (Witness C) was a soldier of Division 703. Stationed in the East Zone, he provides a potentially interesting account of the Vietnamese incursion into Cambodian territory as of 1976, and of the consecutive turmoil that plagued the East Zone. He describes fighting taking place between a unit of Division 703 and the East Zone rebels, in an attempt to crackdown the rebellion forces that have joined with the Vietnamese.⁴⁴

[REDACTED] During the regime, the East Zone was accused of conspiring with Vietnam. Many cadres such as HENG Samrin could manage to escape.

Vannak: What was HENG Samrin's position?

[REDACTED] He served as a Division Commander.

Vannak: Did you know him?

[REDACTED] No, I did not. He was living at Yeay Hy's house.

Vannak: Who was the chief of the East Zone?

[REDACTED] During the regime, SO Phim and Ta Heng Samrin were. I heard that SO Phim and CHAN Chakrei were arrested.⁴⁵

(iv) [REDACTED] (Witness D)

22. [REDACTED] (Witness D) was the chief of the child unit of Division 703. According to his DC-Cam interview, he may be able to provide potentially crucial and unique evidence in relation to Chan Chakrei's betrayal and consecutive arrest. Indeed, he stated in a DC-Cam interview that:

I heard that Division 703 intercepted the radio communication of CHAN Chakrei in the

⁴² 'Documentation Centre of Cambodia's Interview of [REDACTED] (Witness B)', 29 Mar 2001 ('[REDACTED] (Witness B) DC-Cam Interview'), EN 01302712.

⁴³ [REDACTED] DC-Cam Interview, EN 01302714.

⁴⁴ 'Documentation Centre of Cambodia's Interview of [REDACTED]', 27 March 2001, ('[REDACTED] (Witness C) DC-Cam Interview'), EN 01302764.

⁴⁵ [REDACTED] (Witness C) DC-Cam Interview, EN 01302764.

East Zone in 1976. They said that, on the radio CHAN Chakrei said, "They have almost crossed the river." However, I only heard that from others; I myself did not hear the radio communication because that was not my duty. After the war, I was not assigned to do that job any more. I was assigned to carry radios only in battle fields. After CHAN Chakrei said, "They have almost crossed the river," they arrested all the members of the entire unit in the East Zone, and those people were mistreated and sent to build an airfield in Kampong Chhnang.⁴⁶

23. On top of this account of the circumstances surrounding the arrest of Chan Chakrei, [REDACTED] (Witness D) may be able to provide unique evidence related to Choeng Ek in general and to the treatment of children there since he was, at one point in time, sent there and assigned to take care and teach the children.⁴⁷

(v) [REDACTED] (Witness E)

24. According to [REDACTED] (2-TCW-831), [REDACTED] (Witness E) was a battalion leader of the East Zone rebels.⁴⁸ Moreover, [REDACTED] (Witness E) is also referred to as one of the attendees at the meeting attended by [REDACTED] (2-TCW-831), Hun Sen (2-TCW-1001), and the late Chea Sim that took place on 10 June 1977 in Memot, and whose purpose was to draw up a plan to "smash East Zone combatants" and "flee to Vietnam".⁴⁹

25. As such, the Defence submits that [REDACTED] (Witness E) would be able to offer an eyewitness account of the rebellion and the subsequent imprisonment of any fellow East Zone cadres at security centres, including S-21 Security Centre. He can further provide invaluable eyewitness insight regarding the preparations for the rebellion, as well as on the participation and crackdown on East Zone cadres in this regard.

26. [REDACTED] (Witness E)'s testimony appeared to be even more relevant since only one witness, MEAS Soeun, was selected by the Chamber to testify in relation to the "purges" that took place in the East Zone area.⁵⁰ During the Democratic Kampuchea

⁴⁶ 'Documentation Centre of Cambodia's Interview of [REDACTED]', 25 Apr 2001 ('[REDACTED] DC-Cam Interview'), EN 01303953-54.

⁴⁷ [REDACTED] (Witness D) DC-Cam Interview, EN 01303948

⁴⁸ **E3/2961R** and **E3/2962R**, [REDACTED] Interviewed by Ben Kiernan, 07-12-1991', Tapes A and B, transcribed and translated into English in **E3/1568**, 'Retyped from a Handwritten Interview of Chea Sim, Phnom Penh, 3 December 1991, [REDACTED], 7 December 1991' ('[REDACTED]'), EN 00651862-907. "The commander of the forces north of the highway was Pol Saroeun Song Neat, Mau Phok, So Nal. Ta Nya was a civilian region official, in security, south of the highway. And battalions led by Sae Chhun and [REDACTED]" EN 00651902

⁴⁹ **E319/43.3.1**, 'Written Record of Investigation Action of [REDACTED]', 7 Aug 2013, EN 00947224

⁵⁰ On 28 June 2016, Chhum Saman came to testify before the Chamber as a civil party regarding "purges" in the East Zone. Since civil parties do not testify under oath, it is the Defence's position that their evidence should not be given the same weight as those of witnesses.

(‘DK’), MEAS Soeun worked as deputy chairman of a lathing workshop in sector 21. He was also the son of MEAS Seng Hong alias Chan who was deputy chief of the East Zone and who, later on, became also secretary of sectors 23 and 24. However, it transpired from MEAS Soeun’s live testimony that he was not aware of the situation at higher level and of the rebellion led by Sao Phim’s faction against the Centre.⁵¹ [REDACTED] (Witness E), who was higher in rank and who attended at least one meeting held by leaders of the East Zone rebellion, might be able to provide a more substantive evidence regarding the internal struggle that led to the “Purges” in this area.

D. One New Witness to Testify on Conflicting Internal Factions at the Thai Border in Relation to the ‘Internal Purges’ Segment

(i) [REDACTED] (Witness F)

27. [REDACTED] (Witness F) was a soldier during the DK regime.⁵² He states that between 17 April 1975 and 1977, he was posted at Thlok Village in Oddar Meanchey Province, 3.4 kilometres from the Thai-DK border.⁵³ There, he was in charge of defending the border and of preventing civilians from entering Thailand.⁵⁴ He states that sometime in 1977, his squad leader, YOEUEN Yong, who “*led a rebel group known as Sereikar against the Khmer Rouge*”,⁵⁵ permitted people who had been captured at Say Saman, Northwest Zone, to escape and fled along with them to neighbouring Thailand.⁵⁶
28. [REDACTED] (Witness F) would therefore be in position to provide critical evidence on the rebellion in the Northwest Zone and especially about an organised traitorous group, the Seraikar.

⁵¹ See e.g.: Draft T. (Meas Soeun), 29 Jun 2016, p. 97 lns. 23-25 (the witness did not know who was Heng Samrin at the time); p.98, lns 4-8 (the witness did not know who was Chan Chakrei at the time); Draft T. (Meas Soeun), 30 Jun 2016, p. 14, ln 1 (the witness did not know anyone from the General Staff of the East Zone); p.15, lns 5-9 (the witness never heard of a “secret struggle in the East Zone led by So Phim [and] Heng Samrin”).

⁵² E3/9009, ‘Documentation Centre of Cambodia’s Interview of [REDACTED]’, 7 Dec 2010 (“[REDACTED] DC-Cam Interview”), EN 01236297-316.

⁵³ E3/9009, [REDACTED] DC-Cam Interview, EN 01236297.

⁵⁴ E3/9009, [REDACTED] DC-Cam Interview, EN 01236302.

⁵⁵ E3/9009, [REDACTED] DC-Cam Interview, EN 01236303 (emphasis added).

⁵⁶ E3/9009, [REDACTED] DC-Cam Interview, ERN 01236303.

E. One Witness to Testify on the Role of Special Regiment 704 and the Basis for Arrests

(i) ██████████ (Witness G)

29. In 1976, ██████████ (Witness G) joined the Special Regiment 704 within Division 703 and was then sent to work in the Garment Unit 57.⁵⁷ ██████████ (Witness G) explains that Special Regiment 704 was assigned to monitor the workers at the factory in order to identify potential traitors: “They sent me to spy on the enemy who were infiltrating in our forces”⁵⁸
30. The monitoring process described by ██████████ (Witness G) substantiates the Defence’s position that a majority of the arrests conducted during the Democratic Kampuchea regime were not arbitrary

F. Two Witnesses to Testify on the Release of Prisoners from S-21 Security Centre

31. In line with the arguments set out above,⁵⁹ the two witnesses identified below can provide additional insight into the nature of the operations at S-21.

(i) ██████████ (Witness H)

32. ██████████ (Witness H) was a medic in Unit 4 of Division 310 under the command of Oeun.⁶⁰ After 1975, he was stationed at Preah Ket Mealea Hospital in Phnom Penh, which was the Division 310 hospital.⁶¹ In December 1976, after the arrest of his hospital director Phén and of Division 310 Commander Oeun,⁶² ██████████ (Witness H) was arrested and sent to S-21.⁶³ ██████████ (Witness H) states that he stayed in “Tuol Sleng prison office” two days before being released with the intervention of the Preah Ket Mealea Hospital deputy director Yeat.⁶⁴ In March 1977, he was sent to be ‘tempered’ at the construction site at Kampong Chhnang Airfield.⁶⁵

⁵⁷ ‘Documentation Centre of Cambodia’s Interview of ██████████’, 14 Jun 2001 (“█████████ DC-Cam Interview”), EN 01303928.

⁵⁸ ██████████ DC-Cam Interview, EN 01303936.

⁵⁹ See *supra* para 3-5.

⁶⁰ E3/7537, ‘Documentation Centre of Cambodia’s Interview of ██████████’, 23 Jan 2004 (“█████████ DC-Cam Interview”), EN 00251253.

⁶¹ E3/7537, ██████████ DC-Cam Interview, EN 00251252.

⁶² E3/7537, ██████████ DC-Cam Interview, EN 00251252-53.

⁶³ E3/7537, ██████████ DC-Cam Interview, EN 00251254.

⁶⁴ E3/7537, ██████████ DC-Cam Interview, EN 00251254.

⁶⁵ E3/7537, ██████████ DC-Cam Interview, EN 00251255.

33. Eventually, in February 1978, ██████████ (Witness H) was transferred back to work as a medic in Unit 4 as it was considered that he had re-educated himself.⁶⁶
- (ii) ██████████ (Witness I)
34. ██████████ (Witness I) was a soldier of Division 502. In his DC-Cam statement, he was accused of committing a light offence and was sent to S-22, which was the prison office of Division 502.⁶⁷ Either in March or April 1977,⁶⁸ ██████████ (Witness I) was sent from S-22 to S-21 where he was detained for about two months and a half before being sent to Kampong Chhnang Airfield.⁶⁹ ██████████ (Witness I) further states that he was released from S-21 together with “about 50” persons.⁷⁰
35. Surprisingly, ██████████ (Witness I) provided two subsequent statements to the Co-Investigating Judges, given respectively six and seven years after his initial interview with DC-Cam,⁷¹ where he was not questioned about his time at S-21. ██████████ (Witness I)’s live testimony will be an opportunity to confirm his initial statement and obtain a detailed account of the operation of S-21 and of the prisoner releases from the security centre.
36. ██████████ (Witness I) would also be able to provide important information related to rebellion and conflicting internal factions. Indeed, in his DC-Cam statement, he recounts a major conference at the Olympic Stadium with all troops of the General Staff in late 1976 or early 1977, which he attended.⁷² He relates the wave of arrests that started after this meeting with arrests of CHAN Chakrei and other commanders who were accused of being traitors⁷³

⁶⁶ E3/7537, ██████████ DC-Cam Interview, EN 00251257.

⁶⁷ E3/7532, ‘Documentation Centre of Cambodia’s Interview of ██████████’, 24 Oct 2003 (‘██████████ DC-Cam Interview’), EN 00329467.

⁶⁸ E3/7532, ██████████ DC-Cam Interview, EN 00329482.

⁶⁹ E3/7532, ██████████ DC-Cam Interview, EN 00329478 (emphasis added).

⁷⁰ E3/7532, ██████████ DC-Cam Interview, EN 00329481.

⁷¹ E3/5263, ‘Written Record of Interview of ██████████’, 6 Jan 2009 (‘██████████’), EN 00282222-225; E3/8739, ‘Written Record of Interview of ██████████’, 1 Dec 2010, EN 00630429-436.

⁷² E3/5263, ██████████ WRI, EN 00282224.

⁷³ E3/5263, ██████████ WRI, EN 00282224 (emphasis added).

G. Five Documents to be Admitted into Evidence

(i) Overview of the Documents

37. In addition to the above, the Defence requests the DC-Cam interviews of the requested witnesses to be admitted into evidence. Those documents are available to the Parties in the Shared Material Drive.

Relevance	ERN	Date
DC-Cam Interview of ██████████ (Witness A)	KH: 01247800-01247820 EN: 01303910-01303923	26 Dec 2000
Dc-Cam Interview of ██████████ (Witness B)	EN: 01302704-01302719 KH: 01247665-01247688	29 Mar 2001
DC-Cam Interview of ██████████ (Witness C)	KH: 01247745-01247765 EN: 01302752-01302766	27 Mar 2001
Dc- Cam Interview of ██████████ (Witness D)	KH: 01247880-01247905 EN: 01303938-01303956	25 Apr 2001
██████████ (Witness G)	KH: 01247821-01247839 EN: 01303924-01303937	14 Jun 2001

(ii) The Documents Sought for Admission are Prima Facie Relevant and Reliable

38. The requested documents are directly related to the charges regarding the security centres and “internal purges”, discussed, *inter alia*, in paragraphs 178-204, 415 to 475, 489-515 and 589-643 of the Closing Order.⁷⁴ Further, they are statements of or related to the witnesses requested in the instant motion, which were taken by DC-Cam, a reputable organisation. Therefore, the Defence submits that all the statements sought are *prima facie* relevant to Case 002/02 and reliable.

H. The Request is Timely

39. Since it has been notified with the list of witnesses selected by the Trial Chamber to appear in relation to the “Internal Purges” segment, the Defence assessed the nature of the evidence that may be elicited from those witnesses and researched further complementary evidence that may be relevant to its case. The DC-Cam interviews that were uncovered during this process were placed on the case file on 2 June 2016 and the instant Request has been submitted at the earliest opportunity.⁷⁵

40. In any event, the requested evidence closely relates to material already before the Chamber and comprises exculpatory content. Therefore, the Defence submits that the

⁷⁴ D427, ‘Closing Order, 15 Sep 2010.

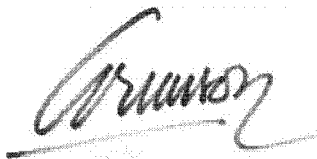
⁷⁵ See *supra*, para. 31.

appearance of the requested witnesses and the admission into evidence of the statements sought will be conducive to the ascertainment of the truth.⁷⁶

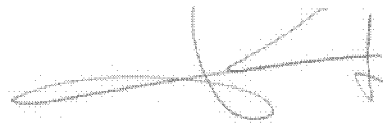
V. RELIEF

41. For the reasons stated above, the Defence requests that the Trial Chamber:
- (a) requests WESU to conduct a risk assessment regarding W4;
 - (b) summons W4, ██████████ (2-TCW-971), ██████████ (Witness A), ██████████ (Witness B), ██████████ (Witness C), ██████████ (Witness D), ██████████ (Witness E), ██████████ (Witness F), ██████████ (Witness G), ██████████ (Witness H) and ██████████ (Witness I) to appear during the Security Centres and “Internal Purges” segment;
 - (c) admits into evidence in Case 002/02 the Documents listed in paragraph 37.

CO-LAWYERS FOR NUON CHEA



SON Arun



Victor KOPPE

⁷⁶ **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: “According to Internal Rule 87(4), the Trial Chamber may admit any new evidence that it deems conducive to ascertaining the truth, where that evidence also satisfies the *prima facie* standards of relevance, reliability and authenticity required under Internal Rule 87(3). Ordinarily, the requesting party must satisfy the Chamber that the proposed new evidence was either unavailable prior to the opening of the trial or could not have been discovered with the exercise of reasonable diligence. However, in certain cases, the Chamber has admitted evidence which does not strictly speaking satisfy this criteria, including in instances where evidence relates closely to material already before the Chamber and where the interests of justice require the sources to be evaluated together, where the proposed evidence is exculpatory and requires evaluation to avoid a miscarriage of justice, or where the other parties do not object to the evidence”.