

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

FILING DETAIL

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NEW WITNESS, CIVIL PARTY AND EXPERT LIST FOR CASE 002/02

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I. INTRODUCTION

1. The Co-Lawyers for Nuon Chea (the ‘Defence’) hereby submit a new list of witnesses, civil parties and experts requested to be called in Case 002/02 (‘New Witness List’), set out in Annex A, with a suggested public classification. The Defence makes the following submissions regarding the New Witness List.

II. SUBMISSIONS

A. The Witnesses Are Admissible Without Being Subject to Internal Rule 87(4)

2. The Defence takes the position, jointly held by all of the Parties in Case 002/02 in accordance with reasons previously communicated to the Chamber, that Internal Rule 87(4) should apply “only to new evidence proposed by a Party *after the opening of the trial*, that is after the upcoming Initial Hearing”.¹ Thus, as the New Witness List has been filed before the Initial Hearing on 30 July 2014, the Defence submits that it is unnecessary to file the New Witness List in accordance with Internal Rule 87(4) and to therefore demonstrate that the relevant criteria for admission of the witnesses under Internal Rules 87(3) and (4) have been met.
3. The Defence submits that Witnesses 1-4 and the expert on the New Witness List relate to a central theme of the defence of Mr. Nuon Chea: that events in Democratic Kampuchea were a reaction to consistent and flagrant aggression on the part of Vietnam and to the presence and destabilising actions of a Vietnamese-sponsored faction within the leadership of the Communist Party of Kampuchea. In particular, Witnesses 1 to 3 are able to provide eyewitness testimony in relation to a plot by Rhos Nhim and Sao Phim to overthrow Pol Pot. The alleged acts at the S-21 Security Centre crime site are crucial to the defence of Mr. Nuon Chea, and in this regard, Witness 5 in the New Witness List is able to provide crucial authentication and chain of custody testimony with respect to S-21-related documents contained at the Tuol Sleng Genocide Museum. In addition to his testimony on the abovementioned central theme of the defence of Mr. Nuon Chea, the sole expert on the New Witness List is also able to provide potentially exculpatory evidence with respect to other allegations against Mr. Nuon Chea,

¹ Doc. No. **E307**, ‘Parties’ Joint Request for Clarification Regarding the Application of Rule 87(4) in Case 002/02’, 30 April 2014, para. 14(b) (emphasis added).

including in relation to cooperatives and worksites and to demographic evidence concerning the alleged number of deaths during Democratic Kampuchea. Further details on each witness and the expert are contained in a list in Annex A and in summaries in Annex B.

B. Even If Internal Rule 87(4) Applies, the Witnesses Meet the Criteria for Admission

4. While the Defence has submitted that Internal Rule 87(4) does not apply at all or at least not until after the Initial Hearing, the Defence notes that the Chamber maintains otherwise and has directed the Parties to submit new witness lists as Internal Rule 87(4) requests.² In compliance with this direction, and in the alternative, the Defence submits the New Witness List pursuant to Internal Rule 87(4). Internal Rule 87(4) provides that the Chamber may admit witnesses requested during the trial where they satisfy the criteria set out in Internal Rule 87(3) and were unavailable before the “opening of the trial”, which the Chamber maintains to have occurred in June 2011.³ Where witness evidence was available before the opening of the trial, the Chamber has permitted the admission of the relevant witness “where the interests of justice so require, in particular where it is exculpatory and requires evaluation in order to avoid a miscarriage of justice”⁴ or where they “closely relate to material already before the Chamber and ... the interests of justice require the sources to be evaluated together.”⁵
5. While the testimony of the witnesses and the expert on the New Witness List were potentially available before the opening of the trial, the Defence reiterates its submissions in paragraph 3 and further submits that the testimony of the witnesses and expert go towards exculpating Mr. Nuon Chea in relation to a range of charges outlined in Annex A, as well as closely relating to material already before the Chamber of a potentially inculpatory nature. Therefore, the interests of justice, and particularly the need to avoid a miscarriage of justice, demand that the witnesses and expert on the New Witness List be admitted.

² Doc. No. **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’, 11 June 2014, paras. 5-6 (emphasis added).

³ Doc. No. **E307/1**, para. 2.

⁴ Doc. No. **E307/1**, para. 3, and *see*, Doc. No. **E190**, ‘Decision Concerning New Documents and Other Related Issues’, 30 April 2012, para. 36.

⁵ Doc. No. **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 June 2013, para. 3.

III. CONCLUSION

6. For the reasons stated herein and previously, the Defence requests the Chamber to admit the witnesses and expert referred to in its New Witness List at Annex A.

CO-LAWYERS FOR NUON CHEA

A handwritten signature in blue ink, appearing to read 'Arun' with a stylized flourish at the end.

SON Arun

A handwritten signature in blue ink, appearing to be a stylized 'V' followed by a horizontal line and a vertical stroke.

Victor KOPPE