

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

FILING DETAILS

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**NUON CHEA'S REQUEST TO WITHDRAW A WITNESS FROM THE CASE 002/02
TRIAL WITNESS LIST**

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I. INTRODUCTION

1. Pursuant to Rule 85, the Co-Lawyers for Mr. Nuon Chea (the “Defence”) submit this request to withdraw witness Mr. SAO Van *alias* SAO Pok (2-TCW-989) — a witness originally requested by the Defence — from the list of witnesses approved by the Trial Chamber to testify in Case 002/02. SAO Van (2-TCW-989) is currently scheduled to appear as the only witness for the imminently forthcoming segment on the Treatment of Former Khmer Republic Officials.

II. PROCEDURAL HISTORY

2. On 29 December 2014, the Defence filed the substantive brief for its appeal against the judgement in Case 002/01.¹ In it, the Defence requested that the Supreme Court Chamber summons SAO Van (2-TCW-989) to testify as a witness on appeal.²
3. On 3 April 2015, the Defence submitted a consolidated request to hear 15 additional witnesses in relation to the Tram Kok Cooperatives and the Tram Kok District Re-education Office 105,³ one of whom was SAO Van (2-TCW-989). In that request, the Defence explained the relevance of SAO Van (2-TCW-989)’s potential evidence as follows:⁴

In the Closing Order, the Tram Kok Cooperatives and Kraing Ta Chan Security Centre are identified as key crime sites for the charges against Nuon Chea relating to the treatment of former Lon Nol soldiers and officials. Proposed new witness Sao Van may be able to provide critical, unique, exculpatory evidence in this regard. Sao Van is a Tram Kok district native. Prior to 17 April 1975, he served in various roles within the district: from 1970 as Trapeang Tuek village chief, and from 1971 as Popel commune re-education committee member. After 17 April 1975, he became a Kampong Svay commune committee member (in Kien Svay district, Sector 25, Southwest Zone). Sao Van was first interviewed by the OCIJ for Case 004 on 27 February 2013. The Chamber granted the Defence access to his statement on 23 September 2013, 72 hours before the Defence’s Case 002/01 closing brief was due. In his statement, Sao Van describes meetings he attended “prior to 1975” (when he would still have been an official in Tram Kok) and “[a]fter 1975”, at which Ta Mok reportedly ordered that “[Lon Nol] soldiers with the ranks *from Second Lieutenant to Colonel were not to be harmed*”. Implementation of this order, he said, “varied from Sector to Sector”. Having served on a re-education committee in Tram Kok, Sao Van may also be able to provide insights as to the nature of re-education in the district.⁵

¹ F16, ‘Nuon Chea’s Appeal against the Judgment in Case 002/01’, 29 Dec 2014 (“Appeal”).

² F16, Appeal, p. 270.

³ E346, ‘Nuon Chea’s Rule 87(4) Request for New Witnesses Re: Tram Kok and Kraing Ta Chan’, 3 Apr 2015 (“Tram Kok/Kraing Ta Chan Witness Request”).

⁴ Footnotes omitted, emphasis in original.

⁵ E346, Tram Kok/Kraing Ta Chan Witness Request, para. 8.

4. On 30 April 2015, the Trial Chamber granted the Defence's request to summons SAO Van (2-TCW-989).⁶ The Chamber stated, however, that SAO Van (2-TCW-989)'s appearance would be delayed until the trial segment on the Treatment of Former Khmer Republic Officials.
5. On 29 May 2015, the Supreme Court Chamber granted the Defence's request to hear SAO Van (2-TCW-989)'s testimony on appeal.⁷ On 2 July 2015, SAO Van (2-TCW-989) testified for one day during the appeal hearings.⁸ He discussed the treatment of former Khmer Republic soldiers and officials at length, and in particular, Ta Mok's order that "[Lon Nol] soldiers with the ranks from Second Lieutenant to Colonel were not to be harmed".
6. On 3 August 2015, the Co-Prosecutors filed a motion to request that all appeal evidentiary hearing transcripts, including the one containing SAO Van (2-TCW-989)'s testimony, be admitted into evidence in Case 002/02.⁹ On 8 September 2015, the Trial Chamber granted the Co-Prosecutors' request.¹⁰
7. On 24 December 2015, the Trial Chamber notified the parties by email that "after hearing the remaining Witnesses and Civil Parties on the Treatment of the Vietnamese and the Treatment of the Cham, the Trial Chamber will hear SAO Van [2-TCW-989]"¹¹ as the sole witness during the Treatment of Former Khmer Republic Officials segment, other relevant testimony having been heard in previous segments or likely to be offered by witnesses appearing during other trial segments.

III. APPLICABLE LAW

8. Rule 85(2) empowers the President of the Trial Chamber to maintain good order during the trial. In particular, Rule 85(1) notes, *inter alia*, that the President must ensure the "free exercise of defence rights" and is authorised to "exclude any proceedings that unnecessarily delay the trial, and are not conducive to ascertaining the truth".

⁶ E346/2, 'Decision on the Nuon Chea's Defence Consolidated Rule Request to Hear Additional Witnesses for the First Case 02/002 Trial Segment on Tram Kok Cooperatives and Kraing Ta Chan Security Centre', 30 Apr 2015.

⁷ F2/5, 'Decision on Part of Nuon Chea's Requests to Call Witnesses on Appeal', 29 May 2015.

⁸ T. 2 Jul 2015 (SAO Van, F1/1.1).

⁹ E356, 'Co-Prosecutor's Motion to Admit Testimony from the Case 002/01 Appeal Evidentiary Hearings of 2, 3 and 6 July 2015', 3 Aug 2015.

¹⁰ E356/2, 'Decision on Co-Prosecutor's Motion to Admit Testimony from the Case 002/01 Appeal Evidentiary Hearings of 2, 3 and 6 July 2015', 8 Sep 2015.

¹¹ Email from the Trial Chamber Senior Legal Officer to Parties, 24 Dec 2015.

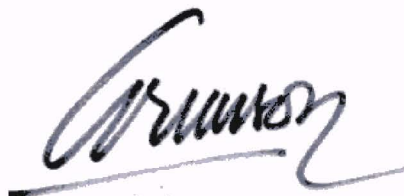
IV. ARGUMENT

9. During its examination of SAO Van (2-TCW-989) on appeal, the Defence was able to wholly address the relevant issues for which it had sought SAO Van (2-TCW-989)'s appearance in the Case 002/02 trial,¹² in particular his insights as to the treatment of former Khmer Republic soldiers and officials. In addition, the other parties in Case 002/02 had the opportunity to cross-examine SAO Van (2-TCW-989) on those issues during the appeal hearings, and the Supreme Court Chamber judges also put questions to the witness. Therefore, it considers that testimony of SAO Van (2-TCW-989) at trial will likely be significantly repetitive of his testimony on appeal, which has already been admitted into evidence in Case 002/02. Given the Trial Chamber's indication that SAO Van (2-TCW-989) will be the only witness to appear in the upcoming segment on the Treatment of Former Khmer Republic Officials, and shifting to this trial topic may require significant work by all parties, the Defence submits that SAO Van (2-TCW-989)'s appearance would be inconsistent with notions of efficiency. The Defence accordingly rescinds its request to hear SAO Van (2-TCW-989) as a witness in Case 002/02, and submits that the Trial Chamber should therefore withdraw SAO Van (2-TCW-989) from the list of testifying witnesses in Case 002/02.

V. RELIEF

10. For the above reasons, the Defence requests that the Trial Chamber remove witness SAO Van (2-TCW-989) from the list of testifying witnesses in Case 002/02.

CO-LAWYERS FOR NUON CHEA



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¹² E346, Tram Kok/Kraing Ta Chan Witness Request, paras. 7-8.