

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

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**NUON CHEA'S URGENT AND CONSOLIDATED REQUEST TO EXPEDITE TWO
 ALREADY-REQUESTED WITNESSES AND SUMMONS FOUR ADDITIONAL
 WITNESSES REGARDING THE TREATMENT OF THE CHAM**

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I. INTRODUCTION

1. Pursuant to Internal Rules 87(4) and 91, the Co-Lawyers for Mr. Nuon Chea (the “Defence”) submit this urgent and consolidated request to hear six additional witnesses during hearings on the treatment of the Cham (the “Request”). The six requested witnesses are former high-ranking CPK cadres who can provide critical, unparalleled insight into events, structure, decisions and policies within East Zone Sector 21: one of two locations included within the Case 002/02 scope in which crimes against the Cham allegedly occurred. The first two witnesses are [REDACTED]¹ and [REDACTED]² who the Defence has already requested to testify in Case 002/02³ and now seek to be scheduled on an expedited basis. The third witness is Hun Sen,⁴ who was previously requested by the Defence in Case 002,⁵ was dropped from the Defence’s witness list in Case 002/02, and is being requested anew in the instant Request. The fourth, fifth, and sixth witnesses are new witnesses not previously requested. One is a former soldier from East Zone Battalion 55; another is the son of the former East Zone [REDACTED] and the last is the daughter of East Zone secretary Sao Phim.

II. PROCEDURAL HISTORY AND BACKGROUND

A. Defence Case 002 Witness Requests

2. On 15 February 2011, the Defence filed its first list of proposed witnesses, civil parties and experts in Case 002 (the “Original Case 002 Witness List”). In it, the Defence requested the testimony of several government members and Cambodian People’s Party leaders who, as former high ranking East Zone CPK cadres, could provide important factual testimony on many contested issues in Case 002. They included [REDACTED], Hun Sen, and Chea Sim.⁶ Over the course of the Case 002/01 trial, the Defence requested these witnesses on several occasions, in particular [REDACTED]⁷.

3. None of these witnesses ever appeared in Case 002/01. The Trial Chamber’s 7 August 2014 Final Decision on Witnesses, Experts and Civil Parties to be heard in Case 002/01 (“Final Case 002/01 Witness Decision”)⁸ revealed why. The Trial Chamber judges unanimously declined to summons

¹ [REDACTED]. His Case 002/02 pseudonym is 2-TCW-831.

² [REDACTED]. His Case 002/02 pseudonym is 2-TCW-951.

³ E305/4, ‘Updated Lists and Summaries of Proposed Witnesses, Civil Parties and Experts’, 8 May 2014 (“Case 002/02 Witness List”); E305/4.1, ‘Annex A: Updated Witness, Civil Party and Experts List (no protective measures sought)’, #9 and #22.

⁴ Hun Sen’s Case 002 pseudonym was TCW-248.

⁵ E9/4/4, ‘List of Proposed Witnesses, Experts, and Civil Parties’, 15 Feb 2011 (“Original Case 002 Witness List”).

⁶ E9/4/4, Original Case 002 Witness List.

⁷ In this regard, *see*, [REDACTED].

⁸ E312, ‘Final Decision on Witnesses, Experts and Civil Parties to be Heard in Case 002/01’, 7 Aug 2014 (“Final Case 002/01 Witnesses Decision”).

Chea Sim and Hun Sen on the basis that their testimony was “irrelevant”.⁹ However, they were “unable to reach a consensus” on summoning [REDACTED] and [REDACTED].¹⁰ The three national judges would not have summonsed either of them. They claimed that the witnesses’ testimony would be repetitive and of “lesser relevance” in the case of [REDACTED] and “not relevant” in the case of [REDACTED].¹¹ Moreover, they noted that “[t]he difficult practical reality of enforcing any such summons militates against summoning” either of them.¹² The two international judges, however, would have called these two witnesses,¹³ noting in contrast that both witnesses “appear to have been privy to information that may not have been accessible to other proposed witnesses in Case 002/01”¹⁴ and concluding that their testimony was “*prima facie* relevant and could assist the Chamber in ascertaining the truth”.¹⁵ The international judges also emphasised that “as any citizen they have a duty to assist the judges of the ECCC to ascertain the truth in a case that is of fundamental importance to the Cambodian people”.¹⁶

4. The Trial Chamber judges’ difference in position deadlocked the decision to summons either [REDACTED] or [REDACTED], such that neither was ultimately summonsed to testify in Case 002/01. That division between the national and international Trial Chamber judges’ positions mirrored that which had earlier arisen between the national and international Co-Investigating Judges, the national and international Pre-Trial Chamber judges and the National Co-Prosecutor and two successive International Co-Prosecutors¹⁷ on the same issue.¹⁸ The existence of such a stark and persistent divide between national and international judges was one factor that prompted the Defence to file on 29 September 2014, *exactly one year ago today*, a request to disqualify Trial Chamber judges Nil Nonn, Ya Sokhan, Jean-Marc Lavergne and You Ottara from presiding in Case 002/02 (the “Second Disqualification Motion”). In that motion, the Defence argued, *inter alia*, that when considered alongside the context in which the Cambodian judiciary operates, the division between the national and international judges in respect of [REDACTED] demonstrated that the three

⁹ The Trial Chamber ruled that Chea Sim’s testimony was of “lesser relevance” and would have been “substantially repetitive of evidence already before the Chamber” in Case 002/01: **E312**, Final Case 002/01 Witnesses Decision, para. 69. The Trial Chamber considered the request for Hun Sen to have “failed to satisfy the threshold conditions of relevance”: **E312**, Final Case 002/01 Witnesses Decision, para. 124.

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¹⁷ Regarding ICP Andrew Cayley, *see, e.g.*, **D314/1/5**, ‘International Co-Prosecutor’s Observations on Ieng Sary and Nuon Chea’s Appeals on the Summoning of Additional Witnesses’, 29 Mar 2010; regarding ICP Nicholas Koumjian, *see infra*, para. 6.

¹⁸ Regarding CIJ Lemonde, *see, e.g.* [REDACTED], and **189/3/1/7.1.3**, ‘Un Juge Face aux Khmers Rouges’ [REDACTED] (in which Judge Lemonde referred to [REDACTED] as “*qu’il nous fallait absolument interroger*”, *cited in* [REDACTED]). Regarding PTC Judges Downing and Marchi-Uhel, *see, e.g.*, **D314/1/12**, ‘Second Decision on Nuon Chea’s and Ieng Sary’s Appeal against OCIJ Order on Requests to Summons Witnesses’, 9 Sep 2010.

national judges in the Trial chamber lacked the requisite “appearance of independence” to remain on the bench in Case 002/02.¹⁹ Similarly, in his Case 002/02 opening remarks, Nuon Chea said to the national judges that “[y]ou demonstrated your lack of independence most of all in your decision not to summon [REDACTED].”²⁰ In addition to its motion to disqualify four Trial Chamber judges, on 29 September 2014, the Defence also filed its notice of appeal against the trial judgement in Case 002/01. That notice indicated that one of the Defence’s 223 grounds of appeal was that “[t]he Trial Chamber erred in law and violated Nuon Chea’s right to present a defence by refusing to hear [] crucially important defence witnesses, including [] [REDACTED].”²¹

5. On 8 May 2014, the Defence submitted its initial witness list for Case 002/02 (the “Case 002/02 Witness List”). In accordance with the Trial Chamber’s directions,²² this list was an update of its Original Case 002 Witness List. In it, the Defence maintained its requests to call [REDACTED] and Chea Sim. The Defence chose to drop Hun Sen from its updated witness list on the basis that maintaining its request for his testimony would be futile. The Defence also hoped that by excluding its request for Hun Sen, the national Trial Chamber judges might be more willing to summons [REDACTED] and Chea Sim. However, none of these witnesses have been summonsed to testify in Case 002/02 yet, and on 8 June 2015, Chea Sim died.²³ This is particularly unfortunate for present purposes given that Chea Sim could have offered critical testimony for the treatment of the Cham. Prior to his death, he was most probably one of only *two* living eyewitnesses (with [REDACTED]) who could have testified as to the events at the May 1975 CPK conference in Phnom Penh. This conference is pivotal to both the Closing Order and the Co-Prosecutors’ Final Submission’s assertions that there was a CPK policy to target the Cham for which Pol Pot and Nuon Chea were directly responsible.²⁴ In addition, Chea Sim was the *only* witness the Co-Prosecutors’ cited in their Final Submission in alleging that the CPK intended to destroy the Chams because:

Pol Pot told Party cadres that Chams and other minority groups were to be “all killed”. Those killings began slowly, but by 1978 had become a “furious” offensive.²⁵

6. On 30 May 2014, the National Co-Prosecutor Chea Leang filed her objections to the Defence’s updated witness list. She objected to the Defence’s requests to call three witnesses – [REDACTED],

¹⁹ **E314/6**, ‘Nuon Chea Application for Disqualification of Judges Nil Nonn, Ya Sokhan, Jean-Marc Lavergne, and You Ottara’, 29 Sep 2014 (“Disqualification Motion”); *see, also*, *Volkov v. Ukraine*, ‘Judgement’, ECtHR, App. No. 21722/11, 27 May 2013, para. 103.

²⁰ [REDACTED].
²¹ **E313/1/1**, ‘Notice of Appeal Against the Judgment in Case 002/01’, 29 Sep 2014, [REDACTED].

²² **E305**, ‘Order to File Updated Material in Preparation for Trial in Case 002/02’, 8 Apr 2014, para. 1.

²³ Saing Soenthrith, ‘CPP President Chea Sim Dead’, *Cambodia Daily*, 8 Jun 2015.

²⁴ **D427**, ‘Closing Order’, 15 Sep 2010 (“Closing Order”), para. 753; **D390**, ‘Co-Prosecutors’ Rule 66 Final Submission’ (“Co-Prosecutors’ Final Submission”), 16 Aug 2010, para. 757.

²⁵ **D390**, Co-Prosecutors’ Final Submission, para. 774(1) (footnotes omitted); *see, also*, fns. 3853 and 3854.

██████████, and Chea Sim – on the basis that ██████████

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██████████ On the other hand, at the 30 July 2014 Case 002/02 initial hearing, International Co-Prosecutor Nicholas Koumjian took pains to stress that “on this particular point I have a different position and I have not objected to any [] witnesses proposed by the Khieu Samphan defence or the Nuon Chea defence”.²⁸

7. Taken together with its witness requests over the course of the Case 002/01 trial and with its first Case 002/02 witness request, the instant Request represents the Defence’s ██████████ request to summons ██████████ to testify in Case 002 overall, and its ██████████ request to summons ██████████. The Defence has also requested the Supreme Court Chamber to schedule both witnesses to testify in connection with its appeal of the Case 002/01 trial judgement.²⁹ No decision has yet been rendered.

B. Case 002/02 Trial Topic on the Treatment of the Cham

8. On 4 April 2014, the Trial Chamber announced its decision as to the scope of Case 002/02.³⁰ The Chamber incorporated the entire Closing Order section on the treatment of the Cham, except that it chose to exclude just one crime site – the Kroch Chhmar Security Centre in East Zone Sector 21 – from the scope.³¹ The Chamber did not offer any reasons for this exclusion, and indeed, the Defence notes that on repeated occasions during the Case 002/02 trial, evidence of additional security centres has been deemed relevant and discussed at length, despite the fact that the security centres themselves are not mentioned in the Closing Order (for example, Office 204 or Prey Kduoch in Tram Kok). The Defence presumes that Kroch Chhmar Security Centre was excluded because the Co-Prosecutors had requested this when making submissions on the scope of Case 002/02 in December 2013. The Co-Prosecutors offered little explanation for that request, other than that this was because the security centre was not “intrinsically related” to the alleged genocide of the Cham.³² However, this is clearly incorrect. Evidence at the Kroch Chhmar Security Centre suggests that if Chams were poorly treated, this was a *direct consequence* of the fact that the Cham had led armed rebellions against the CPK. The

²⁶ E305/10, ‘National Co-Prosecutor’s Objections to the Witnesses and Experts Proposed by the Other Parties’, 30 May 2014 (“National Co-Prosecutor’s Witness Objections”), para. 3.

²⁷ E305/10, National Co-Prosecutor’s Witness Objections, para. 3.

²⁸ T. 30 Jul 2014 (Case 002/02 Initial Hearing, E1/240.1), p. 112, lns. 19-22.

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

³⁰ E301/9/1, ‘Decision on Additional Severance of Case 002 and Scope of Case 002/02’, 4 Apr 2014.

³¹ E301/9/1.1, ‘Annex: List of Paragraphs and Portions of the Closing Order Relevant to Case 002/02’, ERN 00981687 (at 2(iv)(a)).

³² E301/2, ‘Co-Prosecutors’ Submission Regarding the Scope of Case 002/02 and Trial Schedule With Annex A’, 5 Dec 2013, para. 11.

Closing Order itself noted of the security centre that “[t]he arrest and detention of the Cham escalated after the Cham rebellions in 1975. *The people who were arrested were considered to be affiliated with the rebellions.*”³³

9. As is becoming increasingly clear as the hearings on the treatment of the Cham progress, the Co-Prosecutors are intent on effectively excluding this narrative from the discussion altogether. They are focusing on alleged crimes against the Cham which took place after the arrival of CPK cadres from the Southwest Zone in 1977 and 1978 in the Central (Old North) and East Zones respectively, hence shifting away from any possible incrimination of present government officials. Excluding the Kroch Chhmar Security Centre from the trial’s scope goes a significant way towards achieving this end.

10. On 7 August 2015, the Trial Chamber advised that it would schedule a mere 11 witnesses, three civil parties, and one expert to testify on the treatment of the Cham (encompassing numerous charges of crimes against humanity *and* one of Case 002/02’s two charges of genocide) across a total of only 17 hearing days.³⁴ Hearings on the treatment of the Cham began on 7 September 2015. From 7-9 September 2015, one witness (It Sen) and one civil party (Sos Ponyamin), both Cham villagers, provided details of the treatment of the Cham in East Zone Sector 21, including in respect of Cham rebellions at Koh Phal and Svay Khleang and possibly Trea village. During this trial segment, at most five more witnesses are due to testify on events in Sector 21 in 1977 and 1978: two Cham villagers, one commune cadre, one district cadre, and one district secretary.³⁵

C. International Co-Prosecutor’s Request for Additional Witnesses, and Subsequent Postponement of Hearings

11. On 15 September 2015, the International Co-Prosecutor Nicholas Koumjian filed, without the support of his national counterpart, a request to summons three additional witnesses on the Cham segment, two of whom had previously been proposed in the Co-Prosecutors’ Case 002/02 witness list³⁶ but who the Trial Chamber did not select for its list of witnesses for the treatment of the Cham. The Defence filed its written response to this request on 25 September 2015. On 17 September 2015, following Defence oral submissions in connection with the International Co-Prosecutors’ request, the Trial Chamber announced in court and by email that there would be no hearings in the week beginning 19 September 2015³⁷ and that hearings would resume from 28 September 2015,³⁸ when the Chamber

³³ **D427**, Closing Order, para. 773 (emphasis added, footnotes omitted).

³⁴ ‘Email from Trial Chamber Senior Legal Officer to the Parties’, 7 Aug 2015.

³⁵ However, one of these witnesses may now be unavailable for health reasons: ‘Email from Trial Chamber Senior Legal Officer to the Parties’, 25 Sep 2015.

³⁶ **E366**, ‘International Co-Prosecutor’s Request to Call Additional Witnesses During the Case 002/02 Trial Segment on Treatment of the Cham’, 15 Sep 2015 (‘International Co-Prosecutors’ Additional Witness Request’).

³⁷ T. 17 Sep 2015 (Oral Submissions on OCP Witness Request, **E1/349.1**) (‘17 Sep 2015 Transcript’), p. 47, ln. 25 – p. 48, ln. 7; p. 48, lns. 13-16; ‘Email from Trial Chamber Senior Legal Officer to the Parties’, 18 Sep 2015.

would continue hearings the testimony of civil party Him Man in respect of the treatment of the Cham.

12. The Defence further indicated during the 17 September 2015 hearing that it would soon be filing both the instant Request³⁹ as well as a response to the International Co-Prosecutors' request for additional witnesses (the "Response").⁴⁰ On 22 September 2015 the Defence sent a courtesy copy of the instant Request to the senior legal officer of the Trial Chamber "given that this request may affect the Trial Chamber's scheduling considerations", while on 25 September 2015, it filed the Response.

D. Human Rights Watch Report, "30 Years of Hun Sen"

13. On 12 January 2015, the renowned international human rights non-governmental organisation Human Rights Watch published a high-profile report entitled *30 Years of Hun Sen: Violence, Repression, and Corruption in Cambodia* (the "HRW Report"). The report provides not only an overview of Hun Sen's 30 years as Prime Minister of Cambodia but also a rare account of his role as a ranking CPK cadre in the East Zone, including his involvement of the treatment of the Cham in Sector 21. It is a poorly-kept secret that the HRW Report was written by Stephen Heder, even if he is not officially credited. As the Defence argued in its appeal brief against the judgement in Case 002/01:

[T]here is probably not a single living person more directly involved in and responsible for building the case against Nuon Chea at this Tribunal [than Stephen Heder]. Heder drafted the blueprint for the Introductory Submissions in March 2004 with the publication of *Seven Candidates for Prosecution*,⁴¹ including explicit reference to the elements of crimes for which he believed Nuon Chea was responsible. He was then employed with the Co-Prosecutors while the Introductory Submissions were drafted and then immediately afterwards by the Co-Investigating Judges for the purposes of investigating those submissions and drafting the Closing Order.⁴²

14. While the HRW Report does not credit Stephen Heder as its author, it does indicate that it was based on the following wide-ranging source material:

[M]aterials in Khmer, English, Vietnamese, and Chinese. These include official and other Cambodian documents; interviews with Cambodian officials and other Cambodians by Human Rights Watch, other non-governmental organizations, journalists and academics, and United Nations records, foreign government reports, and Cambodian court proceedings.

15. The Khieu Samphan defence team has attempted to admit into evidence in Case 00/02 an excerpt from the HRW Report (Chapter 2) which pertained to Hun Sen's involvement in the treatment of the Cham in Sector 21.⁴³ Despite the clear and obvious relevance of the excerpt, the Trial Chamber denied the request on the basis of the report's apparently flawed methodology. It noted that the HRW

³⁸ E1/349.1, 17 Sep 2015 Transcript, p. 80, Ins. 16-18; 'Email from Trial Chamber Senior Legal Officer to the Parties', 18 Sep 2015.

³⁹ See, e.g., E1/349.1, 17 Sep 2015 Transcript, p. 5, Ins. 22-24.

⁴⁰ E1/349.1, 17 Sep 2015 Transcript, p. 10, Ins. 2-10.

⁴¹ E3/48, Stephen Heder, 'Seven Candidates for Prosecution', Mar 2004.

⁴² F16, Appeal, para. 182.

⁴³ E347, 'Demande de versement au dossier 002/02 de nouveaux documents en vertu de la règle 87-4 du Règlement intérieur', 9 Apr 2015.

Report “appears to be more a summary of the multiple and diverse sources referenced than an assessment of said sources”; in other words, it was just like the vast swathe of secondary source material already admitted into evidence and relied on heavily by the Trial Chamber in its Case 002/01 Judgement. However, in this unique instance, the Chamber was moved to deem the HRW Report “unsuitable to prove the facts it purports to prove pursuant to Rule 87(3) and [] not conducive to ascertaining the truth pursuant to Rule 87(4)”.⁴⁴ Based on this decision, the Trial Chamber forbade the Defence from referring to the Human Rights Watch report in court during its cross-examination of the first witness appearing in respect of the treatment of the Cham in Sector 21.⁴⁵ The Defence noted at that time that this amounted to “[t]rying to hide the truth of what really happened”.⁴⁶ Accordingly, the Defence will be requesting the Trial Chamber in due course to reconsider its decision in respect of the Human Rights Watch Report in a forthcoming request and to rule on that request prior to the imminent appearance of expert witness Ysa Osman.

III. APPLICABLE LAW

16. Pursuant to Rule 87(4), at any stage during the trial, a party may request the Chamber to “summon or hear any person as a witness or admit any new evidence which it deems conducive to ascertaining the truth”, provided “that the requested testimony or evidence was not available before the opening of the trial”, and subject to the general requirements of Rule 87(3). Where the requested testimony or evidence was available before the opening of the trial, the 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”,⁴⁷ or where it “closely relate[s] to material already before the Chamber and [...] the interests of justice require the sources to be evaluated together”.⁴⁸ To satisfy the requirements of Rule 87(3), evidence put before the Trial Chamber need only be *prima facie* relevant and reliable.⁴⁹

17. Rule 91 endows the Trial Chamber with the power to “hear the Civil Parties, witnesses and experts in the order it considers useful”. On this basis, the Trial Chamber has previously held in Case 002/02 that the testimony of witness [REDACTED] should be expedited, since “[a]lthough [REDACTED] [REDACTED]’s testimony is most relevant to later scheduled topics in Case 002/02, the Chamber also

⁴⁴ E347/1, ‘Decision on KHIEU Samphan’s Request Pursuant to Internal Rule 87(4) to Admit New Documents to Case 002/02’, 29 Jun 2015, para. 4.

⁴⁵ T. 8 Sep 2015 (It Sen, E1/343.1) (“8 Sep 2015 Transcript”), p. 25, ln. 24 – p. 26, ln. 4.

⁴⁶ E1/343.1, 8 Sep 2015 Transcript, p. 26, lns. 8-9.

⁴⁷ 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, para. 36.

⁴⁸ 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.

⁴⁹ E313, ‘Case 002/01 Judgement’, 7 Aug 2014, para. 26.

considers it prudent to hear [REDACTED] during earlier topics should he prove to be available”.⁵⁰

IV. ARGUMENT

A. Two Expedited Witnesses: [REDACTED] and [REDACTED]

18. As the Defence has previously indicated, not only was [REDACTED] the most important witness in Case 002/01 in connection with both the evacuation of Phnom Penh and the crimes allegedly committed at Tuol Po Chrey,⁵¹ but he is also, “without a shadow of a doubt, *the most important witness in Case 002/02 and Case 002 generally*.”⁵² In [REDACTED] of its Second Disqualification Motion, the Defence described [REDACTED]’s expected testimony in Case 002/02 as follows:

[H]aving been a senior figure in the Vietnam-backed CPK faction which worked against and ultimately overthrew the faction led by Pol Pot and Nuon Chea, in Case 002/02, [REDACTED] will be able to offer unique, direct evidence on, *inter alia*, internal divisions within the CPK and internal purges in the East Zone; armed conflict with Vietnam and a Vietnam-backed, substantial, defecting CPK faction; and the alleged genocide of the Vietnamese and the Cham in the East Zone.⁵³

19. [REDACTED] is perhaps the second-most important witness in Case 002/02 and would be able to offer testimony on the same wide range of key issues at dispute in Case 002/02. With specific reference to the current trial topic on the treatment of the Cham, the Defence notes that East Zone military forces were heavily involved in suppressing Cham rebellions that fall within the Case 002/02 scope, including the rebellions at Koh Phal, Svay Khleang and Trea village and that accordingly, both [REDACTED] and [REDACTED] could also be expected to provide insight into these activities.

20. As argued many times before, [REDACTED] was only two rungs below East Zone secretary Sao Phim in the zone military hierarchy in 1975. By his own admission, from mid-1975, [REDACTED] East Zone military forces, a member of the East Zone committee, and [REDACTED] East Zone Division 4.⁵⁴ He also had familial connections to East Zone Sector 21, as his sister [REDACTED] was married to Sector 21 [REDACTED].⁵⁵ [REDACTED], meanwhile, was only one level below Sao Phim in the East Zone civilian hierarchy. From July 1975 to 25 May 1978,⁵⁶ he served as [REDACTED] East Zone Sector 21 [REDACTED] [REDACTED].⁵⁷ In short, both [REDACTED] and [REDACTED]

⁵⁰ [REDACTED].

⁵¹ F16, Appeal, [REDACTED].

⁵² [REDACTED].

⁵³ [REDACTED].
⁵⁴ [REDACTED]; see, also, E3/1593, Ben Kiernan, *The Pol Pot Regime*, [REDACTED].

⁵⁵ [REDACTED] (in which [REDACTED] states that “I lost three brothers-in-law. [The first was] [REDACTED], whose husband was [REDACTED]”); see, also, E3/494, ‘Written Record of Analysis of Craig Etcheson’, 18 Jul 2007, ERN 00142836.

⁵⁶ [REDACTED].
⁵⁷ [REDACTED].

██████████ are the senior-most surviving members of the East Zone authority structure. As such, they not only have detailed knowledge of the authority structure in the East Zone in general and Sector 21 in particular,⁵⁸ but are moreover extremely likely to have first-hand knowledge of any orders issued from the very top of the zone military to the lower echelons including the districts and communes and the extent to which, if at all, those orders were originally issued from the CPK Standing or Central Committees or were instead initiated within the zone. Such information is critical and irreplaceable in establishing whether there was a policy to target Chams in Sector 21 of the East Zone, and if so, whether this policy can ultimately be attributed to Nuon Chea.

21. Indeed, evidence on the case file suggests that both witnesses have specific and detailed knowledge concerning the treatment of the Chams in the East Zone. In his 1991 interview with Ben Kiernan, ██████████ alleges that Pol Pot just wanted to “force the Cham people to implement according to the principles like normal Khmers” and notes that rebellions occurred.⁵⁹ In addition, now that Chea Sim is dead, ██████████ is (as far as we know) the only witness still alive among the very few witnesses the Co-Prosecutors relied upon to substantiate their assertions in the Final Submission that “CPK Secretary Pol Pot made statements calling for the persecution and destruction of the Cham people”,⁶⁰ and that at a 20 May 1975 CPK leaders’ conference in Phnom Penh, cadres were advised of an eight point CPK policy plan, the fifth point of which was to “[e]liminate religions, as they are all reactionary”.⁶¹ He is also the only witness upon whom the Co-Prosecutors had relied in their Final Submission when claiming that at the 20 May 1975 conference, “Pol Pot specifically instructed CPK cadres that they were to force the Chams to raise pigs and eat pork, and [that] anyone who resisted was to be killed”.⁶² In his interview with Kiernan, ██████████ also indicates his view, presumably on the Koh Phal rebellion, that:

[Regarding] the suppression of the Chams[, m]y troops did not go to get involved []. It was the Security [] of the bases, subdistrict, village, district. It was a newly created [unclear Khmer words] next to [unclear Khmer words], that island.⁶³

22. The Co-Prosecutors suggest in their Final Submission that the CPK pursued a genocidal policy “to completely destroy the Cham ethnic and religious group”.⁶⁴ However, ██████████, suggests on the contrary that the treatment of the Cham instead owed to their separatist political tendencies. In

⁵⁸ See, e.g., ██████████.

⁵⁹ ██████████.

⁶⁰ D390, Co-Prosecutors’ Final Submission, para. 755, fn. 3767 (in which the only other witness other than ██████████ relied upon was the late Chea Sim). See, *infra*, para. 5.

⁶¹ D390, Co-Prosecutors’ Final Submission, para. 757, fn. 3774 (in which the only sources are the late Mat Ly as cited in a book by Ysa Osman, and the late Chea Sim). See, *infra*, para. 5.

⁶² D390, Co-Prosecutors’ Final Submission, para. 757, fn. 3775.

⁶³ ██████████ (annotations in original, emphasis added); see, also, E3/1593, Kiernan, *The Pol Pot Regime*, ██████████, describing ██████████’s testimony in this regard and noting that Stephen Heder had come to the same conclusion.

⁶⁴ D390, Co-Prosecutors’ Final Submission, para. 753 *et seq.*

an interview with the aforementioned Stephen Heder, [REDACTED] described for instance how there were at least two Cham rebel movements. The first was “FULRO Champa”, which was led by a Sabuon Leskanen and “intended to create [a] state within a[] state because the Cham Muslims wished to occupy Cambodia territory on the eastern bank of the Mekong River to Central Anam [i.e. Vietnam] to create a state”.⁶⁵ The second movement was Kbal Sâ or possibly Khmer Sâ (translated as “White Khmer”), which he described as “operating throughout the country in 1973-1974, with the component of Khmer and Cham Muslims [... F]or those who were arrested, they implicated that Vietnam was the one who ordered them to topple the Pol Pot regime at that time”.⁶⁶ [REDACTED] also mentions the existence of a similarly-named movement which he referred to as the “Kbal Sov”, while a 1974 article in *Washington Post* by journalist James Fenton also relayed refugee reports of:

insurgent forces in the Kompong Cham area, where a group called the Khmer Sor or White Khmers had broken away from the Khmer Rouge and taken to the forests. The White Khmers, whose leaders are mostly former Communist officials, are Cham Moslems. They support Sihanouk and oppose collectivization of property. They believe simply in the abolition of middlemen.⁶⁷

23. This evidence could provide an alternate explanation for the motivation of the various early Cham rebellions in Sector 21 in 1975. [REDACTED] also provided supplementary details of these rebellions in his interview with Stephen Heder. He described how the Chams rebelled in Svay Khleang “against the local authority that had made arrest of Cham Muslims”, while in Koh Phal, the Chams “chopped a sub-district cadre to death, and seized a weapon”.⁶⁸ He also described how “there was chaos in other districts in which Cham Muslims were living” but that ultimately, the Cham rebellions “were all *destroyed*”.⁶⁹ This echoes allegations that East Zone Sector 21’s suppression of Cham rebellions in 1975 were at least as brutal as the alleged treatment of Chams in the Central (Old North) Zone in 1977 and in the East Zone in 1978 on which the Co-Prosecutors have fixated. Evidence suggests that in suppressing the 1975 rebellions, the East Zone military put people, including the sick, “on boats and tipped [them] into the water”, “smashed the heads of [Chams] with pick-handles”, and “stuck heads on pikes and exposed them along the banks of the Mekong”.⁷⁰

24. Despite the fact that [REDACTED] and [REDACTED]’s most significant relevance in Case 002/02 is perhaps to the segments on the nature of the armed conflict with Vietnam, “internal purges” in the East Zone, and the role of Nuon Chea, the Defence nevertheless urgently requests that the Trial

⁶⁵ [REDACTED] (emphasis added, Khmer phrase omitted).

⁶⁶ [REDACTED].
⁶⁷ **F2/8.1.30**, James Fenton, ‘Cambodia: Communism Alters Lifestyle’, *Washington Post*, 24 Nov 1974, p. K1 (emphasis added); see, also, **E3/1593**, Kiernan, *The Pol Pot Regime*, ERN 00678529 (p. 68).

⁶⁸ [REDACTED].
⁶⁹ [REDACTED] (emphasis added).

⁷⁰ In this regard, see, **E3/1593**, Kiernan, *The Pol Pot Regime*, ERN 00678636 (pp. 264-265), citing the evidence of Cham witnesses Sop Khatidjah and Kob Math, as well as François Ponchaud; **E243.1**, François Ponchaud, *Cambodia: Year Zero*, ERN 00862093 (p. 133).

Chamber use its discretion under Rule 91 to expedite and schedule [REDACTED] and [REDACTED]'s testimony as early as possible during the treatment of the Cham trial topic. This is because the Defence believes that [REDACTED] and [REDACTED]'s unparalleled insight into events, structure, decisions and policies within East Zone Sector 21 would significantly influence the ongoing development of the Chamber and the parties' positions and understanding of events regarding the treatment of the Cham. Their testimony would also likely influence the questions parties and judges put to remaining witnesses within the treatment of the Cham topic, minimising the need to recall witnesses for further examination at a later date.

25. Moreover, [REDACTED] and [REDACTED] would offer insight into the heart of the Defence case. This 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 seize overall control of the Party and the country; and that one of those factions also sought to advance the interests of at least Vietnam, if not also the Soviet Union. This is discussed in the recent sixth request to admit additional evidence the Defence filed to the Supreme Court Chamber in the course of the Defence's appeal of the Case 002/01 Judgement.⁷¹

B. Additional Witness: Hun Sen

26. From mid-April 1975, Hun Sen was Chief of Staff for Battalion 55 in East Zone Sector 21.⁷² The HRW Report cites credible, corroborated evidence suggesting that troops under Hun Sen's command were involved in suppressing the Cham rebellion at Svay Khleang.⁷³ It indicates that:

About 1972, Hun Sen was appointed as company commander, in charge of some 130 special forces personnel who were part of a Sector 21 unit. This was designated Battalion 55 and comprised a total of three military companies. [...]

After April 17, 1975, but while still in the hospital, Hun Sen was appointed as chief of staff of an autonomous special regiment in the East Zone, one of three such units in various parts of the zone. As per CPK practice, in this structure the CPK sector secretary exercised authority over the sector military. Created out of the wartime Sector 21 regiment, it comprised Battalions 55, 59, and 75. Hun Sen was concurrently a deputy commander of the regiment, so he held positions giving him authority over all of the regiment's 2,000 men. By May 1975, Hun Sen was well enough to attend meetings, and shortly thereafter he joined his regiment, which had been deployed to the border with Vietnam in Me Mut district of Sector 21.⁷⁴

27. The HRW Report goes on to discuss Hun Sen's role in the suppression of the Cham rebellions in

⁷¹ See, **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' ("Sixth Additional Evidence Request"), 11 Sep 2015, Part IV: The Head and Tail of the Crocodile (paras. 24-70).

⁷² See **E347.3**, Human Rights Watch, *30 Years of Hun Sen: Violence, Repression, and Corruption in Cambodia*, 12 Jan 2015 ("HRW Report"), p. 19; **E3/1593**, Ben Kiernan, *The Pol Pot Regime*, ERN 00678687 (p. 370); **E3/5261**, 'Written Record of Interview of SAU Seimech', 12 Dec 2008 ("SAU Seimech WRI"), ERN 00274338; **E307/5.2.8**, 'Compilation of 20 short biographies from the Stasi archives – Hun Sen's biography', ERN 01002012.

⁷³ See para. 27 above.

⁷⁴ **E347.3**, HRW Report, pp. 15 and 19 (footnotes omitted).

Krauch Chhmar district in Sector 21 in September-October 1975:

Other accounts contradict Hun Sen's version, indicating that although Krauch Chhmar district forces may have dealt on their own with Koh Phal village, Battalion 55 of the Sector 21 Regiment was directly involved in the subsequent attack on Svay Khleang. According to one testimony by a former Sector 21 regiment combatant, after the unrest broke out and had already spread to Svay Khleang, Battalion 55 was dispatched from the border to suppress it. This is corroborated by the account of a Krauch Chhmar resident who observed Sector 21 troops moving into battle, saying that the units that suppressed the Cham unrest in 1975 were Krauch Chhmar District Military forces, based at the district seat on the Mekong, and Battalion 55, which came up into Krauch Chhmar from rubber plantations to the south, thus arriving from further away and therefore later than Krauch Chhmar forces. This is consistent with a Svay Khleang villager's account that after Krauch Chhmar district troops appeared from the west, hundreds of other troops in a different type of uniform and carrying heavy weapons arrived. A fourth source, who also lived in the Svay Khleang village during the attack declared that there were four attack prongs, including Krauch Chhmar district forces who dug in as a blocking force west of Svay Khleang and forces belonging to the Sector 21 regiment from the border, which carried out assaults from the east, the south, and from on boats in the Mekong. This source specified that the attackers bombarded the village with 60 and 82 millimeter mortar rounds, while also firing on villagers with assault rifles and rocket-propelled grenades, killing hundreds of villagers. He also said the Sector troops came up through rubber plantations in, or to the south of, Krauch Chhmar.⁷⁵

28. The Defence notes that the HRW Report's account is corroborated by Sau Seimech (requested as a witness in Part C below), who confirmed that Battalion 55 received orders to suppress the Cham rebellion and described Hun Sen's responsibilities in the Sector 21 military staff at the time.⁷⁶ Furthermore, the account is consistent with the testimony of two Cham villagers from Svay Khleang. Sos Ponyamin testified in court that the military forces had "marine[boats]; they had various types of weapons. [...] They did not use only the light weapons; they had heavy weapons as well. The sounds of gun fire deafened our ears."⁷⁷ Fellow villager Man Zain told Ysa Osman that "an additional force of hundreds, just arrived, wearing uniforms different from those of the district troops. They had backpacks and all types of weapons. They fired heavy weapons and small arms at the rebels".⁷⁸

29. Hun Sen has very relevant information to offer concerning the suppression of the Cham rebellion at Svay Khleang and in particular concerning the role played by Battalion 55 troops placed under his command. As the chief of staff for Battalion 55 at the time of the Cham rebellions in Krauch Chhmar district, Hun Sen must have acquired first-hand knowledge of the events described in the Closing Order and can surely offer critical information concerning crimes allegedly committed against the Cham at Svay Khleang. Hun Sen's testimony would therefore be highly conducive to ascertaining the truth regarding those events.

30. Although Hun Sen was previously requested as a Defence witness and then dropped, the release of the HRW Report in January 2015 – long after the opening of the trial – transformed his evidence

⁷⁵ E347.3, HRW Report, p. 20 (footnotes omitted).

⁷⁶ See para. 31 below.

⁷⁷ T. 8 Sep 2015 (Sos Ponyamin, E1/343.1), p. 95, lns. 2 and 6-7.

⁷⁸ E3/2653, Ysa Osman, *The Cham Rebellion: Survivors' Stories from the Villages*, ERN 00219145 (interview of Man Zain).

into critical evidence which must be heard at trial.⁷⁹ The criteria of Rule 87(4) are therefore satisfied. In any event, the interests of justice require that his testimony be heard. Hun Sen may be able to identify the perpetrators of crimes allegedly committed against the Cham at Svay Khleang, Koh Phal and Trea. The only testimony heard by the Chamber concerning those events was given by Sos Ponnyamin, who proved unable to provide such identification.⁸⁰ If the Chamber wishes to identify those responsible for crimes that may have occurred at Koh Phal, Svay Khleang and Trea and ascertain the truth about those events, then in the interests of justice it should seek to obtain the testimony of Hun Sen, who possesses pivotal evidence in that regard.

C. Additional Witness: Sau Seimech (Former East Zone Battalion 55 Soldier)

31. Sau Seimech was a messenger in Battalion 55 of East Zone Sector 21, stationed in Tboung Khmum district, Kampong Cham province. In his WRI, he describes the command structure in Sector 21 in 1975. He states that Battalion 55 commander Sokh Sath sent troops to suppress Cham rebellions at Koh Phal, Svay Kleang, and Trea.⁸¹ He also describes Hun Sen's former role in Sector 21 as a member of a scout unit in Battalion 55, then as chief of the Sector military staff after April 1975.⁸²

32. Sau Seimech has relevant information to offer concerning the suppression of the Cham rebellions at Koh Phal, Svay Khleang and Trea, and in particular the involvement of Battalion 55 of Sector 21. His testimony would be conducive to ascertaining the truth regarding those events. Although Sau Seimech's testimony was available before the opening of the trial, it should be heard by the Trial Chamber in the interests of justice. Sau Seimech may be able to identify the perpetrators of crimes allegedly committed against the Cham at Koh Phal, Svay Khleang and Trea. Sau Seimech's testimony would assist the Chamber in identifying those responsible for alleged crimes at Koh Phal, Svay Khleang and Trea.

D. Additional Witness: [REDACTED] (Son of [REDACTED] East Zone [REDACTED] and Sector 21 [REDACTED])

33. [REDACTED] is the son of [REDACTED]. He worked as a messenger for his father until after 17 April 1975.⁸³ [REDACTED] mentions the Cham rebellion in Koh Phal, noting that "after the purge on Phal Island, Cham people were less trusted" and that he had "to be cautious when walking through Cham villages", adding that "after the purge in that area, all

⁷⁹ The Trial Chamber held that the trial in Case 002/02 commenced in June 2011: *see* 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 of Evidence (E305/3)', 11 Jun 2014, para. 2; E307/1/2, 'Decision on Joint Request for *de novo* Ruling on the Application of Internal Rule 87(4)', 21 Oct 2014, para. 6.

⁸⁰ *See* T. 9 Sep 2015 (E1/344.1), p. 20, ln. 24 to p. 21, ln. 1, and p. 22, lns. 1–4.

⁸¹ E3/5261, SAU Seimech WRI, ERN 00274336.

⁸² E3/5261, SAU Seimech WRI, ERNs 00274336 and 00274338.

⁸³ E3/5531, 'Written Record of Interview of [REDACTED], 18 Dec 2009 ("[REDACTED] WRI"), ERN 00425885.

people in that area regardless of their races, Cham or Khmer, were moved”.⁸⁴ [REDACTED] also recounts his last conversation with his father sometime in 1978, who told him not to “speak about the previous things (in Sector 21)”, and “to tell his [] subordinates not to say anything and to *show ignorance of Sector 21*”.⁸⁵

34. [REDACTED] has relevant evidence to offer concerning the treatment of the Cham following the rebellion at Koh Phal. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

35. Although [REDACTED]’s testimony was available before the opening of the trial, it should be heard by the Trial Chamber in the interests of justice. He possesses exculpatory evidence indicating that people in Krauch Chhmar district, whether Cham or Khmer, were not targeted on racial, ethnic, or religious grounds, but because of their participation in an armed rebellion against the local authorities. Moreover, [REDACTED] seems to have knowledge of particularly sensitive information concerning the events that occurred in Sector 21. While it is difficult to speculate as to the nature of such information, the very fact that the most senior cadre in the sector took precautions to ensure its secrecy demonstrates its relevance for the case.

E. Additional Witness: Ka Dev (Daughter of Sao Phim and Yeay Karo)

36. On 18 September 2015, the daily newspaper *Rasmei Kampuchea* published an article written in Khmer by DC-Cam investigator and researcher Long Dany.⁸⁶ The article relayed Long Dany’s interview with Ka Dev, the daughter of Sao Phim and apparently the sole surviving member of Sao Phim’s family, who is living in a remote village on the Cambodia-Thai border. In the article, Ka Dev provided details of Sao Phim’s political career (identifying him as the #4 within the CPK), his family, and his suicide. Ka Dev also provided an eyewitness account of the 1978 arrest in the Northwest Zone of her sister Si and Si’s husband Cheal, who was the son of Ruos Nhim and a committee member in Northwest Zone Sector 5, where Trapeang Thma Dam was situated, and who was instrumental in the rebellion against the CPK.

37. Ka Dev may be able to verify [REDACTED] claim in an interview with Ben Kiernan that,

⁸⁴ E3/5531, [REDACTED] WRI, ERN 00425891.

⁸⁵ E3/5531, [REDACTED] WRI, ERN 00425894 (emphasis added).

⁸⁶ Long Dany, ‘Family Photo of Sao Phim’s Family, Secretary of East Zone’, *Rasmei Kampuchea*, 18 Sep 2015.

concerning the suppression of Cham rebellions, “[i]t was [Sao Phim] who signed the orders for Phuong to kill the Chams in Trea in 1974. Sao Phim was “nasty” and that “[t]he affair of the Cham nationals, the Moslems in the areas along the riverbank around Trea and other places, was a matter of orders from So Phim. He was a real savage.”⁸⁷ Ka Dev is able to provide an eyewitness account of the arrest of Ruos Nhim’s son and Sao Phim’s daughter in the Northwest Zone in 1978 and may have further evidence for the Defence’s contention that the CPK was plagued with internal divisions including rebellions in the East and Northwest Zone, including that Sao Phim and Ruos Nhim would meet in the Northwest Zone on the pretext that Sao Phim was visiting his daughter.⁸⁸ She may also be able to provide insight into Sao Phim’s role in the East Zone and events, structure, decisions and policies in the zone.

38. The Defence learnt of Ka Dev’s existence in the 18 September 2015 issue of *Rasmei Kampuchea*. Although Ka Dev’s testimony was technically available before the opening of the trial, her existence was unknown to the Defence – and apparently, to the Co-Investigating Judges and Co-Prosecutors in Cases 002, 003 and 004 – and could not have been discovered with the exercise of due diligence since the Defence was prohibited from undertaking any independent investigative action since the beginning of ECCC proceedings. As a result, the failure to discover her existence in time cannot be attributed to negligent conduct on the part of the Defence. Thus, Ka Dev’s testimony is accordingly eligible for admission pursuant to Rule 87(4).⁸⁹

V. RELIEF

39. The Defence requests that the Trial Chamber summons: (a) already-requested witnesses [REDACTED] and [REDACTED] on an expedited basis; and (b) new witnesses Hun Sen, Sau Seimech, [REDACTED] and Ka Dev ; to testify during hearings on the treatment of the Cham.

CO-LAWYERS FOR NUON CHEA



SON Arun



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⁸⁷ E3/1593, Kiernan, *The Pol Pot Regime*, [REDACTED].

⁸⁸ See, F2/8, Sixth Additional Evidence Request, paras. 33-34.

⁸⁹ Cf. F2/5, ‘Decision on Part of Nuon Chea’s Requests to Call Witnesses on Appeal’, 29 May 2015, para. 19.