

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

**FILING DETAILS**

**Case No:** 002/19-09-2007-ECCC/TC

**Party Filing:** Civil Party Lead Co-Lawyers

**Filed to:** Trial Chamber

**Original Language:** English

**Date of Document:** 21 April 2016

**CLASSIFICATION**

**Classification of the document:**

PUBLIC

**suggested by the filing party:**

សាធារណៈ/Public

**Classification by Chamber:**

**Classification Status:**

**Review of Interim Classification:**

**Records Officer Name:**

**Signature:**




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**LEAD CO-LAWYERS' CONSOLIDATED RESPONSE TO NUON CHEA'S SECOND  
AND THIRD REQUEST RE SECURITY CENTRES AND INTERNAL PURGES**

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**Filed by:**

**Civil Party Lead Co-Lawyers**

PICH Ang  
Marie GUIRAUD

**Co-Lawyers for Civil Parties**

CHET Vanly  
HONG Kim Suon  
KIM Mengkhy  
LOR Chunthy  
MOCH Sovannary  
SIN Soworn  
SAM Sokong  
VEN Pov

**Before:**

**Trial Chamber**

Judge NIL Nonn, President  
Judge YA Sokhan  
Judge Jean-Marc LAVERGNE  
Judge YOU Ottara  
Judge Claudia FENZ

**Distribution to:**

**Office of the Co-Prosecutors**

CHEA Leang  
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Martine JACQUIN  
Yiqiang Y. LIU  
Daniel LOSQ  
Christine MARTINEAU  
Lyma NGUYEN  
Mahesh RAI  
Nushin SARKARATI

**The Accused**

KHIEU Samphan  
NUON Chea

**Co-Lawyers for the Defence**

SON Arun  
Victor KOPPE  
KONG Sam Onn  
Anta GUISSÉ

**Standby Counsel**

TOUCH Voleak  
Calvin SAUNDERS

**Co-Lawyers for Civil Parties**

Olivier BAHUGNE  
Patrick BAUDOUIN  
Beini Ye

## I. INTRODUCTION

1. The Lead Co-Lawyers for the Civil Parties (“Lead Co-Lawyers”) hereby respond to Nuon Chea’s Second and Third Witness Request for the Case 002/02 Security Centres and “Internal Purges” Segment.<sup>1</sup>

## II. APPLICABLE LAW

2. Internal Rule 87(4) grants the Chamber, the liberty to summon or hear any person as a witness, whose evidence it deems conducive to ascertaining the truth upon a reasoned request by a party to the proceedings. The same rule subjects such a request to the criteria set out in Rule 87(3) which mandates, *inter alia*, that such testimony not be “irrelevant or repetitious”.<sup>2</sup> In addition, such party must also satisfy the Chamber that the requested testimony was not available before the opening of the trial.<sup>3</sup>

3. The Trial Chamber has previously refused to call individuals where it considered that the proposed testimony was (i) likely to duplicate the testimony of witnesses who had already testified,<sup>4</sup> (ii) would otherwise not shed light on the role of the Accused in relation to the concerned events;<sup>5</sup> (iii) is likely to be merely corroborative and thus, unnecessary to hear at trial;<sup>6</sup> or (iv) is repetitive of other evidence before the Chamber.<sup>7</sup>

4. Internal Rule 93(2) provides that the judges of the Trial Chamber “under the same conditions as the Co-Investigating Judges” may “interview witnesses”. Internal Rule 60(2) states “[e]xcept where a confrontation is organised, the Co-Investigating Judges or their delegates shall interview witnesses in the absence of the Charged Person, any other party, or their lawyers, in a place and manner that protects confidentiality.”

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<sup>1</sup> Nuon Chea’s Second Witness Request for the Case 002/02 Security Centres and “Internal Purges” Segment (Leadership), **E392**, 1 April 2016 (“Second Request”); Nuon Chea’s Third Witness Request for the Case 002/02 Security Centres and “Internal Purges” Segment (Evidence of the Treasonous Rebellion), **E395**, 11 April 2016 (“Third Request”).

<sup>2</sup> Internal Rule 87(3)(a). *See also* Final Decision on WECP in Case 002/01, para. 124; Duch Trial Judgement, **E188**, 26 July 2010, para. 41.

<sup>3</sup> Internal Rule 87(4).

<sup>4</sup> Final Decision on WECP in Case 002/01, para. 71.

<sup>5</sup> *Ibid*, para. 75.

<sup>6</sup> *Id.*

<sup>7</sup> *Ibid*, paras 75, 78, 82, 133.

### III. PROCEDURAL BACKGROUND

5. In the part relating to “Purge of the Old and New North Zones”, the Closing Order states, *inter alia*:

“Until April 1975, the North Zone (then coded Zone 304) comprised the post-April 1975 Sectors 41, 42, 43 and 106. It was then under the control of Secretary Koy Thuon, and Ke Pork as Deputy Secretary (both were members of the Central Committee). After April 1975, the North Zone (re-designated Zone 303) included only Sectors 41, 42 and 43, as Sector 106 became autonomous. Koy Thuon was transferred to the Centre and became Minister of Commerce at which time Ke Pork replaced him as North Zone Secretary. This remained the situation until the intensification of purges in 1977. In the context of these purges, Ke Pork initially became Secretary of a re-enlarged North Zone, reincorporating Sector 106, and Chan Sam alias Kang Chap alias Se was transferred from his previous posts in the Southwest Zone to become Zone Deputy Secretary and concurrently Secretary of Sector 106. Later in the year, a new North Zone (coded 801) was created. It was comprised of Sector 106 and the hitherto autonomous Sector 103, with Se as Secretary. Sectors 41, 42 and 43 were renamed the Central Zone, with Ke Pork as Secretary.”<sup>8</sup>

6. In the part relating to “Purge of the East Zone”, the Closing Order states, *inter alia*:

“The purges of the East zone started from mid-1976 with the arrests of Suos Nov alias Chhouk, former secretary of Sector 24, and Chan Chakrei alias Nov Mean, former cadre of East Zone Division 170. Both were arrested pursuant to a decision of the Standing Committee. Interrogated and tortured, they produced confessions in which they implicated a number of cadre from Sector 24. These confessions were analysed and by mid-September 1976, Son Sen and S-21 staff intensified their pursuit of alleged traitors with regard to cadres and former cadres of the East Zone supposedly implicated as CIA, KGB or Vietnamese agents. This launched a series of arrests of East Zone cadre, many of whom were sent to S-21 through 1977. For example, on 30 April 1977, Seat Chhae alias Tum, former Secretary of Sector 22, was arrested, whose S-21 confession dated 5 June 1977 was followed by a major purge of sector 22.”<sup>9</sup>

7. In the Annex to the Decision on Additional Severance seised the Trial Chamber in Case 002/02 of the factual findings of “Security Centres and Execution Sites (178-203) (including internal purges, implementation limited to relevant underlying offences)”,<sup>10</sup> the term “internal purges” was qualified in footnote 9 stating that:

“[i]n addition to those sections included within the scope of Case 002/02, the Chamber notes that further facts relating to the North Zone purges are set out in the section of the Closing Order regarding the North Zone Security Centre (paras 572-587). Further facts relating to the East Zone purges are set out in the sections of the Closing Order regarding the Steung Tauch Execution Site (paras 715-738) and movement of population (phase three) (paras 283-300). Upon reasoned application, the Chamber may expand the scope of Case 002/02 to include additional facts relating to internal purges in the

<sup>8</sup> Closing Order, para. 194 (internal citations omitted).

<sup>9</sup> Closing Order, para. 199 (internal citations omitted).

<sup>10</sup> List of paragraphs and portions of the Closing Order relevant to Case 002/02, E301/9/1.1, 4 April 2014 (“Annex to Decision on Additional Severance”), p. 2.

North and East Zones, subject to the right of the Accused to have adequate time and facilities for the preparation of a defence and the right of all parties to be provided with timely notice.”<sup>11</sup>

8. The Annex therefore, does not seize the Trial Chamber of any underlying offences relating to Internal Purges.<sup>12</sup> The Annex further does not seize the Trial Chamber of any other Security Centres save S-21, Kraing Ta Chan, Phnom Kraol, and Au Kanseng.<sup>13</sup> Neither the Lead Co-Lawyers nor the Nuon Chea Defence made any reasoned application to include additional facts relating to internal purges in the North and East Zones in Case 002/02. Therefore, the scope of the factual allegations relevant to Internal Purges is limited to the “Purge of the Old and New North Zones”<sup>14</sup> and “Purge of the East Zone”.<sup>15</sup>

9. On 31 January 2014, the Lead Co-Lawyers filed their observations on the additional severance of Case 002 and advocated for the inclusion of “Forced Transfer Phase 3 and Related Purges of the East Zone”<sup>16</sup> in addition to North Zone Security Centre<sup>17</sup> and Koh Kyang Security Centre.<sup>18</sup>

10. On 11 February 2014, at the Trial Management Meeting, the Nuon Chea Defence took the position that:

“If the Chamber limits us to matters narrowly relevant to the crime sites in Case 002/02, as we feel it generally did in Case 002/01, we must insist that the trial include the allegations in the Closing Order most closely linked to Nuon Chea's defence. In general, these include allegations in respect of crime sites based in the Eastern Zone and the Northwest Zone. We note and support the civil parties' request to include Trapeang Thma Dam worksite, the alleged third phase population movement, and the alleged purge of East Zone cadres within the scope of the trial.”<sup>19</sup>

<sup>11</sup> Annex to Decision on Additional Severance, fn. 9 (emphasis added).

<sup>12</sup> The underlying offences of Crimes against Humanity of murder, extermination, enslavement, imprisonment, persecution on political grounds, and other inhuman acts through “Attacks against human dignity” are limited to S-21, Phnom Kraol and Au Kanseng Security Centre. The Annex also provides for allegations of persecution on racial grounds at S-21 and Au Kanseng Security Centre; Other Inhumane Acts through Enforced Disappearances at Phnom Kraol Security Centre; and torture at S-21 and Phnom Kraol Security Centre. In respect of the Grave Breaches of Geneva Conventions, the Annex further seizes the Trial Chamber of the underlying offences committed at S-21 and Au Kanseng Security Centre.

<sup>13</sup> Annex to Decision on Additional Severance, p. 2.

<sup>14</sup> Closing Order, paras 193-198.

<sup>15</sup> Closing Order, paras 199-203.

<sup>16</sup> Civil Parties' Submission on the Scope of Case 002/02, **E301/5/3**, 31 January 2014 (“Civil Parties' Submission on the Scope of Case 002/02”), paras 29-35.

<sup>17</sup> Civil Parties' Submission on the Scope of Case 002/02, paras 21-24.

<sup>18</sup> Civil Parties' Submission on the Scope of Case 002/02, paras 25-28.

<sup>19</sup> Transcripts dated 11 February 2014, **E1/239.1**, pp. 43-44 EN ERN 00975409- 00975410.

11. On 4 April 2014, the Trial Chamber ruling on the additional severance of Case 002 and the scope of Case 002/02, held that:

“Considering that the NUON Chea Defence team identifies the inclusion of these charges as ‘most important’ to the Accused’s interests and that granting this request would not unduly lengthen the estimated trial time, the Chamber also grants the request to include these charges within the scope of Case 002/02. As discussed further below, internal purges are closely related to allegations of forced movement of population and their inclusion is, consequently, reflective of broader themes of the Closing Order.<sup>20</sup> [...]”

12. On 12 September 2014, the Trial Chamber allotted a full segment to “Security Centres and Internal Purges” with the crime sites limited to Au Kanseng Security Centre, Phnom Kraol Security Centre, and S-21.<sup>21</sup>

13. On 24 March 2016, the Nuon Chea Defence filed their first Rule 87(4) request to call additional witnesses and Rule 93 request for additional investigations in relation to the Case 002/02 trial segment on S-21 Security Centre and “Internal Purges” (“First Request”).<sup>22</sup> The Lead Co-Lawyers responded to the First Request requesting the Trial Chamber to seek further clarification from the Nuon Chea Defence to indicate how the First Request relates to the Closing Order and/or evidence already before the Trial Chamber; the Lead Co-Lawyers requested in the alternative that the First Request be summarily dismissed in the absence of such clarification.<sup>23</sup>

#### IV. RESPONSE

##### (a) The Third Request is not within the scope of Case 002/02

14. The Third Request is based on “two general submissions” by the Nuon Chea Defence that – (i) the witnesses requested to be summonsed or expedited are “in a position to testify on events in the Northwest, East and Northeast Zones”,<sup>24</sup> and (ii) the Co-Prosecutors allege that

<sup>20</sup> Decision on Additional Severance of Case 002 and Scope of Case 002/02, E301/9/1, 4 April 2014 (“Decision on Additional Severance”), para. 35.

<sup>21</sup> Decision on Sequencing of Trial Proceedings in Case 002/02, E315, 12 September 2014, para. 14, p. 6.

<sup>22</sup> Nuon Chea’s First Rule 87(4) Request to Call Additional Witnesses and Rule 93 Request for Additional Investigations in Relation to the Case 002/02 Trial Segment on S-21 Security Centre and “Internal Purges”, E391, 24 March 2016.

<sup>23</sup> Lead Co-Lawyers’ Response to NUON Chea’s First Rule 87(4) and Rule 93 Request Re Case 002/02 Trial Segment on S-21 Security Centre and Internal Purges, E391/1, 5 April 2016, para. 20.

<sup>24</sup> Third Request, para. 21.

“the Northwest Zone sent the highest number of prisoners to S-21 and that these prisoners were arrested during ‘internal purges’”.<sup>25</sup>

15. In respect to the first limb of their submission, the Lead Co-Lawyers submit that the scope of Case 002/02 includes limited factual allegations concerning the *policy* of internal purges in the Old and New North Zones, and the East Zone. The scope does not include, for instance, the crimes or policy of internal purges in the Northwest and Northeast Zones unless they are related to S-21, Phnom Kraol Security Centre, and Aukanseng Security Centre.

16. In respect to the second limb of their submission, the Lead Co-Lawyers submit that the scope of Case 002/02 is not derived from or dependent on the final submissions by the Co-Prosecutors under Internal Rule 66. Under the legal framework at the ECCC, the Trial Chamber is seised *only* by the factual allegations included in the Closing Order and not by assertions made by the parties.

17. Lastly, the Lead Co-Lawyers submit that the Third Request does not provide reasons as to why the additional witnesses and evidence sought to be proffered would be otherwise relevant to any of the three Security Centres within the scope of Case 002/02 or to the policy of Internal Purges in the North and East Zone.

#### **(b) Response concerning Witness L**

18. The Third Request seeks the testimony of one additional witness – MEY Savoeun (Witness L) “who can describe events in the East Zone”.<sup>26</sup> It was noted that this person is a Civil Party in Case 004 and that “to the Defence’s knowledge, he has not filed a civil party application with respect to Case 002”.<sup>27</sup> The Defence requests that he be regarded as a “simple fact witness” and “subject to the obligations applicable to fact witnesses, such as swearing an oath”.

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<sup>25</sup> Third Request, para. 21 *citing* Co-Prosecutors’ Rule 66 Final Submission, **D390**, 16 August 2010, para. 378(1)(b): “378. (1) (b) 1,211 prisoners came from the Northwest Zone with arrests peaking between the third quarter of 1977 and the first quarter of 1978” (internal citations omitted).

<sup>26</sup> Third Request, para. 31.

<sup>27</sup> *Id.*

19. The Lead Co-Lawyers clarify that MEY Savoeun is a Civil Party in Case 002.<sup>28</sup> Therefore, should the Trial Chamber determine to call him to testify, the Lead Co-Lawyers request that the person does so as a Civil Party.

**(c) Response concerning Witness G and 2-TCW-998**

20. In respect of Witness G and 2-TCW-998, the Second Request seeks that (i) the Defence and, in the alternative, the Trial Chamber interview them; and (iii) that the Trial Chamber summons them to testify in court during the trial topic Security Centres and Internal Purges prior to the appearance of witness 2-TCW-916.

21. The Lead Co-Lawyers submit that the request that the *Defence* interview the two persons so mentioned is not founded in the Internal Rules; and it is not based on the procedural framework of the ECCC and/or the Cambodian criminal procedure. The Second Request fails to argue how this modality can be incorporated within the existing ECCC legal framework. Therefore, the Lead Co-Lawyers request that this request be dismissed.

22. Further, the Second Request argues that Witness G will “offer unique insight into preparations for rebellion and the participation and crackdown on East Zone cadres”.<sup>29</sup> It argues that 2-TCW-998 will provide an “eyewitness account of the 1978 arrest in the Northwest Zone”.<sup>30</sup> The Second Request requests, in the alternative, that the Trial Chamber interview these two witnesses. The Lead Co-Lawyers defer to the wisdom of the Trial Chamber in this regard. However, it is urged that the Trial Chamber determine this request in light of arguments advanced by the Lead Co-Lawyers in relation to the scope concerning Internal Purges.<sup>31</sup>

**(d) Response concerning the summoning of 2-TCW-831**

23. The Second Request pleads that the testimony of 2-TCW-831 and 2-TCW-951 be expedited to be heard during the trial topic on Security Centres and Internal Purges.<sup>32</sup>

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<sup>28</sup> See D22/3863. The civil party application has been assigned E3/6859. The supplementary information D22/3863a has been assigned E3/6859a.

<sup>29</sup> Second Request, para. 29.

<sup>30</sup> Second Request, para. 35.

<sup>31</sup> *Supra*, paras 14-17.

<sup>32</sup> Second Request, paras 18-25.



24. The Lead Co-Lawyers defer to the wisdom of the Trial Chamber in summoning these two witnesses. Some Civil Party Lawyers and Civil Parties acknowledge that 2-TCW-831 could provide information that could further the ascertainment of the truth, which is in the interest of the Civil Parties.


25. For the remainder of the Second Request and the Third Request, the Lead Co-Lawyers submit to the Trial Chamber's wisdom.

#### IV. REQUEST

26. The Lead Co-Lawyers respectfully request that the Trial Chamber:

- (i) should Witness L be called, **EXAMINE** him as a Civil Party; and
- (ii) **DETERMINE** the grant of the Third Request through the limited scope of Internal Purges in Case 002/02.

Respectfully submitted,

Date	Name	Place	Signature
21 April 2016	PICH ANG Lead Co-Lawyer	Phnom Penh	
	Marie GUIRAUD Lead Co-Lawyer	Phnom Penh	