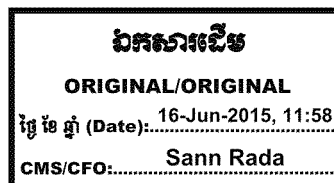


**BEFORE THE SUPREME COURT CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

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**NUON CHEA'S FOURTH REQUEST TO CONSIDER ADDITIONAL EVIDENCE
IN CONNECTION WITH THE APPEAL AGAINST THE TRIAL JUDGEMENT
IN CASE 002/01**

Filed By

Nuon Chea Defence Team:
SON Arun
Victor KOPPE
LIV Sovanna
PRUM Phalla
Doreen CHEN
Xiaoyang NIE
Marina HAKKOU

Distribution

Co-Lawyers for Khieu Samphân:
KONG Sam Onn
Anta GUISSÉ
Arthur VERCKEN

Co-Prosecutors:
CHEA Leang
Nicholas KOUMJIAN

Co-Lawyers for the Civil Parties:
PICH Ang
Marie GUIRAUD

Pursuant to ECCC Internal Rules 104(1) and 108(7), the Co-Lawyers for Mr. Nuon Chea (the “Defence”) submit this request (the “Request”) to consider additional evidence in connection with its appeal against the Trial Judgement in Case 002/01 (the “Appeal”):¹

I. BACKGROUND AND PROCEDURAL HISTORY

A. Trial Chamber Findings and Defence Appeal Grounds on a CPK Policy to Target Former Khmer Republic Soldiers and Officials and Crimes at Tuol Po Chrey

1. In its Case 002/01 judgement delivered on 7 August 2014 (the “Judgement”), the Trial Chamber found that the CPK had ordered and affirmed a policy to target former Khmer Republic soldiers and officials “for arrest, execution and/or disappearance”, beginning before 1975 and continuing throughout the DK era.² On this foundation, it convicted Nuon Chea of crimes against humanity of murder and persecution of former Khmer Republic soldiers and officials at Tuol Po Chrey.³ The Defence challenged these findings on numerous appeal grounds in its 29 December 2014 Appeal. Many relate to the Trial Chamber’s reliance on scant and flimsy supporting evidence;⁴ its unreasonable and highly selective use of the little evidence it did marshal; and its blatant disregard of critical exculpatory evidence, including from Heng Samrin, Phy Phuong, SCW-4,⁵ and *Enemies of the People/One Day at Po Chrey* filmmakers Rob Lemkin and Thet Sambath. The information in the latter duo’s possession, in particular, suggested that CPK zones pursued their own agendas, particularly in the Northwest Zone under secretary Ruos Nhim, where Tuol Po Chrey was located.⁶
2. In its Appeal, the Defence requested that the Supreme Court Chamber summon Heng Samrin, SCW-4, Rob Lemkin and Thet Sambath to testify.⁷ These requests built particularly on two earlier Defence requests: its 1 September 2014 request that the Supreme Court Chamber obtain additional evidence from Lemkin and Sambath,⁸ and its

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

² **E313**, ‘Case 002/01 Judgement’, 7 Aug 2014 (“Judgement”), paras. 119-127, 814, and 829.

³ **E313**, Judgement, paras. 877, 922, 925, 931 and 939.

⁴ For a summary analysis of this evidence, see, **F16**, Appeal, para. 163.

⁵ The Defence refers to SCW-4, SCW-5 and SCW-3 only by their pseudonyms in accordance with the Supreme Court Chamber’s directive that it do so “in *all* future submissions in the Case 002/01 appeal proceedings”: see, **F22**, ‘Directions Concerning Proposed Witnesses in Appeal Proceedings of Case 002/01’, 26 Mar 2015, ERN 01079193 (emphasis added).

⁶ See, e.g., **F16**, Appeal, paras. 57, 59, 62-69, 82, 83, 85, 163, 178, 179, 184, 225, 228, 236-243, 526-8, 559-596, and 601-614.

⁷ **F16**, Appeal, paras. 567, 730(a).

⁸ **F2**, ‘Request to Obtain and Consider Additional Evidence in Connection with the Appeal Against the Judgment in Case 002/01’, 1 Sep 2014.

25 November 2014 request that the Chamber admit the WRI of SCW-5 into evidence and summon him to testify.⁹ On 1 April 2015, the Supreme Court Chamber partially granted the Lemkin and Sambath evidence request.¹⁰ On 11 May 2015, it interviewed Rob Lemkin,¹¹ while on 16 May 2015, the Witness and Expert Support Unit made contact with Thet Sambath.¹² On 29 May 2015, the Chamber granted the Defence's requests to summon SCW-4, SCW-5 and one more witness to testify,¹³ while remaining seized of all other Defence witness requests. SCW-4 and SCW-5 are scheduled to testify on 2 and 6 July 2015.¹⁴

B. Dispersion of Evidence Relevant to Case 002/01 Across All ECCC Cases

3. The Trial Chamber established the existence of a CPK targeting policy against former Khmer Republic soldiers and officials in part based on evidence of its implementation. In contesting the Trial Chamber's analysis of this evidence, the Defence requested that a witness who the Trial Chamber had relied upon but did not testify at trial be duly summoned to testify on appeal.¹⁵ The Supreme Court Chamber granted this request¹⁶ and the relevant witness, SCW-3, is the third witness it summoned for testimony in its 29 May 2015 decision. SCW-3 is scheduled to testify on 3 July 2015.¹⁷
4. One perverse result of the Trial Chamber's severance of Case 002 is that the implementation evidence of a CPK targeting policy against former Khmer Republic soldiers and officials is now dispersed across Cases 002/01 and 002/02. Case 002/02 trial hearings, which began in January 2015, have already featured considerable witness testimony and documentary evidence on the treatment of former Khmer Republic soldiers and officials at Kraing Ta Chan Security Centre and the Tram Kok Cooperatives. Indeed, the instant Request concerns the live testimony offered by one witness on this topic during recent Case 002/02 trial hearings. Further relevant

⁹ **F2/4**, 'Third Request to Consider and Obtain Additional Evidence in Connection With the Appeal Against the Trial Judgment in Case 002/02', 25 Nov 2014.

¹⁰ **F2/4/3**, 'Interim Decision on Part of Nuon Chea's First Request to Obtain and Consider Additional Evidence in Appeal Proceedings in Case 002/01', 1 Apr 2015.

¹¹ **F2/4/3/1**, 'Written Record of Witness Interview – Robert T.F. Lemkin', 18 May 2015.

¹² **F2/4/3/2**, 'Report in Response to Supreme Chamber [sic] Decision F2/4/3', 22 May 2015.

¹³ **F2/5**, 'Decision on Part of NUON Chea's Requests to Call Witnesses on Appeal', 29 May 2015 ("SCC First Witnesses Decision"), para. 26.

¹⁴ **F24**, 'Order Scheduling a Hearing', 2 Jun 2015, ERN 01102026 and **F24.1**, 'Annex – Timetable for the Hearing', 2 Jun 2015, ERN 01102027.

¹⁵ **F16**, Appeal, paras. 595, 730(c).

¹⁶ **F2/5**, SCC First Witnesses Decision, para. 26.

¹⁷ **F24**, Order Scheduling a Hearing, ERN 01102026 and **F24.1**, Annex – Timetable for the Hearing, ERN 01102027.

evidence will undoubtedly emerge in Case 002/02 alongside the ongoing Case 002/01 appeal process. Upcoming Case 002/02 trial hearings (likely to take place in 2016) will, in particular, include a segment dedicated to the alleged targeting of former Khmer Republic soldiers and officials.¹⁸ The Defence will file additional evidence requests to the Supreme Court Chamber whenever it becomes aware of further relevant evidence in Case 002/02.

5. Significant relevant evidence has also come to the fore through the Case 003 and 004 investigations. [REDACTED]

[REDACTED] The Defence continues to be inundated with disclosure documents from those two cases,¹⁹ and will imminently be filing most likely two separate additional evidence requests in relation to disclosed WRIs of crucial importance to Case 002/01. Further requests are likely to follow, at least until the end of the Case 002/01 appeal hearings,²⁰ since the Defence understands that it may receive further disclosures while the investigations continue. Indeed, the Defence may continue to receive evidence of significance to Case 002/01 that it may be unable to put before the Supreme Court Chamber, given that the Case 003 and 004 investigations are likely to continue beyond the conclusion of the appeal hearings. At this stage, those investigations are expected to continue until the end of 2015 for Case 003 and until the same time or the first quarter of 2016 for Case 004 (depending on whether Case 004 will be severed).²¹

II. ADDITIONAL EVIDENCE

6. The additional evidence relates to witness Pech Chim.²² During the DK era, Pech Chim served as Tram Kok district secretary between 1975 and 1977 before moving with

¹⁸ See, **E301/9/1.1**, ‘Annex – List of Paragraphs and Portions of the Closing Order Relevant to Case 002/02’, 4 Apr 2014; **E315**, ‘Decision on Sequencing of Trial Proceedings in Case 002/02’, 12 Sep 2014.

¹⁹ As the Defence will discuss in more detail in a separate additional evidence request to be filed imminently, taking into account the latest disclosures it received on 9 and 11 June 2015, it has received some 7,634 pages of evidence from Cases 003 and 004 in English alone. These documents record evidence from 416 unique individuals.

²⁰ Internal Rule 92; **F2/5**, SCC First Witnesses Decision, para. 24.

²¹ Extraordinary Chambers in the Courts of Cambodia, ‘Completion Plan: Revision 4’, 31 Mar 2015, para. 30, available at <http://www.eccc.gov.kh/sites/default/files/Completion%20plan%20Rev%204%20Final.pdf>.

²² The witness has previously been referred to by the pseudonyms TCW-505 (in Case 002/01) and 2-TCW-809 (in Case 002/02). However, his identity is already in the public domain since he has already testified in public in Cases 002/01 and 002/02 and did so without request for protective measures. His testimony was also widely reported in the press and relied upon in the Judgement. Thus, the Defence considers that the witness’s interest in privacy has diminished and it is appropriate to refer to him by name. See, **F22**, ‘Directions Concerning Proposed Witnesses in Appeal Proceedings of Case 002/01’, 26 Mar 2015, paras. 2 and 4.

Southwest Zone cadres to the Central Zone, where he assumed the role of chief of a rubber plantation workers' union. Pech Chim testified in Case 002/01 on 1 July 2013 and in Case 002/02 from 21 to 24 April 2015. He is clearly regarded by both the Trial Chamber and the Co-Prosecutors as a credible and important witness: not only is he the only witness to have been recalled to testify in Case 002/02 thus far, he was cited 13 times by the Chamber in the Judgement²³ and a striking 35 times by the Co-Prosecutors in their Case 002/01 closing brief.²⁴ The additional evidence consists of two transcripts of Pech Chim's testimony under Defence cross-examination in Case 002/02 (on 23 and 24 April 2015).²⁵ They are appended to this Request as (Public) **Attachments 1 and 2**.

A. 24 April 2015 Transcript

7. During its cross-examination of Pech Chim on 24 April 2015, the Defence confronted him with the WRI of fellow Southwest Zone cadre SCW-4.²⁶ The Defence read the witness several passages from SCW-4's WRI in which SCW-4 described attending two meetings with Ta Mok. The first meeting was "prior to 1975, during a wrap-up meeting held annually in [the] forest" at which Ta Mok "issued an order that the commune, district and sector levels did not have the authority to make arrests or kill people". The second meeting was after the liberation on 17 April 1975 in Takeo provincial town, at which Ta Mok and Sector 13 Chief Ta Saom "announced that soldiers with the ranks from second lieutenant to colonel were not to be harmed".²⁷ Asked to react to SCW-4's testimony, Pech Chim testified as follows:

MR KOPPE: [...] Mr. Pech Chim, this Southwest Zone cadre, Sector 25 cadre, talks about two meetings, a meeting prior to 1975 and a meeting after 1975. Do you recall having attended -- having attended either one of these two meetings?

MR. PECH CHIM: A. I only attended the meeting after 1975, behind the Party office, where Ta Mok also attended. And the meeting that was held in the forest, I did not attend. [...]

Q. I understand, so I will focus on that second meeting, in the provincial town of Takeo. This cadre talks about after 1975. Would you be able to tell us more exactly when this meeting took place in Takeo, during which Ta Mok and Ta Saom were present?

²³ **E313**, Judgement, fns. 682, 683, 691, 699, 706, 960, 962, 1533, 1539, 1546, 2436, 2580 and 2583.

²⁴ **E295/6/1**, 'Co-Prosecutors' Final Trial Brief in Case 002/01', 27 Sep 2013, fns. 391, 644, 662, 717 (twice), 773, 786, 881, 1442, 1451, 1455, 1640 (twice), 1643 (three times), 1645 (three times), 1646 (three times), 1647 (twice), 1665, 1739 (twice), 1740 (twice), 1743, 1744, 1749, 1750, 1751 and 1944.

²⁵ T. 23 Apr 2015 (PECH Chim, **E1/291.1**) and T. 24 Apr 2015 (PECH Chim, **E1/292.1**).

²⁶ **E127/7.1.8**, 'Written Record of Interview of [SCW-4]', 27 Feb 2013.

²⁷ T. 24 Apr 2015 (PECH Chim, **E1/292.1**), p. 14, ln. 9 – p. 15, ln. 24.

A. In Takeo it was after the liberation. In Takeo province the meeting was held after 1975. It was held in one of the houses along the river edge, north part of the provincial town. That was the learning session over there and the sector committee and the district committee, including the military committee, attended. But as for those who were designated with other tasks, they were absent in that meeting and of course that meeting was held then, and there was that announcement.

Q. You remember, Mr. Pech Chim, yesterday we spoke about a four-day meeting in May 1975 in Phnom Penh; a meeting between 20 and 24th May. The meeting in Takeo province, was that after the meeting in Phnom Penh on 20th May and further, 1975?

A. The meeting held in Takeo took place after the meeting in Phnom Penh. [...]

Q. But do you confirm the statement of this Southwest Zone cadre who told the investigators that Ta Mok announced that soldiers with the ranks from second lieutenant to colonel were not to be harmed? Do you confirm this Southwest Zone cadre's statement?

A. Yes, that is correct. [...] I can confirm the statement that that was the announcement at that time. [...]

Q. Do you remember roughly how many people attended this meeting?

A. Approximately 50 to 60 people. There were representatives from the military, from the base, there was no one representing the department because Ta Mok attended himself, and as for the military they would convene, they would invite the commanders from the regiment or division to come and they also extended the invitation to the district and commune, but to some communes only, not all of them. They were of similar rank, but there were different tasks designated to them, that's why certain communes attended and others did not. [...]

Q. Mr. Pech Chim was it clear to you, crystal clear at the end of the day, that soldiers with the rank from second lieutenant to colonel were not to be harmed?

A. Yes, that what we all understood at that time. [...]

Q. [...] The instruction of Ta Mok in relation to soldiers with the ranks from second lieutenant to colonel, that they were not to be harmed, that is clear. What was your impression at the time, or what was your understanding at the time, what the fate should be of soldiers with no ranks or soldiers with ranks lower than second lieutenant?

A. For those who had lower ranks would be spared as you could imagine, that was logical, because for those that were within the ranks from second lieutenant to colonel would be spared, would not be touched.²⁸

B. 23 April 2015 Transcript

8. During his earlier testimony under Defence cross-examination on 23 April 2015, Pech Chim discussed his understanding of the meaning and applicability of the Khmer word

²⁸ T. 24 Apr 2015 (PECH Chim, E1/292.1), p. 16, ln. 10 – p. 17, ln. 17; p. 18, lns. 2-9; p. 19, lns. 3-12; p. 22, lns. 16 – 20, p. 23, ln. 25 – p. 24, ln. 11 (emphasis added).

komchat in respect of the treatment of former Khmer Republic soldiers and officials in District 105 (i.e. Tram Kok district):

BY MR. KOPPE: [] Q. [...] Mr. Pech Chim does the word “komchat” mean anything to you?

MR. PECH CHIM: [] A. The word “komchat” means to take out or to remove. That word was used in the party lines and it stands to get rid of personal feeling, to get rid of personal ambition, and to build a good positive stance in place of the negative ones. And that also referred to the feeling of being capitalist or being officials of the previous regimes. So we need to get rid of these kinds of classes and build our own stance. And we had to strive our hard, our body, ourselves harder in order to conform with the labourer and the peasant class and indeed partly we succeeded in the reform. However, there will always be consequences of our actions as a matter of cause and effect.

Q. The explanation that you just gave about the word “komchat” was that something, was that a policy to be implemented to people who had worked for the former Lon Nol regime? To re-educate them, to take them first out of the framework but then re-educate them and the re-integrate them back into the society?

A. Yes, that is also correct. They had to refashion themselves in order to conform themselves to the society and to get rid of their personal negatives. From the beginning they did have some negative aspects amongst themselves and they had to get rid of that. That was another meaning of that word.

Q. And Mr. Pech Chim, was that the policy of District 105 when it comes to the treatment of former Lon Nol officials and former Lon Nol military? To “komchat” them?

A. Yes, that statement you made is also correct. It’s the word that was used.²⁹

III. APPLICABLE LAW

9. Within the ECCC framework, the admission of new evidence on appeal is governed by ECCC Internal Rules 104(1) and 108(7). Pursuant to Rule 104(1), the Supreme Court Chamber “may itself examine evidence and call new evidence” to determine any appeal. Rule 108(7) provides, in relevant part, as follows:

Subject to Rule 87(3), the parties may submit a request to the Chamber for additional evidence provided it was unavailable prior to trial and could have been a decisive factor in reaching the decision at trial. The request shall clearly identify the specific findings of fact made by the Trial Chamber to which the additional evidence is directed.

10. The Chamber has previously exercised its discretion to admit new evidence pursuant to Rules 104(1) and 108(7) in connection with the Appeal and pursuant to Rule 108(7) in connection with appeals filed against the trial judgement in Case 001.³⁰

²⁹ T. 23 Apr 2015 (PECH Chim, E1/291.1), p. 71, ln. 25 – p. 73, ln. 5.

IV. ARGUMENT

A. Confidentiality and Conditions of Disclosure

11. The Defence acknowledges the disclosure conditions that the International Co-Investigating Judge, through the International Co-Prosecutor, has placed on it with respect to WRIs from Cases 003 and 004, as well as the supplementary conditions imposed by this Chamber in that regard.³¹ The instant Request is proposed as Confidential [REDACTED]

[REDACTED] The Defence did this in order to present the Supreme Court Chamber with a full picture of the procedural history and situation faced by the Defence and, by extension, the Chamber. The Defence considers such reference to be permissible in a confidential filing and will provide the Chamber with suggested redactions for a Public (Redacted) version of this Request.

B. Pech Chim is a Critical Witness with Regard to the CPK Policy to Target Khmer Republic Soldiers and Officials

12. The Trial Chamber held in its Judgement that “a CPK policy targeting soldiers and officials of the Khmer Republic existed prior to 1975”³² and “continued throughout the DK era and, in particular, during the time period relevant to Case 002/01”.³³ This policy was “ordered and affirmed by the Party leadership during the final offensive to ‘liberate the country’ and then throughout the DK era”.³⁴ It applied to “*all elements of the former Khmer Republic regime*”³⁵ and involved their “arrest, execution and/or disappearance”.³⁶
13. In an ironic twist, it just so happens that Pech Chim was the one witness the Trial Chamber chose to spotlight in order to show how the targeting policy was disseminated at Party indoctrination sessions. It devoted half a paragraph in the Judgement to

³⁰ F2/5, SCC First Witnesses Decision, paras. 19-26; Case 001/18-07-2007/ECCC/SC, *Prosecutor v. Kaing Guek Eav*, F2/5/1, ‘Decision on Group 1 Civil Parties’ Co-Lawyers’ Supplementary Request to Admit Additional Evidence’, 29 Mar 2011, ERNs 00657389-00657391; Case 001/18-07-2007/ECCC/SC, *Prosecutor v. Kaing Guek Eav*, F2/4, ‘Decision on Requests by Co-Lawyers for Accused and Civil Parties Groups 1, 2, 3 to Admit Additional Evidence’, 25 Mar 2011, ERNs 00656514-00656517.

³¹ F22, ‘Directions Concerning Proposed Witnesses in Appeal Proceedings of Case 002/01’, 26 Mar 2015.

³² E313, Judgement, para. 127.

³³ E313, Judgement, para. 814.

³⁴ E313, Judgement, para. 817.

³⁵ E313, Judgement, para. 829 (emphasis added).

³⁶ E313, Judgement, paras. 829, 833.

describe how Pech Chim had “attended a month-long study session in December 1975 for District secretaries where NUON Chea instructed around 800 people on the topic of enemies” which enabled him to understand how to discern friend from foe.³⁷

14. However, while the Defence agrees that Pech Chim is indeed a significant witness, it would suggest that this is for a reason precisely opposite to the one suggested by the Trial Chamber. In its Appeal, the Defence cited two pieces of evidence – SCW-4’s testimony and documentary evidence from Tram Kok district and Kraing Ta Chan³⁸ – as “evidence [that] definitively shows that no ongoing policy to seek out and execute even senior Khmer Republic military officers existed” at the time of the alleged events at Tuol Po Chrey.³⁹ Pech Chim’s testimony of 24 April 2015 is critical to the Appeal as it offers credible, specific corroboration for both pieces of evidence. Pech Chim confirmed that, just like SCW-4, he too attended a meeting in Takeo provincial town at which Ta Mok instructed cadres that former Khmer Republic soldiers from the ranks of second lieutenant to colonel were not to be harmed and that this was well-understood by all who attended the meeting. Pech Chim also confirms that, as the Defence suggests, soldiers with ranks below second lieutenant were spared from harm.

15. Pech Chim’s testimony also corroborates Heng Samrin’s critically-important evidence concerning the definition of the Khmer word *komchat* and its applicability to former soldiers and officials of the Khmer Republic.⁴⁰ Pech Chim testified on 24 April 2015 that *komchat* meant “to take out or remove.” Pech Chim was also able to offer a detailed explanation as to the use of *komchat* within the CPK. He explained that *komchat* “was used in the party lines and it stands to get ride of personal feeling, to get rid of personal ambition, and to build a good positive stance.” This line applied to former Khmer Republic soldiers and officials in the sense that “[t]hey had to refashion themselves in order to conform themselves to the society and get rid of their personal negatives.” Pech Chim’s testimony therefore bolsters Heng Samrin’s testimony that *komchat* does not mean “kill” or “smash” and that Nuon Chea, who stated at a 20 May 1975 meeting that leaders of the Khmer Republic should be *komchat*, was ordering not their execution but their “removal from the framework”. Indeed, the Defence

³⁷ E313, Judgement, para. 818.

³⁸ See, F16, Appeal, fn. 1505, which provides an analysis of a selection of relevant documents contained in the so-called “Tram Kok District Records” collection.

³⁹ F16, Appeal, para. 568.

⁴⁰ F16, Appeal, paras. 59, 62-75, and 569-570; see, also, E295/6/3, ‘Nuon Chea’s Closing Submissions in Case 002/01’, 26 Sep 2013 (“Closing Brief”), paras. 384-5.

highlighted in the Appeal that in the *One Day at Po Chrey* film, Nuon Chea expressly denied ordering the execution of Khmer Republic soldiers and officials in the Northwest Zone, explaining that “[a]t the time, I did not know about these killings. And if I had known, we would have taken preventive measures to stop that kind of killing. They had done nothing wrong, they were normal people, no different from ordinary people.”⁴¹

16. Furthermore, Pech Chim’s testimony bolsters the Defence’s argument that there was never any order in 1975 to execute former Khmer Republic soldiers and officials at all. This argument was grounded in an analysis of Heng Samrin and Ouk Bunchhoeun’s accounts of the 20 May 1975 meeting with Nuon Chea.⁴² As the Defence argued in its closing brief in Case 002/01 (“Closing Brief”), it would not make sense for the CPK leadership to order officials of the former regime to be targeted in April 1975 and then retract that just one month later at the May meeting. The only logical conclusion was rather that there was never any execution order at all.⁴³ This conclusion is consistent with Phy Phuon’s testimony that Pol Pot expressly ordered that former Khmer Republic soldiers and officials were not to be touched.⁴⁴ Indeed, in this sense, Pech Chim’s evidence also strengthens the Defence’s argument that disappearances did not inevitably result in execution. The Defence already presented the Trial Chamber with one striking supporting example for this in its Closing Brief: that according to Ben Kiernan, “400 Khmer Republic officials and the ‘great majority’ of the 580 soldiers detained in the East Zone [in] April 1975 *were released* in July [1975] *after a period of reeducation*”.⁴⁵ The Trial Chamber simply chose to ignore this evidence in its Judgement.
17. Finally, Pech Chim’s testimony would support Nuon Chea’s position, articulated in the Defence’s Closing Brief, that the limited executions that may have taken place were unauthorised and the Party tried to stop them.⁴⁶ The Defence noted that this was corroborated by Ben Kiernan’s interviews in relation to the situation in the Northwest Zone, in which “several interviewees describe[d] receiving or hearing about instructions sometime between April and October 1975 to stop executions, especially of former

⁴¹ **E186/1R**, ‘One Day at Po Chrey’, 22:30-24:00, *cited in F16*, Appeal, para. 184, fn. 494.

⁴² **F16**, Appeal, paras. 59-69 and 82.

⁴³ **F16**, Appeal, para. 386.

⁴⁴ **F16**, Appeal, paras. 178 and 566; **E295/6/3**, Closing Brief, para. 387.

⁴⁵ **E3/1593**, ‘The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge 1975-1979’ (“The Pol Pot Regime”), ERN 00678599, *cited in E295/6/3*, Closing Brief, para. 390, fn. 853 (emphasis added).

⁴⁶ **E295/6/3**, Closing Brief, para. 452.

government officials”.⁴⁷ Kiernan concluded that instead, the “Party Centre” had been making efforts to stop executions of former Khmer Republic soldiers and officials from occurring but was “struggling to maintain control or [was] temporarily outmaneuvered by different government organs or factions”.⁴⁸ In this sense, Pech Chim’s testimony gives renewed significance to the account of a former diplomat of the Khmer Republic – referenced in its Closing Brief⁴⁹ – which was reported in the Bangkok Post on 25 June 1975 and retold in Kiernan’s *The Pol Pot Regime*:

A former diplomat who escaped with 11 members of his family reported that on May 31 a Khmer Rouge official stopped him about 30 miles from the Thai border and told him: “You are lucky. Three days ago we received instructions not to kill any more people of the old government.”⁵⁰

18. In light of Pech Chim’s testimony and Nuon Chea and Kiernan’s analysis of the Party Centre’s positions, it now appears clear that the former diplomat was in fact describing an order from the CPK faction within the CPNLF, issued after the 20 May 1975 meeting in Phnom Penh, to stop executions it had never authorised. The diplomat indicated that an order “not to kill any more people of the old government” was issued on approximately 28 May 1975. Likewise, Pech Chim indicated that the meeting with Ta Mok also “took place after the meeting in Phnom Penh”. This suggests that there may have been a series of similar meetings around the country immediately after the 20 May 1975 meeting to disseminate orders not to harm former soldiers and officials of the Khmer Republic.

C. Pech Chim’s Evidence Should be Admitted Pursuant to Rule 108(7)

19. Rule 108(7) expressly contemplates a request for additional evidence before the Supreme Court Chamber provided such evidence “was unavailable at trial”. While Pech Chim testified during the Case 002/01 trial, his potential knowledge on the Takeo provincial town meeting with Ta Mok was unavailable to the Defence at trial. [REDACTED]

[REDACTED] Therefore, Pech Chim’s knowledge as to the meeting with Ta Mok can clearly be considered evidence that was unavailable at trial for the purposes of Rule 108(7).

⁴⁷ E3/1593, *The Pol Pot Regime*, ERN 00678541, cited in E295/6/3, Closing Brief, para. 453, fn. 971.

⁴⁸ E3/1593, *The Pol Pot Regime*, ERN 00678541, cited in E295/6/3, Closing Brief, para. 453, fn. 972.

⁴⁹ E295/6/3, Closing Brief, para. 453, fn. 971.

⁵⁰ E3/1593, *The Pol Pot Regime*, ERN 00678541 (emphasis added).

20. The Defence accepts that since Pech Chim testified in Case 002/01 on the execution of “bad” people, it may have been theoretically possible that his testimony in regard to the definition and application of the Khmer word *komchat* could have been obtained in Case 002/01. However, the Defence contests whether this testimony was truly available in reality. The Defence was only made aware of the depth of testimony Pech Chim could provide on such issues as a result of [REDACTED]

[REDACTED] Pech Chim provided extensive testimony on CPK operations and structure especially in the Southwest and Central Zones. He demonstrated his familiarity with many key leaders, described how CPK structures functioned, and explained how information was communicated and policies implemented. It was only upon review of this wide-ranging, sophisticated and detailed testimony that the Defence was able to determine that it would be appropriate and a meaningful use of its limited time to question Pech Chim on subjects such as the meaning and applicability of the term *komchat*. [REDACTED]

21. Rule 108(7) also requires that the additional evidence “could have been” a decisive factor at trial. As discussed above, Pech Chim’s testimony during Case 002/01 would have corroborated important arguments of the Defence rejected by the Trial Chamber in the Judgement and central to its assessment of Nuon Chea’s criminal liability. His testimony proves even more convincingly that there was an order from the CPK Standing Committee level not to harm former Khmer Republic soldiers and officials from the ranks of second lieutenant to colonel, and that soldiers with lower ranks were to be spared. His testimony corroborates the evidence of Heng Samrin that at a 20 May 1975 meeting with Nuon Chea, Nuon Chea ordered not that former Khmer Republic soldiers and officials were to be killed but that they would be *komchat* or “taken out of

the framework”. Indeed, Pech Chim’s testimony, together with that of SCW-4 and the diplomat who successfully escaped Cambodia, would even suggest that a series of meetings may have taken place after the 20 May 1975 meeting to disseminate this order.

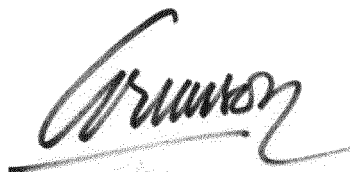
D. Pech Chim’s Evidence Should be Admitted Pursuant to Rule 104(1)

22. Rule 104(1) endows the Supreme Court Chamber with the power to “call new evidence” “where the interests of justice so require, taking into account the specific circumstances of the case.”⁵² The Defence notes that in this regard, the Supreme Court Chamber recently cited the *Lubanga* Appeal Judgement, indicating that the ICC Appeals Chamber in that case “found that it enjoyed discretion to admit evidence on appeal despite a negative finding on one or more of the criteria governing the admissibility of evidence on appeal”.⁵³
23. The Defence submits that even if part or all of Pech Chim’s testimony is deemed not to meet the requirements of Rule 108(7) and 87(3), it should nevertheless be admitted under Rule 104(1) in the interests of justice. In this regard, the Defence underscores its Appeal arguments that the Trial Chamber’s findings on the targeting policy against Khmer Republic soldiers and officials were built on a feeble evidentiary foundation. Pech Chim’s testimony in contrast offers cogent, significant corroboration for exculpatory evidence cited by the Defence, including that of Heng Samrin. Therefore, the admission of Pech Chim’s evidence on appeal is essential.

V. RELIEF

24. The Defence hereby requests that the Supreme Court Chamber admit into evidence the two transcripts of Pech Chim’s 23 and 24 April 2015 testimony in Case 002/02.

CO-LAWYERS FOR NUON CHEA



SON Arun



Victor KOPPE

⁵² F2/5, SCC First Witnesses Decision, para. 17.

⁵³ F2/5, SCC First Witnesses Decision, fn. 51.