



**អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា**  
Extraordinary Chambers in the Courts of Cambodia  
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

**ព្រះរាជាណាចក្រកម្ពុជា**  
**ជាតិ សាសនា ព្រះមហាក្សត្រ**

Kingdom of Cambodia  
Nation Religion King  
Royaume du Cambodge  
Nation Religion Roi

**អង្គជំនុំជម្រះសាលាដំបូង**  
Trial Chamber  
Chambre de première instance

**សំណុំរឿងលេខ: ០០២/១៩ កញ្ញា ២០០៧/អវតក/អជសដ**  
**Case File/Dossier No. 002/19-09-2007/ECCC/TC**

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

**Date:** 31 March 2016  
**Original language(s):** Khmer/English/French  
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du dossier: ..... SANN RADA .....

**REASONS FOLLOWING DECISION ON THE NUON CHEA DEFENCE'S CONSOLIDATED RULE 87(4)  
REQUEST TO HEAR ADDITIONAL WITNESSES FOR THE FIRST CASE 002/02 TRIAL SEGMENT ON  
THE TRAM KAK COOPERATIVES AND KRAING TA CHAN SECURITY CENTRE AND DECISION ON  
SANN LORN (2-TCW-1007), SOU PHIRIN (2-TCW-1027) AND IV SARIK (2-TCW-1026) (E346/2)**

**Co-Prosecutors**  
CHEA Leang  
Nicolas KOUMJIAN

**Accused**  
NUON Chea  
KHIEU Samphan

**Civil Party Lead Co-Lawyers**

PICH Ang  
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**Lawyers for the Defence**

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Anta GUISSÉ

## 1. INTRODUCTION

1. The Trial Chamber is seized of the NUON Chea Defence's Consolidated Rule 87(4) Request to hear 15 additional witnesses in relation to the Tram Kak Cooperatives and the Kraing Ta Chan Security Centre.<sup>1</sup> The Request divides the 15 witnesses into six categories: i) one witness on the treatment of former LON Nol soldiers and officials; ii) five former Kraing Ta Chan prisoners; iii) three former Kraing Ta Chan staff members; iv) two former Tram Kak cadres; v) two witnesses on forced marriage; and vi) two witnesses on the authenticity of documents. The Civil Party Lead Co-Lawyers ("Lead Co-Lawyers") filed their response on 10 April 2015 and the Co-Prosecutors and the KHIEU Samphan Defence responded orally during the hearing of 21 April 2015.<sup>2</sup>

2. On 30 April 2015, the Trial Chamber issued a memorandum, with reasons to follow, granting the Request with respect to two witnesses: one on the treatment of the former LON Nol officials, SAO Van (2-TCW-989), and one of the former Kraing Ta Chang prisoner, VORNG Sarun (2-TCW-986).<sup>3</sup> The Chamber deferred its decision on six of the proposed individuals, including SANN Lorn (2-TCW-1007), and rejected the remaining seven persons subject of the Request.<sup>4</sup> In relation to SANN Lorn (2-TCW-1007), on 24 December 2015 the Trial Chamber notified the parties that it had decided to hear him during the segment on the Treatment of Targeted Groups.<sup>5</sup> The Chamber hereby provides reasons for its decision and decides on two proposed witnesses for whom it originally deferred a decision, SOU Phirin (2-TCW-1027) and IV Sarik (2-TCW-1026).

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<sup>1</sup> NUON Chea's Consolidated Rule 87(4) Request to Hear Additional Witnesses for the First Case 002/02 Trial Segment on the Tram Kok Cooperatives and Kraing Ta Chan Security Centre, E346, 3 April 2015 ("Request").

<sup>2</sup> Civil Party Lead Co-Lawyers' Response to Nuon Chea Defence's Consolidated Rule 87(4) Request to Hear Additional Witnesses on the Tram Kok Cooperatives and Kraing Ta Chan Security Centre, E346/1, 10 April 2015 ("Lead Co-Lawyers' Response"); T. 21 April 2015, pp. 81-86.

<sup>3</sup> Decision on the NUON Chea Defence's Consolidated Rule 87(4) Request to Hear Additional Witnesses for the First Case 002/02 Trial Segment on the Tram Kok Cooperatives and Kraing Ta Chan Security Centre, E346/2, 30 April 2015 ("Decision on NUON Chea Defence 87(4) Request").

<sup>4</sup> Decision on NUON Chea Defence 87(4) Request, p. 2.

<sup>5</sup> Email from Trial Chamber Senior Legal Officer to all Parties, 24 December 2015.

## **2. SUBMISSIONS**

### **2.1. NUON Chea Defence**

#### *2.1.1. Treatment of former LON Nol soldiers and officials*

3. The NUON Chea Defence submits that proposed Witness SAO Van (2-TCW-989) could provide “critical, unique, exculpatory evidence” as regards the treatment of the former LON Nol soldiers and officials at the Tram Kak Cooperatives and Kraing Ta Chan Security Centre.<sup>6</sup> It submits that SAO Van’s statement was not available to it at the opening of the trial in June 2011 as it was disclosed to the Defence only on 23 September 2013. The NUON Chea Defence submits that because the statement was disclosed at an exceptionally busy time, it only became aware of this statement while finalising its Appeal Brief for Case 002/01. In view of this, and noting other closely-related evidence on the topic, the NUON Chea Defence submits that it is in the interests of justice to now grant its request.<sup>7</sup>

#### *2.1.2. Former Kraing Ta Chan prisoners*

4. The NUON Chea Defence proposes five additional former Kraing Ta Chan prisoners (“Former Prisoners”): MEAS Sarat (2-TCW-821) and HUN Kimseng (2-TCW-1018),<sup>8</sup> OUCH Han (2-TCW-1019) and VORNG Sarun (2-TCW-986),<sup>9</sup> and SET Yem (2-TCCP-1020).<sup>10</sup> It submits that the testimony heard and evidence presented in relation to Kraing Ta Chan has in large part served to “heighten contradictions and uncertainty in the available evidence”.<sup>11</sup> The NUON Chea Defence contends that the testimony of these five “real”

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<sup>6</sup> Request, para. 7. The Trial Chamber notes that SAO Van (2-TCW-989) later testified before the Supreme Court Chamber in the context of the appeal against Case 002/01, on 2 July 2015, see F1/1.1. On 15 January 2016, the NUON Chea Defence requested to withdraw SAO Vann (2-TCW-989) from its list of proposed witnesses for Case 002/02. This request was rejected by the Trial Chamber on 26 January 2016 and SAO Vann testified before the Chamber on 1 February 2016. See Decision on NUON Chea Defence Request to Withdraw a Witness from the Case 002/02 Trial Witness List (E364/2/1), E346/2/2, 26 January 2016; NUON Chea’s Request to Withdraw a Witness from the Case 002/02 Trial Witness List, E346/2/1, 15 January 2016; T. 1 February 2016 (SAO Vann).

<sup>7</sup> Request, paras 7-8.

<sup>8</sup> The two individuals are respectively the sister and the mother of MEAS Sokha, who testified in Case 002/02 on 8 and 21-22 January 2015. See Request, para. 11.

<sup>9</sup> Request, paras 13-14.

<sup>10</sup> Request, paras 15-16.

<sup>11</sup> Request, para. 10.

prisoners may assist in ascertaining the truth, is in the interests of justice and closely relates to the evidence already presented.<sup>12</sup>

5. The NUON Chea Defence submits that, in view of the state of the evidence relating to Kraing Ta Chan, the evidence of MEAS Sarat (2-TCW-821) and HUN Kimseng (2-TCW-1018) is now essential to clarify the nature of interrogation, prisoners' work responsibilities, the alleged detention and execution of their husbands, as well as "conditions, operations, staff and prisoners generally".<sup>13</sup> In relation to MEAS Sarat (2-TCW-821) in particular, the NUON Chea Defence submits that she is the focus of testimonies during this trial relating to an incident of rape identified in the Closing Order.<sup>14</sup> Considering the gravity of the allegation, the mixed evidence on the case, that the alleged rape was not mentioned by either MEAS Sokha (2-TCW-936) or HUN Kimseng (2-TCW-1018), the NUON Chea Defence argues that it is now essential to call this witness. The NUON Chea Defence submits that it did not know of MEAS Sarat (2-TCW-821) at the start of the trial and that while it knew of HUN Kimseng (2-TCW-1018) it did not consider her testimony necessary until now.<sup>15</sup>

6. The NUON Chea Defence submits that OUCH Han (2-TCW-1019) and VORNG Sarun (2-TCW-986), two female hospital medics held prisoner at Kraing Ta Chan, would be able to testify about Democratic Kampuchea hospital conditions in the district and zones, as well as conditions, operations, staff and prisoners at Kraing Ta Chan. In addition, it submits that VORNG Sarun (2-TCW-986) could provide information regarding the prison chief Ta An, as she was allegedly his "mistress".<sup>16</sup> The NUON Chea Defence further submits that the these two witnesses were not interviewed by the OCIJ and that, while their names appear on purported Kraing Ta Chan records, the NUON Chea Defence did not identify them as potential witnesses. However, the two women were identified and discussed in court as surviving former prisoners. It therefore now considers their testimony essential.<sup>17</sup>

7. In relation to SET Yem (2-TCCP-1020), a Civil Party in Case 004, the NUON Chea Defence submits that her testimony is important as she could shed light on a significant point that was "not mentioned in the Closing Order at all: that it was possible for detainees of

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<sup>12</sup> Request, para. 10.

<sup>13</sup> Request, para. 11.

<sup>14</sup> Request, paras 11-12; Closing Order, para. 504.

<sup>15</sup> Request, paras 11-12.

<sup>16</sup> Request, paras 13-14.

<sup>17</sup> Request, para. 13.

Kraing Ta Chan to be released and return to life in the cooperative”.<sup>18</sup> In addition, this proposed Civil Party could provide clarity with respect to issues for which there is conflicting evidence, including whether rapes or sexual assaults occurred at the security centre, conditions, operations, staff and prisoners at Kraing Ta Chan, alleged methods of execution, the number of prisoners transferred there each day, and whether detainees included Khmer Krom, Cham and Vietnamese.<sup>19</sup> The NUON Chea Defence submits that it received her statement on 16 February 2015 and that her testimony was therefore not available to the defence at the opening of the trial in 2011.<sup>20</sup>

### 2.1.3. *Former Kraing Ta Chan staff members*

8. The NUON Chea Defence submits that the testimony of SAING Sim (2-TCW-1021), Touch (2-TCW-1022) and Uok (2-TCW-1023), all former Kraing Ta Chan staff members, may assist the Chamber in ascertaining the truth, including on the conditions, operations, executions, and rape/sexual assault at the security centre.<sup>21</sup> It submits that while it was aware of SAING Sim (2-TCW-1021), it was unaware of the other two, who were never interviewed by the OCIJ but were referred to in some witnesses’ statements. In any event, the NUON Chea Defence argues that it did not consider their testimony necessary until now.<sup>22</sup>

### 2.1.4. *Former Tram Kak District Cadres*

9. The NUON Chea Defence proposes two Tram Kak cadres, SANN Lorn (2-TCW-1007) and TOEM Hy (2-TCW-833), to assist the Chamber in ascertaining the truth in relation to the operation of the Tram Kak Cooperatives and Kraing Ta Chan Security Centre, their interrelationship and their situation within the authority structure of the Tram Kak district, its constituent sub-districts and communes, as well as its parent sector and zone. The NUON Chea Defence submits that the statements of these two witnesses were part of the disclosures it received since the start of Case 002/02 from Case 004.<sup>23</sup>

10. The NUON Chea Defence submits that SANN Lorn (2-TCW-1007) was a district messenger and that he can provide important insight into the communication of orders and

<sup>18</sup> Request, para. 16.

<sup>19</sup> Request, para. 16.

<sup>20</sup> Request, para. 15. *See* Strictly Confidential Written Record of Interview of [REDACTED], E319/12.3.6, 9 September 2014; Disclosure of Confidential Case Materials, E319/12/1.2, 16 February 2015.

<sup>21</sup> Request, para. 17.

<sup>22</sup> Request, para. 17.

<sup>23</sup> Request, paras 18-20.

on the transportation of people within the district. It also submits that he can testify on the leadership in the area, including on the role of PECH Chim (2-TCW-809), Phi and KHOEM Boeun (2-TCW-979), on the “internal enemies within the CPK” and on agricultural policy. The NUON Chea Defence submits that it received his statement on 19 February 2015.<sup>24</sup>

11. The NUON Chea Defence submits that as a district messenger responsible to deliver letters from district chairpersons Chim and Kit to An at Kraing Ta Chan, TOEM Hy (2-TCW-933) may be able to provide insight into the role of Chim, Kit and An. It also submits that this proposed witness can offer further details into the conditions, operations, staff and prisoners at Kraing Ta Chan. In addition, as Vorn Vet’s messenger, TOEM Hy (2-TCW-933) may also be able to provide insight into high-ranking CPK leaders. The NUON Chea Defence submits that it received his statement on 4 November 2014.<sup>25</sup>

#### 2.1.5. *Witnesses on forced marriage*

12. The NUON Chea Defence also proposes to hear two additional witnesses on forced marriage, TRI Touch (2-TCW-1024) and SENG OI (2-TCW-1025). It submits that the Tram Kak Cooperatives are identified as one of the focal crime sites for forced marriage.<sup>26</sup> In view of the “mixed” nature of the live testimony heard so far, and in light of the close attention paid to the alleged forced marriage of CHEANG Sreimom (2-TCW-834), the NUON Chea Defence submits that it is essential to call as witnesses these two individuals as they were implicated in her alleged forced marriage.<sup>27</sup>

13. SENG OI (2-TCW-1025) was a women’s unit leader, who presided over CHEANG Sreimom’s alleged forced marriage and who was identified by the latter as the person whom she did not dare oppose. The NUON Chea Defence submits that SENG OI (2-TCW-1025) may be in a position to provide further information on alleged forced marriages from a cadre’s perspective and insight as to any policy on the regulation of marriage. The NUON Chea Defence further submits that while the statement of SENG OI (2-TCW-1025) was

<sup>24</sup> Request, para. 19. *See* Strictly Confidential Written Record of Interview of [REDACTED], E319/13.3.60, 29 September 2014; Disclosure of Confidential Case Materials, E319/13/1.3

<sup>25</sup> Request, para. 20. *See* Strictly Confidential Written Record of Interview of [REDACTED]], E319.1.29; Disclosure of Confidential Case File Materials, E319/4.1.

<sup>26</sup> Request, paras 21-24.

<sup>27</sup> Request, paras 22-24. CHEANG Sreimom (2-TCW-834) testified on 29 January and 2 February 2015.

available to it before the start of the trial in 2011, her testimony has not become essential until now.<sup>28</sup>

14. The NUON Chea Defence submits that, as husband of CHEANG Sreimom (2-TCW-834), TRI Touch (2-TCW-1024) would be able to testify on the circumstances of the alleged forced marriage. Further, he could be able to provide the essential perspective of a husband to the notion of forced marriage. The NUON Chea Defence submits that while it could technically have known about this witness as his name figures in CHEANG Sreimom's statement, his testimony has only now become essential in light of CHEANG Sreimom's testimony.<sup>29</sup>

#### 2.1.6. *Authenticity of documents*

15. Finally, the NUON Chea Defence requests that two additional Witnesses, IV Sarik (2-TCW-1026) and SOU Phirin (2-TCW-1027), be heard regarding the location of the originals of 135 documents on the Case File, purported to be records from Tram Kak and the Kraing Ta Chan Security Centre and the levels above and below. IV Sarik (2-TCW-1026) was allegedly at some point the Deputy Director of the Provincial Education Department in Takeo,<sup>30</sup> whereas SOU Phirin (2-TCW-1027) was Governor of Takeo in the 1990s, then of Siem Reap. He currently appears to be a Secretary of State in the Council of Ministers.<sup>31</sup> The NUON Chea Defence notes that there is information indicating that IV Sarik (2-TCW-1026) gave the originals to Ben Kiernan on behalf of SOU Phirin (2-TCW-1027), and that Ben Kiernan did not return the originals.<sup>32</sup> The NUON Chea Defence submits that while it could have requested these individuals at the start of the trial, it did not consider their testimony essential until now. However, given the heavy reliance on these documents, it is now imperative that they be called as they may be able to provide additional insight as to where the original documents may be found, provenance, chain of custody, authenticity and reliability.<sup>33</sup>

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<sup>28</sup> Request, para. 23.

<sup>29</sup> Request, para. 24.

<sup>30</sup> Request, paras 25, 27-28.

<sup>31</sup> Request, para. 27.

<sup>32</sup> Request, paras 27-28.

<sup>33</sup> Request, paras 26-28.



## 2.2. Co-Prosecutors' Response

16. The Co-Prosecutors respond that, contrary to the NUON Chea Defence's submission that the evidence has been very confusing, there has been consistent evidence from both cadres and victims on the key points: almost everyone detained at Kraing ta Chan was killed and not released, children were not spared, and people were tortured, suffocated and beaten to get confessions.<sup>34</sup>

17. The Co-Prosecutors respond that witnesses SAO Van (2-TCW-989) and SENG OI (2-TCW-1025) appear to have potentially exculpatory information and that the Trial Chamber should therefore hear their testimony in relation to the treatment of former LON Nol soldiers and officials and forced marriage, respectively.<sup>35</sup>

18. In relation to the Former Prisoners, the Co-Prosecutors submit that the Accused are not charged with crimes of sexual violence *per se* and it is therefore not necessary to hear MEAS Sarat (2-TCW-821) and HUN Kimseng (2-TCW-1018). It is contended that hearing OUCH Han (2-TCW-1019) and VORNG Sarun (2-TCW-986) would be more suitable instead. They make no submission in relation to SET Yem (2-TCCP-1020).<sup>36</sup>

19. As regards the proposed additional Kraing Ta Chan former staff members, the Co-Prosecutors submit that it is not known if Touch (2-TCW-1022) and Uok (2-TCW-1023) are alive, whereas SAING Sim's (2-TCW-1021) statement has been extensively used and read out in court. His presence would therefore not add to the evidence already before the Chamber.<sup>37</sup>

20. As to the Tram Kak District cadres, the Co-Prosecutors agree that TOEM Hy (2-TCW-833) should be heard. It suggests, however, that he be called during the trial topic of Internal Purges. They make no submissions in relation to SANN Lorn (2-TCW-1007).<sup>38</sup>

21. The Co-Prosecutors submit that CHEANG Sreimom's testimony on her forced marriage was clear and it is therefore not necessary to call TRI Touch (2-TCW-1024) to testify in addition to SENG OI (2-TCW-1025).<sup>39</sup>

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<sup>34</sup> T. 21 April 2015, p. 83.

<sup>35</sup> T. 21 April 2015, p. 21.

<sup>36</sup> T. 21 April 2015, pp. 83-84.

<sup>37</sup> T. 21 April 2015, p. 84.

<sup>38</sup> T. 21 April 2015, p. 84.

22. In relation to the Kraing Ta Chan documents, the Co-Prosecutors respond that there have already been hearings on this topic in Case 002/01 and the new proposed witnesses have little to add. Furthermore, evidence corroborating the authenticity of documents has already been heard.<sup>40</sup>

### **2.3. Civil Party Lead Co-Lawyers' Response**

23. The Lead Co-Lawyers defer to the Trial Chamber's discretion with respect to whether SAO Van (2-TCW-989) should be heard, but note that his statement was and still is available to the NUON Chea Defence to use during the examination of witnesses and Civil Parties testifying on the treatment of former LON Nol soldiers and officials.<sup>41</sup>

24. In relation to MEAS Sarat (2-TCW-821), the Lead Co-Lawyers note that her testimony would duplicate the testimony of other witnesses on the detention conditions at Kraing Ta Chan, and that her purported sexual assault has already been discussed at length.<sup>42</sup> The Lead Co-Lawyers further submit that the testimonies of HUN Kimseng (2-TCW-1018), OUCH Han (2-TCW-1019) and VORNG Sarun (2-TCW-986), would be repetitive to or duplicate testimonies already given before the Chamber.<sup>43</sup> In relation to SET Yem (2-TCCP-1020) and her purported revelation that it was possible for detainees to be released from the Security Centre, the Lead Co-Lawyers note that the Closing Order clearly mentions that six witnesses were released from Kraing Ta Chan. They also note that the Chamber called two of those witnesses, giving the NUON Chea Defence ample opportunity to question them on this issue.<sup>44</sup>

25. The Lead Co-Lawyers respond that the testimony of the additional Kraing Ta Chan staff members, SAING Sim (2-TCW-1021), Touch (2-TCW-1022) and Uok (2-TCW-1023), is likely to be corroborative or repetitive of other evidence already before the Chamber. They defer to the Trial Chamber's discretion on whether these individuals should be heard.<sup>45</sup>

26. In relation to the two Tram Kak Cooperative cadres, the Lead Co-Lawyers note that the testimony of SANN Lorn (2-TCW-1007) is likely to duplicate that of KHOEM Boeun (2-

<sup>39</sup> T. 21 April 2015, p. 85.

<sup>40</sup> T. 21 April 2015, p. 85.

<sup>41</sup> Lead Co-Lawyers' Response, para. 16.

<sup>42</sup> Lead Co-Lawyers' Response, para. 17.

<sup>43</sup> Lead Co-Lawyers' Response, paras 18-19.

<sup>44</sup> Lead Co-Lawyers' Response, para. 20.

<sup>45</sup> Lead Co-Lawyers' Response, para. 21

TCW-979), whereas TOEM Hy (2-TCW-833) was already on the list of proposed witnesses and Civil Parties.<sup>46</sup>

27. Finally, the Lead Co-Lawyers submit that the requests for the two proposed witnesses on the regulation of marriage are untimely. In addition, in relation to TRI Touch (2-TCW-1024), they argue that his testimony is likely to duplicate the testimony of witnesses who have already testified. The Lead Co-Lawyers also note that a whole trial topic will be dedicated to Forced Marriage and that the list they proposed for that trial topic includes both men and women who will testify on the issue.<sup>47</sup>

28. The Lead Co-Lawyers made no submissions in relation to IV Sarik (2-TCW-1026) and SOU Phirin (2-TCW-1027).

### 3. LEGAL FRAMEWORK

29. The Trial Chamber recalls that under the ECCC legal framework, the Trial Chamber shall select those individuals to testify that it determines to be most conducive to ascertaining the truth, subject to the overall requirement that ECCC proceedings “be fair and adversarial and preserve a balance between the rights of the parties” and that they are “brought to a conclusion within a reasonable time”.<sup>48</sup> The Chamber may also hear expert evidence on any subject considered necessary at trial.<sup>49</sup>

30. Pursuant to Internal Rule 87(3), the Chamber may decline to hear evidence that is (a) irrelevant or repetitious; (b) impossible to obtain within a reasonable time; (c) unsuitable to prove the facts it purports to prove; (d) not allowed under the law; or (e) intended to prolong proceedings or frivolous.<sup>50</sup>

<sup>46</sup> Lead Co-Lawyers’ Response, para. 22.

<sup>47</sup> Lead Co-Lawyers’ Response, para. 23.

<sup>48</sup> Internal Rules 21(1)(a) and 21(4); *see also*, Internal Rule 85 (providing that the President shall guarantee the free exercise of Defence rights and may exclude any proceedings that unnecessarily delay the trial and are not conducive to ascertaining the truth). *See* Final Decision on Witnesses, Experts and Civil Parties to be Heard in Case 002/01, E312, 7 August 2014, para. 22.

<sup>49</sup> Internal Rule 31(1). *See* Final Decision on Witnesses, Experts and Civil Parties to be Heard in Case 002/01, E312, 7 August 2014, para. 22.

<sup>50</sup> Internal Rule 87(3); Decision on the Co-Prosecutors’ and KHIEU Samphan’s Internal Rule 87(4) Requests concerning US Diplomatic Cables (E282 and E282/1; E290 and E290/1), E282/2, 13 June 2013, para. 3. *See also*, *KAING Guek Eav alias Duch*, Trial Judgement, ECCC Trial Chamber (001/18-07-2007/ECCC/TC), E188, 26 July 2010, para. 41; *Prosecutor v. Karemera et al.*, Decision on Mathieu Ndirumpatse’s Appeal from the Trial Chamber Decision of 17 September 2008, ICTR Appeals Chamber (ICTR-98-44-AR73.14), 30 January 2009, para. 25 (finding that the repetitive nature of testimony is to be considered as a factor in determining Reasons Following Decision on the NUON Chea Defence’s Consolidated Rule 87(4) Request to Hear Additional Witnesses for the First Case 002/02 Trial Segment on the Tram Kak Cooperatives and Kraing Ta Chan Security Centre and Decision on SANN Lorn (2-TCW-1007), SOU Phirin (2-TCW-1027) and IV Sarik (2-TCW-1026) (E346/2) – Confidential – 31 March 2016

31. The Trial Chamber further recalls that pursuant to Internal Rule 87(4), it may admit any new evidence that it deems conducive to ascertaining the truth, where that evidence also satisfies the criteria of Internal Rule 87(3), including *prima facie* standards of relevance, reliability and authenticity.<sup>51</sup> Any Party requesting such new evidence or testimony must do so by reasoned submission. The request to hear new witnesses, Civil Parties and/or experts must satisfy the Chamber that the requested new testimony was not available before the opening of the trial or that it could not have been discovered with the exercise of reasonable diligence.<sup>52</sup> Where the Parties fail to do so, the Chamber may summarily reject any such request. However, in certain cases, the Chamber has admitted evidence which does not strictly speaking satisfy this criterion, including where evidence relates closely to material already before the Chamber and where the interests of justice require the sources to be evaluated together, and where it is exculpatory and requires examination in order to avoid a miscarriage of justice.<sup>53</sup>

32. The Trial Chamber is also mindful of the advanced age of the Accused, witnesses, and Civil Parties, and bears in mind that the proceedings, while fair and adversarial, must

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whether hearing it is necessary). *See* Final Decision on Witnesses, Experts and Civil Parties to be Heard in Case 002/01, E312, 7 August 2014, para. 23.

<sup>51</sup> Response to the Internal Rule 87(4) Requests of the Co-Prosecutors, NUON Chea, and KHIEU Samphan (E236/4/1, E265, E271, E276, E276/1), E276/2, 10 April 2013, para. 2; Decision on the Co-Prosecutors' and KHIEU Samphan's Internal Rule 87(4) Requests concerning US Diplomatic Cables (E282 and E282/1; E290 and E290/1), E282/2, 13 June 2013, para. 3; Decision on International Co-Prosecutor's Request to Admit Documents Relevant to Tram Kak Cooperatives and Kraing Ta Chan Security Centre Pursuant to Rules 87(3) and 87(4) (Confidential), E319/11/1, 26 February 2015, para. 2; Decision on International Co-Prosecutor's Request to Admit Documents Relevant to Tram Kok Cooperatives and Kraing Ta Chan Security Center and Order on Use of Written Records of Interview from Case Files 003 and 004, E319/7, 24 December 2014, para. 9.

<sup>52</sup> Response to the Internal Rule 87(4) Requests of the Co-Prosecutors, NUON Chea, and KHIEU Samphan (E236/4/1, E265, E271, E276, E276/1), E276/2, 10 April 2013, para. 3; Response to Internal Rule 87(4) Requests to Place New Documents on the Case File concerning the Testimony of Witnesses François PONCHAUD and Sydney SCANBERG (E243) and Experts Philip SHORT (E226, 226/1 and 230) and Elizabeth BECKER (E232 and E232/1), E260, 18 January 2013, para. 5; Decision on Civil Party Lead Co-Lawyers' Rule 87(4) Request Regarding Civil Party D22/2500 with Confidential Annex A, E344/1, 31 March 2015, para. 2; Decision on International Co-Prosecutor's Request to Admit Documents Relevant to Tram Kok Cooperatives and Kraing Ta Chan Security Center and Order on Use of Written Records of Interview from Case Files 003 and 004, E319/7, 24 December 2014, para. 9; Internal Rule 87(4).

<sup>53</sup> Response to the Internal Rule 87(4) Requests of the Co-Prosecutors, NUON Chea, and KHIEU Samphan (E236/4/1, E265, E271, E276, E276/1), E276/2, 10 April 2013, para. 2; Response to Internal Rule 87(4) Requests to Place New Documents on the Case File concerning the Testimony of Witnesses François PONCHAUD and Sydney SCANBERG (E243) and Experts Philip SHORT (E226, 226/1 and 230) and Elizabeth BECKER (E232 and E232/1), E260, 18 January 2013, para. 5; Decision on NUON Chea's Rule 87(4) Request for admission of 11 diplomatic cables (E383), E383/2, 15 March 2016, para 3.

Reasons Following Decision on the NUON Chea Defence's Consolidated Rule 87(4) Request to Hear Additional Witnesses for the First Case 002/02 Trial Segment on the Tram Kak Cooperatives and Kraing Ta Chan Security Centre and Decision on SANN Lorn (2-TCW-1007), SOU Phirin (2-TCW-1027) and IV Sarik (2-TCW-1026) (E346/2) – Confidential – 31 March 2016 12

preserve the balance between the rights of the parties and the necessity to conclude them within a reasonable time.<sup>54</sup>

#### 4. FINDINGS

##### 4.1. Treatment of Former LON Nol Soldiers and Officials - SAO Van (2-TCW-989)

33. The Chamber notes that the statement of SAO Van (2-TCW-989) became available to the Defence on 23 September 2013,<sup>55</sup> and was therefore not available before the start of trial in 2011. The NUON Chea Defence was nonetheless required to request the addition of this witness in a timely manner, which it failed to do. Despite having access to the statement as of 23 September 2013, the NUON Chea Defence submits that it only became aware of this witness and his importance during the preparation of its appeal brief against the judgement in Case 002/01 (“Appeal Brief”).<sup>56</sup> While the Appeal Brief was filed on 29 December 2014, prior to the start of the hearings on the Tram Kak Cooperatives and Kraing Ta Chan Security Centre trial topic, the NUON Chea Defence did not request to hear this witness in Case 002/02 until 3 April 2015 when the Chamber was approaching the end of the topic. The Chamber therefore finds that the NUON Chea defence failed to exercise due diligence and that the request in relation to this witness is not timely.

34. The Chamber recalls, however, that where a request does not satisfy the requirements of Rule 87(4) it may still admit the evidence where the interests of justice so require, particularly when it concerns exculpatory material which requires examination in order to avoid a miscarriage of justice. The Chamber notes that no party objected to the addition of this witness. Considering that this witness may provide potentially exculpatory evidence, the Chamber grants the NUON Chea Defence Request. However, considering that a trial topic is dedicated to the Treatment of the former LON Nol soldiers, the Chamber finds it more appropriate to hear the testimony of SAO Van (2-TCW-989) at that stage. The Chamber

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<sup>54</sup> See Final Decision on Witnesses, Experts and Civil Parties to be Heard in Case 002/01, E312, 7 August 2014, para. 22.

<sup>55</sup> Trial Chamber Memorandum Entitled “Admission of Case 003 and 004 statements relevant to Case 002, E127/7/2, 23 September 2013.

<sup>56</sup> The Chamber notes that this Witness appeared to give evidence before the Supreme Court Chamber of the ECCC on 2 July 2015, F1/1.1.

therefore decides to hear SAO Van (2-TCW-989) during the trial topic dedicated to the Treatment of the Former Khmer Republic Officials.<sup>57</sup>

#### **4.2. Former Kraing Ta Chan Prisoners**

##### *4.2.1. MEAS Sarat (2-TCW-821) and HUN Kimseng (2-TCW-1018)*

35. The Chamber notes that MEAS Sarat (2-TCW-821) is a reserve witness on the OCP proposed list of witnesses, Civil Parties and experts.<sup>58</sup> While she was not interviewed by the OCIJ, a summary of her proposed evidence has been available to the NUON Chea Defence since at least 9 May 2014.<sup>59</sup> As regards HUN Kimseng (2-TCW-1018), the Chamber notes that by the NUON Chea Defence's own admission, it was aware of the existence of her testimony before the start of the trial in 2011.<sup>60</sup> The Chamber therefore finds that the NUON Chea Defence failed to exercise due diligence and that the Request as regards these two witnesses is untimely and may be summarily rejected on this basis.

36. The Chamber further finds that the NUON Chea Defence fails to show that these testimonies should nevertheless be heard in the interests of justice or that they provide potentially exculpatory material which should be examined to avoid a miscarriage of justice. In this regard, the Chamber has previously found that while the occurrence of rape may be relevant to, among other things, the conditions in Kraing Ta Chan Security Centre, the Accused in Case 002/02 are not charged with rape outside the context of forced marriage.<sup>61</sup> In addition, the Chamber has already heard live evidence on the other matters which the NUON Chea Defence submits these witnesses could provide clarity on and finds that, contrary to the NUON Chea Defence submission, the evidence is relatively consistent on

<sup>57</sup> The Chamber notes that SAO Van (2-TCW-989) has since testified before in Case 002/02 on 1 February 2016, see T. 1 February 2016 (SAO Vann).

<sup>58</sup> Confidential Annex I: Co-Prosecutors' Combined, Witness, Civil and Expert List for Case 002/02 in Recommended Order of Trial Segments and Appearance, E305/6.1, 9 May 2014; Annex I: Co-Prosecutors' Revised Combined Witness, Civil Party and Expert List for Case 002/02 in Recommended Order of Trial Segments and Appearance (July 2014), E307/3/2.2, 28 July 2014.

<sup>59</sup> Confidential Annex IIIA: OCP Updated Alternate Witness, Civil Party and Expert Summaries [Reserves], E305/6.5, 9 May 2014, p. 3.

<sup>60</sup> See Request, para. 11.

<sup>61</sup> Decision on KHIEU Samphan's Request for Confrontation Among Witness SREY Than and Civil Parties SAY Sen and SAUT Saing and Disclosure of Audio Recordings of Interviews of SAY Sen, E348/4, 12 June 2015, para. 11.

these issues. The purported testimony of these witnesses is likely to be repetitive to testimony already before the Chamber.<sup>62</sup>

37. For the above reasons, the NUON Chea Request in relation to MEAS Sarat (2-TCW-821) and HUN Kimseng (2-TCW-1018) is rejected.

#### 4.2.2. *VORNG Sarun (2-TCW-986) and OUCH Han (2-TCW-1019)*

38. The Chamber notes that neither OUCH Han (2-TCW-1019) nor VORNG Sarun (2-TCW-986) were interviewed by the OCIJ or identified as potential witnesses in the case by any Party, and that no other statement of these two proposed witnesses exists on the Case File. Information on their whereabouts emerged during the Court hearings.<sup>63</sup> The Chamber is therefore satisfied that the testimony of these two proposed witnesses was not available before the start of trial in June 2011 or at the time the Parties filed their Revised Lists.<sup>64</sup>

39. The Chamber finds that while the testimony of these two proposed witnesses regarding Kraing Ta Chan is likely to be largely repetitive of live testimony already heard by the Chamber,<sup>65</sup> it could provide additional insight into medical conditions and treatment, which may assist the Chamber in ascertaining the truth. Considering that VORNG Sarun (2-TCW-986) may also be able to provide further insight into the role of the prison chief Ta An, the Chamber selects VORNG Sarun (2-TCW-986) to testify.<sup>66</sup> It rejects the Request as regards OUCH Han (2-TCW-1019) as, based on the position she held at the time, her testimony is likely to be otherwise repetitive of that of VORNG Sarun (2-TCW-986).

<sup>62</sup> See T. 21-22 January 2015 (MEAS Sokha); T. 2 February 2015 (KEO Chandara); T. 4 February 2015 (KEO Chandara); T. 4-6 February 2015 (SORY Sen); T. 18 May 2015 (VORNG Sarun).

<sup>63</sup> T. 25 March 2015 (SORY Sen), pp. 86-91.

<sup>64</sup> See Trial Chamber Memorandum entitled "Decision on Joint Request for de novo Ruling on the application of Internal Rule 87(4)", E307/1/2, 21 October 2014, paras 10-11. On 8 April 2014 the Trial Chamber ordered the Parties to file updated lists and summaries of proposed witnesses, Civil Parties and experts for Case 002/02 ("Revised Lists"), Order to File Updated Material in Preparation for Trial in Case 002/02, E305, 8 April 2014, paras 1-8. See Co-Prosecutors' Proposed Witness, Civil Party and Expert List and Summaries for the Trial in Case File 002/02 (With 5 Confidential Annexes I, II, IIA, III and IIIA), E305/6, 9 May 2014, with Confidential Annexes E305/6.1, E305/6.2, E305/6.3, E305/6.4, E305/6.5; Civil Party Lead Co-lawyers' Rule 80 Witness, Expert and Civil Party Lists for Case 002/02 with Confidential Annexes, E305/7, 9 May 2014, with Confidential Annexes E305/7.1, E305/7.1.1, E305/7.1.2; *Témoins et experts proposés par la Défense de M. KHIEU Samphân pour le procès 002/02*, E305/5, 9 May 2014, with Confidential Annexes E305/4.1, E305/4.2. See also Addendum to Civil Party Lead Co-lawyers' Rule 80 Witness, Expert and Civil Party Lists for Case 002/02 with Confidential Annex, 23 July 2014, E305/7/4, with Confidential Annex E305/7/4.1.

<sup>65</sup> See T. 21-22 January 2015 (MEAS Sokha); T. 2 February 2015 (KEO Chandara); T. 4 February 2015 (KEO Chandara); T. 4-6 February 2015 (SORY Sen); T. 17-18 March 2015 (RIEL Son).

<sup>66</sup> VORNG Sarun (2-TCW-986) testified in Case 002/02 on 18 May 2015, T. 18 May 2015 (VORNG Sarun).

#### 4.2.3. *SET Yem*

40. The Chamber notes that a written record of interview for SET Yem (2-TCCP-1020) was taken on 9 September 2014 and was disclosed to the Defence on 16 February 2015.<sup>67</sup> The Chamber is therefore satisfied that this Civil Party's testimony was not available to the Defence before the start of the trial or by the time the Parties filed their Revised Lists.

41. Contrary to the submission of the NUON Chea Defence, however, the issues upon which this Civil Party is proposed to testify are not new. The Chamber notes that the Closing Order states that at least six witnesses were released from Kraing Ta Chan,<sup>68</sup> two of whom, MEAS Sokha (2-TCW-936) and KEV Chandara (2-TCW-964), testified before the Chamber in Case 002/02 and confirmed being released after a period of time.<sup>69</sup> As regards the other points on which the NUON Chea Defence submits this Civil Party may offer clarity, the Chamber finds that it has already heard extensively on these topics and that the proposed testimony of this Civil Party is likely to be repetitive of live testimony already before this Chamber.<sup>70</sup> Finally, upon review of the Civil Party's statement, the Chamber notes that SET Yem (2-TCCP-1020) maintained that she did not know the names of those who worked at Kraing Ta Chan and that she was too scared to even look at them.<sup>71</sup> She also does not remember when and how long she was in Kraing Ta Chan and states that she has become "all confused" after the death of her child while in the Security Centre.<sup>72</sup> The Chamber therefore finds that her proposed testimony does not meet the criteria of Rule 87(3) and that it is not conducive to ascertaining the truth. For these reasons the NUON Chea Request in relation to SET Yem (2-TCCP-1020) is rejected.

<sup>67</sup> Strictly Confidential Written Record of Interview of [REDACTED], E319/12.3.6, 9 September 2014; Confidential Notice of KHIEU Samphan, NUON Chea, Civil Party Lead Co-Lawyer, and Standby Counsel Acceptance of Documents Disclosed Relevant to Case 002/02, E319/12/1, 16 February 2015.

<sup>68</sup> Closing Order, para. 505.

<sup>69</sup> T. 21 January 2015 (MEAS Sokha), p. 41-42; T. 2 February 2015 (KEO Chandara), pp. 49, 53; T. 4 February 2015 (KEO Chandara), p. 18 (total of 24 days). *See also* Closing Order, referring explicitly to KEO Chandara's release, D427, para. 505.

<sup>70</sup> *See* T. 21-22 January 2015 (MEAS Sokha), T. 4-6 February 2015 (SORY Sen); 25 March 2015 (SORY Sen); T. 4 February 2015 (KEO Chandara); T. 24 March 2015 (SAUT Saing), T. 3 March 2015 (VANN Soeun); T. 19 February 2015 (SREI Than); 23-24 February 2015 (SREI Than) on the conditions of detention. On number of prisoners and structure of Kraing Ta Chan, *see* T. 19 February 2015 (SREI Than); T. 3 March 2015 (VANN Soeun); Written Record of Interview of Witness SAING Sim, D40/20, 28 November 2007. On structure/layout of Kraing Ta Chan, T. 24 March 2015 (SAUT Saing); T. 4 March 2015 (VANN Soeun); Annex D: Plan of Kraing Ta Chan Security Centre compiled from evidence provided by Witness SAY Sen, E3/5830, 6 February 2015.

<sup>71</sup> Strictly Confidential Written Record of Interview of [REDACTED], E319/12.3.6, 9 September 2014, pp. 7, 10.

<sup>72</sup> Strictly Confidential Written Record of Interview of [REDACTED], E319/12.3.6, 9 September 2014, pp. 6, 9.



**4.3. Former Kraing Ta Chan Staff Members - SAING Sim (2-TCW-1021), Touch (2-TCW-1022) and Uok (2-TCW-1023)**

42. The Chamber notes that the record of interview of SAING Sim (2-TCW-1021) was available to the NUON Chea Defence before the start of the trial in 2011. It further notes that his statement was on the OCP updated document list filed on 13 June 2014, specifically identified as a statement relating to the Kraing Ta Chan Security Centre.<sup>73</sup> The document has been used in several instances with witnesses in court, particularly with other former Kraing Ta Chan staff members.<sup>74</sup> The Chamber therefore finds that the NUON Chea Defence failed to exercise due diligence and that the request in relation to SAING Sim (2-TCW-1021) is untimely.

43. Similarly, the Chamber notes that Touch (2-TCW-1022) and Uok (2-TCW-1023) were known to the NUON Chea Defence before the start of the trial in 2011<sup>75</sup> and that the statements in which they were mentioned are also listed in the OCP updated document list as relevant for the Kraing Ta Chan Security Centre.<sup>76</sup> Despite this, the NUON Chea Defence did not seek to add these witnesses until 3 April 2015.<sup>77</sup> The Chamber therefore finds that the NUON Chea Defence failed to exercise due diligence and that the request in relation to Touch (2-TCW-1022) and Uok (2-TCW-1023) is untimely.

44. The Chamber further finds that the NUON Chea Defence fails to show that testimony from either SAING Sim (2-TCW-1021), Touch (2-TCW-1022) or Uok (2-TCW-1023) should nevertheless be heard in the interests of justice or that they provide potentially exculpatory material which should be examined to avoid a miscarriage of justice. In addition, the Chamber notes that in any event, while the NUON Chea Defence claims that they may offer insight into the alleged execution of two small children and the alleged sexual assault discussed during this trial topic, as well as general conditions and operation of the security

<sup>73</sup> Confidential Annex 12A: Witness Statements, E305/13.12, 13 June 2014, p. 165.

<sup>74</sup> See T. 19 February 2015 (SREI Than); T. 23 February 2015 (SREI Than); T. 3-5 March 2015 (VANN Soeun); T. 24-25 March 2015 (SAUT Saing).

<sup>75</sup> NUON Chea's Consolidated Rule 87(4) Request to Hear Additional Witnesses for the First Case 002/02 Trial Segment on the Tram Kok Cooperatives and Kraing Ta Chan Security Centre, E346, 3 April 2015, fn. 43, referring to Written Record of Interview of Witness SAING Sim, D40/20, 28 November 2007; Written Record of Interview of Witness SOTR Saing, D40/21, 28 November 2007; Written Record of Interview of Witness VANN Soan, D40/23, 29 November 2007; Written Record of Interview of Witness SREI Than, D232/93, 29 December 2009. The Chamber notes that the above mentioned Written Records of Interview have been assigned E3 numbers as follows: D40/20 is now E3/5853, D40/21 is now E3/5864, D40/23 is now E3/5845, and D232/93 is now E3/5834.

<sup>76</sup> Confidential Annex 12A: Witness Statements, E305/13.12, 13 June 2014, pp. 165, 199, 201, 232.

<sup>77</sup> Request, para. 17.

centre,<sup>78</sup> sufficient evidence has been heard in relation to the operation, killings, prisoners, staff and conditions of the Kraing Ta Chan Security Centre, including from the perspective of former staff members.<sup>79</sup> In this regard the Chamber recalls that ascertaining the truth does not necessitate hearing an unlimited number of witnesses.<sup>80</sup>

45. As regards the NUON Chea Defence's submission that the three proposed witnesses could provide clarity on the alleged sexual assault of women, the Chamber reiterates its previous finding that while the occurrence of rape may be relevant to the conditions in Kraing Ta Chan Security Centre, the Accused in Case 002/02 are not charged with rape outside the context of forced marriage.<sup>81</sup>

46. Finally, the Chamber notes that it is not known whether Touch (2-TCW-1022) and Uok (2-TCW-1023) are still alive.<sup>82</sup>

47. Under these circumstances, the Chamber rejects the NUON Chea Defence Request to call SAING Sim (2-TCW-1021), Touch (2-TCW-1022) and Uok (2-TCW-1023).

#### **4.4. Former Tram Kak District Cadres - SANN Lorn (2-TCW-1007) and TOEM Hy (2-TCW-833)**

48. The Chamber initially deferred its decision in relation to SANN Lorn (2-TCW-1007) and TOEM Hy (2-TCW-833), as at the time of the Request the Chamber was still expecting to hear the evidence of additional Tram Kak cadres (KHOEM Boeun (2-TCW-979) and EK Hoeun (2-TCW-822)), which it considered could have an impact on the Chamber's assessment of the relevance of hearing these additional witnesses requested by NUON Chea.<sup>83</sup>

49. At the outset the Chamber notes that SANN Lorn (2-TCW-1007) was interviewed by the OCIJ in September 2014 and that his statement was disclosed to the Defence Teams on

<sup>78</sup> Request, para. 17.

<sup>79</sup> See T. 19, 23-24 February 2015 (SREI Than); T. 3-5 March 2015 (VANN Soeun); *see also* Written Record of Interview of SAING Sim, D40/20, 28 November 2007; T. 2 February 2015 (KEO Chandara); T. 21 January 2015 (MEAS Sokha).

<sup>80</sup> *See supra*, paras 29-32.

<sup>81</sup> Decision on KHIEU Samphan's Request for Confrontation Among Witness SREY Than and Civil Parties SAY Sen and SAUT Saing and Disclosure of Audio Recordings of Interviews of SAY Sen, E348/4, 12 June 2015, para. 11.

<sup>82</sup> T. 5 February 2015 (SORY Sen), pp. 42, 48; T. 25 March 2015 (SAUT Saing), pp. 3-5. According to SORY Sen, Touch is dead, T. 5 February 2015 (SORY Sen), p. 48. Other individuals could not remember Uok, T. 18 February 2015 (SAO Han), p. 5; T. 24 February 2015 (SREI Than), p. 8.

<sup>83</sup> Decision on NUON Chea Defence 87(4) Request, pp. 1-2.

17 February 2015.<sup>84</sup> His statement was therefore not available to the NUON Chea Defence before the start of the trial, and the Chamber is satisfied that the request as regards this witness is timely.

50. The NUON Chea Defence submits that SANN Lorn (2-TCW-1007) could testify as to the leadership in the Tram Kak district, on communication of orders, transport of people, and details on the role of, *inter alia*, PECH Chim (2-TCW-809) and KHOEM Boeun (2-TCW-979). The Chamber notes that it has heard extensively on the functioning of the Tram Kak Cooperatives and the leadership in the area, including directly from PECH Chim (2-TCW-809) and KHOEM Boeun (2-TCW-979).<sup>85</sup> It therefore finds that the testimony of SANN Lorn (2-TCW-1007) in this regard is likely to be repetitive of live testimony already heard by this Chamber. However, the Chamber notes that following its decision with reasons to follow to defer SANN Lorn (2-TCW-1007), the latter was implicated in the transport of Vietnamese to the execution sites by EK Hoeun (2-TCW-822).<sup>86</sup> The Chamber also notes that another witness from the Tram Kak District gave evidence that some individuals, who he believes claimed to be Vietnamese, were transported by truck towards a mountain area where they were allegedly killed.<sup>87</sup> Considering that the Closing Order alleges that Vietnamese were targeted and killed throughout Cambodia, including in Takeo,<sup>88</sup> the Chamber finds that hearing the testimony of SANN Lorn (2-TCW-1007) may assist it in ascertaining the truth in relation to the treatment of the Vietnamese. The Chamber therefore calls SANN Lorn (2-TCW-1007) to testify during the trial topic on the Treatment of the Vietnamese.

51. As regards TOEM Hy (2-TCW-933), the Chamber notes that this witness was proposed by the OCP in its updated list of witnesses, Civil Parties and experts.<sup>89</sup> His initial statement, in which he states that he was a messenger for Ta Chim in 1977 and describes an incident of torture, is dated 18 August 2008. The Khmer original and the English translation of this statement were placed on the Case File on 19 December 2009 and 15 August 2012

<sup>84</sup> Strictly Confidential Annex A: Disclosure of Case 004 Documents Related to Case 002, E319/13.3, 19 February 2015, p. 10.

<sup>85</sup> T. 22-24 April 2015 (PECH Chim); T. 4-5 May 2015 (KHOEM Boeun). *See also* T. 3 March 2015 (VANN Soeun).

<sup>86</sup> *See* Decision on NUON Chea Defence 87(4) Request, p. 2; T. 7 May 2015 (EK Hoeun), pp. 76-77, 84-85. *See also* the statement of SANN Lorn (2-TCW-1007), Strictly Confidential Written Record of Interview [REDACTED], E319/13.3.60, 29 September 2014, pp. 57-58.

<sup>87</sup> T. 29 January 2015 (CHEANG Sreymom), pp. 36-37, 79-81.

<sup>88</sup> *See* Closing Order, paras 803-804.

<sup>89</sup> Confidential Annex I: Co-Prosecutors' Revised Combined, Witness, Civil Party and Expert List for Case 002/02 in Recommended Order of Trial Segments and appearance (July 2014), E307/3/2.2, 28 July 2014.

respectively.<sup>90</sup> Further, the additional statement provided by TOEM Hy (2-TCW-933) to the OCIJ was disclosed to the NUON Chea Defence on 4 November 2014. Nevertheless, the NUON Chea Defence did not request to hear this witness until 3 April 2015, when the Chamber was approaching the end of this topic.<sup>91</sup> The Chamber therefore finds that the NUON Chea Defence failed to exercise due diligence and that the request in relation to TOEM Hy (2-TCW-933) is untimely. The Chamber further notes that the NUON Chea Defence fails to provide compelling reasons why the testimony of this witness should nevertheless be heard in the interests of justice and does not submit that the witness could provide exculpatory material.

52. Despite this, the Chamber finds that the evidence of TOEM Hy (2-TCW-933) may be relevant to the trial topic of Internal Purges. The Chamber also notes that the other Parties did not object to calling this witness.<sup>92</sup> The Chamber therefore will consider TOEM Hy (2-TCW-933) when selecting witnesses for the trial topic of Internal Purges.

#### **4.5. Witnesses on Forced Marriage - SENG OI (2-TCW-1025) and TRI Touch (2-TCW-1024)**

53. The Chamber defers its decision on the Request in relation to SENG OI (2-TCW-1025) and TRI Touch (2-TCW-1024) as it finds it to be premature in view of the primary topic to be addressed by these witnesses. The Chamber notes that an entire trial topic is dedicated to the topic of Forced Marriage and that it has yet to make a selection amongst the witnesses, Civil Parties and experts proposed by all the Parties. The Chamber therefore finds that it would be appropriate to consider the Request when it performs such selection.

54. As a preliminary matter, however, the Chamber notes that the statement of SENG OI (2-TCW-1025) was available to the NUON Chea Defence before the start of the trial in 2011.<sup>93</sup> The Chamber therefore finds that the NUON Chea Defence failed to exercise due diligence and that this request is untimely. The Chamber will therefore only select this witness if it is satisfied that the interests of justice require the Chamber to hear her testimony,

<sup>90</sup> Confidential Complaint of TOEM Hi, D230/1.1.607a, 18 August 2008. *See also* Confidential Annex 13A: Complaints, E305/13.13, p. 44.

<sup>91</sup> Notice of NUON Chea Acceptance of Documents Disclosed Regarding Tram Kak Cooperatives and Kraing Ta Chan Security Centre, E319/4, 12 November 2014.

<sup>92</sup> *See supra*, paras 20 and 26. The Lead Co-Lawyers merely ask that the Chamber keep in consideration its preliminary submissions when deciding on this witness, *see*, Lead Co-Lawyers' Response, paras 11-15, 22.

<sup>93</sup> Request, para. 23.

particularly if it concerns exculpatory material and requires examination in order to avoid a miscarriage of justice.<sup>94</sup>

**4.6. Request on the authenticity of documents - SOU Phirin (2-TCW-1027) and IV Sarik (2-TCW-1026)**

55. The NUON Chea Defence acknowledges that a request to hear SOU Phirin (2-TCW-1027) and IV Sarik (2-TCW-1026) could have been made before the start of the trial.<sup>95</sup> The Chamber notes that information regarding these two potential witnesses was available to the NUON Chea Defence since at least 2009<sup>96</sup> and that, in December 2009, it made a request for investigative action to the Co-Investigating Judges in order to establish the chain of custody of a variety of documents, including the Kraing Ta Chan documents in question.<sup>97</sup> In their decision denying this request, the Co-Investigating Judges stated that they had already “conducted investigations on the chain of custody of a number of documents”.<sup>98</sup> The NUON Chea Defence’s appeal against the decision of the Co-Investigating Judges was found inadmissible by the Pre-Trial Chamber.<sup>99</sup> The Pre-Trial Chamber was not satisfied that the NUON Chea Defence’s request for investigative action was actually aimed at collecting information conducive to ascertaining the truth and reminded the NUON Chea Defence that the latter retained the opportunity to challenge the authenticity of any document relied upon by the Co-Investigating Judges before the Trial Chamber.<sup>100</sup> The Chamber therefore finds that the NUON Chea Request as regards these two witnesses is untimely. It now considers whether it is nonetheless in the interests of justice to call these witnesses.<sup>101</sup>

<sup>94</sup> See *supra*, para. 31.

<sup>95</sup> Request, para. 26.

<sup>96</sup> NUON Chea Defence’s Seventeenth Request for Investigative Action, D265, 8 December 2009 [CONFIDENTIAL], para. 4, referring to the portion of Written Record of Interview of CHHANG Youk (2-TCW-870) where SOU Phirin and IV Sarik are mentioned in connection to the Kraing Ta Chan documents.

<sup>97</sup> NUON Chea Defence’s Seventeenth Request for Investigative Action, D265, 8 December 2009 [CONFIDENTIAL], paras 1-2, 4, 18.

<sup>98</sup> Order on NUON Chea’s Sixteenth (D253) and Seventeenth (D265) Requests for Investigative Action, D265/2, 12 January 2010 [CONFIDENTIAL], para. 9. See also the NUON Chea Defence’s Appeal against OCIJ Order on Nuon Chea Sixteenth (D253) and Seventeenth (D265) Requests for Investigative Action, D253/3/1, 8 February 2010 [CONFIDENTIAL]; Pre-Trial Chamber Decision on Appeal Against OCIJ Order on NUON Chea’s Sixteenth (D253) and Seventeenth (D265) Requests for Investigative Action, D253/3/5, 6 April 2010.

<sup>99</sup> Pre-Trial Chamber Decision on Appeal Against OCIJ Order on NUON Chea’s Sixteenth (D253) and Seventeenth (D265) Requests for Investigative Action, D253/3/5, 6 April 2010, para. 12.

<sup>100</sup> Pre-Trial Chamber Decision on Appeal Against OCIJ Order on NUON Chea’s Sixteenth (D253) and Seventeenth (D265) Requests for Investigative Action, D253/3/5, 6 April 2010, paras 11, 13.

<sup>101</sup> See *supra*, para. 31.

56. The NUON Chea Defence submits that it is nevertheless essential to hear these witnesses now, given the heavy reliance on these documents during the first trial topic.<sup>102</sup> In this regard the Chamber notes that the Closing Order relies on some of the contested Kraing Ta Chan documents and that the NUON Chea Defence was on notice that the Co-Prosecutors intended to rely on these documents in Case 002/02 since at least June 2014, when the Co-Prosecutors filed their updated document list, and the Opening Statements in October 2014.<sup>103</sup>

57. The Chamber notes that the Kraing Ta Chan documents in question are photocopies and recalls that while original documents are a preferred method of proof and may be accorded more weight than photocopies, the latter may be put before the ECCC.<sup>104</sup>

58. The Chamber notes that the Kraing Ta Chan documents have been found, for the most part, *prima facie* relevant and reliable, including authentic, and have been corroborated by other evidence before this Chamber, including the testimony of a number of witnesses heard by the Chamber.<sup>105</sup> This determination took into consideration that a number of the documents were relied on in the Closing Order while others originated from DC-Cam, respectively granting them a rebuttable presumption of relevance and reliability, including authenticity.<sup>106</sup> The NUON Chea Request does not clearly link its Request to a challenge to authenticity to any specific document in the Request.<sup>107</sup> Indeed, the NUON Chea Defence relied on some of these documents to show that a different picture from the one painted by

<sup>102</sup> Request, para. 26.

<sup>103</sup> Closing Order, paras 490-513; Confidential Annex 8A: Tram Kak District Records, E305/13.8, 13 June 2014; T. 17 October 2014, pp. 19-20. During the opening statements, the Co-Prosecutors stated that the “crimes committed at Kraing Ta Chan will be proven, *not only by the hundreds of surviving Tram Kak records*, but also by the testimony of surviving detainees [...]”, T. 17 October 2014, p. 20 (emphasis added).

<sup>104</sup> See Decision on Objections to Documents Proposed to be put before the Chamber on the Co-Prosecutors’ Annexes A1-A5 and to Documents cited in Paragraphs of the Closing Order Relevant to the First Two Trial Segments of Case 002/01, E185, 9 April 2012, para. 21.

<sup>105</sup> 136 Kraing Ta Chan documents have been admitted into evidence, Decision on Objections to Documents Proposed to be put before the Chamber in Co-Prosecutors’ Annexes A6-A11 and A14-A20 and by the Other Parties, E185/1, 3 December 2012, paras 9-13; Annex C – Documents Proposed by the Co-Prosecutors, E185/1.3, 3 December 2012; Third Decision on Objections to Documents Proposed for Admission before the Trial Chamber, E185/2, 12 August 2013, para. 27; Annex B – Documents Sought to Be Put Before the Chamber by the Office of the Co-Prosecutors – Population Movement Phase I, E185/2.2, 12 August 2013; Decision on Objections to Documents Proposed to Be Put before the Chamber in Case 002/02, E305/17, 30 June 2015; Annex A: Documents Proposed by the Co-Prosecutors Put before the Chamber, E305/17.1, 30 June 2015. See also notably T. 21-22 January 2015 (MEAS Sokha); T. 2 February 2015 (KEO Chandara); T. 23 February 2015 (SREI Than); T. 4-5 March 2015 (VANN Soeun); T. 2 April 2015 (THANN Thim); T. 24 April 2015 (PECH Chim).

<sup>106</sup> See Decision on Objections to Documents Proposed to be put before the Chamber in Co-Prosecutors’ Annexes A6-A11 and A14-A20 and by the Other Parties, E185/1, 3 December 2012, para. 9; Annex C – Documents Proposed by the Co-Prosecutors, E185/1.3, 3 December 2012; Third Decision on Objections to Documents Proposed for Admission before the Trial Chamber, E185/2, 12 August 2013, para.20.

<sup>107</sup> Request, paras 25-28.

the Co-Prosecutors could be drawn on at least some of the events that unfolded at Kraing Ta Chan.<sup>108</sup> Any specific and substantiated challenge to identified documents will therefore be addressed on a case by case basis by the Chamber.

59. The Chamber recalls that there is no procedural requirement before the ECCC to call witnesses with personal knowledge to authenticate documents on the Case File.<sup>109</sup> However, the Chamber also recalls that testimony as to chain of custody and provenance may assist the Chamber in assessing the weight to be attributed to particular documents.<sup>110</sup>

60. In this regard, additional information from the Case File on the chain of custody of all but two of the 135 Kraing Ta Chan documents in question shows that in December 2009 the Co-Investigating Judges took steps to locate the originals of these documents.<sup>111</sup> The Co-Investigating Judges asked Ben Kiernan to provide information regarding evidentiary material including the Kraing Ta Chan documents. Attachments accompanying that request and Mr. Kiernan's response are on the Case File.<sup>112</sup> In his response of 5 March 2010, Mr. Kiernan explains that in July 1980, together with SOK Sokhun of the Cambodian Ministry of Information and Culture, he collected the originals of the documents from a Tram Kak official. Upon making photocopies in Phnom Penh, Mr. Kiernan returned the original documents to Mr. SOK Sokhun, who assured Mr. Kiernan that the Ministry of Information and Culture would return them to Tram Kak. Mr. Kiernan was unaware of the fact that they were never returned to Tram Kak.<sup>113</sup> Based on the information provided by Mr. Kiernan, on 18 March 2010, the Co-Investigating Judges contacted the Minister of Information, KHIEU Kanharith, seeking any information available on, amongst other, the location of the Kraing

<sup>108</sup> T. 28 April 2015, pp.7-26.

<sup>109</sup> Decision on Objections to Documents Proposed to be put before the Chamber on the Co-Prosecutors' Annexes A1-A5 and to Documents cited in Paragraphs of the Closing Order Relevant to the First Two Trial Segments of Case 002/01, E185, 9 April 2012, para. 21.7.

<sup>110</sup> See Decision on Objections to Documents Proposed to be put before the Chamber on the Co-Prosecutors' Annexes A1-A5 and to Documents cited in Paragraphs of the Closing Order Relevant to the First Two Trial Segments of Case 002/01, E185, 9 April 2012, para. 21.7.

<sup>111</sup> Confidential Annex 8A: Tram Kak District Records, E305/13.8, 13 June 2014; Confidential Response of Ben KIERNAN to the CIJs dated 5 March 2010, D269/4, para. 9; Confidential Letter of the CIJs to Ben KIERNAN, D269, 17 December 2009; Confidential List of Annexes, D269.1, 17 December 2009, Annex B; Confidential Annex 8A: Tram Kak District Records, E305/13.8, 13 June 2014. Two documents on the Co-Prosecutors' List of Tram Kak District Records, E3/4164 and E4166, do not appear on the list of documents that were given to Mr. Kiernan and he claims to be unaware of any other Kraing ta Chan Documents, Confidential Response of Ben KIERNAN to the CIJs dated 5 March 2010, D269/4, para. 9.

<sup>112</sup> Confidential Letter of the CIJs to Ben KIERNAN, D269, 17 December 2009; Confidential List of Annexes, D269.1, 17 December 2009, Annex B; Confidential Response of Ben KIERNAN to the CIJs dated 5 March 2010, D269/4, para. 9; see also Confidential Annex 8A: Tram Kak District Records, E305/13.8, 13 June 2014.

<sup>113</sup> Confidential Response of Ben KIERNAN to the CIJs, D269/4, 5 March 2010, para. 9.

Ta Chan documents.<sup>114</sup> KHIEU Kanharith responded on 30 March 2010 that the Ministry of Information did not have “any Kraing Ta Chan documents”.<sup>115</sup>

61. The Chamber further notes that according to CHHANG Youk (2-TCW-870), SOU Phirin (2-TCW-1027) is the Tram Kak official who had the originals of the documents before they were given to Mr. Kiernan in July 1980. CHHANG Youk (2-TCW-870) is further recorded as stating that SOU Phirin (2-TCW-1027) told him that the original documents were lost.<sup>116</sup> As regards IV Sarik (2-TCW-1026), the Chamber notes that while there are indications that he is the person who personally handed the original documents to Mr. Kiernan,<sup>117</sup> there is no indication that he received the originals back after Mr. Kiernan made the photocopies.

62. The Chamber finds that the documentation available on the Case File, as set out above, consistently indicates that the location of the originals of these documents is unknown, or that they are lost. The Chamber is therefore also not convinced that the testimony of SOU Phirin (2-TCW-1027) and IV Sarik (2-TCW-1026) is suitable to prove the facts it is purported to prove and finds that engaging in additional investigations at this stage to locate the original of these documents would cause an unreasonable delay to the proceedings.

63. In any event, the Chamber also finds that while the location of the originals of these documents is unknown, the documentation on the Case File shows that their chain of custody is relatively well documented and can be traced back to July 1980. The Chamber therefore finds that there is no need to hear additional witnesses on the chain of custody of the Kraing Ta Chan documents.

64. The Request in relation to these two witnesses is therefore denied.

## **5. CONCLUSION**

**FOR THE FOREGOING REASONS, THE TRIAL CHAMBER:**

**REJECTS** the Request to summons MEAS Sarat (2-TCW-821), HUN Kimseng (2-TCW-1018), OUCH Han (2-TCW-1019), SET Yem (2-TCCP-1020), SAING Sim (2-TCW-1021),

<sup>114</sup> Confidential Request for Information about Certain Documents, D268/6, 18 March 2010, p. 3.

<sup>115</sup> Confidential Response from KHIEU Kanharith to the Co-Investigating Judges, D269/6/1, 30 March 2010.

<sup>116</sup> Written Record of Interview of CHHANG Youk, E3/188, 15 September 2009, p. 4.

<sup>117</sup> Written Record of Interview of CHHANG Youk, E3/188, 15 September 2009, p. 4.



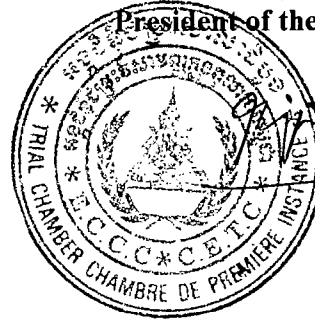
Touch (2-TCW-1022), Uok (2-TCW-1023) SOU Phirin (2-TCW-1027) and IV Sarik (2-TCW-1026).

**GRANTS** the Request to summons VORNG Sarun (2-TCW-986).

**GRANTS** the Request to summons SAO Van (2-TCW-989) and SANN Lorn (2-TCW-1007), but defers hearing them until the trial topic dedicated to the Treatment of Targeted Groups.

**DEFERS** its decision on the following witnesses until future trial topics: TOEM Hy (2-TCW-833), SENG OI (2-TCW-1025), and TRI Touch (2-TCW-1024).

Phnom Penh, 31 March 2016  
President of the Trial Chamber



*[Handwritten signature]*  
**Nil Nonn**