

BEFORE THE TRIAL CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

FILING DETAILS

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**CO-PROSECUTORS' REQUEST TO CALL THET SAMBATH (2-TCW-885)
AS A PRIORITY WITNESS**

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REQUEST

1. The Co-Prosecutors hereby request the Trial Chamber (“Chamber”) to prioritise the testimony of Thet Sambath (2-TCW-885) in Case 002/02. Material in the public domain indicates that the witness, who is based outside Cambodia and has repeatedly refused to cooperate with the ECCC legal process, may now be willing and available to give important evidence conducive to ascertaining the truth. In his film and book, Sambath has documented several admissions by Nuon Chea that prove his criminal responsibility for the crimes charged within the scope of trial in Case 002/02. Thus despite the established personal relationship and Sambath’s acknowledged sympathy towards Nuon Chea, the Co-Prosecutors believe that his evidence will be highly probative and incriminatory.
2. On 9 May 2014, both the Co-Prosecutors and Nuon Chea proposed Thet Sambath as a trial witness in Case 002/02.¹ The Co-Prosecutors sought his testimony primarily in connection with the series of interviews he conducted with Nuon Chea, which served as a basis for a documentary film and book.² Both Parties had also requested his testimony in Case 002/01.³ However, the Trial Chamber was unable to call him during those proceedings, as Mr. Sambath failed to respond to efforts by the Court to contact him and stayed outside of Cambodia (in the United States) during that period.⁴
3. Recent developments indicate that Thet Sambath may now be willing to appear and provide evidence in Case 002/02. A recently published Voice of America article (filed as **Annex 1** hereto) states that Thet Sambath “wants to testify at the Khmer Rouge Tribunal,” quoting him as directly stating: “[i]f the court agrees, and if the court openly gives me freedom, I’ll do it.”⁵ These statements are in contrast to Thet Sambath’s prior refusals to cooperate with

¹ **E305/6.1** Annex 1: Co-Prosecutors’ combined witness, Civil Party and expert list for Case 002/02 in recommended order of trial segments and appearance, 9 May 2014, no. 3(2); **E305/4.1** Annex A: witness, Civil Party and Expert Lists (no protective measures), no. 27.

² **E3/4001R** Enemies of the People; **E3/4202** Gina Chon and Thet Sambath “*Beyond the Killing Fields: a Khmer Rouge leader and one of his victims*” (University of Pennsylvania Press, 2010).

³ **E9/4.3** Annex 3: OCP witness list, 28 January 2011, no. 215; **E9/4/4.4** Annex A: witness list, 15 February 2011, no. 456.

⁴ **E294/1** Decision on Nuon Chea Request to Admit New Documents, to Initiate an Investigation and to Summons Mr. Rob Lemkin, 24 July 2013, para. 14; **E292/1/2** WESU Memorandum entitled “Potential Witnesses – Unable to Locate,” 4 July 2013.

⁵ **Annex 1** Voice of America article titled “Journalist Asks to Testify at Khmer Rouge Tribunal”, 6 January 2015, ERN 01054083-84.

the ECCC legal process, both during the judicial investigation in Case 002⁶ and trial proceedings in Case 002/01.⁷ The Co-Prosecutors welcome this development and ask the Chamber to act swiftly, while the witness remains willing to testify, to ensure that his evidence is obtained.

4. While Thet Sambath already appears on the proposed witness lists for Case 002/02, the Co-Prosecutors have characterised his evidence as most relevant to the phase of trial concerned with the Role of the Accused and Joint Criminal Enterprise, which the Chamber has scheduled at “the end of the trial”.⁸ Based on the current trial schedule, this phase of the trial is not likely to be heard until 2016. Given the importance of this witness’ testimony and his prior lack of cooperation, the Co-Prosecutors request that the Trial Chamber prioritise his appearance and test his recently expressed change of attitude by inviting him to testify at the earliest opportunity.
5. The Co-Prosecutors also note that the Nuon Chea Defence has requested the appearance and testimony of a number of witnesses, including Thet Sambath before the Supreme Court Chamber as part of the appeal proceedings in Case 002/01.⁹ The Co-Prosecutors have opposed all of those requests on the grounds that they do not meet the standards for presentation of new evidence on appeal and will unduly prolong proceedings. The Co-Prosecutors noted that the Defence’s rather vague proffer of Sambath’s anticipated evidence relevant to Toul Po Chrey could not have been a “decisive factor” in the Case 002/01 Judgment, and thus does not meet the standards required by Internal Rule 108(7).¹⁰

⁶ **D344** Co-Prosecutors’ Investigative Request Regarding Interviews of Nuon Chea and the Film *Enemies of the People*, 3 February 2010; **D344/1.1** Letter from You Bunleng & Marcel Lemonde to Robert Lemkin, 3 February 2010; **D344/1.2** Email from Rob Lemkin to Marcel Lemonde to Robert Lemkin, 9 February 2010; **D344/1** Order on Investigative Request Regarding the Film *Enemies of the People*, 9 April 2010, para. 8 (“The CIJs find it deeply regrettable that ... the filmmakers showed to be subsequently unwilling to cooperate upon being formally approached by the court and despite being given judicial assurances [of confidentiality]”).

⁷ **E294/1** Decision on Nuon Chea Request to Admit New Documents, to Initiate an Investigation and to Summons Mr. Rob Lemkin, 24 July 2013 at para. 14, 16 & fn. 31; **E292/1/2** WESU Memorandum entitled “Potential Witnesses - Unable to Locate”, 4 July 2013.



⁸ **E315** Decision on Sequencing of Trial Proceedings in Case 002/02, 12 August 2014.

⁹ **F2** Request to obtain and consider additional evidence in connection with the appeal against the Trial Judgment in Case 002/01, 1 September 2014.

¹⁰ **F2/2** Co-Prosecutors’ response to Nuon Chea Defence first and second requests to obtain and consider additional evidence in connection with the appeal against the Trial Judgment in Case 002/01, 16 September 2014 at paras. 6-16.

6. Moreover, because of his status as a public figure, the filings relating to Thet Sambath in the Case 002/01 appeal were classified and released as public documents. (For reference, a copy of the Co-Prosecutors' filing to the Supreme Court Chamber on this issue is submitted hereto as **Annex 2.**) Accordingly, the Co-Prosecutors have proposed that this filing be classified as public, with the witness identified by his name rather than his assigned pseudonym (2-TCW-885).
7. For these reasons the Co-Prosecutors respectfully request the Chamber to:
- (a) **prioritise** the hearing of evidence from Thet Sambath; and
 - (b) **call Thet Sambath** to appear as a witness in Case 002/02 as soon as possible.

Respectfully submitted,

| Date | Name | Place | Signature |
|-----------------|------------------------------------|------------|---|
| 15 January 2015 | CHEA Leang Co-Prosecutor | Phnom Penh |  |
| | Nicholas KOUMJIAN Co-Prosecutor | |  |