

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

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**CO-PROSECUTORS' RESPONSE TO NUON CHEA'S FOURTH REQUEST TO
CONSIDER AND OBTAIN ADDITIONAL EVIDENCE IN CONNECTION WITH
THE APPEAL AGAINST THE TRIAL JUDGMENT IN CASE 002/01**

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I. Introduction

1. The Co-Prosecutors hereby respond to the Fourth Request to Consider Additional Evidence filed by the Nuon Chea Defence.¹ The Defence seeks to admit selective excerpts of the Case 002/02 trial testimony of former Tram Kak District Secretary Pech Chim, but omits the most significant testimony of that witness which confirms the Trial Chamber's finding of a CPK policy targeting Lon Nol soldiers and officials in the period following 17 April 1975. In contrast, the new testimony proffered by the Defence does not correlate to the period during which Lon Nol soldiers and officials were executed at Tuol Po Chrey, and thus could not have been a decisive factor in reaching the Judgment.
2. The Supreme Court Chamber ("SCC") cannot consider in isolation the testimony of this witness, the other new statements that have been offered by the Defence and the upcoming testimony of new witnesses scheduled for early July 2015. If this Chamber is reopening evidence on the issue of CPK policy toward Lon Nol soldiers and officials based on new testimony derived from either the Case 002/02 trial or the Case 003 and 004 judicial investigations, such new evidence must be evaluated alongside both (a) the extensive witness testimony and hundreds of documents admitted during the 002/01 trial on that subject, and (b) the other equally significant new evidence relating to the policy that has arisen in the course of the Case 002/02 trial and Case 003 and 004 investigations, which overwhelmingly supports the findings of the Trial Chamber in the Case 002/01 Judgment.
3. Accordingly, the Co-Prosecutors submit with this response Annexes that summarize the new evidence on this subject from Case 002/02 (**Annex A**) and Cases 003 and 004 (**Confidential Annex B**). The interests of justice mandate that the Defence requests for additional evidence, and the upcoming testimony of the three witnesses to be heard by this Chamber, be considered in full and proper context, in which case it will be abundantly clear that the new evidence that has arisen since the Case 002/01 trial would not have changed, and indeed would further support, the convictions of the Accused.

¹ **F2/6** Nuon Chea's Fourth Request to Consider Additional Evidence in Connection with the Appeal Against the Trial Judgment in Case 002/01, 15 June 2015 ("Fourth Additional Evidence Request").

II. The Proffered Testimony of Pech Chim and SCW-4 Could Not Be a Decisive Factor that Would Change the Case 002/01 Judgment

4. In applying Internal Rule 108(7), the SCC has established a three-pronged test, pursuant to which it must be established that the new evidence proposed for admission on appeal: (i) was unavailable at trial despite the exercise of due diligence; (ii) could have been a decisive factor in reaching the decision under appeal; and (iii) pertains to specific findings of fact by the Trial Chamber.²
5. This rule establishes a high standard for admitting new evidence on appeal. Rather than mere relevance, the evidence must be of such weight and significance that it could have been “a decisive factor in reaching the decision at trial.” Such a high standard is crucial to avoid the appeal deteriorating into a second trial, unduly prolonging proceedings and promoting inefficient litigation.³ For the reasons stated below, the proffered testimony of Pech Chim does not meet these standards, as it could not have been a decisive factor in the Trial Chamber’s Judgment.
6. The Co-Prosecutors first observe that the Defence seeks to admit only limited excerpts from two of the four transcripts of former Tram Kak District Secretary Pech Chim’s Case 002/02 trial testimony, ignoring the first full day of that witness’s testimony during which he provided significant inculpatory evidence on the very same subject. Specifically, the Defence seeks to admit the testimony of Pech Chim that was provided after Nuon Chea’s Counsel read to him the statement of SCW-4 regarding a meeting at which Ta Mok purportedly instructed that former Lon Nol soldiers of certain ranks were not to be harmed. In reaction to the statement of SCW-4, Pech Chim testified that he may have been present at that meeting and heard that instruction. However, the meeting with Ta Mok described by SCW-4 and confirmed by Pech Chim took place at least “a few months” after 17 April 1975,⁴ after the CPK had already carried out

² F2/5 Decision on Part of Nuon Chea’s Requests to Call Witnesses on Appeal, 29 May 2015, at para. 16.

³ *Prosecutor v. Kupreškić et al.*, IT-95-16-A, Decision on the Motions of Drago Josipović, Zoran Kupreškić and Vlatko Kupreškić to Admit Additional Evidence Pursuant to Rule 115 and for Judicial Notice to be Taken Pursuant to Rule 94(B), 8 May 2001 at para. 3.

⁴ E305/13.23.405 DC-Cam Interview of SCW-4, 20 April 2011, at ENG 01098761 (“At Phnom Trae Mountain, Ta Mok announced that soldiers with the rank of colonel or higher shall not be killed. He didn’t state that immediately after the liberation. He waited until a few months after that to make such announcement”); E127/7.1.8 OCIJ Statement of SCW-4, 17 February 2013, at A9 (“After 1975, there was another meeting in the provincial town of Takeo, in the presence of Grandfather Mok, and Saom, who was in the Sector 13 Committee, announced that soldiers with the ranks from Second Lieutenant to Colonel were not to be harmed”); E1/292.1 Transcript, 24 April 2015, Pech Chim, at 09.45.12 [testifying that he believed the meeting with Ta Mok was held sometime after late May 1975, though also admitting he “may be confused” about such meetings]. The Co-Prosecutors note the significant inconsistencies between SCW-4’s original statement to DC-Cam in April 2011 and what he told the OCIJ investigators

organized killings of Lon Nol officers and officials at Tuol Po Chrey, Tram Kak District and other locations throughout the country.

7. The Defence request omits the most important trial testimony given by Pech Chim on this subject – testimony relating to the instructions from the CPK leadership on purges of Lon Nol soldiers that were in effect during the period immediately following liberation. An earlier trial witness (Riel Săn, the former Deputy Chief of the Tram Kak District Hospital) had testified to attending two meetings, one before and one after the evacuation of Phnom Penh, in which Pech Chim gave instructions that Lon Nol officials were to be identified and purged.⁵ When confronted with this testimony at the Case 002/02 trial, Pech Chim stated: “that was the plan set out by the upper echelon and we had to disseminate such plan.”⁶ He further testified:

At that time, Khom [*Ta Mok's daughter, then Tram Kak District Secretary*] made the announcement about the plan as she received the plan from the sector level and I participated in that meeting. However, I did not see any purge being conducted after the meeting was held, as the people, those people subject to the plan had already been gathered on the 17 April 1975, or while they were en route to various provinces. [...] If those people indeed were gathered, it meant they had no future. It means their fate was in a disaster.⁷

8. The testimony of SCW-4 and Pech Chim about the alleged instruction of Ta Mok must be evaluated against the other existing evidence which supports the Trial Chamber’s conclusion regarding the CPK policy targeting former Lon Nol soldiers and officials that was in effect in the immediate weeks following 17 April 1975. For example, Standing Committee member Ieng Sary admitted that the CPK leaders decided, around 20 April 1975, to extend executions of Lon Nol officials and soldiers further down the ranks beyond the so-called 7 “super-traitors,” whose execution had been previously called for in a public statement issued by Khieu Samphan.⁸ Other CPK cadres confirm

in February 2013, which are matters that will obviously be explored with that witness during his upcoming testimony.

⁵ **E3/5511** Written Record of Interview of Riel Săn, 29 October 2009 at A9 [“Before people [from Phnom Penh] were evacuated to this area, the chiefs of the district, the communes, the villages and unit members were invited to attend a conference. The conference participants were informed of what categories of people to be purged. [...] People who were targeted to be purged included soldiers from the ranks of corporal sergeant and above in army and from the first deputy chief and above in administration”]; **E1/278.1** Transcript, 17 March 2015, Riel Săn, at 11.17.12 to 11.21.39, 13.32.15; **E1/279.1** Transcript, 18 March 2015, Riel Săn, at 15.05.03 to 15.18.10 [witness attended two meetings where similar instructions regarding Lon Nol officials were given – one before the evacuation, and one after. In the second meeting, Pech Chim instructed the chiefs of villages and communes to research whether evacuees were Lon Nol ranking officers or civil servants, and if so, they had to be purged].

⁶ **E1/291.1** Transcript, 23 April 2015, Pech Chim, at 11.00.37.

⁷ **E1/291.1** Transcript, 23 April 2015, Pech Chim, at 11.05.16 to 11.09.41 (emphasis added).

⁸ **E3/89** Ieng Sary Statement, 17 December 1996, at ENG 00417606; **E3/532** Ieng Sary Statement, 17

that the Party leadership provided instructions during that period to execute all high-ranking Lon Nol soldiers and officials.⁹ Witnesses also confirm that Ta Mok was present when Lon Nol soldiers were gathered and taken for execution at Pochentong Airport on 17 April 1975¹⁰ and at Wat Champa in Tram Kak District in the period immediately after 17 April evacuees arrived and were gathered at that location.¹¹ Similar organized executions of Lon Nol soldiers and officials took place at locations throughout Cambodia in the days and weeks immediately following 17 April 1975.¹² Testimony of SCW-4 and Pech Chim regarding a meeting that took place months after

December 1996, at ENG 00003665; **E3/117** FBIS *Khieu Samphan Chairs NUFV Congress Session: Communiqué Issued*, 26 February 1975, at ENG 00166772, KHM 00242309, FR 00281432.

⁹ See, e.g., **E319/19.3.125** [Name redacted] OCIJ Statement, 16 July 2014, at ENG 01031927-28 [Member of Sanlong Commune Committee, part of Angkor Chey District of Sector 13 of the Southwest Zone, who describes how former Lon Nol soldiers holding the rank of 2nd Lieutenant or higher were killed, pursuant to orders from the upper echelon, one or two weeks after the fall of the former regime]; **E3/5649** [Name redacted] DC-Cam Interview, 25 May 2004, at ENG 00885243, 00885246-47; **E3/387** Uk Bunchhoeun Interview, 7 August 1990, at ENG 00350205 [stating that the CPK leadership issued a policy in April 1975 to “[wipe] out all elements in the Lon Nol regime”, specifying that “With respect to civilian local administrators, they would be purged from sub-district level to upper echelon. Regarding soldiers, they would be swept clean from 2nd lieutenants up to generals”]; **E319/12.3.2** Khoem Boeurn OCIJ Statement, 21 May 2014, at A22-A24, A91 & A254-A255 [testimony of former Cheang Torng commune chief and member of Tram Kak District Committee that: “Immediately when the Khmer Rouge regime began, they commenced making biographies of people who used to be teachers, policemen, or civil servants in the Lon Nol regime. Then they sent all of those biographies to the upper echelon. That was an order from the upper echelon. [...] After the biographies were sent to the upper echelon, they provided the names of those people to me. Then I ordered the arrests of those people and sent them to the upper echelon.”].

¹⁰ Confidential Annex B, No. 94, summarizing **E319/23.3.42** [Name redacted] OCIJ Statement, 11 September 2014, at A14-A37 [cadre from Division 1 of Southwest Army describes how a large group of high-ranking Lon Nol soldiers and pilots were gathered and immediately taken away to be smashed on 17 April 1975 at Pochentong Airport, stating that Ta Mok, Meas Muth and Sou Met were present, that it was Ta Mok who ordered that the Lon Nol soldiers be taken away by a special unit under his command, and that Ta Mok stated that the Lon Nol soldiers had been taken to be smashed].

¹¹ **E3/5153** Keo Chandara OCIJ Statement, 12 March 2008, at ENG 00205090, KHM 00172044, FRE 00205095 [evacuees gathered at Wat Champa in Tram Kak District after 17 April 1975, many were then taken away and killed at Kraing Ta Chan, Krabei Prey, Office 160 and at Office 204]; **E1/255.1** Transcript, 2 February 2015, Kev Chandara, at 11.09.28 to 11.11.45, 13.46.16 to 13.49.24 [witness who lived next to Wat Champa testified that he saw “thousands of evacuees” gathered there, that he also saw Ta Mok there, and that the Lon Nol soldiers were taken to a location in Prey Kdauch location called “Office 204”]; **E319.1.32** UI Hoeun OCIJ Statement, 19 March 2014, at A113 [describing how “people were evacuated from Phnom Penh to Wat Champa Leuk Pagoda”, where the Khmer Rouge identified, rounded up and took away the “soldiers with rank” such as “second lieutenants and first lieutenants, [until] only ordinary people remained”]; **E1/290.1** Transcript, 22 April 2015, Pech Chim, at 10.59.10 [confirming that Ta Mok was present when the evacuees were gathered at Wat Champa]; **E3/2048** Report to Tram Kak District Angkar from Cheang Torng commune, 30 April 1977, at KHM 00079089, ENG 00276562-63, FRE 00611659 [“His father was a map draftsman in Takeo. When we liberated it, he came out to Wat Champa and our Angkar removed him”]; **E3/2107** KTC notebook, at ENG 00290205-06, KHM 00068050, FRE 00655726 [notes for prisoner Chou Sovann that his father was Subdistrict Chief and was arrested by Angkar since arriving at Wat Champa].

¹² See, e.g., **D390** Co-Prosecutors’ Rule 66 Final Submission, 16 August 2010, at paras. 171-172, 194-196, 198, 226; **E295/6/1** Co-Prosecutors’ Final Trial Brief in Case 002/01, 27 September 2013, paras. 291-297, 309-310; **F17/1/Corr-1** Co-Prosecutors’ Response to Case 002/01 Appeals, 24 April 2015, paras. 367-376, 381-383, 385-389.

these executions does not undermine and could not be a “decisive factor” that would change the Trial Chamber’s Judgment.

9. The Co-Prosecutors further note that the testimony of SCW-4 and Pech Chim about the purported instruction from Ta Mok not to harm Lon Nol soldiers of certain ranks does not withstand scrutiny when one considers the existing evidence as to what happened to that group during the remainder of the Democratic Kampuchea regime (i.e., after mid-1975, the purported time of Ta Mok’s instruction). For example, former S-21 chairman Kaing Guek Eav alias Duch has testified that during the initial period of S-21 from late 1975 to early 1976, the largest group of prisoners were Lon Nol officials and soldiers,¹³ and contemporaneous records from S-21 confirm that large groups of such persons were detained and executed at S-21 during this time period.¹⁴ If Pol Pot, Nuon Chea and Ta Mok had actually instructed that Lon Nol soldiers and officials with certain ranks were not to be harmed, those persons would not have been arrested, detained and killed at the security office which reported directly to the CPK Standing Committee.
10. Similarly, surviving records from Tram Kak District for the time period of April to May 1977 expressly reference instructions from the District to identify and purge ranking Lon Nol officers,¹⁵ and Southwest Zone cadres who were assigned by Pol Pot, Nuon Chea and Ta Mok to purge the Central (old North) Zone during this same time period have stated that they received instructions from their superiors to identify, arrest and kill the former Lon Nol soldiers in their district.¹⁶ Over fifty percent of the documented prisoners at Kraing Ta Chan, the Tram Kak District security office, were former Lon

¹³ E1/32.1 Transcript, 15 June 2009, Kaing Guek Eav alias “Duch”, p. 7 at 9.31.40.

¹⁴ See, e.g., E3/1539 S-21 Execution Log [list of 162 Lon Nol military, officials & family members who were executed or died of sickness at S-21 from 22 to 30 March 1976, with ranks specified]; E3/3973 S-21 Execution Log, at ENG 00837571-81 [list of 206 Lon Nol military detained at S-21, with ranks, entry and execution dates].

¹⁵ E3/2048 Report to Tram Kak District Angkar from Cheang Torng commune chief Khoem Boeun, 30 April 1977, at KHM 00079089, ENG 00276562-63, FRE 00611659 [“*After having received successive instructions from Angkar* about being vigilant about the enemy and purging the *enemy officers*, we have tracked, examined and found the following persons ...”]; E1/296.1 Transcript, 4 May 2015, Khoem Boeun, at 11.20.25 to 11.22.40 [“Q: Do you recall receiving successive recommendations from the upper echelon regarding the enemy and the cleaning up of enemy soldiers, in particular, high-ranking soldiers or officers? A: Yes”]; E3/2048 Report from Ta Phem commune chief Khit to Angkar, 28 April 1977, at KHM 00079091, ENG 00276564, FRE 00611661 [reporting that the commune had “examined and purged the *enemies who held ranks, after having received the instructions of the Party*”]; E3/2435 Report from Ang Ta Saom Commune to District Angkar, 26 April 1977 [“for those who have their *ranks as 1st Lieutenant or 2nd Lieutenant*, I am going to contact with Comrade Yorn, District Military, in order to take them out this evening right away”].

¹⁶ See Confidential Annex B, Nos. 19-27.

Nol soldiers, officials or police.¹⁷ The original Secretary of Tram Kak District was Yeay Khom, the daughter of Ta Mok, and subsequent District Secretaries were the brother-in-law and cousins of Ta Mok. In the face of this evidence, the assertions of SCW-4 and Pech Chim proffered by the Defence could not be a “decisive factor” that would overcome the clear and overwhelming evidence proving that former Lon Nol soldiers and officials remained a targeted group subject to arrests and executions throughout the DK regime, including in the Zones for which Ta Mok had immediate responsibility.

11. The other testimony of Pech Chim proffered by the Defence, which concerns his interpretation of different possible meanings of the Khmer word *komchat*, does not help the Defence. During trial and in this appeal, Nuon Chea has asserted that *komchat* means to “scatter.” At trial, Steve Heder disputed this interpretation, and testified that the word actually had a more threatening meaning, which was to “get rid of, eliminate.”¹⁸ Pech Chim interprets the word as meaning to “take out or remove” or to “get rid of,”¹⁹ which is consistent with Heder’s interpretation and contrary to that put forward by the Defence in this appeal. Many words have different meanings in different contexts. Pech Chim’s assertion, in response to leading questions from the Defence, that *komchat* could have “another meaning” when used in the context of refashioning, is of little relevance. He made the exact same assertion in regards to the word *komtech* (smash), initially claiming that it could mean to “eliminate the sense of class” and “get rid of mindsets,” but then conceding that when used in relation to detained enemies, it meant “to kill.”²⁰ In any event, the views of one witness on the nuances of one word is not the type of evidence that could have been a “decisive factor” in the Judgment.

¹⁷ **D313/1.2.16** Henri Locard Report titled “Tram Kak District in the Grip of the Khmer Rouge,” at KHM 00739044, ENG 00217700-01, FRE 00743759-60 [“Among these 477 detainees, it is possible to identify 225 ex-soldiers, 15 wives (one of whom has been identified as of Vietnamese origin) and 6 of their children. If one adds 27 ex-policeman or military policemen, this is a total of 273 victims connected with the forces of law and order of the previous regime”]; **E3/4095** Kraing Ta Chan Notebook, May 1976 [identifying 105 prisoners, 62 of whom were former Lon Nol officers, soldiers, officials, police, relatives or persons otherwise connected to the Lon Nol regime].

¹⁸ **E1/224.1** Transcript, 16 July 2013, Stephen Heder, 15.15.32 to 15.19.30.

¹⁹ **E1/291.1** Transcript, 23 April 2015, Pech Chim, at 14.40.11.

²⁰ **E1/290.1** Transcript, 22 April 2015, Pech Chim, at 14.05.50 to 14.10.07.

III. In Order to Determine Whether the Proffered Testimony of Pech Chim and SCW-4 Should Be Admitted, and the Weight it Should Receive in Such Event, the Interests of Justice Require this Chamber to also Consider the New Evidence from the Case 002/02 Trial and Case 003 & 004 Judicial Investigations which Supports the Judgment

12. In addition to this Fourth Request for Additional Evidence, Nuon Chea has already filed a Fifth Request, and has indicated that he intends to file even further such requests.²¹ The Defence is correct that the ongoing trial in Case 002/02 and judicial investigations in Cases 003 and 004 will continue to result in new evidence relevant to the targeting of former Lon Nol soldiers and officials and other issues during the remainder of 2015 and much of 2016.²² This Chamber is now squarely facing the prospect of never-ending requests from Appellants to hear or admit new evidence that threaten to prolong these proceedings for years.
13. It remains the view of the Co-Prosecutors that none of the new witness statements or other evidence that Nuon Chea has requested to admit in his various requests filed since the start of these appellate proceedings meet the high standards that must be applied to the admission of new evidence – that is, that the evidence is of such weight that it could have been a “decisive factor” for the Trial Chamber in reaching its Judgment.
14. To the extent this Chamber does intend to reopen evidence on issues such as the CPK policy towards former Lon Nol soldiers and officials, the Co-Prosecutors submit that the Chamber cannot be limited to the isolated statements the Defence believe to be in their favor which they have selectively picked from the hundreds of new Case 003 and 004 witness interviews and the hundreds of hours of new Case 002/02 trial witness testimony. If evidence is being reopened on this issue, the Co-Prosecutors submit that it is in the interest of justice and essential to the ascertainment of the truth that the Chamber also admit and consider the wealth of new evidence from Case 002/02 that supports the Trial Chamber’s findings on the policy targeting former Lon Nol soldiers and officials, officers, and ordinary soldiers.
15. **Annex A** submitted with this response identifies 24 days of Case 002/02 trial testimony from at least 18 witnesses supporting the existence of a policy to purge and kill Lon Nol officers and officials during the Democratic Kampuchea regime, including the

²¹ F2/6 Fourth Additional Evidence Request, para. 4 [“The Defence will file additional evidence requests to the Supreme Court Chamber whenever it becomes aware of further relevant evidence in Case 002/02”].


²² F2/6 Fourth Additional Evidence Request, paras. 4-5.

period immediately following 17 April 1975. **Annex B** identifies 97 new witness statements from Cases 003 and 004 that the International Co-Prosecutor submits also prove the existence of that policy.²³ When viewed in its entirety, the new evidence from the ongoing trial and judicial investigations overwhelmingly supports the Judgment, and the limited evidence selected by the Defence from those Cases does not meet the criteria of Rule 108(7) or provide any legitimate basis for reversing the convictions in Case 002/01.

IV. Conclusion

16. For the reasons set forth above, the Co-Prosecutors respectfully request that the Supreme Court Chamber deny the Nuon Chea Defence Request to admit the testimony of Pech Chim from Case 002/02. However, should the Chamber deem it appropriate to admit either the testimony of Pech Chim or any other new evidence relating to the CPK policy toward Lon Nol soldiers and officials, the International Co-Prosecutor respectfully requests that it also admit new evidence that further proves the policy under the same criteria.

Respectfully submitted,

Date	Name	Place	Signature
30 June 2015	CHEA Leang Co-Prosecutor	Phnom Penh	
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²³ This Annex lists both the date on which the witness was interviewed, and the month during which OCIJ authorized the Co-Prosecutors to disclose the interviews to Case File 002. It is the latter which is relevant for determining whether this evidence was unavailable during trial. As noted in prior filings describing the background of these disclosures, the Co-Investigating Judges declined the OCP's initial requests to disclose these materials, and deferred authorizing the disclosure of most of the Case 003 and 004 interviews until 2015 due to concerns regarding the confidentiality of the judicial investigations.