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**CO-PROSECUTORS' RESPONSE TO NUON CHEA'S AND KHIEU SAMPHAN'S
RULE 87(4) REQUEST TO ADMIT EVIDENCE IN RELATION TO THE LATE
KING FATHER NORODOM SIHANOUK**

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RESPONSE

1. The Co-Prosecutors hereby respond to the Rule 87(4) request filed by Nuon Chea to admit new evidence relating to the Late King Father Norodom Sihanouk, which was notified on 12 April 2016 (“Request”)¹ and also to the subsequent joinder to that Request by Khieu Samphan on 20 April 2016.² A combined response to both requests by 26 April 2016 was authorized by the Trial Chamber (“Chamber”) on 22 April 2016.³
2. Nuon Chea has requested that the Chamber admit three letters, one video and one audio recording containing statements made by the Late King Father Norodom Sihanouk.⁴ In order to make these documents relevant, Nuon Chea constructs an argument that the genocide studies expert Alex Hinton suggested in his testimony that (1) the Late King Father’s views on the Vietnamese and Vietnam’s invasion of Cambodia were inconsistent; and (2) the Late King Father never used the term “Yuon”.⁵ The effect of Nuon Chea’s argument is to imply that, because the material put forward demonstrates that these two suggestions are not true, this undermines the expert’s testimony as to the Accused’s and other CPK leaders’ intention to incite hatred and violence through references to Vietnamese intentions to annex Cambodia and by referring to the Vietnamese as “Yuon”.
3. However, such a conclusion cannot be drawn from these documents. The expert did *not* suggest that the Late King Father’s views on the Vietnamese occupation were consistent, nor did he state that the Late King Father never used the word “Yuon” in his speeches, with the exception of the one given to the United Nations Security Council (“UNSC”) in January 1979. More fundamentally, the Late King Father’s views of Vietnamese intentions to annex Cambodia after the DK period and his use of the word “Yuon” in his speeches towards them is irrelevant to the question as to whether or not the Accused and

¹ E396 Nuon Chea’s Rule 87(4) Request For Admission Of Three Letters, One Video And One Audio In Relation To The Late King Father Norodom Sihanouk, 8 April 2016.

² E396/1 Khieu Samphan Rule 87(4) Request, 20 April 2016, para. 4.

³ This combined response was requested by the Office of the Co-Prosecutors by email at 0743 hours on Friday 22 April 2016 (**Attachment 1**), objected to by the Nuon Chea Defence by email at 1001 hours (**Attachment 2**) and authorized by the Trial Chamber through the Senior Legal Officer Ken Roberts by email at 1345 hours (**Attachment 3**) all on the same day.

⁴ E396 Request.

⁵ E396 Request, paras 4 and 6.

other CPK leaders possessed the intent to incite hatred and violence against the Vietnamese during the DK period.

4. First, the three letters written by the late King Father to the Prime Minister of Vietnam Pham Van Dong in October and November 1979 where he voices his objections to the ongoing occupation of Cambodia by Vietnam in 1979 are of no probative value. These objections to Vietnamese *occupation* in Cambodia *after* the CPK were removed from power are completely irrelevant in determining the intent of the Accused to commit genocide and crimes against Vietnamese *during the DK period*.
5. Nuon Chea's argument that the objections contained in these three letters are similar to those made by the late King Father at the UNSC in January 1979, and therefore undermine the credibility of Alex Hinton's testimony, is unsubstantiated. The expert testified that the late King Father may have been under coercive pressure by the CPK to make such strong objections to the Vietnamese occupation at the UNSC, however he stated he could not provide a definitive answer.⁶ The more fundamental point put to the expert by the Nuon Chea Defence—that the UNSC statement of the late King Father towards the Vietnamese was the same type of statement made by the CPK against the Vietnamese—was strongly contested by the expert;

“Of course, in the context of Democratic Kampuchea, the immediate aftermath, this was very much a distinction that was in everybody's mind. This is clear from the passage you read. If we talk to the point at which we began yesterday about whether discourses using the word "Yuong" that are in a context that are much stronger and promote and incite potential violence such as the one we had many examples -- up until today, we had implemented one against 30, meaning we lose one, the "Yuong" lose 30, so then our losses are 30 times fewer than those of the "Yuong". You know, this was read in Court. I don't think I need to read again, but if you -- I just -- could I please finish?

Q. Yes. [10.01.51] A. If you take the context of a speech like that, the DK – the speech from DK that I just read that was introduced as evidence and you take that and you compare it to the words of the late King Father that were given immediately after the fall of the DK regime while he was under the coercive pressure of the Khmer Rouge at the time, *it seems to me vastly different, and so I would say that the rhetorics that are expressed, for example, in much DK discourse such as this one are of high level incitement towards violence and that it's not accurate to compare a speech given by the late King Father. To compare*

⁶ E1/403.1 Transcript, 16 March 2016, p. 35, 10.05.23.

the two -- I mean, I could continue to read this. You could read that. And they're completely different. (emphasis added)"⁷

6. Consequently, these three letters provide no probative value in assessing the treatment of the Vietnamese during the DK period by the Accused and other CPK leaders, nor do they assist in assessing the credibility of the expert.
7. Second, the two video and audio recordings which contain two statements of the late King Father where he uses the expression "Yuon" are also of no probative value. These statements were not made by the Accused or the CPK leadership and were made *after and outside of the context of the DK period*. As the expert has testified, the context of the use of the word "Yuon" is important, not the mere use of it, in determining whether it was used in order to incite hatred and violence during the DK period;

"As I said before earlier, the word "Yuon" can be used at times and ways that don't have full, sort of strong racist connotations, sometimes in ignorance, so there are other contexts in which it is used. I said that clearly at the very beginning. In order to understand the deployment of the word "Yuon", in the context of DK as well as other highly politicized contexts, when the word is brought into ideologies that incite hate ranging from the Khmer Republic into politics in the 1990s in Cambodia, the word "Yuon" is used to refer to ethnic Vietnamese as part of a broader context of hatred and incitement that's linked to political, ideological broadcast. So while noting that there are other contexts, in the context of ideological mobilization, in a context of seeking to root out internal enemies burrowing from within, in context of mobilizing against a defuse ethnic Vietnamese enemy, in those precise contexts the use of the word "Yuon", which I've been talking about, refers to racist language, the stigmatization of ethnic Vietnamese. But, again, there -- I've noted from the very beginning -- that there are other possible uses of the word "Yuon" that are done in ignorance or in other contexts, not in the broader context of incitement, propaganda that promotes hate, where the word can be used differently."⁸

"In the end I stand strongly by my stance that the word "Yuon" can be a very incendiary word. It's a word that *can* incite hatred and violence and *in the context of DK* it was an incitement to genocide. (emphasis added)"⁹

8. Due to the different context, purpose and time in which the late King Father's speeches were given, they have no probative value in determining whether the Accused and other CPK leaders used the word "Yuon" in conjunction with other language and policies

⁷ E1/403.1 Transcript, 16 March 2016, p. 32-33, 10.01.04 –10.03.25.


⁸ E1/404.1 Transcript, 17 March 2016, p. 64, 11.27.42 – 11.30.22.

⁹ E1/404.1 Transcript, 17 March 2016, p. 83, 12.10.24 – 12.11.14.

during the DK period to incite racial hatred and violence against the Vietnamese. Moreover, whether or not the Late King Father's speeches employed racist language towards the Vietnamese through the use of the word "Yuon" is irrelevant to the determination of the charges against the Accused.

9. Khieu Samphan's arguments largely mirror those of Nuon Chea. However, he goes further to state that the materials proposed by Nuon Chea "directly contradict" the evidence of Alex Hinton.¹⁰ For the reasons stated above, the proposed evidence does not contradict the evidence of Expert Hinton.
10. The Co-Prosecutors therefore request that the Chamber deny the defence request to admit these materials. They are irrelevant to determining the charges in the Indictment relating to the treatment of the Vietnamese, and do not challenge the credibility of the expert witness Alex Hinton.

Respectfully submitted,

Date	Name	Place	Signature
26 April 2016	CHEA Leang Co-Prosecutor	Phnom Penh	
	Nicholas KOUMJIAN Co-Prosecutor		

¹⁰ E396/1 Khieu Samphan Request, 20 April 2016, para. 4.