

**BEFORE THE TRIAL CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

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**NUON CHEA'S FIRST RULE 87(4) REQUEST TO CALL ONE ADDITIONAL
WITNESS AND TO ADMIT ONE INTERVIEW FOR THE CASE 002/02 TRIAL
SEGMENT ON THE PHNOM KRAOL SECURITY CENTRE**

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I. INTRODUCTION

1. Pursuant to ECCC Internal Rule 87(4), the Co-Lawyers for Mr. Nuon Chea (the “Defence”) submit this request (the “Request”) to hear one additional witness in relation to the Phnom Kraol Security Centre, and to admit into evidence one interview of the witness.

II. BACKGROUND

2. On 8 and 9 May 2014, the Defence and the parties respectively filed updated lists of proposed witnesses, civil parties and experts for Case 002/02.¹ On 5 February 2016, the Trial Chamber (the “Chamber”) issued a list of five witnesses scheduled to be heard in relation to the Phnom Kraol Security Centre.² The first witness appeared on 27 July 2015, and one other witness has also appeared before the Chamber.
3. On 15 March 2016, the Chamber informed the parties of its decision to hear 2-TCW-1012 (SAO Sarun) via video link.³
4. On 16 March 2016, the Co-Prosecutors filed a request to call one witness, 2-TCW-1017 [REDACTED], *in lieu* of or in addition to her brother 2-TCW-1011 (KHAM Phan *alias* Phan Van), and one civil party, 2-TCCP-1016 (SUN Vuth), for the segment on the Phnom Kraol Security Centre.⁴ The Co-Prosecutors submitted that “[b]ecause of the deaths of half the witnesses originally proposed by the Co-Prosecutors, good cause exists under Rule 87(3) and 87(4) for calling SUN Vuth [2-TCCP-1016] and [REDACTED] [2-TCW-1017].”⁵
5. On 16 March 2016, the parties were informed that in view of the motion filed by the Co-Prosecutors, “the Chamber requests to hear oral responses, *in lieu* of written responses, tomorrow after the conclusion of Professor Hinton’s testimony.”⁶ On 17 March 2016 the

¹ **E305/4**, ‘Updated Lists and Summaries of Proposed Witnesses, Civil Parties and Experts’, 8 May 2014; **E305/5**, ‘Témoins et experts proposés par la Défense de M. KHIEU Samphan pour le procès 002/02’, 9 May 2014; **E305/6**, ‘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)’, 9 May 2014; **E305/7**, ‘Civil Party Lead Co-Lawyers’ Rule 80 Witness, Expert and Civil Party Lists for Case 002/02 With Confidential Annexes’, 9 May 2014.

² Email from Trial Chamber Senior Legal Officer to Parties, 5 Feb 2016.

³ **E29/476/2**, ‘Decision on Video-Link for 2-TCW-1012’, 15 Mar 2016.

⁴ **E390**, ‘Co-Prosecutors’ Motion to Call Additional Phnom Kraol Witnesses’, 16 Mar 2016 (“OCP Phnom Kraol Witness Request”).

⁵ **E390**, OCP Phnom Kraol Witness Request, 16 Mar 2016, para. 8.

⁶ Email from Trial Chamber Legal Officer to Parties, 16 Mar 2016.

Chamber made an oral decision that the Chamber would hear oral responses, *in lieu* of written responses on 21 March 2016.⁷

6. On 21 March 2016, the Chamber heard oral responses from the parties in respect of the OCP Phnom Kraol Witness Request. The Defence did not object to the request to call [REDACTED] (2-TCW-1017) but stressed that both KHAM Phan (2-TCW-1011) and his sister should testify as witnesses, as one should not testify *in lieu* of the other. Furthermore, the Chamber was notified by the Defence that a courtesy copy of this Request would be circulated on 21 March 2016.⁸

III. APPLICABLE LAW

7. Rule 87(4) enables the Chamber to, at its own initiative or on a party's request, summon a person as a witness who "it deems conducive to ascertaining the truth". The rule requires the Chamber to consider the request's merits in accordance with criteria set out in Rule 87(3). The requesting party, for its part, must satisfy the Chamber that the testimony was unavailable before the opening of the trial. The Chamber specified that the opening of the trial in Case 002 was the initial hearing, which started on 27 June 2011. The Chamber has held that where the relevance of a person's testimony was revealed but by "minimal information" before the opening of the trial while more detailed information was only available after the opening of the trial, the testimony in question will be considered unavailable before the opening of the trial.⁹ Where testimony was available before the opening of the trial, the Trial Chamber has held that it may nevertheless be admitted "where the interests of justice so require, in particular where it is exculpatory and requires evaluation in order to avoid a miscarriage of justice"¹⁰ or where it "closely relate[s] to material already before the Chamber and ... the interests of justice require the sources to be evaluated together."¹¹ To satisfy the requirements of Rule 87(3), evidence put before the Trial Chamber need only be *prima facie* relevant and reliable.¹²

⁷ Draft Transcript of Proceedings, 17 Mar 2016, pp. 36-37, Ins. 20-1.

⁸ Draft Transcript of Proceedings 21 Mar 2016, pp. 8-9, Ins. 21-8.

⁹ T. 7 Dec 2015 (TC Ruling, **E1/363.1**), p. 49, Ins. 2-8.

¹⁰ **E307/1**, 'Decision on Parties' Joint Request for Clarification Regarding the Application of Rule 87(4) (E307) and the Nuon Chea Defence Notice of Non-Filing of Updated Lists Evidence (E305/3)', 11 Jun 2014, para. 3, *accord* **E190**, 'Decision Concerning New Documents and Other Related Issues', 30 Apr 2012, para. 36.

¹¹ **E289/2**, 'Decision on Civil Party Lead Co-Lawyers' Internal Rule 87(4) Request to Put Before the Chamber New Evidence (E289) and KHIEU Samphan's Response (E289/1)', 14 Jun 2013, para. 3.

¹² **E313**, 'Case 002/01 Judgement', 7 Aug 2014 ("Judgement"), para. 26.

8. Likewise, in the case of requests to admit new evidence, pursuant to Rule 87(4), at any stage during the trial a party may request the Chamber to “admit any new evidence which it deems conducive to ascertaining the truth”, subject to the general requirements of Rule 87(3) and provided “that the requested [...] evidence was not available before the opening of the trial” or that it “could not have been discovered earlier with the exercise of reasonable diligence”.¹³ To satisfy the requirements of Rule 87(3), the proposed evidence needs only be *prima facie* relevant and reliable.¹⁴

IV. ARGUMENT

9. The Defence requests that the Chamber summons CHIN Saroeun (Witness A) to testify as he can provide accurate, detailed evidence as to Division 920 in Mondulkiri given that he was a member of Regiment 93,¹⁵ and later served in Battalion 502 of Sector 105.¹⁶ As a member of Division 920 and Battalion 502, CHIN Saroeun (Witness A) is able to provide invaluable information in respect of the structure and chain of command of Division 920, arrests of soldiers who were sent to Phnom Kraol Security Centre, the structure and chain of command of Battalion 502, S-21, and armed conflict with Vietnam.
10. The Defence notes that the relevance of CHIN Saroeun’s (Witness A’s) evidence to the segment on the Phnom Kraol Security Centre, has been enhanced by the Co-Prosecutors’ request to summons SUN Vuth (2-TCCP-1016) for the segment. SUN Vuth (2-TCCP-1016) is said to have assumed the “role of chairman of Special Company 920 in Mondulkiri province.”¹⁷ He was subsequently sent to a security office in Koh Nhèk district.¹⁸ The Co-Prosecutors allege that SUN Vuth (2-TCCP-1016) is the only known

¹³ **E313**, Judgement, para. 25.

¹⁴ **E313**, Judgement, para. 26.

¹⁵ **E3/7960**, ‘DC-Cam Interview Summary, Northeast Minority People under Democratic Kampuchea’, 24 Apr 2015, at ERN 00450294.

¹⁶ **E3/7960**, ‘DC-Cam Interview Summary, Northeast Minority People under Democratic Kampuchea’, 24 Apr 2015 at ERN 00450295. In the relevant paragraph it is stated that CHIN Saroeun (Witness A) ‘served region military battalion 52 until the Vietnamese liberation’. An internal transcription and translation of the ‘DC-Cam statement of CHIN Saroeun (Witness A)’, ERN 00042513-00042533, 15 August 2001 was completed by a staff member of the Nuon Chea Defence Team, which indicated that ‘battalion 52’ was a typographical error and should have been listed as ‘battalion 502’. In the Internal Transcription of the ‘DC-Cam statement of CHIN Saroeun (Witness A)’, at Khmer ERN 00042524, CHIN Saroeun (Witness A) states: ‘At that time, my battalion was 502, not 52. People were scared when they saw the plate number of the military car 502. Both good and bad people were scared. They were afraid of the rebellion between the link of Svay and Kham Phoun and the link of Ta Ham, which had to be suppressed.’

¹⁷ **E3/6760a**, Supplementary Information Form, 21 Jun 2010, at ERN 01194793.

¹⁸ **E3/6760a**, Supplementary Information Form, 21 Jun 2010, at ERN 01194793.

surviving prisoner of the larger prison near the Phnom Kraol dam.¹⁹ Assuming this may be the case, the Defence submits that it is important to obtain a comprehensive picture of the arrests within Division 920, Sector 105 more generally, and of the larger prison near the Phnom Kraol dam. CHIN Saroeun (Witness A), as a surviving soldier of Regiment 93, Division 920 and a person who conducted arrests of Division 920 soldiers on behalf of Battalion 502, is able to provide corroborative evidence which is “conducive to the ascertaining of the truth”. In this sense, since this request is partly triggered by the Co-Prosecutors’ request for SUN Vuth (2-TCCP-1016), the request for CHIN Saroeun (Witness A) is not untimely.

11. Further importance may be placed upon CHIN Saroeun’s (Witness A’s) testimony given the particular significance of Autonomous Region 105 to the Security Centres segment. Of any Zone, the Northeast Zone allegedly sent the largest number of persons to S-21, with the majority of the people belonging from Division 920.²⁰ Of the 537 people sent to S-21, at least 410 were Division 920 soldiers.²¹ In light of the fact that CHIN Saroeun (Witness A) served as a soldier with region military Battalion 502 – which had the authority to arrest soldiers from Division 920²² - CHIN Saroeun (Witness A) may be able to provide invaluable information about the implementation of policy behind the arrests of more than 400 people from Division 920 from 1977 to 1979.²³
12. In particular, CHIN Saroeun (Witness A) may be able to provide clarification about the nexus between the arrests of Svay and around 80 others connected to ‘the Kham Phoun movement’, and that movement’s involvement with Vietnam.²⁴ From 1977 CHIN Saroeun (Witness A) served in Battalion 502 until the Vietnamese liberation.²⁵ As a member of Battalion 502, CHIN Saroeun (Witness A) participated directly in the arrest of Svay as “tried to arrest Svay at Dos Kromom mountain.”²⁶ As summarised by DC-Cam, CHIN Saroeun (Witness A) was tasked to arrest Svay because

¹⁹ **E390**, OCP Phnom Kraol Witness Request, para. 7.

²⁰ **E3/1664**, ‘Khmer Rouge Purges in the Mondul Kiri Highlands’, 2009, at ERN 00397579.

²¹ **E3/1664**, ‘Khmer Rouge Purges in the Mondul Kiri Highlands’, 2009, at ERN 00397640.

²² **E3/7960**, ‘DC-Cam Interview Summary, Northeast Minority People under Democratic Kampuchea’, 24 Apr 2015, at ERN 00450295.

²³ **E3/1664**, ‘Khmer Rouge Purges in the Mondul Kiri Highlands’, 2009, at ERN 00397642.

²⁴ **E3/7960**, ‘DC-Cam Interview Summary, Northeast Minority People under Democratic Kampuchea’, 24 Apr 2015, at ERN 00450295.

²⁵ **E3/7960**, ‘DC-Cam Interview Summary, Northeast Minority People under Democratic Kampuchea’, 24 Apr 2015, at ERN 00450295.

²⁶ Internal Transcription of the ‘DC-Cam statement of CHIN Saroeun (Witness A)’, ERN 00042513-00042533, 15 August 2001, at Khmer ERN 00042522.

Kham Phoun brought Vietnamese people through Svay, his nephew, and hiked those Vietnamese people near that village. It was their struggle movement. And Hâm learned of it. They were no longer trusted and Kham Phoun was called for a meeting ... in Phnom Penh because they had experience that it was not easy to smash.²⁷

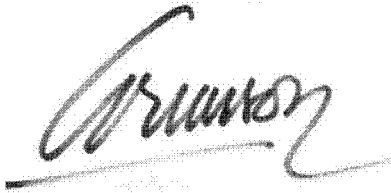
13. In light of an internal rebellion with links to Vietnam, CHIN Saroeun (Witness A) states that his “unit only was armed to suppress the rebellion movement.”²⁸ Subsequently, the two witnesses CHAN Tauch and NET Savat were arrested as part of the group of around 80 people who were in those networks and imprisoned at Phnom Kraol Security Centre. As such, CHIN Saroeun (Witness A) may be able to provide invaluable information about the authorisation and command structure in relation to the arrests of people in Sector 105 from 1977.
14. CHIN Saroeun’s (Witness A’s) evidence is *prima facie* relevant to the Phnom Kraol Security Centre and reliable. It is conducive to ascertaining the truth.
15. Considering that this request to call CHIN Saroeun (Witness A) was triggered by the Co-Prosecutors’ request to call SUN Vuth (2-TCCP-1016), it is now important that the DC-Cam statement related to this witness be admitted to the Case File. CHIN Saroeun’s (Witness A’s) DC-Cam statement is part of the public domain. However, the DC-Cam statement is only available in Khmer with a shared materials drive reference at ERN 00042513-00042533. An interview summary of the DC-Cam statement is available in English in the document E3/7960 ‘Northeast Minority People under Democratic Kampuchea’. Although the witness was interviewed by DC-Cam on 15 August 2001 and the evidence obtained thereby was technically available before the opening of the trial, the Defence nevertheless submits, that it is in the interests of justice to hear his live testimony which is potentially exculpatory.
16. The Defence notes in addition that the relevance of the witness’ evidence to the Phnom Kraol Segment, the need to hear this witness has been enhanced by the Co-Prosecutors’ recent decision to request SUN Vuth (2-TCCP-1016), who is the only witness who is expected to testify as to the larger Phnom Kraol Security Centre.

²⁷ Internal Transcription of the ‘DC-Cam statement of CHIN Saroeun ((Witness A)’, ERN 00042513-00042533, 15 August 2001, at Khmer ERN 00042522.

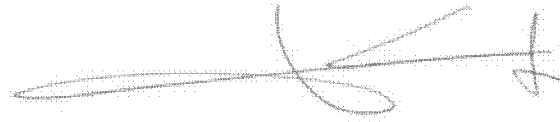
²⁸ **E3/7960**, ‘DC-Cam Interview Summary, Northeast Minority People under Democratic Kampuchea’, 24 Apr 2015, at ERN 00450296.

V. RELIEF

17. For the above reasons, the Defence requests that the Trial Chamber
- (a) summons Chin Saroeun (Witness A) to testify in Case 002/02 at the earliest opportunity; and
 - (b) admit into evidence the 'DC-Cam statement of CHIN Saroeun (Witness A)' ERN 00042513-00042533, 15 Aug 2001.

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