

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

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**NUON CHEA'S RESPONSE TO THE CO-PROSECUTORS' REQUEST TO CALL
THET SAMBATH (2-TCW-885) AS A PRIORITY WITNESS**

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Pursuant to Article 8.3 of the Practice Direction for the Filing of Documents Before the ECCC, the Co-Lawyers for Mr. Nuon Chea (the “Defence”) submit this response (the “Response”) to the Co-Prosecutors’ request to call Thet Sambath¹ as a priority witness:

1. Both the Defence and Co-Prosecutors requested journalist and documentary filmmaker Thet Sambath to testify in Case 002/01 and have maintained their respective requests for Case 002/02. Until recently, Mr. Sambath appeared unwilling to cooperate with the Tribunal. However, on 6 January 2015, the *Voice of America* published an interview with Mr. Sambath in which he indicated that he might now be willing to testify if “the court openly gives [him] freedom”.² On 15 January 2015, the Co-Prosecutors reacted by requesting that this Chamber call Mr. Sambath as a priority witness (the “Co-Prosecutors’ Request”). They reasoned that “[g]iven the importance of this witness’ testimony and his prior lack of cooperation”, the Chamber should “prioritise his appearance and test his recently expressed change of attitude by inviting him to testify at the earliest opportunity”.³
2. The Defence concurs with the Co-Prosecutors’ Request to the extent that it concerns generally prioritising and expediting Thet Sambath’s testimony. Mr. Sambath is a key Defence witness (also) in Case 002/02. He interviewed not only Nuon Chea (over an extended period of time) but also CPK cadres, especially from the Northwest Zone. Mr. Sambath’s evidence may significantly assist this Chamber to ascertain the truth as to a range of critical matters at issue in Case 002/02. These include – as the Defence indicated in its May 2014 witness list – internal divisions within the CPK, CPK policies concerning internal enemies and top ranking CPK factional support for the Vietnamese invasion of DK,⁴ By way of illustration, in an interview Thet Sambath gave to *VOA Khmer* and broadcast on Cambodian radio on 13-14 August 2014, he remarked, among other things, that:⁵

¹ Given that the Trial Chamber assigned a public classification the Co-Prosecutors’ request, which referred to Thet Sambath by name rather than pseudonym, as a public document, no further interest in maintaining confidentiality remains. Therefore, the Defence refers to Thet Sambath by name and suggests that this Response also be classified as public.

² Sok Khemara, ‘Journalist asks to testify at the Khmer Rouge Tribunal’, *Voice of America*, 6 Jan 2015.

³ E335, ‘Co-Prosecutors’ Request to Call Thet Sambath (2-TCW-885) as a Priority Witness’, 15 Jan 2015 (“Co-Prosecutors’ Request”), para. 4.

⁴ E305/4.2, ‘Annex B: Updated Summaries of Witnesses, Civil Parties and Experts (no protective measures sought): Nuon Chea Defence Team’ (“Nuon Chea May 2014 Witness Summaries”), 8 May 2014, pp. 14-15.

⁵ The following quotes are taken from an internal transcription produced by the Defence of Thet Sambath’s interview with *VOA Khmer* on 13 and 14 August 2014. The audio recording of this interview is on the Shared Materials Drive at T01022159 and T01022160, while the transcription is excerpted in a Defence request filed to

- (a) “those who initiated [...] and caused” “starvation, arrest and execution in the Mr. Nuon Chea or Mr. Pol Pot’s regime [...] are still living” and “are in the government”;⁶
- (b) “lower ranked leaders acted excessively” and “most” “low rank people [...] secretly betrayed and opposed Pol Pot and Nuon Chea”,⁷ and those who can testify about this, to whom Mr. Sambath has spoken, “really want to speak” but have security concerns and need “security assurance[s]” if they are to testify;⁸ and
- (c) his second documentary film, which “illustrates a conflict called the secret civil war in the Khmer Rouge regime [...] and] what was behind those killings”.⁹

For all of the above reasons, Mr. Sambath’s testimony should indeed be prioritised and expedited in Case 002/02 trial proceedings.

3. However, the Defence disagrees with the Co-Prosecutors’ request to call Thet Sambath “at the *earliest* opportunity”.¹⁰ As the Co-Prosecutors’ Request noted, the Defence has also requested to call Mr. Sambath as a witness before the Supreme Court Chamber in upcoming appeal hearings in Case 002/01.¹¹ The merits of the Defence’s request to call Mr. Sambath for the purposes the Case 002/01 appeal proceedings are solely a matter for the Supreme Court Chamber’s consideration. Notwithstanding this, the Co-Prosecutors’ Request highlighted that the Co-Prosecutors have challenged those merits. This is clearly intended to bolster the Co-Prosecutors’ argument that this Chamber should call Mr. Sambath “at the earliest opportunity” and to implicitly suggest that the Chamber should do so with no regard for the appeal hearings in Case 002/01. The Defence requests the opposite: that this Chamber should schedule Thet Sambath’s testimony to take place either immediately before or after the appeal hearings in Case 002/01, which at this stage are expected to take place in approximately June or July 2015. This would clearly facilitate Mr. Sambath’s availability to testify in both proceedings if so summonsed, given that the Defence understands that Mr. Sambath

the Supreme Court Chamber: *see* **F2**, ‘Request to Obtain and Consider Additional Evidence in Connection with the Appeal against the Trial Judgement in Case 002/01’, 1 Sep 2014 (“Additional Evidence Request”), pp. 3-8.

⁶ **F2**, Additional Evidence Request, pp. 3, 5.

⁷ **F2**, Additional Evidence Request, pp. 4, 6.

⁸ **F2**, Additional Evidence Request, pp. 4-5.

⁹ **F2**, Additional Evidence Request, p. 7.

¹⁰ Emphasis added.

¹¹ **F2**, ‘Request to Obtain and Consider Additional Evidence in Connection with the Appeal against the Trial Judgement in Case 002/01’, 1 Sep 2014; **F16**, ‘Nuon Chea’s Appeal against the Judgement in Case 002/01’, 29 Dec 2014, para. 730(a).

presently resides in the U.S. and it would be impractical, costly and unduly onerous to have him travel to Cambodia twice in (likely) close succession to testify at Tribunal proceedings.

4. In addition, the Defence requests that if the Chamber agrees to prioritise and expedite the testimony of Thet Sambath, it should also do the same with respect to another critically important witness requested by the Defence in Case 002/02: Rob Lemkin.¹² Mr. Lemkin is well-known as the co-producer and co-director with Mr. Sambath of the full-length documentary *Enemies of the People*, the short documentary film *One Day at Po Chrey*, and a second full-length documentary film referred to at paragraph 2(c) above. As with Mr. Sambath, the Defence has requested Mr. Lemkin to testify in both Case 002/01 trial and appellate proceedings, as well as in Case 002/02. The Defence considers Rob Lemkin to be a key witness. He would be able to testify on the same matters as Mr. Sambath,¹³ and to not simply corroborate Mr. Sambath's testimony but supplement it with additional evidence. These include details as to Rhos Nhim's role in internal divisions within the CPK, the role of other Northwest Zone cadres in the internal armed conflict within the CPK¹⁴ and research Mr. Lemkin conducted in connection with the films. In addition, given his close connection with Thet Sambath, Mr. Lemkin's testimony should directly precede or follow Mr. Sambath's and be scheduled immediately before or after the appeal hearings in Case 002/01. In this regard, the Defence adds that it understands that Mr. Lemkin lives in the U.K. Thus, as with Thet Sambath, it would likewise be impractical, costly and unduly onerous for him to travel to Cambodia twice in (likely) close succession so as to testify in Tribunal proceedings.
5. For the above reasons, the Defence requests that the Trial Chamber:
 - (a) prioritise and expedite the testimony of both Thet Sambath and Rob Lemkin;

¹² The Defence has requested Mr. Lemkin's testimony in direct connection to Thet Sambath's, in documents classified as public by both this Chamber and the Supreme Court Chamber: *see, e.g.* **E305/4.2**, Nuon Chea May 2014 Witness Summaries, and **F2**, Additional Evidence Request. Mr. Lemkin is also well-known as a collaborator with Mr. Sambath, as discussed at paragraph 4. For these reasons, and given Mr. Sambath has already been referred to by name in the publicly-classified Co-Prosecutors' Request, there is no interest in maintaining confidentiality with respect to Mr. Lemkin. Consequently, the Defence refers to him by name and maintains its request that this filing be public.

¹³ *See, e.g.*, **E305/4.2**, Nuon Chea May 2014 Witness Summaries, p. 9.

¹⁴ *See, e.g.*, **E294**, 'Request to Admit New Evidence, Summons Rob Lemkin and Initiate an Investigation', 11 Jul 2013; **F2**, Additional Evidence Request.

- (b) schedule Thet Sambath and Rob Lemkin to testify immediately before or after appeal hearings in Case 002/01; and
- (c) schedule Thet Sambath and Rob Lemkin to testify consecutively.

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