



**អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា**

Extraordinary Chambers in the Courts of Cambodia  
Chambres Extraordinaires au sein des Tribunaux Cambodgiens



**ព្រះរាជាណាចក្រកម្ពុជា  
ជាតិ សាសនា ព្រះមហាក្សត្រ**

Kingdom of Cambodia  
Nation Religion King  
Royaume du Cambodge  
Nation Religion Roi

**អង្គជំនុំជម្រះតុលាការកំពូល**

Supreme Court Chamber  
Chambre de la Cour suprême

សំណុំរឿងលេខ: ០០២/១៩-០៩-២០០៧-អ.វ.ត.ក/អ.ជ.ត.ក

Case File/Dossier N°. 002/19-09-2007-ECCC/SC

**Before:**

**Judge KONG Srim, President**  
**Judge Chandra Nihal JAYASINGHE**  
**Judge SOM Sereyvuth**  
**Judge Agnieszka KLONOWIECKA-MILART**  
**Judge MONG Monichariya**  
**Judge Florence Ndepele MWACHANDE-MUMBA**  
**Judge YA Narin**

**Date:**

**29 May 2015**

**Language(s):**

**Khmer/English**

**Classification:**

**PUBLIC**

**DECISION ON PART OF NUON CHEA’S REQUESTS  
TO CALL WITNESSES ON APPEAL**

**Co-Prosecutors**

CHEA Leang  
Nicholas KOUMJIAN

**Co-Lawyers for NUON Chea**

SON Arun  
Victor KOPPE

**Accused**

KHIEU Samphân  
NUON Chea

**Co-Lawyers for KHIEU Samphân**

KONG Sam Onn  
Anta GUISSÉ  
Arthur VERCKEN

**Civil Party Lead Co-Lawyers**

PICH Ang  
Marie GUIRAUD

1. **THE SUPREME COURT CHAMBER** of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea between 17 April 1975 and 6 January 1979 (“Supreme Court Chamber” and “ECCC”, respectively) is seized of a number of requests by NUON Chea to call witnesses on appeal, which are included in his “Request to Obtain and Consider Additional Evidence in Connection with the Appeal Against the Trial Judgment in Case 002/01” (“First Request”),<sup>1</sup> in his “Third Request to Consider and Obtain Additional Evidence in Connection with the Appeal Against the Trial Judgment in Case 002/01” (“Third Request”),<sup>2</sup> and in “NUON Chea’s Appeal Against the Judgment in Case 002/01” (“Appeal Brief”).<sup>3</sup>

### **A. BACKGROUND**

2. On 7 August 2014, the Trial Chamber issued its judgment in Case 002/01 (“Trial Judgment”),<sup>4</sup> convicting KHIEU Samphân and NUON Chea of the crimes against humanity of extermination (encompassing murder), persecution on political grounds, and other inhumane acts (comprising forced transfer, enforced disappearances and attacks against human dignity), and sentencing them each to life imprisonment.<sup>5</sup>

3. On 1 September 2014, prior to the filing of his appeal against the Trial Judgment, NUON Chea submitted his First Request, asking the Supreme Court Chamber to summon THET Sambath and Robert LEMKIN to testify.<sup>6</sup> On 16 September 2014, the Co-Prosecutors responded to the First Request.<sup>7</sup> On 25 September 2014, NUON Chea filed his reply to the Co-Prosecutors’ response.<sup>8</sup>

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<sup>1</sup> Request to Obtain and Consider Additional Evidence in Connection with the Appeal against the Trial Judgment in Case 002/01, 1 September 2014, F2.

<sup>2</sup> Third Request to Consider and Obtain Additional Evidence in Connection with the Appeal Against the Trial Judgment in Case 002/01, 25 November 2014, F2/4.

<sup>3</sup> Nuon Chea’s Appeal Against the Judgment in Case 002/01, 29 December 2014, F16.

<sup>4</sup> Case 002/01 Judgement, 7 August 2014, E313.

<sup>5</sup> Trial Judgment, p. 622.

<sup>6</sup> First Request, para. 18(b).

<sup>7</sup> 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, F2/2.

<sup>8</sup> Reply to Co-Prosecutors’ Response to Requests to Obtain and Consider Additional Evidence in Connection with the Appeal Against the Trial Judgment in Case 002/01, 25 September 2014, F2/3.

4. On 3 September 2014, NUON Chea lodged a second motion to obtain and consider additional evidence in connection with his appeal against the Trial Judgment, which contains no request to hear witnesses on appeal.<sup>9</sup>
5. On 25 November 2014, NUON Chea filed his Third Request for additional evidence, requesting that the Supreme Court Chamber call SCW-5 to testify.<sup>10</sup> On 19 December 2014, the Co-Prosecutors filed their attendant response (“Response to Third Request”).<sup>11</sup>
6. On 29 December 2014, NUON Chea lodged his Appeal Brief. The Appeal Brief requests that the Supreme Court Chamber, *inter alia*, call a total of nine witnesses, including those previously identified in his First and Third Requests.<sup>12</sup> On 24 April 2015, the Co-Prosecutors responded to the Appeal Brief (“Response to Appeal Brief”).<sup>13</sup>
7. NUON Chea requests the Supreme Court Chamber to summon HENG Samrin, Robert LEMKIN, OUK Bunchhoen, THET Sambath and SCW-5 pursuant to Internal Rule<sup>14</sup> 108(7),<sup>15</sup> and SCW-1, SCW-2, SCW-3, SCW-4 pursuant to “its *de novo* appellate jurisdiction”.<sup>16</sup>
8. The Supreme Court Chamber hereby renders its decision on the witnesses whom it has decided to hear first, namely witnesses SCW-5, SCW-3 and SCW-4, while reserving its determination on the remainder of NUON Chea’s requests.

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<sup>9</sup> Second Request to Consider Additional Evidence in Connection with the Appeal Against the Trial Judgment in Case 002/01, 3 September 2014, F2/1.

<sup>10</sup> Third Request, para. 34(b).

<sup>11</sup> Co-Prosecutors’ Response to Nuon Chea’s Third Request to Consider and Obtain Additional Evidence in Connection with the Appeal Against the Trial Judgment in Case 002/01, 19 December 2014, F2/4/1.

<sup>12</sup> Appeal Brief, para. 730(a) and (c).

<sup>13</sup> Co-Prosecutors’ Response to Case 002/01 Appeals (strictly confidential), 24 April 2015, F17/1. The public redacted version was filed on 4 May 2015.

<sup>14</sup> Internal Rules of the ECCC, Revision 9, 16 January 2015 (“Internal Rules”).

<sup>15</sup> Appeal Brief, para. 730(a). *Cf.* Third Request, p. 10 (given the gist of the arguments made in respect of SCW-5 contained in both the Third Request and the Appeal Brief, the Supreme Court Chamber interprets this request to have been made under Internal Rule 108(7), despite its initial characterization as a motion under Internal Rule 104(1) in the Third Request).

<sup>16</sup> Appeal Brief, para. 730(c).

## B. SUBMISSIONS

### 1. SCW-5

9. NUON Chea seeks the testimony of SCW-5 and the admission into evidence of the attendant Written Record of Interview (“WRI”) pursuant to Internal Rule 108(7).<sup>17</sup> He submits that the testimony of SCW-5 is “critical” to ascertain the truth concerning the killings in Tuol Po Chrey and the effective command structure of the Communist Party of Kampuchea (“CPK”).<sup>18</sup> The WRI relating to SCW-5 is said to demonstrate his direct and prominent involvement in key events occurred in the Northwest Zone as a consequence of his “close personal and working relationship with [Northwest Zone secretary] Ruos Nhim”.<sup>19</sup> The WRI would “resonate” with other evidence, showing that the CPK was a “deeply fragmented [p]arty” within which Zone secretaries wielded considerable authority, independent of – or even contrary to – the Party leadership.<sup>20</sup> Accordingly, NUON Chea avers that the Trial Chamber’s decision to exclude that possibility is rendered untenable.<sup>21</sup> Additionally, NUON Chea argues that, since he obtained this WRI in November 2014, this evidence was unavailable at trial.<sup>22</sup>

10. The Co-Prosecutors respond that the requested additional evidence fails to satisfy the “high standard” of admissibility stipulated in Internal Rule 108(7).<sup>23</sup> They postulate that the request to summon SCW-5 is speculative, misrepresentative of the facts and unlikely to produce exculpatory evidence.<sup>24</sup> Specifically, the Co-Prosecutors contend that the request is speculative because SCW-5 never mentioned Tuol Po Chrey or the treatment of Khmer Republic soldiers and officials, and therefore his evidence cannot be considered a decisive factor pursuant to Internal Rule 108(7).<sup>25</sup> Moreover, NUON Chea misstates the role and location of SCW-5 during the relevant time period.<sup>26</sup> Finally, SCW-5’s interview record does

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<sup>17</sup> Third Request, para. 34(a) and (b); Appeal Brief, para. 730(a); *cf.* fn 15 above.

<sup>18</sup> Third Request, paras 15-22.

<sup>19</sup> Third Request, paras 8, 9, 17-18.

<sup>20</sup> Third Request, paras 20, 24-26.

<sup>21</sup> Third Request, para. 24.

<sup>22</sup> Third Request, para. 23.

<sup>23</sup> Response to Third Request, paras 2-4.

<sup>24</sup> Response to Third Request, paras 5-10.

<sup>25</sup> Response to Third Request, paras 3-4.

<sup>26</sup> Response to Third Request, para. 5.

not support NUON Chea's contention that RUOS Nhim acted independent of the Party Centre's instructions when committing the crimes charged.<sup>27</sup>

## 2. SCW-3

11. NUON Chea requests that the Supreme Court Chamber summon SCW-3 "acting pursuant to its *de novo* jurisdiction over errors of fact".<sup>28</sup> He submits that, in failing to call a witness who could give the only "evidence of any significance" on the executions of Khmer Republic officials, the Trial Chamber's reliance on his WRI was an error of law and fact.<sup>29</sup> In his interview, SCW-3 gave an eyewitness account of being led off for execution and escaping by pretending to be dead.<sup>30</sup> Due to an alleged technical problem, this portion of the interview had no audio recording.<sup>31</sup> NUON Chea asserts that the investigator who conducted the interview had previously been involved in "producing highly inculpatory statements without audio recordings" of another witness, who disclaimed almost the entire unrecorded section of his written record of interview during cross-examination.<sup>32</sup> NUON Chea therefore claims that, had SCW-3 been called to give evidence at trial, his testimony would have proved irrelevant.<sup>33</sup>

12. The Co-Prosecutors respond that NUON Chea failed to establish that the Trial Chamber abused its discretion in denying his requests to call additional witnesses.<sup>34</sup> With specific reference to SCW-3, the Co-Prosecutors note that the request to summon him was filed toward the end of the proceedings, as part of the request for the appearance of 110 additional witnesses and could thus have delayed the trial by at least one year.<sup>35</sup> The Co-Prosecutors further observe that the testimony of SCW-3 was proposed on an issue that had already been covered by 25 witnesses.<sup>36</sup> Therefore the Trial Chamber did not act unreasonably in rejecting the request.<sup>37</sup> Moreover, the fact that a technical issue occurred during recording does not render SCW-3's account unreliable.<sup>38</sup> More generally, the Co-

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<sup>27</sup> Response to Third Request, paras 7-8.

<sup>28</sup> Appeal Brief, para. 595.

<sup>29</sup> Appeal Brief, para. 595.

<sup>30</sup> Appeal Brief, para. 595.

<sup>31</sup> Appeal Brief, para. 595.

<sup>32</sup> Appeal Brief, para. 595.

<sup>33</sup> Appeal Brief, para. 595.

<sup>34</sup> Response to Appeal Brief, para. 57.

<sup>35</sup> Response to Appeal Brief, para. 62.

<sup>36</sup> Response to Appeal Brief, para. 62.

<sup>37</sup> Response to Appeal Brief, paras 62, 388.

<sup>38</sup> Response to Appeal Brief, para. 171 and fn. 656.

Prosecutors emphasise that an appeal before the Supreme Court Chamber is not a trial *de novo*.<sup>39</sup>

### 3. SCW-4

13. NUON Chea requests that the Supreme Court Chamber summon SCW-4 pursuant to its *de novo* appellate jurisdiction over errors of fact.<sup>40</sup> NUON Chea submits that the WRI of SCW-4 is exculpatory, since the witness recalls having personally attended a meeting in which Standing Committee member and Southwest Zone Secretary Ta Mok ordered that soldiers with the ranks from Second Lieutenant to Colonel were not to be harmed.<sup>41</sup> NUON Chea argues that the Trial Chamber showed bias by failing to acknowledge in the Trial Judgment the existence of SCW-4's exculpatory statement.<sup>42</sup> NUON Chea further submits that the testimony of SCW-4 is corroborated by extensive evidence "demonstrating that no policy to kill even senior Khmer Republic military officers existed".<sup>43</sup> NUON Chea finally clarifies that, due to delays attributable to the Co-Prosecutors and the Trial Chamber, this WRI was disclosed to him as late as 72 hours before the deadline for the closing briefs in Case 002/01.<sup>44</sup>

14. In response, the Co-Prosecutors argue that it was "within the [Trial] Chamber's discretion to reject evidence it did not find credible" and to rely instead on accounts given by other witnesses.<sup>45</sup> The Co-Prosecutors point out that "[n]umerous accounts" show that any order not to harm military officers was not followed, making it unlikely such an order was given.<sup>46</sup> Therefore, the Trial Chamber's finding that soldiers were killed reasonably rests on the evaluation of the evidence as a whole.<sup>47</sup>

### C. APPLICABLE LAW

15. The Supreme Court Chamber recalls that there are two avenues available to the Chamber to admit new evidence on appeal. First, Internal Rule 108(7) sets out the criteria that are to be followed in deciding upon the parties' requests for additional evidence. This is

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<sup>39</sup> Response to Appeal Brief, paras 8-9, 14-20, 388.

<sup>40</sup> Appeal Brief, para. 567.

<sup>41</sup> Appeal Brief, para. 567.

<sup>42</sup> Appeal Brief, paras 567, 573.

<sup>43</sup> Appeal Brief, para. 568.

<sup>44</sup> Appeal Brief, para. 567.

<sup>45</sup> Response to Appeal Brief, para. 173.

<sup>46</sup> Response to Appeal Brief, para. 173.

<sup>47</sup> Response to Appeal Brief, para. 173.

the ordinary avenue for the introduction of evidence on appeal. Internal Rule 108(7) reads in relevant part:

Subject to Rule 87(3), the parties may submit a request to the Chamber for additional evidence provided it was unavailable at trial and could have been a decisive factor in reaching the decision at trial. The request shall clearly identify the specific findings of fact made by the Trial Chamber to which the additional evidence is directed.

The Supreme Court Chamber recalls that this rule applies to both newly discovered facts and new means of evidence (*facta noviter producta* and *facta noviter reperta*).<sup>48</sup>

16. Thus, in addition to the general admissibility test under Internal Rule 87(3), a three-prong test governs decisions on requests for additional evidence on appeal. The Supreme Court Chamber must satisfy itself that the proffered evidence: (i) was unavailable at trial; (ii) could have been a decisive factor in reaching the trial decision under appeal; and (iii) pertains to specific findings of fact by the Trial Chamber. In relation to the first of these steps, jurisprudence at the international level requires the applicant to show that “the [proposed] evidence was not available at trial despite the exercise of due diligence”.<sup>49</sup> This requirement is vital to avoid disruptive and inefficient litigation strategies.<sup>50</sup>

17. Secondly, Internal Rule 104(1) confirms that the Supreme Court Chamber may “call new evidence” to decide the appeal of which it is seized. This is a discretionary power that the Chamber may exercise *proprio motu* where the interests of justice so require, taking into account the specific circumstances of the case.<sup>51</sup> In making this determination, the Chamber will consider whether the evidence is “conducive to ascertaining the truth”.<sup>52</sup> The eventual use of this power is without prejudice to the Supreme Court Chamber’s determination of NUON Chea’s argument that the Chamber should exercise *de novo* appellate jurisdiction over factual findings of the Trial Chamber.

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<sup>48</sup> Interim Decision on Part of NUON Chea’s First Request to Obtain and Consider Additional Evidence in Appeal Proceedings of Case 002/01, 1 April 2015, F2/4/3, para. 15.

<sup>49</sup> *Lubanga* Appeal Judgment, para. 50 (summarising the case law of the ICTY and ICTR on the point).

<sup>50</sup> See *Prosecutor v. Nahimana et al.*, ICTR-99-52-A, “Decision on Appellant Jean-Bosco Barayagwiza’s Motions for Leave to Present Additional Evidence Pursuant to Rule 115 of the Rules of Procedure and Evidence”, Appeals Chamber, 8 December 2006, para. 4; *Prosecutor v. Zoran 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)”, Appeals Chamber, 8 May 2001, para. 3.

<sup>51</sup> See *Prosecutor v. Lubanga*, ICC-01/04-01/06 A 5, “Judgment”, Appeals Chamber, 1 December 2014 (“*Lubanga* Appeal Judgment”), para. 62 (in which the Appeals Chamber of the International Criminal Court found that it enjoyed discretion to admit evidence on appeal despite a negative finding on one or more of the criteria governing the admissibility of evidence on appeal).

<sup>52</sup> See Internal Rule 87(4) read in conjunction with Internal Rule 104*bis*.

## D. DISCUSSION

18. To begin with, the Supreme Court Chamber clarifies that the scope of the present decision is limited to addressing some of NUON Chea's requests to introduce evidence on appeal and the determinations contained herein are without prejudice to the subsequent disposal by this Chamber of the specific grounds of NUON Chea's appeal.

### 1. SCW-5

19. Since the International Co-Investigating Judge authorised the disclosure of the WRI of SCW-5 on 14 October 2014<sup>53</sup> – i.e. *after* the issuance of the Trial Judgment – NUON Chea could not have had any knowledge of this individual at trial. Considering that NUON Chea was prohibited from taking any independent investigative action from the beginning of the ECCC proceedings,<sup>54</sup> the failure to discover the existence of SCW-5 in time cannot be attributed to negligent conduct on the part of NUON Chea. Hence the requirement under Internal Rule 108(7) that additional evidence be unavailable at trial is met.

20. Considering whether the testimony of SCW-5 could have been a decisive factor under Internal Rule 108(7), the Supreme Court Chamber notes that the Co-Prosecutors downplay the role of SCW-5 and consider NUON Chea's arguments speculative.<sup>55</sup> It observes, though, that the proffered witness was in a close personal and working relationship with the Northwest Zone Secretary RUOS Nhim<sup>56</sup> and that he claims to have held key positions within the Northwest Zone bureaucracy and to have engaged in an armed confrontation with Southwest Zone troops loyal to Pol Pot as part of a resistance movement against the Party Centre.<sup>57</sup> As such, the Supreme Court Chamber assumes that SCW-5 may provide material information concerning the alleged CPK policy against Khmer Republic soldiers and officials – including the events at Tuol Po Chrey, the factional character of the CPK and RUOS Nhim's independent decision-making power. Likewise, the testimony of SCW-5 could shed

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<sup>53</sup> Decision on Co-Prosecutor's Urgent Request to Disclose Case 004 Interviews Relevant to 1<sup>st</sup> Segment of Case 002/02 Trial (strictly confidential), E319.2, 14 October 2014.

<sup>54</sup> Letter sent from the Office of the Co-Investigating Judges to the Co-Lawyers for NUON Chea entitled "Response to your letter dated 20 December 2007 concerning the conduct of the judicial investigation", 11 January 2008, A110/I; Trial Chamber Memorandum entitled "NUON Chea Defence Notice to the Trial Chamber Regarding Research at DC-CAM (E211)", 13 Aug 2012, E211/2, para. 4.

<sup>56</sup> Annex 1 [to Third Request]: Written Record of Witness Interview of [SCW-5], 10 September 2013 (English translation filed on 11 February 2014), F2/4.1.1 (strictly confidential) ("SCW-5 WRI"), paras A7-8, A11, A14, A35, A41, A89, A124-125.

<sup>57</sup> SCW-5 WRI, paras A6-A8, A11, A37-40, A182.



light on the contentious question relating to a concealed warehouse erected by him in 1975 for the storage of weapons. At present, the Co-Prosecutors' assertion that the warehouse was simply "a place for safekeeping weapons built in a location that could not easily be located by [the remaining opponents to the CPK]"<sup>58</sup> seems to stand as unsupported as NUON Chea's contrary contention that the weapons were stored clandestinely with the intention of utilising them against the Party Centre.<sup>59</sup>

21. In conclusion, having reviewed the relevant evidence cited in the Trial Judgment,<sup>60</sup> the Supreme Court Chamber is of the view that SCW-5 should be heard pursuant to Internal Rule 108(7). For the same reasons, it admits the WRI of SCW-5 into evidence.

## 2. SCW-3

22. The Supreme Court Chamber notes that the Trial Chamber denied a request to hear SCW-3.<sup>61</sup> NUON Chea proposed SCW-3's testimony, along with that of an additional 109 witnesses, only toward the end of first-instance proceedings, even though all these witnesses had been mentioned in the Closing Order or in previous Co-Prosecutors' motions.<sup>62</sup> In relation *inter alia* to SCW-3, the Trial Chamber considered that since NUON Chea had been put on timely notice that a number of witness statements would be admitted in lieu of oral testimony, his request was belated and thus did not meet the requirements of Internal Rule 87(4).<sup>63</sup> The Co-Prosecutors submit that the Trial Chamber did not abuse its discretion in deciding not to call SCW-3 or any of the other 109 proposed witnesses.<sup>64</sup>

23. The Supreme Court Chamber considers that, in deciding whether to call SCW-3 *proprio motu*, pursuant to Internal Rule 104(1), the issue is not whether the Trial Chamber erred by not calling that witness itself, but rather, as set out above, whether calling SCW-3 in the appellate phase of the proceedings is in the interests of justice and, in particular, conducive to ascertaining the truth. Given that the Trial Chamber relied on SCW-3's written

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<sup>58</sup> Response to Third Request, para. 9.

<sup>59</sup> Third Request, paras 19, 24.

<sup>60</sup> See e.g. Trial Judgment, paras 507-509, 511, 513, 659, 678, 859-861, fn. 1530.

<sup>61</sup> T. (EN) 23 July 2013, E1/227.1, p. 68; Decision on Objections to the Admissibility of Witnesses, Victim and Civil Party Statements and Case 001 Transcripts Proposed by the Co-Prosecutors and Civil Party Lead Co-Lawyers, 8 August 2013, E299 ("Decision on Objections"), para. 38.

<sup>62</sup> Request to Summons Witnesses in Respect of Alleged Policy of Targeting Khmer Republic Officials, 25 July 2013, E291/2, para. 5; including Annex A: Witnesses Cited by the CIJs and Co-Prosecutors in Connection with Alleged Policy to Target Lon Nol Soldiers and Officials for Execution, E291/2.1.

<sup>63</sup> Decision on Objections, para. 38.

<sup>64</sup> Response to Appeal Brief, para. 62.

statement for its conclusion that Khmer Republic soldiers who heeded calls from the Khmer Rouge to return to Phnom Penh were subsequently executed<sup>65</sup> and NUON Chea's submissions as to the circumstances of the recording of the interview of the witness,<sup>66</sup> the Supreme Court Chamber considers it to be important to hear the witness in person.

### 3. SCW-4

24. The Supreme Court Chamber observes that, even though NUON Chea acquired knowledge of SCW-4's written statement only few days before his closing brief was due, he subsequently had more than one month at his disposal to request the Trial Chamber to call SCW-4.<sup>67</sup> Therefore, the fact that NUON Chea failed to submit this request at trial is a failure to exercise due diligence.

25. The Supreme Court Chamber nevertheless considers that calling SCW-4 is, under the circumstances of the case, in the interests of justice. First, NUON Chea's late proposal regarding this witness does not appear to be related to any underlying tactic aimed to revisit old trial strategies and omissions or to unduly prolong proceedings. Moreover, the Supreme Court Chamber finds that it must give consideration to potentially exculpatory evidence. SCW-4's first-hand account of the order ostensibly given by Ta Mok is *prima facie* relevant to the Trial Chamber's finding of a CPK policy to execute Khmer Republic soldiers and officials. Considering that the Trial Chamber fell short of discussing the probative value of this piece of evidence *vis-à-vis* the rest of the evidentiary material, and that hearing SCW-4 will not prejudice the fairness of the proceedings, the Supreme Court Chamber decides to call SCW-4 pursuant to its *proprio motu* power under Internal Rule 104(1).

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<sup>65</sup> See Trial Judgment, fn. 1530, in which SCW-3 appears to be the only eyewitness to the execution of Khmer Republic soldiers and officials. Other evidence cited by the Trial Chamber on this point concerns hearsay statements or evidence regarding arrests and disappearances, not executions. See also Response to Appeal Brief, paras 170-173.

<sup>66</sup> Appeal Brief, para. 595.

<sup>67</sup> According to NUON Chea, the WRI was notified "on 23 September 2013, 72 hours before closing briefs in Case 002/01 were due" (Appeal Brief, para. 567 (emphasis in original)). However, the Supreme Court Chamber notes that, according to Internal Rule 92, the parties may make written submissions "up until the closing statements" (see also Internal Rule 96(2)). In this case, the closing statements were concluded on 31 October 2013 (Trial Judgment, para. 8).

**E. DISPOSITION**

26. For the foregoing reasons, the Supreme Court Chamber:

**GRANTS** NUON Chea's requests to call SCW-5 and to admit the associated WRI<sup>68</sup> into evidence, pursuant to Internal Rule 108(7);<sup>69</sup>

**DECIDES** *proprio motu* to hear SCW-3 and SCW-4, pursuant to Internal Rule 104(1);

**ORDERS** that SCW-3, SCW-4 and SCW-5 appear to give testimony before the Supreme Court Chamber on a date to be scheduled in due course;

**REMAINS SEIZED** of NUON Chea's requests to summon HENG Samrin, Robert LEMKIN, OUK Bunchhoen, THET Sambath, SCW-1 and SCW-2.

**Phnom Penh, 29 May 2015**

**President of the Supreme Court Chamber**



**KONG Srim**

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<sup>68</sup> Annex 1 [to Third Request]: Written Record of Witness Interview of [SCW-5], 10 September 2013 (English translation filed on 11 February 2014), F2/4.1.1 (strictly confidential).

<sup>69</sup> Third Request, para. 34(a) and (b); Appeal Brief, para. 730(a).