



**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

**អង្គជំនុំជម្រះសាលាដំបូង**

Trial Chamber

Chambre de première instance

**សាធារណៈ / Public**

**សំណុំរឿងលេខ: ០០២/១៩ កញ្ញា ២០០៧/អវតក/អជសដ**

**Case File/Dossier No. 002/19-09-2007/ECCC/TC**

**Before:**

**Judge NIL Nonn, President**

**Judge Silvia CARTWRIGHT**

**Judge YA Sokhan**

**Judge Jean-Marc LAVERGNE**

**Judge YOU Ottara**

**Date:**

**12 August 2013**

**Original language(s):**

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du dossier:.....*[Signature]*.....

**THIRD DECISION ON OBJECTIONS TO DOCUMENTS PROPOSED FOR ADMISSION BEFORE THE  
TRIAL CHAMBER**

**Co-Prosecutors**

CHEA Leang

Andrew CAYLEY

**Accused**

NUON Chea

KHIEU Samphan

**Civil Party Lead Co-Lawyers**

PICH Ang

Elisabeth SIMONNEAU FORT

**Lawyers for the Defence**

SON Arun

Victor KOPPE

KONG Sam Onn

Arthur VERCKEN

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Anta GUISSÉ

## 1. INTRODUCTION

1. On 21 January 2013, the Co-Prosecutors filed four lists containing 142 documents which they requested to be put before the Chamber as relevant to population movements phases I and II and Tuol Po Chrey.<sup>1</sup> The parties were given the opportunity to object to the admissibility of these documents at a hearing held on 21 and 22 January 2013. At this hearing, the IENG Sary Defence identified an additional 38 documents which they requested to be put before the Chamber.<sup>2</sup> The parties were also permitted to file written objections to any remaining documents.<sup>3</sup>

2. Following the Trial Chamber decisions on new documents, several additional documents were placed on the Case File over the course of Case 002/01.<sup>4</sup> The parties were granted an opportunity to object to these documents at different stages of proceedings, both orally and in writing.<sup>5</sup>

3. The present decision consolidates all objections made to these remaining documents and categories of documents tendered over the course of Case 002/01 and determines whether

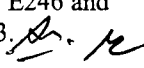
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<sup>1</sup> Co-Prosecutors' Response to the Trial Chamber's Request to Indicate Additional Documents Relevant to the Population Movement and Tuol Po Chrey Trial Segments and Motion for Scheduling of Documentary Hearings, E223/2/1, 23 November 2012; Annex 1: Remaining Documents to be put before the Chamber (E223/2/1.1); Annex 2A: Additional OCP Documents Relating to Phase 1 – Movement of the Population (E223/2/1.2); Annex 2B: Additional OCP Documents Relating to Phase 2 – Movement of the Population (E223/2/1.3); Annex 2C: Additional OCP Documents Relating to Tuol Po Chrey Execution Site (E223/2/1.4).

<sup>2</sup> Although the present decision is issued after the termination of proceedings against the Accused IENG Sary following his death, the Chamber has nevertheless, in the interests of justice, considered all submissions that remain pertinent to the issues at trial; *see also* Decision on Severance of Case 002 following Supreme Court Chamber Decision of 8 February 2013, 26 April 2013, E284, para. 53.

<sup>3</sup> T., 22 January 2013, p. 69.

<sup>4</sup> The Chamber ruled on two categories of new documents: "new documents" included in the initial lists filed by the parties in accordance with Internal Rule 80(3)(d), encompassing documents identified by the parties at the beginning of the trial which were not already on the Case File at the time the Trial Chamber was seised of the case and (2) documents unavailable before the opening of the trial whose admission at trial was requested by the parties during the course of the trial pursuant to Internal Rule 87(4). *See* Decision Concerning New Documents and Other Related Issues, E190, 30 April 2012 ("New Documents Decision"), with annexes; *see also* Decision on Placement of New Documents on the Case File, E190/2, 8 June 2012 ("Second New Documents Decision"), with annexes (collectively, "New Document Decisions"). In addition, several other documents were also put before the Chamber pursuant to various oral rulings or in numerous written decisions concerning requests to tender individual documents pursuant to Internal Rule 87(4). The documents to which these decisions pertain are therefore not assessed in the present decision.

<sup>5</sup> *See e.g.* Further Oral Hearing on Documents (commencing 12 March 2012), E172/1, 24 February 2012; Updated Memorandum for Next Document Hearing, 12-19 March 2012", E172/5, 2 March 2012; Forthcoming Document Hearings and Response to Lead Co-Lawyers' Memorandum Concerning the Trial Chamber's Request to Identify Civil Party Applications for Use at Trial (E208/4) and KHIEU Samphan Defence Request to Revise Corroborative Evidence Lists (E223), E223/2, 19 October 2012; Revised Schedule for Forthcoming Document Hearings (commencing Monday 21 January 2013), E223/3, 17 January 2013 and Response to Motions E246 and E185/1/1 and Other Sundry Requests Concerning Documents and Deadlines, E246/1, 13 February 2013. 

they satisfy the admissibility criteria contained in Internal Rule 87(3) and may thus be considered to have been put before the Chamber.

## 2. PROCEDURAL HISTORY

4. On 17 November 2011, the Trial Chamber announced that documents and other sources referenced in the footnotes to the portions of the Closing Order relevant to each trial segment in Case 002/01 were considered to be put before the Chamber pursuant to Internal Rule 87.<sup>6</sup> It further clarified that these documents were entitled to a presumption of relevance and reliability, including authenticity.<sup>7</sup>

5. The parties were granted an opportunity to rebut this presumption in relation to documents cited in the footnotes to the historical background section of the Closing Order at a hearing on 16–19 January 2012 (“First Document Hearing”).<sup>8</sup> At that hearing, the parties were also required to present objections to all documents listed in Annexes A1-A5 of the Co-Prosecutors’ Rule 80 document lists.<sup>9</sup> On 16 February 2012, a further hearing was scheduled to provide an opportunity for rebuttal in relation to the documents cited in the footnotes to the Closing Order paragraphs relevant to communication and administrative structures and some elements of the roles of the Accused (“Second Document Hearing”).<sup>10</sup> The Chamber ruled on these objections on 9 April 2012.<sup>11</sup> The Chamber recently identified three documents (D366/7.1.72, D243/2.1.16 and D366/7.1.820) which were erroneously omitted from the Framework Document Decision. These documents are now put before the Chamber.

6. Between 12 and 15 March 2012, the parties were granted an opportunity to object to documents listed in the Co-Prosecutors’ remaining Annexes A6–A11 and A14–20, as well as

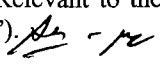
<sup>6</sup> See Response to Issues Raised by Parties in Advance of Trial and Scheduling of Informal Meeting with Senior Legal Officer on 18 November 2011, E141, 17 November 2011, pp. 2-3; Scheduling of Oral Hearing on Documents (16-19 January 2012), E159, 11 January 2012 (“First Document Hearing Scheduling Order”), para. 5; Next Group of Witnesses, Civil Parties and Experts to be heard in Case 002/01, E172, 17 February 2012.

<sup>7</sup> T., 26 January 2012, pp. 85-88; see also Trial Chamber Response to Portions of E114, E114/1, E131/1/9, E131/6, E136 and E158, E162, 31 January 2012 (“Summary of Oral Decision”), para. 3.

<sup>8</sup> Response to Issues Raised by Parties in Advance of Trial and Scheduling of Informal Meeting with Senior Legal Officer on 18 November 2011, E141, 17 November 2011, p. 2.

<sup>9</sup> First Document Hearing Scheduling Order; see also Co-Prosecutors’ Response to the Trial Chamber’s Request for Documents relating to the First Phase of Trial, E109/4, 22 July 2011 (“Co-Prosecutors’ 22 July 2011 List”), with Annexes A1-A20.

<sup>10</sup> Scheduling of Oral Hearing on Documents (13-16 February 2012), E170, 9 February 2012, para. 5.

<sup>11</sup> Decision on Objections to Documents Proposed To Be Put Before the Chamber on the Co-Prosecutors’ Annexes A1-A5 and to Documents Cited in Paragraphs of the Closing Order Relevant to the First Two Trial Segments of Case 002/01, E185, 9 April 2012 (“Framework Document Decision”). 

to a number of documents proposed by the other parties ("Third Document Hearing").<sup>12</sup> The Chamber ruled on these objections on 3 December 2012.<sup>13</sup>

7. On 30 April and 8 June 2012, the Trial Chamber placed on the Case File 485 new documents, which the parties had proposed to put before the Chamber during Case 002/01 pursuant to Internal Rules 80(3) and 87(4). It indicated that in due course an opportunity would be provided for adversarial debate concerning their admissibility.<sup>14</sup>

8. On 19 October 2012, the Trial Chamber informed the parties that a hearing would be scheduled to enable adversarial challenge to the admissibility of all remaining documents at issue in Case 002/01, including all new documents ("Fourth Document Hearing").<sup>15</sup> The Chamber also directed the parties to identify no later than 30 November 2012 which documents from their original document lists they sought to tender in relation to the remaining trial segments, namely population movements phases I and II and Tuol Po Chrey.<sup>16</sup> The Co-Prosecutors responded on 23 November 2012.<sup>17</sup>

<sup>12</sup> T., 12-15 March 2012 and Updated Memorandum for Next Document Hearing (12-19 March 2012), E172/5, 2 March 2012, para. 2. This hearing was limited to documents that had not previously been discussed in court or considered in the Framework Document Decision. As several documents listed in Annexes A6-A20 of the Co-Prosecutors' 22 July 2011 List were also cited in relevant Closing Order footnotes, objections to them were considered in the Framework Document Decision (*see* Annex A to the Framework Document Decision (E185.1)). Objections to documents listed in Annexes A12-A13 were not considered in the Third Document Hearing and will not be considered in the present decision. They were instead addressed in the Chamber's Decision on Co-Prosecutors' Rule 92 Submission Regarding the Admission of Witness Statements and Other Documents Before the Trial Chamber, 20 June 2012, E96/7 ("Witness Statements Decision") and forthcoming Decision on Objections to the Admissibility of Witness, Victim and Civil Party Statements Proposed by the Co-Prosecutors and Civil Party Lead Co-Lawyers ("Pending Written Statements Decision") (*see* Annex IV(b): List of all Motions Filed at Trial and their Corresponding Disposition by the Trial Chamber (Motions still pending before the Chamber (upon which a decision is expected shortly)), p. 26 (sent to all parties as an advance courtesy copy by the Trial Chamber Senior Legal Officer on 10 June 2013)).

<sup>13</sup> Decision on Objections to Documents Proposed to be put before the Chamber in Co-Prosecutors' Annexes A6-A11 and A14-A20 and by the Other Parties, E185/1, 3 December 2012 ("Second Document Decision"). Annex 21 contains a list of documents not on the case file which was submitted at an earlier stage of the trial. The documents listed in that Annex are also listed in Annexes A1-A20 of the Co-Prosecutors' 22 July 2011 List. These documents were placed on the case file pursuant to the New Document Decisions but were not addressed in the Framework Document Decision or in the Second Document Decision.

<sup>14</sup> New Document Decisions; *see also* Second Document Decision, para. 22.

<sup>15</sup> Of the initial 485 new documents listed in the New Document Decisions, the admissibility of 451 has yet to be determined by the Chamber. The instant decision deals with all objections made to these documents. The remaining 50 documents were either already put before the Chamber during trial proceedings, or are instead dealt with in the Pending Written Statements Decision.

<sup>16</sup> Forthcoming Document Hearings and Response to Lead Co-Lawyers' Memorandum Concerning the Trial Chamber's Request to Identify Civil Party Applications for Use at Trial (E208/4) and KHIEU Samphan Defence Request to Revise Corroborative Evidence List (E223), E223/2, 19 October 2012, paras 2-6.

<sup>17</sup> Co-Prosecutors' Response to the Trial Chamber's Request to Indicate Additional Documents Relevant to the Population Movement and Tuol Po Chrey Trial Segments and Motion and Motion for Scheduling of Documentary Hearings, E223/2/1, 23 November 2012. *Am - pr*

9. On 8 January 2013, the Chamber notified the parties that the Fourth Document Hearing would take place during the week of 18-21 February 2013.<sup>18</sup> In consequence of the Chamber's inability to hear testimony due to the continuing ill health of the Accused, this hearing was brought forward and instead held between 21-24 and 30-31 January 2013.<sup>19</sup>

10. At the beginning of the Fourth Document Hearing, the Co-Prosecutors submitted four lists of documents for which opportunity for adversarial challenge of their admissibility had yet to be provided ("Co-Prosecutors' Lists"). The first of these lists contains 48 outstanding documents tendered by numerous parties, while the remaining three lists contained a total of 94 documents the Co-Prosecutors sought to put before the Chamber in relation to population movement phases I and II and Toul Po Chrey.<sup>20</sup> At this hearing, the IENG Sary Defence identified 54 documents they considered had not been subjected to discussion.<sup>21</sup> The Co-Prosecutors submitted that all other documents contained on the parties' Case 002/01 document lists had been debated and all objections to them since ruled upon by the Trial Chamber.<sup>22</sup>

11. Following the Fourth Document Hearing, the IENG Sary Defence and the KHIEU Samphan Defence also filed written objections regarding the admissibility of some documents.<sup>23</sup> The NUON Chea Defence responded on 8 February 2013.<sup>24</sup> The Co-Prosecutors filed a joint response to the respective Defence objections on 22 February 2013.<sup>25</sup>

<sup>18</sup> Consolidated Schedule of Witnesses and Experts for Early 2013, E236/4, 8 January 2013.

<sup>19</sup> Revised Schedule for Forthcoming Document Hearings (commencing Monday 21 January 2013), E223/3, 17 January 2013, para. 2. During the Fourth Document Hearing, the Chamber also granted the parties an opportunity to highlight key documents deemed by them to be of particular significance in relation to the historical background trial segment (T., 22 January 2013, pp. 65 and 69-71; *see also* Scheduling of Oral Hearing on Documents (13-16 February 2012), E170, 9 February 2012, paras 2-3). Opportunities to highlight key documents relevant to other trial segments were also granted throughout the trial.

<sup>20</sup> Annex 1: Remaining Documents to be put before the Chamber (E223/2/1.1) (containing 2 documents referred in the footnotes of the paragraphs of the Closing Order relevant to population movement phases I & II and Tuol Po Chrey, 6 documents put forward by the Co-Prosecutors, 2 documents tendered by the Lead Co-Lawyers, 1 document jointly by the Co-Prosecutors and the Lead Co-Lawyers, 4 documents by the IENG Sary Defence, 22 Documents by the KHIEU Samphan Defence and 11 documents by the NUON Chea Defence); Annex 2A: Additional OCP Documents Relating to Phase 1 – Movement of the Population (E223/2/1.2) (containing 88 documents); Annex 2B: Additional OCP Documents Relating to Phase 2 – Movement of the Population (E223/2/1.3) (2 documents) and Annex 2C: Additional OCP Documents Relating to Tuol Po Chrey Execution Site (E223/2/1.4) (4 documents).

<sup>21</sup> T., 22 January 2013, pp. 42-44 and 49-68 ("IENG Sary Defence List").

<sup>22</sup> T., 21 January 2013, p. 6.

<sup>23</sup> IENG Sary's Objections to the Admission of Certain Documents, 23 January 2013, E223/2/2 ("IENG Sary's Written Objections to Co-Prosecutors' Documents"); Annex 1: IENG Sary's Objections to the Documents Proposed by the OCP in E223/2/1 (E223/2/1.2); Annex 2: IENG Sary's Objections to the Documents Proposed by the OCP in E223/2/1 (E223/2/1.3); Annex 3: IENG Sary's Objections to the Documents Proposed by the OCP in E223/2/1 (E223/2/1.4); Annex 4: Remaining [non-statement] documents to be put before the chamber [not relating to forced transfer 1, 2 or Tuol Po Chrey] (E223/2/2.1); Annex 5: IENG Sary's Objections to the

12. Subsequently, the Chamber granted a further opportunity to file written objections to all new documents.<sup>26</sup> The KHIEU Samphan Defence filed written objections to these documents on 22 February 2013, whilst alleging that it lacked sufficient opportunity to formulate objections to all new documents.<sup>27</sup> In response, the Co-Prosecutors noted that all parties had been granted ample opportunity to object to new documents over the course of trial.<sup>28</sup>

### 3. SUBMISSIONS

#### 3.1. Co-Prosecutors' Objections

13. The Co-Prosecutors objected orally to the tendering of the following eight documents:

- i. Four letters introduced by the KHIEU Samphan Defence in relation to the Accused's character, on grounds that they concern KHIEU Samphan's role and not merely his character, and were sought by the Defence after the close of the judicial investigation;<sup>29</sup>
- ii. Document E131/1/13/12 (a book introduced by the NUON Chea Defence, regarding current political issues in Cambodia), on grounds of relevance;<sup>30</sup>

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Documents Proposed by the OCP in E223/2/1 (E223/2/2.5); Objections to the Admissibility of Documents Relating to Population Movements and to the Tuol Po Chrey Site (with Annexes), 8 February 2013, E223/2/4 ("KHIEU Samphan Written Objections to Co-Prosecutors' Documents"); Commentaires à "Annex 1 to OCP Response to TC Request re Additional Documents re Population Movement and Tuol Po Chrey and Motion for Scheduling of Documentary Hearings" (E223/2/4.1); Commentaires à "Annex 2A to OCP Response to TC Request re Additional Documents re Population Movement and Tuol Po Chrey and Motion for Scheduling of Documentary Hearings" (E223/2/4.2); Commentaires à "Annex 2B to OCP Response to TC Request re Additional Documents re Population Movement and Tuol Po Chrey and Motion for Scheduling of Documentary Hearings" (E223/2/4.3); Commentaires à "Annex 2C to OCP Response to TC Request re Additional Documents re Population Movement and Tuol Po Chrey and Motion for Scheduling of Documentary Hearings" (E223/2/4.4).

<sup>24</sup> Response to Co-Prosecutors' Objections to Defence Documents, 8 February 2013, E223/2/3 ("NUON Chea Response to Co-Prosecutors' Objections").

<sup>25</sup> Co-Prosecutors' Joint Response to IENG Sary and KHIEU Samphan Objections to the Admission of Certain Documents, 22 February 2013, E223/2/5 ("Co-Prosecutors' Response to IENG Sary and KHIEU Samphan Written Objections"). The Chamber allowed the parties until 8 February 2012 to file their written objections, and permitted the Co-Prosecutors until 22 February 2013 to respond (T., 22 January 2013, p. 69).

<sup>26</sup> Response to Motions E246 and E185/1/1 and Other Sundry Requests Concerning Documents and Deadlines, E246/1, 13 February 2013, para. 4.

<sup>27</sup> Objections to Admissibility of New Documents, E246/1/1, 22 February 2013 ("KHIEU Samphan Objections to New Documents") and IENG Sary's Objections to the Admission of Documents Contained in E190.1 and E190/2.1, E223/2/2/1, 22 February 2013. The NUON Chea Defence filed no objections.

<sup>28</sup> See e.g. Co-Prosecutors' Response to KHIEU Samphan's 22 February 2013 Objections to the Admissibility of New Documents, 21 March 2013, E246/1/2, ("Co-Prosecutors' Response to KHIEU Samphan Objections to New Documents") paras 4-21; Moreover the KHIEU Samphan Defence was given a full afternoon to make observations regarding the probative value of key documents presented by the Co-Prosecutors and Civil Parties. See Schedule for the final document and other hearings in Case 002/01, for the questioning of the Accused and response to motions E263 and E288/1, E288/1/1, 21 June 2013, paras 5-6; T., 9 July 2013, pp. 49-50.

<sup>29</sup> T., 21 January 2013, pp. 22-24 (objecting to Testimony by Philippe JULLIAN-GAUFRES in Defence of Mr. KHIEU Samphan, E190/2.5, 15 October 2010; Témoignage de SAM SOK in faveur de Monsieur KHIEU Samphan, E190/2.7, 21 January 2011; Letter from former Minister Roland Dumas, E190/2.18, 14 February 2011 and Témoignage de Claude Katz, E190/2.19, 18 April 2011).

<sup>30</sup> T., 21 January 2013, p. 24 (objecting to Joel Brinkley, "Cambodia's Curse: A Modern History of a Troubled Land", E131/1/13/12). *See* - 12

- iii. Documents E131/1/13.2 and E131/1/13.10 (a newspaper article and a report introduced by the NUON Chea Defence, examining the personalities and politics of various Cambodian public figures, and recent political tensions between Cambodia and Thailand), on grounds of relevance;<sup>31</sup> and
- iv. Document E131/1/13.11 (a report introduced by the NUON Chea Defence, to the extent it discussed the so-called K-5 construction plan), also on grounds of relevance.<sup>32</sup>

14. The Civil Party Lead Co-Lawyers endorsed the Co-Prosecutors' objections regarding these documents.<sup>33</sup> In response, the NUON Chea Defence countered that document E131/1/13.11, entitled "K-5 Construction Plan for Fiscal year 1987", is relevant to Case 002/01 but did not address any other document presented during this hearing.<sup>34</sup>

### **3.2. Defence Objections**

15. During the Fourth Document Hearing, the NUON Chea Defence did not seek to object orally to any documents.<sup>35</sup> The KHIEU Samphan and IENG Sary Defence, frequently repeating their earlier objections to the tendering of certain categories of documents, submitted as follows:

- i. Letters, media articles, books and academic articles should not be admitted unless they are shown to be authentic, relevant and reliable, and if their authors, producers or other relevant witnesses testify before the Chamber;<sup>36</sup>
- ii. The probative value of videos cannot be assessed where the producer or director is unavailable to testify regarding the questions being asked of the subject, the method of filming, and the means of producing the film;<sup>37</sup>
- iii. Documents from foreign governments, particularly from France and the United States, should not be admitted unless their authors are available to testify at trial, as both countries were involved in Cambodian affairs at the relevant time;<sup>38</sup>
- iv. The biography of witness LONG Norin should not be admitted, on grounds that the witness has already testified before the Chamber;<sup>39</sup>
- v. Confessions, where obtained under torture, are inadmissible in accordance with the relevant ECCC jurisprudence;<sup>40</sup>
- vi. Rogatory completion reports of the Office of the Co-Investigating Judges should not be admitted, as they are of no evidentiary value;<sup>41</sup>

<sup>31</sup> T., 21 January 2013, pp. 25-26 (objecting to a *Vanity Fair* article by T.D. Allman entitled "Sihanouk's Sideshow", 31 January 2012, E131/1/13.2 and Working visit to Thailand of the Second Prime Minister Hun Sen, May 6-7, 1998, E131/1/13.10).

<sup>32</sup> T., 21 January 2013, pp. 25-26 (objecting to K-5 Construction Plan for Fiscal Year 1987, The Council of Ministers, 23 August 1986, E131/1/13.11).

<sup>33</sup> T., 21 January 2013, p. 27.

<sup>34</sup> NUON Chea Response to OCP Objections, paras 3-11.

<sup>35</sup> T., 21 January 2013, p. 28.

<sup>36</sup> T., 21 January 2013, pp. 33-36.

<sup>37</sup> T., 21 January 2013, pp. 30, 34-35.

<sup>38</sup> T., 21 January 2013, pp. 31-32.

<sup>39</sup> T., 21 January 2013, p. 31.

<sup>40</sup> T., 21 January 2013, p. 31.

- vii. Photographs unless the parties have the opportunity to cross-examine the photographer, or unless there is some independent indicia of reliability that provides the necessary context;<sup>42</sup>
- viii. Documents originating from the Documentation Center of Cambodia (“DC-Cam”) should also be ruled inadmissible, given concerns over chain of custody, as should documents without an identifiable author. These include, in particular, documents concerning Tram Kak District.<sup>43</sup>

16. In response, the Co-Prosecutors submit that many of the Defence objections concern the probative value and thus weight to be afforded to documents, rather than their admissibility as such.<sup>44</sup> The Civil Party Lead Co-Lawyers concurred with the Co-Prosecutors and further noted that the Defence objections to documents proposed by the Co-Prosecutors and the Lead Co-Lawyers are objections upon which the Chamber has previously ruled.<sup>45</sup>

17. In its written submissions, the IENG Sary Defence recalled its earlier objections to the admission of any document not demonstratively authentic or shown to be authentic.<sup>46</sup> It also noted that 38 documents on its initial list of 54 documents (distributed during the hearing on 22 January 2013) had not been subject to debate, and objected to a total of 180 documents divided under several categories.<sup>47</sup> The KHIEU Samphan Defence also repeated its earlier objections to books, video documentaries, confessions, rogatory reports and documents translated by DC-Cam.<sup>48</sup> In total, it identified 56 documents under these categories to which it objected, including document D108/31.28 from the IENG Sary List.<sup>49</sup>

18. In response, the Co-Prosecutors reiterated their previous written and oral submissions and requested that the majority of the Defence objections should be dismissed, on grounds that the Chamber has previously rejected them.<sup>50</sup>

19. In its written objections to the new documents, the KHIEU Samphan Defence, in addition to recalling its earlier objections, submits that most of these documents are

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<sup>41</sup> T., 21 January 2013, p. 29.

<sup>42</sup> T., 21 January 2013, pp. 60-61.

<sup>43</sup> T., 21 January 2013, pp. 61, 62.

<sup>44</sup> T., 21 January 2013, pp. 48, 63-70.

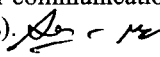
<sup>45</sup> T. 21 January 2013, p. 52, 53 (noting the Framework Document Decision and the Second Document Decision).

<sup>46</sup> IENG Sary’s Written Objections to Co-Prosecutors’ Documents, p. 1

<sup>47</sup> IENG Sary’s Written Objections to Co-Prosecutors’ Documents, pp. 2-4; *see also* T., 22 January 2013, pp. 53-56. The remaining 16 documents either appear on the Co-Prosecutors’ Lists or were previously ruled upon.

<sup>48</sup> KHIEU Samphan Written Objections to Co-Prosecutors’ Documents, p. 3-4.

<sup>49</sup> Letter from Met to Duch, D108/31.28.

<sup>50</sup> Co-Prosecutors’ Response to IENG Sary and KHIEU Samphan’s Written Objections, paras 3-4 (incorporating by reference the Co-Prosecutors’ prior oral submissions of 21 January 2013 regarding documents described as international communications, as well as international media reports, videos and the relevance of Tram Kak District reports). 

inadmissible on grounds that they are either irrelevant, outside the time-period covered by the Closing Order, at variance with the Closing Order, unsuitable to prove the facts they purport to prove, unavailable in Khmer, not authentic, obtained under torture, or inappropriate to admit because their author is unidentified.<sup>51</sup> In response, the Co-Prosecutors submit that these objections are either repetitious or of a general nature.<sup>52</sup>

## 4. FINDINGS

### 4.1. Introduction

20. According to Internal Rule 87(3), only documents which are *prima facie* relevant, reliable and authentic may be put before the Chamber. In its prior Document Decisions, the Chamber outlined the following general principles governing the admissibility of documents within the ECCC legal framework:<sup>53</sup>

- a. All documents cited in the portions of the Closing Order relevant to each trial segment in Case 002/01 are entitled to a presumption of relevance and reliability (including authenticity);<sup>54</sup>
- b. Contemporaneous DK era documents originating from DC-Cam are entitled to a rebuttable presumption of *prima facie* relevance and reliability (including authenticity). On the basis of the testimony of the DC-Cam Director and Deputy Director, the Chamber declared the methodology used by DC-Cam in obtaining, archiving and preserving documents to be reliable and found no basis to conclude that documents originating from DC-Cam were likely to have been tampered with, distorted or falsified;<sup>55</sup>
- c. The Chamber declined to adopt a presumption of relevance and reliability (including authenticity) for all documents put before the Trial Chamber in Case 001 on grounds that not all of these documents are relevant to Case 002/01. However, the reliability accorded to them in Case 001 is one factor to be considered in determining their compliance with Internal Rule 87;<sup>56</sup>
- d. Issues concerning, amongst other things, the legibility of copies of documents or discrepancies between an audio recording and the written statement which summarized it are matters going to the weight to be accorded to evidence rather than its admissibility pursuant to Internal Rule 87(3);<sup>57</sup>
- e. There is no requirement within the ECCC legal framework that documents be put before the Chamber only in connection with the testimony of a witness, expert or Civil Party.

<sup>51</sup> KHIEU Samphan Objections to New Documents, paras 26-30.

<sup>52</sup> Co-Prosecutors' Response to KHIEU Samphan Objections to New Documents, paras. 40-43.

<sup>53</sup> See also First Document Hearing Scheduling Order; Summary of Oral Decision; Decision on NUON Chea's Request for a Rule 35 Investigation Regarding Inconsistencies in the Audio and Written Records of OCII Witness Interviews, E142/3, 13 March 2012; New Document Decisions and Witness Statement Decision.

<sup>54</sup> Framework Document Decision, para. 20; see also Summary of Oral Decision, para. 3 and T., 26 January 2012, pp. 85-88.

<sup>55</sup> Framework Document Decision, para. 28.

<sup>56</sup> Framework Document Decision, para. 34; see also T., 3 April 2012, pp. 65-66 (noting that the Chamber had already decided to place before it specified written records of interview of KAINING Guek Eav made by the Co-Investigating Judges and thus rejecting the Defence's objections to them).

<sup>57</sup> Framework Document Decision, paras 21 and 30. *Ag - 12*

While sources such as books, analytical reports, documentary films or media articles are not as such inadmissible, the appropriate weight to be accorded to these sources shall be assessed by the Chamber in due course;<sup>58</sup>

- f. The Trial Chamber has previously clarified in its jurisprudence the extremely limited uses that may legitimately be made of evidence obtained through torture.<sup>59</sup>
- g. Objections lacking sufficient specificity as to why particular documents or categories of documents are inadmissible shall be rejected;<sup>60</sup>
- h. Regarding the availability of translations of documents into all ECCC official languages, the Trial Chamber has indicated that parties seeking the introduction of documents at trial bear the burden of ensuring their timely availability in all three official languages;<sup>61</sup> and
- i. Questions regarding the probative value and thus weight to be accorded to documents are irrelevant to the assessment of their conformity with the Rule 87(3) criteria. The probative value and thus weight to be accorded to documents shall nonetheless be considered by the Chamber in its evaluation of all evidence in connection with the verdict.<sup>62</sup>

21. Related principles, governing the admissibility and criteria for evaluation of new documents and written statements tendered by the parties absent the testimony of their authors, are contained in other Trial Chamber decisions and trial management memoranda.<sup>63</sup>

The following general principles are relevant in this regard:

- a. Material which was not part of the Case File originally forwarded to the Trial Chamber may, under certain conditions, also be placed on the Case File and put before the Chamber, either on the Chamber's own initiative or at the request of a party. For instance, prior to the commencement of trial, parties may include on their document lists 'new' documents (*i.e.* those not already on the Case File at the time the Trial Chamber was seised of the case) pursuant to Internal Rule 80(3)(d). Once the trial has commenced, parties may also, by reasoned submission addressing the criteria in Internal Rule 87(4), seek to tender new evidence (*i.e.* that which was unavailable before the opening of the trial);<sup>64</sup>
- b. All evidence must fulfil the general criteria for admission contained in Internal Rule 87(3) (a)-(e). It follows that an opportunity for the parties to object to any document pursuant to these criteria is also a precondition for the admission of all new documents before the Chamber;<sup>65</sup> and
- c. Prior statements of witnesses and Civil Parties heard or to be called at trial may be put before the Chamber in conjunction with their evidence. Witness and Civil Party statements and other written statements are under certain conditions also admissible absent the

<sup>58</sup> Framework Document Decision, paras 21(4) and 31.

<sup>59</sup> Framework Document Decision, para 21(5) (citing E74 of 8 April 2011 and its oral decisions in Case 001 dated 20 and 28 May 2009).

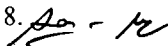
<sup>60</sup> Framework Document Decision, para. 23; *see also* First Document Hearing Scheduling Order, para. 2.

<sup>61</sup> Framework Document Decision, para. 21(8); Second Document Decision, para. 16; *see also* Decision on Co-Prosecutors' Request to Establish Procedure Regarding Admission of Documents not Translated in all ECCC Languages (E223/2/6) and Lead Co-Lawyers' Response to Trial Chamber Directives on Tendering Civil Party Statements and Other Documents (E223/2/7 and E223/2/7/1), E223/2/6/1, 20 June 2013.

<sup>62</sup> Second Document Decision, para. 13.

<sup>63</sup> *See e.g.* New Document Decisions; Witness Statement Decision, paras 21-25 and 30-31 (*see also* Forthcoming Document Hearings and Response to Lead Co-Lawyers' Memorandum concerning the Trial Chamber's Request to Identify Civil Party Applications for use at Trial (E208/4) and KHIEU Samphan Defence Request to Revise Corroborative Evidence Lists (E223), 19 October 2012, E223/2).

<sup>64</sup> New Documents Decision, paras 17 and 22.

<sup>65</sup> New Documents Decision, para. 18. 

testimony of their authors. However, written statements proposed to be put before the Chamber as proof of the acts and conduct of the Accused as charged in the indictment are, subject to limited exceptions, inadmissible pursuant to Internal Rule 87(3)(d) unless the Defence has been accorded the opportunity of in-court examination of their authors.<sup>66</sup>

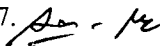
22. The Chamber has reviewed each document put forward by the parties and has considered all objections made to them in light of the Internal Rule 87(3) criteria and the relevant Trial Chamber jurisprudence.

#### **4.2. Co-Prosecutors' Objections**

23. The Trial Chamber recalls that during the hearing of 6 September 2012 it sustained an objection to a question pertaining to K-5 ( construction works along the Thai border between 1984-88) because such questions were irrelevant to the facts in Case 002/01.<sup>67</sup> Document E131/1/13.11 (concerning the so-called K-5 Construction Plan for Fiscal Year 1987) (paragraph 13(iv)), is accordingly rejected as irrelevant. The Chamber also excludes documents E131/1/13.12 (a book concerning contemporary political issues in Cambodia), E131/1/13.2 (a *Vanity Fair* article, regarding various Cambodian political figures) and E131/1/13.10 (a 1998 report, concerning the relationship between Cambodia and Thailand) (paragraphs 13(ii) and (iii)) on grounds that they also concern events outside the scope of the Case 002/01 Closing Order and are therefore irrelevant.

24. The Chamber, however, finds that the four letters filed by the KHIEU Samphan Defence (E190/2.5, E190/2.7, E190/2.18, and E190/2.19) are relevant to facts at issue in Case 002/01 – namely the character of the Accused KHIEU Samphan and his role as head of the State Presidium during the period of Democratic Kampuchea. Letter E190/2.5 has already been put before the Chamber on 12 May 2013, in connection with the testimony at trial of its author. Although, as submitted by the Co-Prosecutors, these letters also address issues other than the Accused's character and were produced outside the investigation phase, these are matters which will be considered when assessing the probative value, and thus weight, to be accorded to the letters. The Chamber decides to admit the letters. The Co-Prosecutors' objections regarding these letters (paragraph 13(i)) are therefore rejected.

<sup>66</sup> Witness Statement Decision, paras 22-25.

<sup>67</sup> T., 6 September 2012, pp. 26-27. 

#### **4.3. Objections by the Defence**

25. The Defence object to a number of documents on grounds of relevance. Many of these objections lack specificity and the Chamber would be entitled to reject them on this basis (paragraph 20(g)). It has nonetheless reviewed all documents objected to on this basis and has assessed whether they are relevant to ascertaining the truth in Case 002/01 and therefore comply with Internal Rule 87(3(a)). Many of the Defence objections (for example, those contained in paragraph 15(i), (ii), (v), (vii) and (viii)) are also identical to those addressed in substance by the Chamber's previous admissibility decisions and are rejected for the reasons cited therein.

26. Concerning the rogatory reports to which the IENG Sary Defence object (paragraph 15(vi)), the Chamber notes that rogatory reports have been previously admitted in both the Framework Document Decision as well as the Second Document Decision. The Chamber considers that such documents cannot as a category be excluded pursuant to Internal Rule 87, although all objections regarding the alleged partiality of the substance of these documents will be taken into account by the Chamber when assessing the probative value, and thus weight, to be accorded to them in its evaluation of all the evidence. Regarding the IENG Sary Defence objection to the admission of the biography of LONG Norin, the Chamber notes that this document was previously put before the Chamber on 8 December 2011, following adversarial argument regarding it during the testimony of this witness.

#### **4.4. Conclusion**

27. Having examined all documents contained in the Co-Prosecutors' and IENG Sary Lists, the Chamber finds all, with the exception of 11 documents, to be *prima facie* relevant and reliable (including authentic) and thus to satisfy the admissibility criteria contained in Internal Rule 87. The Chamber similarly finds all new documents, with few exceptions, also to satisfy the requirements of this Rule. They have therefore been assigned an E3 number and put before the Chamber. All objections raised to these documents over the course of the trial shall nonetheless be considered by the Chamber when weighing the probative value and thus weight to be accorded to each of these documents in relation to the verdict.

28. For ease of reference, the Chamber has listed all documents put before the Chamber in consequence of this decision in 6 Annexes: Annex A (containing all documents on the first



Co-Prosecutors' List); Annex B (all documents on the Co-Prosecutors' List, concerning population movement phase I); Annex C (all documents proposed in the Co-Prosecutors' List concerning population movement phase II); Annex D (all documents on the Co-Prosecutors' List pertaining to Tuol Po Chrey); Annex E (all documents on the IENG Sary List) and Annex F (new documents).

**FOR THE FOREGOING REASONS, THE TRIAL CHAMBER:**


**CONSIDERS** the following documents to have been put before the Chamber and assigns them an E3 number:

- i. Document D366/7.1.72 (assigned E3/4603);
- ii. Document D243/2.1.16 (assigned E3/4604); and
- iii. Document D366/7.1.820 (assigned E3/4605)

**CONSIDERS** those documents contained in Annexes A-F of this Decision to have been put before the Chamber, with the exception of 14 documents as further identified and particularized in each of these Annexes;

**RECALLS** that the probative value and thus weight to be accorded to all evidence put before the Chamber in consequence of this decision will be determined by the Chamber at the conclusion of the hearing of evidence in Case 002/01 and in connection with the verdict.

Phnom Penh, 12 August 2013  
President of the Trial Chamber

  
Nil Nonn