



**ឯកសារដើម**  
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du dossier:..... NANN PANDA .....

**ព្រះរាជាណាចក្រកម្ពុជា**  
**ជាតិ សាសនា ព្រះមហាក្សត្រ**

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

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

**TRIAL CHAMBER**

**TO:** All Parties, Case 002

**FROM:** NIL Nonn, President of the Trial Chamber

**CC:** All Trial Chamber Judges; Trial Chamber Senior Legal Officer



**SUBJECT:** Decision on Internal Rule 87(4) Request of the Co-Prosecutors to Put before the Chamber Document D366/7.1.366

1. The Co-Prosecutors requested orally on 24 June 2013 to put before the Chamber a National Security Council memorandum entitled “Cambodia Fact Sheets” dated 17 March 1975 (D366/7.1.366).<sup>1</sup> They submit that even though they are unable to demonstrate reasonable diligence in discovering this proposed evidence, it is “particularly relevant” and its admission would be in the interests of justice (T., 24 June 2013, pp. 58-60, 77-83). The KHIEU Samphan Defence objects, arguing that the Co-Prosecutors failed to make a timely, written and reasoned application which satisfies the criteria set out in Internal Rules 87(3) and 87(4) (T., 9 July 2013, pp. 55-68).

2. According to Internal Rule 87(4), the Chamber may admit any new evidence that it deems conducive to ascertaining the truth, where that evidence also satisfies the *prima facie* standards of relevance, reliability and authenticity required under Rule 87(3). The requesting party must satisfy the Chamber that the proposed evidence was either unavailable prior to the opening of the trial or could not have been discovered earlier with the exercise of reasonable diligence. In certain cases, however, the Chamber has admitted evidence that does not strictly speaking satisfy this criteria where the interests of justice so require (E190, paras 19-21; E289/2, para. 3).

3. The Co-Prosecutors first requested that the proposed evidence be placed on the case file on 12 February 2010 (D366). Thereafter, the Co-Investigating Judges placed the

<sup>1</sup> The Chamber notes that this document was erroneously identified by the IENG Sary Defence (E223/2/2) and thereafter, was erroneously included in the “Third Decision on Objections to Documents Proposed for Admission before the Chamber”, Annex E (E185/2.5), p. 3. A corrigendum will be issued in due course removing it from this Annex.

proposed evidence on the case file on 4 May 2010 (D366/7). The Co-Prosecutors, however, did not include the proposed evidence on its Internal Rule 80(3) lists of proposed evidence. They acknowledge that they cannot justify the untimely discovery and presentation of this evidence during the final key document hearing in Case 002/01 and more than three years after the evidence was initially placed on the case file (T., 24 June 2013, p. 80). The Co-Prosecutors therefore fail to satisfy the criteria set out in Internal Rule 87(4).

4. The Chamber further notes that the portion of the proposed evidence identified by the Co-Prosecutors as particularly relevant (T., 24 March 2013, p. 80; D366/7.1.366, ERN 00443226-8) is repetitive of, and/or based upon the same sources as, other evidence already before the Chamber recounting refugee reports of forced movement and executions in the year preceding 17 April 1975 (*see e.g.* E3/30; E3/120; E3/3472). Therefore, the Chamber considers that the Co-Prosecutors failed to demonstrate that it is in the interests of justice to admit this evidence, especially at this late stage of the trial. The Chamber denies the request to admit document D366/7.1.366.

5. This constitutes the Chamber's official response to the application made by the Co-Prosecutors in court on 24 June 2013 (T., 24 June 2013, pp. 58-60, 77-83).