

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

FILING DETAIL

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INITIAL DOCUMENT LIST FOR CASE 002/02

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I. INTRODUCTION

1. The Co-Lawyers for Nuon Chea (the ‘Defence’) hereby submit an initial list of documents to be put before the Chamber in Case 002/02 (‘Initial Document List’), set out in Annex A, with a suggested public classification. The Defence makes the following submissions regarding the Initial Document List.

II. SUBMISSIONS

A. The Documents are Admissible under the Properly Applicable Cambodian Law

2. The Defence maintains its consistent position that under the properly applicable law, there is no “advance-notice requirement” governing the admission of documentary evidence in the ECCC.¹ On the contrary, this Initial Document List and any further documentary evidence proffered by the Defence is admissible at any point until the end of the trial in Case 002/02.
3. To reiterate and summarise its position, the Defence highlights that under Article 12 of the Agreement to establish the ECCC, ECCC procedure “shall be in accordance with Cambodian law” unless it is silent, uncertain, or inconsistent with international standards on a particular matter.² Article 334 of the Cambodian *Code of Criminal Procedure (CCP)* provides that an accused has the right to submit documentary evidence “[u]ntil the end of the trial hearing”.³ This provision of Cambodian law is express, certain, and consistent with international standards. Therefore, the Defence submits that Article 334 of the CCP prevails over Internal Rule 87(4) to govern the admission of documentary evidence in the ECCC.
4. It follows that the criteria according to which documentary evidence should be assessed for admission is provided not in Internal Rules 87(3) and (4) but in Article 334 of the CCP, which permits an accused to submit “all documents and evidence that they think will be conducive to ascertaining the truth”. Most documents in the Initial Document

¹ See, e.g., Doc. No. **E131/1/13**, ‘List of Documents to be Put Before the Chamber During the First Mini-Trial’, 31 January 2012, para. 5.

² *Agreement Between the United Nations and the Royal Government of Cambodia Concerning the Prosecution under Cambodian Law of Crimes Committed During the Period of Democratic Kampuchea*, 6 June 2003, Art. 12.

³ *Code of Criminal Procedure of the Kingdom of Cambodia*, 2007, Art. 334 (emphasis added).

List relate to a central theme of the defence of Mr. Nuon Chea: that events in Democratic Kampuchea were a reaction to consistent and flagrant aggression on the part of Vietnam and to the presence and destabilising actions of a Vietnamese-sponsored faction within the leadership of the Communist Party of Kampuchea. The other documents illustrate procedural irregularities in the ECCC that arguably violate the fundamental right of Mr. Nuon Chea to a fair trial and thus the pursuit of truth. In short, the Defence submits that all documents in its Initial Document List are conducive to ascertaining the truth in Case 002/02 and are therefore admissible.

**B. In the Alternative, the Documents are Automatically Admissible
and Not Subject to Internal Rule 87(4)**

5. In the alternative, the Defence takes the position, jointly held by all of the Parties in Case 002/02 in accordance with reasons previously communicated to the Chamber, that Internal Rule 87(4) should apply “only to new evidence proposed by a Party *after the opening of the trial*, that is after the upcoming Initial Hearing”.⁴ Thus, the Defence submits that it is unnecessary to file the Initial Document List in accordance with Internal Rule 87(4) and to therefore demonstrate that the relevant criteria for admission have been met. Instead, as the Initial Document List has been filed before the Initial Hearing in Case 002/02, all documents listed therein are automatically admissible.

C. Even If Internal Rule 87(4) Applies, the Documents Meet the Criteria for Admission

6. While the Defence has submitted that Internal Rule 87(4) does not apply at all or at least not until after the Initial Hearing, the Defence notes that the Chamber maintains otherwise and has directed the Parties to submit new documents as Internal Rule 87(4) requests.⁵ In compliance with this direction, and in the alternative, the Defence submits the Initial Document List pursuant to Internal Rule 87(4). Internal Rule 87(4) provides that the Chamber may admit documents submitted during the trial where they satisfy the criteria set out in Internal Rule 87(3) and were unavailable before the “opening of

⁴ Doc. No. **E307**, ‘Parties’ Joint Request for Clarification Regarding the Application of Rule 87(4) in Case 002/02’, 30 April 2014, para. 14(b) (emphasis added).

⁵ Doc. No. **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’, 11 June 2014, paras. 5-6 (emphasis added).

the trial”, which the Chamber maintains to have occurred in June 2011.⁶ Of the 22 documents in the Defence’s Initial Document List, only Documents 21 and 22 were unavailable before the “opening of the trial”. The Defence submits that these documents also satisfy the criteria of Internal Rule 87(3) and are admissible as they are relevant and unique; already obtained and uploaded to the case file; suitable to demonstrate procedural irregularities and violations of the fair trial rights of Mr. Nuon Chea; legally permissible; and submitted in good faith.

7. Where documents were available before the opening of the trial, the Chamber has permitted their admission “where the interests of justice so require, in particular where it is exculpatory and requires evaluation in order to avoid a miscarriage of justice”⁷ or where they “closely relate to material already before the Chamber and ... the interests of justice require the sources to be evaluated together.”⁸ With respect to Documents 1 to 20 on the Initial Document List, the Defence reiterates its submissions in paragraph 4. The Defence further submits that those documents go towards exculpating Mr. Nuon Chea in relation to a range of charges outlined in Annex A, as well as closely relating to material already before the Chamber of a potentially inculpatory nature. Therefore, the interests of justice, and particularly the need to avoid a miscarriage of justice, demand that the documents in the Initial Document List be admitted.

III. CONCLUSION

8. For the reasons stated herein and previously, the Defence requests the Chamber to admit the documents referred to in its Initial Document List at Annex A.

CO-LAWYERS FOR NUON CHEA



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⁶ Doc. No. **E307/1**, para. 2.

⁷ Doc. No. **E307/1**, para. 3, and *see*, Doc. No. **E190**, ‘Decision Concerning New Documents and Other Related Issues’, 30 April 2012, para. 36.

⁸ Doc. No. **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 June 2013, para. 3.