



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia

Chambres Extraordinaires au sein des Tribunaux Cambodgiens

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E335/5

ព្រះរាជាណាចក្រកម្ពុជា

ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia

Nation Religion King

Royaume du Cambodge

Nation Religion Roi

TRIAL CHAMBER

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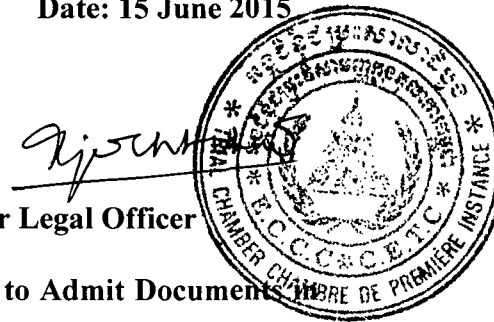
Date: 15 June 2015

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 Khieu Samphan Rule 87(4) Request to Admit Documents
respect of witness THET Sambath



1. The Trial Chamber is seised of a request by the KHIEU Samphan Defence ("Request") to place three documents on the Case File and admit them into evidence, pursuant to Internal Rule 87(4) (E335/4, para. 9): (1) a Cambodia Daily article by George Wright entitled "Journalist again asked to testify at Tribunal", dated 16 May 2015 (E335/4.1); (2) a Cambodia Daily article by George Wright entitled "Journalist Will Only Appear at ECCC if Foreign Leaders Will", dated 18 May 2015 (E335/4.2); and (3) the Written Record of Witness Interview of Robert T. F. Lemkin before the Supreme Court Chamber, dated 18 May 2015 (F2/4/3/1). The KHIEU Samphan Defence submits that the documents were not available prior to the opening of the trial and that they are conducive to ascertaining the truth (E335/4, para. 4). In addition, the KHIEU Samphan Defence contends that the documents are relevant to the upcoming testimony of witness THET Sambath (E335/4, para. 5). In this respect, the two press articles relate to information relied upon by THET Sambath to produce his documentaries "Behind the Killing Fields" (E3/4202), "Enemies of the people" (E3/4001R) and "Suspicious Minds" (E335/4, para. 6). The Written Record of the interview by Mr. Lemkin is relevant in so far as it concerns his cooperation with THET Sambath as well as the preparation of the above-mentioned documentaries (E335/4, para. 7). The other parties did not file responses.

2. According to Internal Rule 87(4), the Trial Chamber may admit any new evidence that it deems conducive to ascertaining the truth. The Chamber will determine the merit of a request to put new evidence before it in accordance with the criteria in Internal Rule 87(3). In addition, Internal Rule 87(4) requires that any party seeking the admission of new evidence shall do so by a reasoned submission. The requesting party must satisfy the Trial Chamber that the proposed evidence was either unavailable prior to the opening of

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the trial or could not have been discovered earlier with the exercise of reasonable diligence. In addition, the Trial Chamber may put evidence before it when it does not strictly satisfy these criteria, provided that the interests of justice so require (E289/2, para. 3 and E172/24/5/1, para. 3). These instances include, *inter alia*, cases where the evidence closely relates to material already before the Trial Chamber (E289/2, para. 3 and E172/24/5/1, para. 3).

3. At the outset, the Trial Chamber notes that the Written Record of Witness Interview of Robert T.F. Lemkin has already been placed on the Case 002 Case File (F2/4/3/1). The other two documents at issue, dated 16 and 18 May 2015 respectively, were unavailable prior to the opening of the trial. The Trial Chamber notes that these documents contain information about the position of the Accused at the relevant time as well as their knowledge of the crimes committed by the Khmer Rouge. Moreover, this information complements other items of evidence originating from THET Sambath that have already been put before the Chamber in the present proceedings (see E3/4202 and E3/4001R). In light of the foregoing, the Trial Chamber considers that putting these three documents before it would be conducive to ascertaining the truth.

4. Furthermore, the Trial Chamber has identified four additional media articles, published between 18 April 2014 and 5 January 2015, which are conducive to ascertaining the truth. The Chamber refers to the following: (1) a Harvard Gazette article entitled “Deep into bloody history”, dated 18 April 2014; (2) a VOA Khmer article by Sok Khemara entitled “Nuon Chea’s Defense Finds Grounds To Appeal at Least One crime Accusation”, dated 4 September 2014; (3) a Cambodia Daily article by Julia Wallace entitled “Nuon Chea Seeks Testimony of Filmmakers”, dated 23 December 2014; and (4) a VOA Khmer article by Sok Khemara entitled “Journalist Wants To testify at Tribunal”, dated 5 January 2015.

5. The Chamber considers that placing these documents on the Case File in conjunction with those proffered by the KHIEU Samphan Defence is necessary to provide a more complete picture of the relevant issues which they touch upon. Thus, the Chamber, on its own motion, considers it appropriate to put the above four media articles before it along with the material object of the Request.

6. This constitutes the Chamber’s official response to E335/4.