

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

FILING DETAILS

Case No: 002/19-09-2007-ECCC/TC

Party Filing: Co-Prosecutors

Filed to: Trial Chamber

Original Language: English

Date of Document: 14 September 2016



CLASSIFICATION

**Classification of the document
suggested by the filing party:** PUBLIC

Classification by Trial Chamber: សាធារណៈ/Public

Classification Status:

Review of Interim Classification:

Records Officer Name:

Signature:

CO-PROSECUTORS' RULE 87(4) APPLICATION IN RESPONSE TO E327/4/5

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I. Submission

1. The Co-Prosecutors submit this Rule 87(3) and 87(4) request in relation to certain documents obtained by the Trial Chamber and placed on the Shared Materials Drive.¹ The Trial Chamber set the deadline for submission of Rule 87(4) requests from these documents at 15 September 2016.² The Trial Chamber has also informed the parties that it may choose to admit some or all of the documents on its own motion.³

2. The Co-Prosecutors ask the Chamber to admit six of the fourteen documents obtained by the Trial Chamber into evidence. All of the documents the Co-Prosecutors propose for admission satisfy the “*prima facie* standards of relevance, reliability and authenticity required under Rule 87(3).”⁴ The documents are reliable and authentic as they consist of hand-copied Vietnamese translations of DK-era documents carried out by an academic, Professor Christopher Goscha, with whom the Trial Chamber communicated directly regarding how he obtained the documents.⁵ Professor Goscha confirmed to the Trial Chamber that, although he never saw the original Khmer documents, he made hand-written copies of Vietnamese translations while he was conducting research at the People’s Army Library in Hanoi.⁶ He did not convey any doubts as to their authenticity, and he suggested that “the Army must have the original Khmer documents.”⁷ He also affirmed the completeness of his copies, stating: “I do remember trying to write down everything, that is verbatim.”⁸ Case 002 Expert Phillip Short also relied on at least two of the documents provided to him by Professor Goscha (which were also included in the documents the Trial Chamber obtained) in writing his book “Pol Pot, The History of a Nightmare”,⁹ which is on the Case File.¹⁰ Expert Short’s reliance on these documents as authentic further enhances their reliability. The Co-Prosecutors also note that the names of the Vietnamese translators, as well as the dates of translation, are identified for many of the documents the Trial Chamber obtained, demonstrating the systematicity and professionalism underlying the translations.

¹ **E327/4/5** Trial Chamber Memorandum: “Translation of copies of Vietnamese documents obtained from Texas Tech University Archive originating from Christopher Goscha”, 24 August 2016 (hereinafter “Goscha Memorandum”).

² Email from Matteo Crippa, 2 September 2016; **E327/4/5** Goscha Memorandum, para. 4; Draft Trial Transcript, 25 August 2016, ENG pp. 25-26.

³ Draft Trial Transcript, 25 August 2016, ENG page 26.

⁴ **E424/1** Decision on Nuon Chea Defence Rule 87(4) Request relating to 2-TCW-1005, 2 September 2016, at para. 4.

⁵ **E327/4/5.4** Trial Chamber Emails with Christopher Goscha.

⁶ **E327/4/5** Goscha Memorandum, para. 1.

⁷ **E327/4/5** Goscha Memorandum, para. 1.

⁸ **E327/4.5.4** Trial Chamber Emails with Christopher Goscha, at p. 1.

⁹ See **E327/4.5.3** Trial Chamber Emails with Philip Short, p. 2.

¹⁰ **E3/9** Philip Short, “Pol Pot: The History of a Nightmare,” 2004.

3. The reliability of the content of the documents is further demonstrated by the fact that aspects of the information contained therein is often verified by other documents on the Case File. By way of example, this includes the use of Khmer Rouge cadres' aliases¹¹, office codes (e.g., "Office 870"¹²), geographic codes (e.g., "Region 21"¹³), policies (e.g., "three tons per hectare"¹⁴), and factual matters¹⁵ reflected in other DK-era documents on the Case File.
4. The documents the Co-Prosecutors propose the Trial Chamber admit are relevant "as they pertain directly to the issues to be tried in Case 002/02."¹⁶ The Co-Prosecutors explain this relevance further for each document below, referring to the document by the number on the list provided by the Trial Chamber at E327/4/5.1.¹⁷
5. **Document 1** is titled "Extracts from a number of documents from Office 870."¹⁸ It contains evidence relevant to the targeting of the Vietnamese, to the authority of Nuon Chea, the motivations of the evacuation of persons from the East Zone, CPK ideology, and Khieu Samphan's knowledge and authority regarding these issues through his connection to Office 870.
6. The document notes at least one meeting being led by "the Second Brother,"¹⁹ a.k.a., Nuon Chea, and him authoritatively stating the "political line in our Party."²⁰ In the meeting led by Nuon Chea, the reason why large groups of the population were transferred out of the East Zone is described. It was not for their safety or well-being, but rather "the decision to withdraw 60,000 people living along the border was ... proper because if we did not move those people, they would riot from the inside."²¹
7. In relation to the targeting of Vietnamese, the minutes note that one aspect of the "Guidance of [Office] 870" was "[m]obilisation of ethnic and class hatred within the community towards the Vietnamese invader and to raise this ethnic hatred to become a material orientation."²²

¹¹ See, e.g., SMD ENG 01313109.

¹² See, e.g., SMD ENG 01320887.

¹³ See, e.g., SMD ENG 01313121.

¹⁴ See, e.g., SMD ENG 01323780.

¹⁵ See, e.g., discussion of Document 8 below.

¹⁶ **E319/7** Decision on International Co-Prosecutor's Request to Admit Documents Relevant to Tram Kok Cooperatives and Kraing Ta Chan Security Centre and Order on Use of Written Records of Interview from Case Files 003 and 004, 24 December 2014, para. 10.

¹⁷ **E327/4/5.1** Copies of Vietnamese Documents Obtained by Professor Goscha.

¹⁸ SMD ENG 01320887.

¹⁹ SMD ENG 01320889

²⁰ SMD ENG 01320892.

²¹ SMD ENG 01320889.

²² SMD ENG 01320890 (emphasis added).

8. This document also sheds light on the ideology of the CPK generally, noting that “[t]he stance of the proletariat of the Party” includes “[t]he stance of giving up the rights to material possessions, the rights of power, the privilege of freedom of thought.”²³ It clarifies that included in the material possessions that the proletariat must be prepared to give up is “life”²⁴, and that they must also “obey[] unconditionally under both easy and difficult circumstances.”²⁵
9. **Document 6** is titled “Decision of the Pol Pot Party Center, June 1976.”²⁶ This document is relevant as it shows the Central Committee providing directives relating to forced labour policies and the screening of persons for “enemy” backgrounds. In regards to the former, the document shows the Central Committee promulgating the “three tons per hectare” requirement, and, in order to facilitate agriculture, the requirement to build various structures to promote irrigation.²⁷ In regards to the latter, it shows the Central Committee promulgating directives to “screen out dangerous and destructive elements” from “the inside of the Party and the Revolutionary Army”²⁸ and asserting that “[i]t is imperative to strive to screen cadres and Party Members in the mass peasant worker movement and the Revolutionary Army...”²⁹
10. **Document 7** is titled “Meeting to Distribute Work Within the Standing Organization of Pol Pot on 4 February 1974”³⁰ and on the Texas Tech University bibliography as “A Meeting of the Standing Committee Office of Pol Pot Assigning Work on 4-2-1976.”³¹ The Co-Prosecutors note the year discrepancy between the English translation and the date provided in the bibliography. On review of the original document in Vietnamese³², it appears that the 1976 date reflected by the bibliography is correct. Although the handwritten “6” at the top of the document does resemble a type of “4”, a comparison to Professor Goscha’s other “4”s on the document shows that it is not similar. Moreover, the document discusses matters that could only take place following 17 April 1975. Specifically, it notes that Ieng Thirith, *alias* Phea, was “responsible for Public Health in Phnom Penh and Phnom Penh pharmaceutical factories.”³³

²³ SMD ENG 01320893.

²⁴ SMD ENG 01320893.

²⁵ SMD ENG 01320894.

²⁶ SMD ENG 01323780-01323781.

²⁷ SMD ENG 01323781, para. 3.

²⁸ SMD ENG 01323780-81, para. 2.

²⁹ SMD ENG 01323781, para. 4(a).

³⁰ SMD ENG 0131309.

³¹ **E327/4/5.2** Bibliography: The Khmer Rouge Documents, ENG 01321234.

³² SMD VN 01241117.

³³ SMD ENG 01313110.

11. This set of Standing Committee minutes does not yet appear on the Case File, and is relevant to the authority structure within the CPK as it provides a breakdown of the responsibilities of various CPK leaders. As specifically related to Nuon Chea, it reflects his power as “deputy, overall responsibility”, as well as his responsibility for “propaganda, political and ideological education.”³⁴ It also notes that Chhim Sam Aok *alias* Pang (Poeng) was “directly subordinate to Comrade Nuon.”³⁵
12. **Document 8** is titled “Meeting of the Pol Pot’s Standing Committee Discussing the National Assembly, 30 March 1976.”³⁶ This set of Standing Committee minutes does not yet appear on the Case File, and the Co-Prosecutors submit that it should be included for that reason due to the general import of Standing Committee minutes. In addition, this document relates to other evidence on the Case File. For example, this document discusses “the issue of using Sihanouk” and King Father Sihanouk’s desire to resign.³⁷ This matter is later discussed, in a different, more propagandistic light, in the report concerning The People’s Representative Assembly of Kampuchea that took place 11-13 April 1976.³⁸ Khieu Samphan also reported on the resignation of King Father Sihanouk and his fate at another set of Standing Committee minutes on the Case File.³⁹ Document 8 also notes the appointment of Khieu Samphan as Chairman of the State Presidium⁴⁰, an appointment that is also reflected in the report concerning The People’s Representative Assembly of Kampuchea.⁴¹
13. **Document 11** is a compilation of Standing Committee minutes titled “Materials on the Minutes of Pol Pot.”⁴² This document is relevant as it shows Standing Committee awareness, endorsement, and control of purges in Democratic Kampuchea, as well as the screening processes that facilitated those purges. For instance, the minutes of the 3 April 1977 meeting include the following passages:

³⁴ SMD ENG 01313109.

³⁵ SMD ENG 01313110.

³⁶ SMD ENG 01313105.

³⁷ SMD ENG 01313105.

³⁸ *See, e.g., E3/165* Document on Conference 1 of Legislature 1 of The People’s Representative Assembly of Kampuchea, 11-13 April 1976, ENG 00184067.

³⁹ **E3/197** Minutes of the Meeting of the Standing Committee, 11 March 1976.

⁴⁰ SMD ENG 01313106.

⁴¹ **E3/165** Document on Conference 1 of Legislature 1 of The People’s Representative Assembly of Kampuchea, 11-13 April 1976, ENG 00184068.

⁴² SMD ENG 01324075.

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- “The internal enemy: in 1976, we basically eliminated most [of] the reactionaries from the important organizations, including the revisionists and CIA members. However, we still need to find more of them because those men are still hiding in our ranks.”⁴³
- “Development of the organization: there must be effective measures to educate and purge the reactionaries in our military ranks. In particular, soldiers are requested to submit their curricula vitae and we must have a plan to monitor any suspect soldiers. Our plan is also that, by the middle of 1977, we must have curricula vitae of all high-ranking officials of regiments, battalions and companies and have the entire curricula vitae of all (men and women) soldiers by the end of 1977.”⁴⁴
- “The task of establishment, reinforcement and development of Party members: basic reinforcement of Party members because our purging mission in our units was not well implemented and has not left us completely spotless. Thus, there is an increasing number of Party members for whom we cannot assure their moral or political qualifications. However, the expansion mission of Party members should be carried on if any units have carried out the purging mission well and managed to exact the curricula vitae of their soldiers.”⁴⁵

14. Elsewhere in the document, the 13 April 1977 minutes include the notation “Continuance to fight against reactionaries and hunt for reactionaries inside our department and bases in order to promote and foster the mission in 1977.”⁴⁶ And another set of minutes includes the following imperative: “Task delegation in the Standing Committee: Based on the resolutions of the Central Party and the Standing Committee: Direction of the implementation is to continuously hunt down the enemy.”⁴⁷
15. **Document 13** is titled “Report at the Mid-1977 East Zone Conference (From 17 July 1977)”⁴⁸ and is the final document the Co-Prosecutors submit for admission. It contains evidence relevant to the internal purges, the conflict with Vietnam, the targeting of Vietnamese, and the forced labour policy.

⁴³ SMD ENG 01324076, para. 3.

⁴⁴ SMD ENG 01324077, para. 2.

⁴⁵ SMD ENG 01324077.

⁴⁶ SMD ENG 01324080.

⁴⁷ SMD ENG 01324081.

⁴⁸ SMD ENG 01313118.

16. In relation to the conflict with Vietnam, the report states that one of the “shortcomings” that they must “strive to overcome” is “pacifist thought”⁴⁹, demonstrating that peaceable solutions to the conflict with Vietnam were anathema to Khmer Rouge ideology.
17. In relation to the forced labour policy, the document confirms that “[t]he direction of our Party is to build modern agriculture in an extremely rapid way.”⁵⁰
18. The document contains extensive evidence in regards to internal purges, and of targeting of Vietnamese or persons considered to be Vietnamese. The document relates that “We have destroyed the enemies coming from outside and have also destroyed their embedded networks inside. Enemy cliques that are secret links and lackeys of the Yuon lying in wait inside the Party from 1948 until now have been hunted down, and we have been able to fundamentally destroy them, especially in Region 21.”⁵¹ It confirms that even “[d]uring the past six months, we destroyed many hundreds of the enemy”, and “[w]e tracked down and swept away the enemy.”⁵² This enemy consisted of the “cliques inside,”⁵³ “the traitor running-dog cliques, including the CIA running-dogs of the imperialists”, and “the reactionaries inside” who were “certainly at leadership level.”⁵⁴ The report continues in more detail:

Simultaneously, the reactionaries within our ranks, the forces upon whom the Yuon rely, have been continuously destroyed and completely swept away, from Region 24 to Regions 23, 20, and 21. These reactionaries have lost all their important leaders, and this defeat for the enemy has smashed our internal enemies (although a few of them remain) and even the external enemy, the Yuon, to lose the entire foundation, the entire basis and organization that they need to swallow up our nation.

During the first six months of the year, we attacked the enemy in the proper way and struck them at their weak and strong points. What were the enemy's strong points? They crawled deeply into the ranks, but those holding authority have been swept clean. We had no difficulty in hunting them down, but as far those the enemy emplaced in the leadership ranks, they were difficult to discover. They were all in the ranks of the leadership. They had the networks and resources and relationships to open paths for the Yuon to infiltrate and operate continuously inside our

⁴⁹ SMD ENG 01313118.

⁵⁰ SMD ENG 01313118.

⁵¹ SMD ENG 01313120-21.

⁵² SMD ENG 01313121.

⁵³ SMD ENG 01313121.

⁵⁴ SMD ENG 01313121.

country. But we destroyed them and swept them away systematically on a large scale during the past six months.⁵⁵

19. In the twisted logic of the Khmer Rouge, it was this very purging that gave them strength, and was a “victory” itself:

Because class warfare among the people has occurred strongly, because the strength of the collective has been strong and resolved, the activities of the enemy to implant spies and those of counterrevolutionaries have been exposed, and through that we have continuously swept them clean. Within only the first six months of this year, we have swept clean hundreds of them, for example, in Chhlaung District, Krauch Chhmar District, Peam Chi Leang District, Tbaung Khmum District, military units in Region 21, etc Their ringleader commanders in their bases have been fundamentally swept clean by us. Because of that, even though our Party has fewer people, it is as hard as steel. Fewer people, but internally strong.

We recognize that the enemy can no longer hide. The enemy has fundamentally lost its leadership apparatus. We clearly see our victory in destroying enemies both internal and external, during the first six months of 1977. This can be seen as one of our great victories of historic nature since 17 April.⁵⁶

20. The document celebrates that this purging “shows that our Party has had an absolute stance in striking the enemy”⁵⁷ and states that part of the reason they were able “to destroy the enemy so well” is that they were resolute in “destroying all enemies without being vague, without hesitation,”⁵⁸ and that they continued “to sweep clean the enemy without being complacent.”⁵⁹ This confirms that any questioning, any hesitation, in accusing persons of being enemies and/or in killing those accused of being enemies was itself seen as counterrevolutionary.
21. Even more explicitly in regards to targeting of Vietnamese within the East Zone, the document describes the need to produce “propaganda and educat[e] the people to absolutely erase Vietnamese influence among the people” including “a number of people along the border who worked with and are acquainted with the Yuon and are still attached emotionally to the Yuon and have not been able to be unswerving.”⁶⁰

⁵⁵ SMD ENG 01313124 (emphasis added).

⁵⁶ SMD ENG 01313125 (emphasis added).

⁵⁷ SMD ENG 01313121.

⁵⁸ SMD ENG 01313124.

⁵⁹ SMD ENG 01313125.

⁶⁰ SMD ENG 01313122.

22. Therefore, the Co-Prosecutors submit that all of these documents meet the *prima facie* standards of Rule 87(3). For documents that meet those standards, the Trial Chamber “may admit any new evidence that it deems conducive to ascertaining the truth”⁶¹ pursuant to Rule 87(4). Rule 87(4) states that the party requesting to submit new evidence must satisfy the Chamber that the requested evidence was not available before the opening of the trial, or that the evidence could not have been discovered with the exercise of reasonable diligence.⁶² The Trial Chamber has held that for Case 002/02, the opening of trial occurred in June 2011.⁶³ All of these documents were available prior to the start of trial, however the Co-Prosecutors submit that they could not have been discovered with reasonable diligence. This is demonstrated by the fact that it required multiple emails from the Trial Chamber and WESU in order to learn of the existence of these materials, that they were located at Texas Tech University, and the circumstances under which they were produced.⁶⁴ Even had the Co-Prosecutors known of these materials and their location, they were available only in Vietnamese—a language the Co-Prosecutors do not have the capacity to read—and thus the Co-Prosecutors would not have been able to evaluate them for possible admission.
23. However, regardless of whether the documents could have been discovered with reasonable diligence prior to the start of trial, the Chamber has also “admitted evidence that does not strictly satisfy this criterion, including in instances where evidence relates closely to material already before the Chamber and where the interests of justice require the sources to be evaluated together...”⁶⁵ Because of the relevancy of these documents to other material on the Case File as described above, the Co-Prosecutors submit that the interests of justice require that they be evaluated alongside those materials on the Case File.

⁶¹ **E319/7** Decision on International Co-Prosecutor’s Request to Admit Documents Relevant to Tram Kok Cooperatives and Kraing Ta Chan Security Centre and Order on Use of Written Records of Interview from Case Files 003 and 004, 24 December 2014, para. 9.

⁶² **E424/1** Decision on Nuon Chea Defence Rule 87(4) Request relating to 2-TCW-1005, 2 September 2016, para. 4.

⁶³ **E307/1** Decision on Parties’ Joint Request for Clarification Regarding Application of Rule 87(4) (E307) and the Nuon Chea Defence Notice of Non-Filing of Updated Lists Evidence (E305/3), 11 June 2014; **E307/1/2** Decision on Joint Request for *de novo* Ruling on the application of Internal Rule 87(4), 21 October 2014, para. 10.

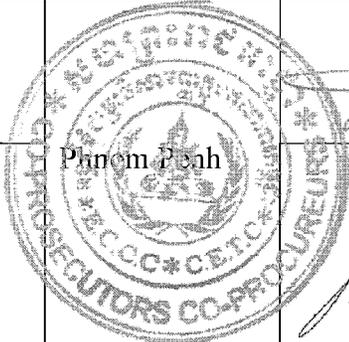
⁶⁴ See **E327/4/5.4** Trial Chamber Emails with Christopher Goscha; **E327/4/5** Goscha Memorandum.

⁶⁵ **E424/1** Decision on Nuon Chea Defence Rule 87(4) Request relating to 2-TCW-1005, 2 September 2016, para. 4.

II. Relief Requested

24. The Co-Prosecutors request that the Trial Chamber admit the six documents identified above into evidence.

Respectfully submitted,

Date	Name	Place	Signature
14 September 2016	CHEA Leang Co-Prosecutor	 Phnom Penh	
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