ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

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

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

សាធារណៈ / Public

TRIAL CHAMBER

Date: 9 April 2015

TO: **All Parties, Case 002**

FROM: **Judge YA Sokhan, on behalf of the President of the Trial Chamber**

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

SUBJECT: **Decision on Nuon Chea Rule 87(4) Request to Admit Documents in respect of Civil Party OUM Suphany**

1. The Trial Chamber is seised of a request by the NUON Chea Defence ("Request") to place five documents on the Case File: (1) a book authored by Civil Party OUM Suphany titled "Under the Drops of Falling Rain", (2) a press release from the Association of Khmer Rouge Victims in Cambodia, (3) an article from the "National Radio" website, (4) an article from the "Phnom Penh Post" weekly publication and (5) a book review of "Under the Drops of Falling Rain", and admit them into evidence under Internal Rule 87(4) (E337, paras 5, 9).[1] The Civil Party Lead Co-Lawyers submit that the Chamber should dismiss the Request on the basis that it is not timely, does not satisfy the criteria set out in Internal Rules 87(3) and 87(4), and is not in the interests of justice (E337/1, paras 1, 5-8 and p. 6). The Co-Prosecutors request the Chamber to deny admission of Documents 1 2, 3 and 5 under Rule 87(4) because Documents 1 and 5 would require considerable time to distinguish real accounts from fiction, while Documents 2 and 3 would not impeach the Civil Party's testimony or serve any value in ascertaining the truth (E337/2, paras 6-7, 10). The Co-Prosecutors request the admission of Document 4, namely the article from the "Phnom Penh Post" publication, but submit that OUM Suphany should not be recalled and subjected to further examination on this document, due to the calculated refusal of the NUON Chea Defence to follow court rules (E337/2, paras 2, 8, 10). Further, the Co-Prosecutors request that the NUON Chea Defence be precluded from posing questions to future witnesses and civil parties on the basis of documents which have not been notified to the Chamber and other parties (E337/2, paras 1, 3, 5, 10).

[1] The documents are currently available on the Shared Material Drive and hold the following ERNs numbers: (1) 01058323-01058332, (2) 01058310-01058316, (3) 01058317-01058319, (4) 01058320 and (5) 01058321-01058322.

2. The NUON Chea Defence submits that these documents appear *prima facie* to contradict OUM Suphany's testimony at trial as they demonstrate that she made or endorsed public statements indicating that she had been forcibly married to a Khmer Rouge cadre. Accordingly, it is submitted that these documents should be admitted in the interests of justice because they are directly relevant to OUM Suphany's testimony, affect her credibility and thus may assist in ascertaining the truth (E337, paras 6, 8).

3. 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 admit new evidence in accordance with the criteria in Rule 87(3). Rule 87(4) also 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 the trial or could not have been discovered earlier with the exercise of reasonable diligence. Moreover, the Trial Chamber recalls that parties must ordinarily lodge a consolidated Internal Rule 87(4) request for all new documents intended for use during the testimony of a witness at least two weeks before his or her scheduled appearance (E276/2 referring to E218, para. 22).

4. The Trial Chamber observes that OUM Suphany has not alleged, either in her Civil Party application or during her appearance before this court, that she was forcibly married.[2] To the extent that the NUON Chea Defence wishes to rely on the documents to cast doubt on her credibility, the Chamber finds that they do not demonstrate that OUM Suphany stated that she was forcibly married. Document 1 appears to be a novel based on the story of her life. This novel describes characters whose names are not those of the author or of relatives.[3] OUM Suphany confirmed this in court when she testified that the book is not entirely autobiographical.[4] In the absence of any contradiction, the book cannot serve to impeach her credibility. Documents 5 and 2 respectively summarise the content of, and contain quotations from this novel.[5] As regards Documents 3 and 4, these news articles constitute secondary sources of OUM Suphany's accounts and do not indicate that she endorsed the statements contained therein. As they do not establish any potential contradictions with her in-court testimony, they are unsuitable to prove the facts they purport to prove (*see e.g.*, T., 23 January 2015, pp. 101-103; T., 26 January 2015, pp. 21-22). Accordingly, the Trial Chamber is not satisfied that the five documents requested for admission are conducive to ascertaining the truth within the meaning of Rule 87(4) and therefore dismisses the Request.

9. This constitutes the Chamber's official response to E337.

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[2] See Victim Unit's Report on Civil Party Applicant, D22/3248/1, 12 May 2010; Supplementary Information of Civil Party OUM Suphany 09-VU-03554, E307/6.1.11, 10 June 2014, where she witnessed her "sibling in-law" as well as other couples being forcibly married but did not indicate that she was herself forcibly married. See also E337/1, para. 8 and E337/2, para. 7.

[3] The book describes itself as a "novel" (See the book "Under the Drops of Falling Rain", SMD, ERN (English) 01058328-01058330, pp. 1, 3, 4) and its author as a "highly acclaimed writer (...) in writing historical fiction". The preface reads: "it [the book] tells the story of my life".

[4] See T., 23 January 2015 (OUM Suphany), p. 89. See also T., 26 January 2015 (OUM Suphany), pp. 23-25.

[5] See Document 2, p. 4.