
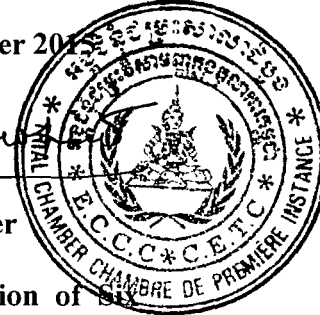


E319/30/1

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

TRIAL CHAMBER**សាធារណៈ / Public**
TO: All Parties, Case 002
Date: 15 September 2015
FROM: NIL Nonn, President of the Trial Chamber
[Signature]
CC: All Trial Chamber Judges; Trial Chamber Senior Legal Officer
SUBJECT: Decision on NUON Chea's Rule 87(4) Request for Admission of Statements and One Annex Relevant to Case 002/02


1. The Trial Chamber is seised of the NUON Chea Defence's request to admit seven documents pursuant to Internal Rules 87(3) and 87(4), filed on 24 August 2015 ("Request") (E319/30, para. 1). The relevant documents are six written records of interview and one annex prepared after interviews with the following witnesses during Case 004 investigations:

[REDACTED]

These Case 004 documents were subsequently disclosed in Case 002/02. The NUON Chea Defence submits that the material is relevant to Case 002/02, as it contains evidence which pertains to the administrative, military and communication structures of Democratic Kampuchea as well as to a number of Case 002/02 trial topics: Worksites, the Treatment of Targeted Groups, Security Centres and Internal Purges, the Regulation of Marriage and the Role of the Accused (E319/30, paras 17-22, 33). The NUON Chea Defence further submits that the written records of interview may contain exculpatory information (E319/30, para.15). According to the NUON Chea Defence, this material was obtained between 2013 and 2014, after the commencement of the trial proceedings in Case 002/02. No party responded to the Request.

2. According to Internal Rule 87(4), the Trial Chamber may admit, at any stage of the trial, all evidence that it deems conducive to ascertaining the truth (E319/7, para. 8). 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 with the exercise of reasonable diligence. However, in certain cases, the Chamber has admitted evidence which does not strictly speaking satisfy this criterion, including in instances where evidence relates closely to material already before the Chamber and the interests of justice require the sources to be evaluated together, where the proposed evidence is exculpatory and requires evaluation to avoid a miscarriage of justice, or where the other parties do not object to the evidence (E276/2, para. 2 referring to E190 and E172/24/5/1).

3. The Chamber observes that the six written records of interview and the annex referred to in the Request were obtained by the Office of the Co-Investigating Judges during the investigation phase in Case 004 and are dated between 3 September 2013 and 31 October 2014. Thus, the documents were unavailable prior to the opening of the trial in Case 002/02. Nonetheless, the Chamber expects all parties to exercise due diligence and to request admission of documents in a timely manner, notably as soon as practicable after becoming aware of the material sought for admission (E344/1, para. 4; E323/1, para. 4). In the instant case, the documents were disclosed to the Defence between 4 November 2014 and 19 March 2015 and their admission was requested on 24 August 2015. Given the huge number of documents made available to the parties, the Chamber considers that the Request remains timely. Further, it considers that it is in the interests of the justice to admit the seven documents into evidence for the reasons below.

4. First the Chamber notes that no party objected to the Request. Moreover, the Chamber considers that the documents at issue are relevant to Case 002/02 as they contain information about several topics in the current trial proceedings, namely Worksites, Treatment of Targeted Groups, Security Centres and Internal Purges, Regulation of Marriage and Role of the Accused. In particular, the Chamber notes that all six written records of interview describe the structure of the Northwest Zone and the pattern of arrests carried out by members of the Southwest Zone against the former. The written records of interview of [REDACTED] and [REDACTED] provide information on the treatment of the targeted groups Cham and Vietnamese. The written record of interview of [REDACTED] contains an account of marriage regulation at the relevant time of the charges. The written record of interview of [REDACTED] describes the arrest of Northwest Zone cadres. The annex (a compilation of pictures), when taken in conjunction with the second written record of interview of [REDACTED] [REDACTED], provides information regarding the organisational structure of the Northwest Zone. In addition to the above, the Chamber notes that [REDACTED] has been proposed to testify as a witness in Case 002/02 [REDACTED] and [REDACTED]

[REDACTED]. Accordingly, the Chamber considers that admitting [REDACTED] two proposed written records of interview and the annex will also allow their evaluation together with the evidence of this witness that is already placed on the Case File. Finally, the Chamber is of the view that part of the material sought for admission may contain exculpatory information.

5. In light of the foregoing, the Chamber finds that the requirements of Internal Rule 87(4) have been satisfied and considers that admitting the six written records of interview and the annex would be conducive to ascertaining the truth. The Trial Chamber accordingly grants the Request. The parties are reminded that the use of this material is subject to the procedural requirements set out in the Chamber's decision E319/7.

6. This constitutes the Chamber's official response to E319/30.