



ឯកសារដើម
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL

ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/Date de reception):
..... 12 / 11 / 2015

ម៉ោង (Time/Heure): 15:00

អគ្គិសនីសម្របសម្រួលករឯកសារ/Case File Officer/L'agent chargé
du dossier: Sann Rada

E319/31/2

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

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

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

សាធារណៈ / Public

TRIAL CHAMBER

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 Civil Party Lead Co-Lawyers' request to admit information forms and related documents

Date: 12 November 2015



1. The Trial Chamber is seised of a request by the Civil Party Lead Co-Lawyers (LCLs) to admit into evidence two Civil Party Applications (CPAs) (E319/25.3.24; E319/27.4.109) and related documents pursuant to Rules 87(3) and 87(4) (E319/31). The LCLs submit that the statements are conducive to ascertaining the truth, are relevant to Case 002/02 and are consistent with the Trial Chamber's guidelines on the disclosure of Case 003 and 004 CPAs (E319/31, para. 3). The CPAs were submitted to the Victims Support Section after the opening of the trial in June 2011, but were only disclosed to the LCLs and other parties on 13 August 2015 (E319/31, para. 5). At the hearing of 1 September 2015, the LCLs clarified that they no longer seek to rely on E319/25.3.24 as it belongs to a Civil Party whose testimony was cancelled, while leaving it open to the Trial Chamber to decide whether this document should be admitted as evidence (T. 1 September 2015, p. 4).

2. The KHIEU Samphan Defence opposes the admission of one CPA (E319/25.3.24) for the Civil Party whose testimony was cancelled (E319/31/1, paras 2, 3, 6). It submits that only documents which are exculpatory or could affect the credibility of inculpatory evidence as well as the prior statements of persons who testify should be disclosed. It therefore submits that E319/25.3.24 was disclosed illegally and should not be admitted as evidence (E319/31/1, paras 4-5).

3. The Chamber has previously rejected the KHIEU Samphan Defence submission that the disclosure of Case 003 and 004 documents was illegal, noting that the disclosure of documents in addition to those falling under the Co-Prosecutors duty of disclosure "does not in itself constitute a violation of the Accused's rights [...] so long as other accommodations are made." (E363/3, para. 31). The Chamber notes that since 13 August 2015 where the CPAs were disclosed, the Defence had enough time and facility to

familiarise themselves with these documents. Therefore, the issue which remains at hand is not whether the documents were properly disclosed but whether they should be admitted pursuant to Internal Rule 87(4).

4. 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).

5. The Chamber observes that the two CPAs at issue were received by the Victims Support Section in July 2013 and disclosed to the LCLs and other parties on 13 August 2015. Thus, the documents were unavailable prior to the opening of the trial in Case 002/02 in June 2011 and were submitted to the Chamber in a timely manner.

6. Document E319/27.4.109 is the CPA of Civil Party MEAN Loey who testified at the hearing on harm suffered on 1 September 2015 on the topic of the Trapeang Thma Dam. It is therefore relevant to Case 002/02 and to ascertaining the credibility of the Civil Party. MEAN Loey's thumbprint appears on each page of the application. Further, no question was raised as to the authenticity of the application during his testimony. The Chamber therefore considers the requirements of IR 87(3) and (4) to be satisfied and admits the document.

7. By contrast, Document E319/27.4.109 belongs to a Civil Party whose testimony has been cancelled and the LCLs no longer seek to rely on it. Although the Civil Party's thumbprint appears on the application, the Co-Investigating Judges have not yet ruled on its reliability or authenticity as it has yet to be accepted in Case 004 (E319/14/2, para. 4). The Chamber therefore rejects E319/27.4.109.

8. This constitutes the Chamber's official response to E319/31.