

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

**FILING DETAILS**

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**CO-PROSECUTORS' RULE 87(4) REQUEST TO ADMIT ONE DOCUMENT**

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**Distributed to:**

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## I. Introduction

1. Pursuant to Internal Rules<sup>1</sup> 87(3) and 87(4), the Co-Prosecutors submit this Motion to have admitted into evidence one document, a report from the diplomatic mission of the former German Democratic Republic (“GDR”) in Vientiane, People’s Democratic Republic of Laos (“Laos”), dated October 1977 (the “Document”).<sup>2</sup>

## II. Submissions

2. This Chamber has recently reiterated the applicable law concerning the admission of new evidence:

The Chamber recalls that 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, where that evidence also satisfies the prima facie standards of relevance, reliability, and authenticity required under Rule 87(3). The Chamber determines 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 where the interests of justice require the sources to be evaluated together...<sup>3</sup>

3. The Co-Prosecutors submit that for the reasons below, the Document is relevant to Case 002/02, reliable and authentic, and conducive to ascertaining the truth. It was not available to the Co-Prosecutors before the opening of the trial, and should be admitted in the interests of justice. As the original language of the Document is German, and it is not yet available in any of the Tribunal’s working languages, the Co-Prosecutors summarise its relevant content

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<sup>1</sup> Internal Rules of the Extraordinary Chambers in the Courts of Cambodia, Rev. 9, 16 January 2015 (“Internal Rule(s)” or “Rule(s)”).

<sup>2</sup> The Document, entitled “Zur Situation in der Partei- und Staatsführung des Demokratischen Kampuchea” (“Regarding the situation in the party and state leadership of Democratic Kampuchea”), is attached to this Motion as **Attachment 1**.

<sup>3</sup> **E390/2** Decision on Nuon Chea’s First Rule 87(4) Request to Call One Additional Witness and to Admit One Interview for the Case 002/02 Trial Segment on Phnom Kraol Security Centre, 4 May 2016, para. 3.

below.<sup>4</sup>

4. The Co-Prosecutors submit that the Document meets the *prima facie* criteria for admission laid out in Rule 87(3). The Document is dated 3-4 October 1977 and contains a report, apparently prepared for the GDR's Ministry for Foreign Affairs, from its diplomatic mission in Vientiane, Laos. It records information provided by the Ambassador of the Socialist Republic of Vietnam ("Vietnam"). Given its provenance in the publicly-accessible official archives of the German Ministry for Foreign Affairs,<sup>5</sup> the Document is presumptively authentic. Its contents are particularly reliable since the Document was not intended for public consumption, but formed part of the internal communications within the allied Communist bloc at that time.
5. The Document is relevant to the proceedings in Case 002/02, in particular in dispelling Nuon Chea's claim that a faction within the Communist Party of Kampuchea ("CPK") "received significant support from Vietnam to foment rebellion and treason against [...] the DK government".<sup>6</sup> Nuon Chea has argued that Vietnam's "Plan A was to sponsor, groom and puppeteer Cambodian proxies to seize the reins of the country internally through a rebellion and coup d'état, as well as through acts of sabotage".<sup>7</sup> Khieu Samphan has put forward similar arguments.<sup>8</sup> For the reasons already articulated by the Co-Prosecutors, evidence of factions or rebellions against the leadership of Democratic Kampuchea ("DK")

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<sup>4</sup> See *infra* paras 4, 6.

<sup>5</sup> The Document is extracted from file MfAA – C 6682, entitled "Berichte und Informationen von Botschaften der DDR in Vietnam und China sowie kambodschanische Dokumente zur Lage in Kampuchea" ("Reports and Information of the GDR embassies in Vietnam and China, as well as Cambodian documents regarding the situation in Kampuchea") from the Political Archives of the Ministry for Foreign Affairs in Berlin, Germany.

<sup>6</sup> **E395/2** Nuon Chea's Submissions on the Relevance of Evidence of Treasonous Rebellion to his Individual Criminal Responsibility in Case 002/02, 10 June 2016 ("NC Rebellion Filing"), para. 10.

<sup>7</sup> **E395/2** NC Rebellion Filing, para. 12.

<sup>8</sup> See, e.g. **E3/203** Transcript of Recorded Interview with Khieu Samphan, ENG 00424013-00424014, FR 00434232-00434233, KH 00385409-00385411, in particular "I would like to stress that [the lives of innocent people] were affected by Yuon agents by Khmer people who were Yuon undercover agents in our authority lines. Those people held important positions. [...] [D]uring the First Indochina War, there were Viet Minh cadres and army carrying out activities in Cambodia and controlling resistance movements in Cambodia. It was then when they established their agents to serve their Indochina strategies. Since then, year by year those agents had gained more and more important positions and they had worked undercover in our movements. In 1975, it was those who obtained important positions. They exercised their power. Some of them were in charge of major zones and they distorted our line [...] They were Yuon agents. They served the Yuon Indochina strategy. [...] They adapted themselves, and gradually they achieved more and more important positions. Between 1975- 1978, they carried out their actions. [...] Q: In 1975, what percentage of them were in the senior ranks of the party, in the Central Committee, or in the Standing Committee? A: There were many. Q: Half? A: Less than half in the Central Committee, but nearly half in the Standing Committee."

is legally irrelevant to Case 002/02 and will not absolve the Accused of liability for the torture, extrajudicial executions and other crimes with which they have been charged.<sup>9</sup> This Document demonstrates that the Accuseds' position is also factually incorrect.

6. The Document shows Vietnamese diplomatic sources explaining their understanding of the leadership structures within the CPK in late 1977. The Vietnamese Ambassador reports the existence of two factions within the CPK leadership, describing one led by the “petit bourgeois, opportunistic and anti-Vietnamese” Pol Pot and Ieng Sary, whose position he contrasts with the more “reasonable” attitude towards Vietnam of “Ho Chi Minh’s old comrade” Nuon Chea, and Khieu Samphan.
7. A reasonable reading of the Document therefore demonstrates the absence of Vietnamese agents in the DK, or Vietnamese support for factions opposed to the Accused in this case. It shows that, if the Vietnamese regime were to be considered to be promoting *any* individuals or group within the DK in late 1977, it would be Nuon Chea and Khieu Samphan, whom it considered to be the members of the CPK most friendly to it. Vietnam therefore viewed as its potential allies the very individuals who now claim in their defence that the CPK leadership conducted purges of entire regions of the DK in order to kill those who were agents of Vietnam. All Parties in the current trial seem to agree that the evidence is unequivocal that Nuon Chea and Khieu Samphan were anything but “pro-Vietnamese”. The Document therefore also demonstrates the complete lack of intelligence available to the Vietnamese about the inner workings of the CPK and makes ludicrous the Accuseds' claims that there was a CPK faction secretly working for Vietnam.
8. Finally, 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. The Trial Chamber has held that for Case 002/02, the opening of trial occurred in June 2011.<sup>10</sup> The Document was provided to the Co-Prosecutors on 9 August 2016, and was therefore not available before the opening of trial. Moreover, in view of its relevance, as outlined above,

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<sup>9</sup> See **E395/3** Co-Prosecutors' Response to Nuon Chea's Submissions on the Significance of Alleged Factions and Rebellions during the DK Period, 20 June 2016.

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

to countering the position articulated by Nuon Chea in his June 2016 filing, the Co-Prosecutors submit that it is in the interests of justice for the Document to be admitted.

### III. Relief Requested

9. Accordingly, the Co-Prosecutors respectfully request that the Trial Chamber admit the Document pursuant to Rules 87(3) and 87(4).

Respectfully submitted,

Date	Name	Place	Signature
1 September 2016	CHEA Leang Co-Prosecutor	Phnom Penh	
	Nicholas KOUMJIAN Co-Prosecutor		