

ឯកសារដើម
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E162



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

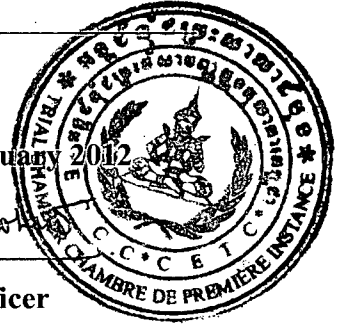
MEMORANDUM – TRIAL CHAMBER

TO: All parties, Case 002

Date: 31 January 2012

FROM: Judge NIL Nonn, President, Trial Chamber

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



SUBJECT: Trial Chamber response to portions of E114, E114/1, E131/1/9, E131/6, E136 and E158.

On 26 January 2012, the Trial Chamber rendered the below oral decision:

1. During last week’s hearing, the parties raised questions as to the proper application of Internal Rule 87. The Trial Chamber provides the following guidelines regarding the applicability of Internal Rule 87 insofar as it concerns relevance and reliability (including authenticity) of documents intended to be put before the Chamber.

2. Internal Rule 87(3)(a) requires that a document be relevant. A document that clearly lacks reliability (including authenticity) may be considered by the Chamber to be "unsuitable to prove the facts it purports to prove" (Internal Rule 87(3)(c)). Internal Rule 87(3) therefore requires documents intended to be put before the Chamber to satisfy *prima facie* standards of relevance, reliability and authenticity. Where, for example, a document does not appear to be a forgery, or unrepresentative of the original, the Chamber shall consider the document to have been put before it. Objections of this type must be raised at the time it is proposed to put a document or other evidence before the Chamber. Any further submissions as to the document’s reliability shall go instead to the weight to be accorded to it by the Chamber.

3. Internal Rule 67(3) requires the Co-Investigating Judges to review and evaluate documents to determine whether as a whole there is sufficient evidence to support the charges against the accused. It follows that during the judicial investigation, the Co-Investigating Judges assessed all documents placed on the case file for relevance, and accorded some probative value to the evidence cited in the Closing Order. The Closing Order was subject to appeal to the Pre-Trial Chamber. For these reasons, the Trial Chamber has accorded the documents cited in the Closing Order a presumption of relevance and reliability

(including authenticity) and has given them an E3 number. Documents that are on the Case File but are not found in the Closing Order have not been accorded this presumption.

4. Original documents are a preferred method of proof and will be accorded more weight than photocopies of documents. The fact that certain words within a document are illegible does not preclude putting it before the Chamber. Such issues are a matter of weight and shall not be considered when evaluating the requirements of Internal Rule 87(3).

5. Material such as analytical reports, books, documentary films, and media articles may be relevant and will not be excluded as a category. Its probative value, however, shall be determined by the Chamber in due course.

6. The ICTY and other international tribunals have adopted a practice that permits judges to exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial. This is not reflected in the ECCC legal framework, and is in any event unnecessary because professional judges have the ability to disregard unduly prejudicial evidence.

7. There is no procedural requirement before the ECCC to call witnesses with personal knowledge to authenticate documents on the case file. Nonetheless, testimony as to chain of custody and provenance will assist the Chamber in assessing the weight to be attributed to particular documents.

8. The Trial Chamber has previously indicated that parties seeking the introduction of documents at trial bear the burden of ensuring their timely availability in all three official languages (E131/1). Some latitude will be granted by the Chamber where parties are precluded from doing so due to workload constraints of the ITU and when the relevant portions of the documents the parties intend to put before the Chamber and to use as the basis to question a witness or an Accused are available in at least one language that the Accused or the witness can understand. Alternatively, and where the relevant portion of a document in question is brief and can be easily translated in court, the Chamber may allow that portion of the document in question to be put to an accused or witness.

9. As this issue continues to be raised by the parties, the Trial Chamber reiterates that evidence obtained through torture has limited uses. It reminds the parties of its memorandum E74 in Case 002 and its oral decisions in Case 001 of 20 and 28 May 2009.

This oral decision addresses the parties' submissions regarding standards of relevance, reliability and authenticity in the application of Internal Rule 87 and constitutes the Trial Chamber's official response to these portions of the motions listed above. Where these motions instead include objections to specific documents or submissions not otherwise addressed by the oral decision, these will be addressed in due course.