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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

TRIAL CHAMBER

TO: All Parties, Case 002
FROM: NIL Nonn, President of the Trial Chamber
CC: All Trial Chamber Judges; Trial Chamber



SUBJECT: Decision on the Co-Prosecutors' Request for Reconsideration of the Decision Regarding Admission of Newly Available United States Diplomatic Cables (E282/2/1) and KHIEU Samphan's Response (E282/2/1/1)

1. The Chamber is seised of a request from the Co-Prosecutors to reconsider its decision of 13 June 2013 (E282/2) refusing the Co-Prosecutors' request to put before the Chamber 26 diplomatic cables dating between 1973 and 1975 (E282/2/1). The KHIEU Samphan Defence objects to the Co-Prosecutors' request. In the alternative, they request reconsideration of their prior request to put 14 diplomatic cables on the case-file (E282/2/1/1).
2. The Trial Chamber recalls it previously found that while all the proposed cables were available before the opening of the trial, the Co-Prosecutors exercised reasonable diligence in discovering and presenting this new evidence once WikiLeaks had created a searchable database. However, it denied the Co-Prosecutors' previous request because: (i) it was not satisfied of the cables' authenticity, and any attempt to put before the Chamber authenticated cables would likely be lengthy and impossible to obtain within a reasonable time; and (ii) the cables were repetitious of other background evidence already on the case-file concerning circumstances that prevailed in Cambodia between 1973 and 1975 (E282/2, paras. 4-5, 7-8).
3. The Chamber has previously held that reconsideration does not form part of the ECCC legal framework and the Chamber will not entertain requests for reconsideration, except where a fresh application justified by new evidence or new circumstances is made (see E238/11/1, paras. 7-8; E292/2/1, para. 4). The Co-Prosecutors now put forward "newly available information regarding the source, authenticity and immediate

availability of the Cables” which they claim warrants reconsideration of the prior decision. Further, they submit that the non-admission of the “now authenticated Cables” would be contrary to the interests of justice.

4. While the Trial Chamber considers that the proposed new information may be pertinent to the Chamber’s previous finding on authenticity, it does not provide a persuasive basis for revisiting its finding that the documents are repetitive with respect to information already on the case file. Further, the Chamber notes that not only were the proposed cables declassified in June 2005 and made available on NARA’s publicly accessible database at that time, but the online database could be electronically word-searched thus facilitating identification of relevant cables. Thus it was well within the Co-Prosecutors’ ability to identify and provide authentic versions of the relevant diplomatic cables well before the opening of the trial. Therefore the Chamber is now satisfied that the Co-Prosecutors did not in fact exercise reasonable diligence in putting this evidence before the Chamber.

5. Similarly, concerning the corollary request by the KHIEU Samphan Defence for reconsideration of the decision of 13 June 2013 (E282/2) not to admit 14 diplomatic cables proposed by the Defence, the Trial Chamber affirms its ruling that the KHIEU Samphan Defence failed to exercise reasonable diligence and that, with the exception identified below, the remainder of the proposed cables are repetitious of evidence already on the case-file or irrelevant (Internal Rule 87(3)(a)).

6. Accordingly, with the exception of E290.1.6 and E290.1.12, previously proposed by KHIEU Samphan and already on the case-file as E3/3310 and E3/3349 respectively, the Chamber rejects the parties’ requests to place the remainder of the proposed cables on the case-file.

7. This constitutes the Chamber’s official response to E282/2/1 and E282/2/1/1.