



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

អង្គជំនុំជម្រះសាលាដំបូង
Trial Chamber
Chambre de première instance

សំណុំរឿងលេខ: ០០២/១៩ កញ្ញា ២០០៧/អវតក/អជសដ
Case File/Dossier No. 002/19-09-2007/ECCC/TC

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Before: Judge NIL Nonn, President
Judge Jean-Marc LAVERGNE
Judge YA Sokhan
Judge Claudia FENZ
Judge YOU Ottara

Date: 24 December 2014
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**DECISION ON INTERNATIONAL CO-PROSECUTOR'S REQUEST TO ADMIT DOCUMENTS
RELEVANT TO TRAM KOK COOPERATIVES AND KRAING TA CHAN SECURITY CENTER AND
ORDER ON USE OF WRITTEN RECORDS OF INTERVIEW FROM CASE FILES 003 AND 004**

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1. INTRODUCTION

1. The International Co-Investigating Judge has authorized the disclosure of 33 confidential written records of interview and an annex to one of these confidential written records of interview.¹ These written records were obtained from 26 individuals during the ongoing investigations in Case 004.² The Trial Chamber is now seised of the International Co-Prosecutor's request to admit into evidence 30 of these written records of interview from 25 individuals, plus the annex, relating to the Tram Kok Cooperatives and Kraing Ta Chan Security Center.³ The relevant written records of interview are identified in a table annexed to the Rule 87 Request.⁴

2. The Trial Chamber is also seised of a proposal by the International Co-Prosecutor for a procedure for the use of these written records of interview during Trial 002/02. The proposed procedure is also intended to apply to any confidential written records of interview from Cases 003 and 004 which the Co-Investigating Judge may in the future authorize for disclosure in Case 002/02.⁵

2. SUBMISSIONS

2.1. Rule 87 Request

3. In support of his Rule 87 Request, the International Co-Prosecutor submits that each proposed written record of interview meets the criteria for admission required by Internal Rules 87(3) and 87(4).⁶ The International Co-Prosecutor submits that these statements are highly relevant to the Tram Kok Cooperatives and Kraing Ta Chang Security Centre crime sites.⁷ The International Co-Prosecutor also notes that all written records of interview were made in either 2013 or 2014, after the opening of trial in Case 002, and that the International

¹ Decision on Co-Prosecutor's Urgent Request to Disclose Case 004 Interviews Relevant to 1st Segment of Case 002/02 Trial, E319.2, 14 October 2014 ("Disclosure Decision"). *See also* International Co-Prosecutor's Disclosure of Statements from Case File 004, E319, 20 October 2014 ("Co-Prosecutor's Disclosure").

² Disclosure Decision, para. 23. *See also* Annex A to the Co-Prosecutor's Disclosure: List of CF 004 Written Records Proposed to be Disclosed in Case File 002 Pursuant to CF004-D193/4, E319.1, 20 October 2014.

³ International Co-Prosecutor's Request to Admit Documents Relevant to Tram Kak Cooperatives and Kraing Ta Chan Security Centre Pursuant to Rules 87(3) & 87(4), E319/5, 13 November 2014 ("Rule 87 Request").

⁴ Annex E - New Witness Statements Relevant to Tram Kak Cooperatives and Kraing Ta Chan Security Centre, E319/5.1, 20 October 2014.

⁵ International Co-Prosecutor's Notice of Proposed Procedure for Use of Witness Statements from Case Files 003 and 004, E319/2, 22 October 2014 ("Proposed Procedure").

⁶ Rule 87 Request, para. 2. Annex E, attached to the Rule 87 Request, provides a description of each of the 31 documents submitted.

⁷ Rule 87 Request, para. 2.

Co-Investigating Judge authorized him to provide them to the Trial Chamber only recently, on 14 October 2014.⁸

4. The Trial Chamber received no responses to the Rule 87 Request.

2.2. Proposed Procedure for the Use at Trial of Written Records of Interview from Cases 003 and 004

5. In the Disclosure Decision, the International Co-Investigating Judge authorised disclosure of confidential written records of interview from Case 004 under certain restrictive conditions.⁹ The International Co-Investigating Judge also requested that the Trial Chamber ensure that all parties comply with the Disclosure Decision.¹⁰ A preliminary discussion on the use at trial of written records of interview originating from Case 003 and 004 was held during the Trial Management Meeting of 21 October 2014.¹¹

6. To implement the conditions attached by the International Co-Investigating Judge, the International Co-Prosecutor proposes that written records of interview from Cases 003 and 004 that are disclosed for use in Case 002/02 should be admitted into evidence and classified as confidential, following the procedure at trial in Case 002/01.¹² He further proposes that such confidential, written records of interview may be used during public Case 002/02 trial proceedings, including in the examination of witnesses and civil parties, as in Case 002/01.¹³ The International Co-Prosecutor provided a copy of the Proposed Procedure to the Co-Investigating Judges,¹⁴ who have not indicated any objection to it.

7. No written responses to the Proposed Procedure were filed. At the Trial Management Meeting held on 28 October 2014, when asked by the Trial Chamber for objections to the Proposed Procedure, the NUON Chea Defence did not state its position.¹⁵ The KHIEU Samphan Defence noted that the Proposed Procedure is similar to the practice that it has appealed in Case 002/01 and objected to the proposed provision which bars reference to

⁸ Rule 87 Request, para. 3; Disclosure Decision, paras 23-24.

⁹ Disclosure Decision, paras 23-24.

¹⁰ Disclosure Decision, paras 23, 26.

¹¹ T., 21 October 2014, pp. 4-15. The Defence failed to attend to this Trial Management Meeting, in violation of an order to the Trial Chamber. *See* Trial Chamber Memorandum entitled “Warning to Counsel for NUON Chea and KHIEU Samphan”, E320, 24 October 2014.

¹² Proposed Procedure, para. 2-3.

¹³ Proposed Procedure, para. 2.

¹⁴ Proposed Procedure, para. 6.

¹⁵ T., 28 October 2014, pp. 17-18.

confidential written records of interview as originating from Case 003 or Case 004 during public session. The KHIEU Samphan Defence stated no other objections.¹⁶

3. APPLICABLE LAW

8. All evidence is admissible¹⁷ and, subject to the criteria set out in Internal Rule 87(3) and (4), the parties may propose the admission of evidence at any stage of the trial.¹⁸ The Trial Chamber has broad discretion in determining the evidence to be admitted.¹⁹ All proposed evidence not available at the time the Chamber is seised with the case is considered “new” evidence subject to the requirements of Internal Rule 87(4).²⁰

9. According to Internal Rule 87(4), the Trial Chamber may admit any new 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 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 earlier with the exercise of reasonable diligence.²¹ Before placing new material on the Case File, the Chamber must determine if it is conducive to ascertaining the truth.²² The parties must have the opportunity to subject evidence to adversarial debate and to object to the admission of evidence, even if they do not avail themselves of this opportunity.²³

4. FINDINGS

4.1. Rule 87 Request

10. The Trial Chamber finds that the written records of interview proposed by the International Co-Prosecutor are *prima facie* relevant, as they pertain directly to the issues to be tried in Case 002/02, and satisfy the criteria of Internal Rule 87. These written records of interview pertain to the Tram Kok Cooperatives, the Kraing Ta Chan Security Center, the

¹⁶ T., 28 October 2014, p. 18. The KHIEU Samphan Defence objected to paragraph “5.1” of the Proposed Procedure. Presumably, the KHIEU Samphan Defence meant to refer to para. 5(a) of the Proposed Procedure instead.

¹⁷ Internal Rule 87(1).

¹⁸ Internal Rules 9(5) and (6), 10(4), 55(6), 55(11), 86.

¹⁹ Case 002/01 Judgement, E313, 7 August 2014, para. 25.

²⁰ Case 002/01 Judgement, E313, 7 August 2014, para. 25.

²¹ See e.g., Decision on Civil Party Co-Lead Lawyers’ Rule 87(4) Request Regarding Contemporaneous Diary of 2-TCC-296, E323/1, 27 November 2014, para. 2.

²² Decision Concerning New Documents and Other Related Issues, E190, E190, 2 May 2012, para. 27, fn. 38.

²³ Case 002/01 Judgement, E313, 7 August 2014, para. 26.

treatment of targeted groups, the regulation of marriage, and other factual issues to be tried in Case 002/02. Therefore, the Trial Chamber deems admitting these written records to be conducive to ascertaining the truth. The written records were made in 2013 or 2014 and were not available for admission into evidence until the International Co-Investigating Judge's authorization for their disclosure, outlined in the Disclosure Decision of 14 October 2014.²⁴ The International Co-Prosecutor timely filed his Rule 87 Request thereafter and has demonstrated that the proposed evidence was not available sooner. Additionally, no party has objected to the admission of these written records. Accordingly, the Trial Chamber will admit these written records into evidence.

4.2. Proposed Procedure for the Use at Trial of Written Records of Interview from Cases 003 and 004

11. The Co-Investigating Judges have previously permitted the use of confidential written records in other proceedings where they determined that this would not jeopardize an investigation or put at risk the security of any victim or witness.²⁵ The International Co-Prosecutor's Proposed Procedure aims to protect the identities of victims and witnesses interviewed for the Case 003 and Case 004 judicial investigations within the parameters set by the International Co-Investigating Judge.²⁶ In previous decisions concerning the treatment of confidential information, this Chamber already recognized the need to avoid disruptions in the conduct of judicial investigations currently before the Co-Investigating Judges.²⁷ To find a balance between the public discussion of evidence at trial and the need to protect the integrity of the investigations and safeguard the relevant victims and witnesses, the Trial Chamber finds it necessary to ensure that, where warranted, certain information originating from ongoing investigations in other cases remains confidential when discussed during trial proceedings.²⁸ Accordingly, the Trial Chamber takes this into account below in its order regarding the use of such confidential written records of interview in Case 002/02.

12. While the Trial Chamber considers the protections and prohibitions sought in the Proposed Procedure to be appropriate, it also finds it necessary to take into account other Trial

²⁴ Rule 87 Request, para. 3; Co-Prosecutor's Disclosure, para. 4.

²⁵ Decision on the International Co-Prosecutor's Request to Disclose Documents in Case 002, 12 September 2013, E127/7/2.2, para. 7.

²⁶ Proposed Procedure, paras 4-5.

²⁷ See e.g., Trial Chamber Memorandum entitled "Transfer of Case 002 statements to Case Files 003 and 004", E308/2, 21 May 2014.

²⁸ See also Trial Chamber Memorandum entitled "Admission of Case 003 and 004 Statement Relevant to Case 002", E127/7/2, 23 September 2013.

Chamber directions and orders which remain in force concerning the hearing of individuals at trial.²⁹ The procedure outlined in the order below will provide to all parties an opportunity for an adversarial discussion of the evidence put before the Chamber during public hearings. The defence teams have not shown that the use of pseudonyms and new document numbers would obstruct or impact the rights of the defence.

13. The procedure outlined below is contingent on the confidential status of the written records of interview disclosed by the Office of the Co-Investigating Judges. Depending on any relevant development in Case 003 and 004, the Chamber might decide to modify this procedure, if warranted.

FOR THE FOREGOING REASONS, THE TRIAL CHAMBER

ADMITS the documents listed in the Rule 87 Request at Annex E into evidence; and

ORDERS that

- a) No party, counsel, or other individual shall, orally or otherwise, refer to the written records of interview authorized for disclosure in the Disclosure Decision, or in any similar, subsequent authorization from the International Co-Investigating Judge, in public session during Case 002/02 as statements or interviews originating from Cases 003 or 004;
- b) No party, counsel, or other individual shall identify or disclose to any person or entity not authorized by the Disclosure Decision any of said written records of interview by the date of interview or as a statement or interview originating from Cases 003 or 004, but instead shall identify the written record of interview only by the Case 002 document number assigned after its disclosure in Case 002;
- c) At no time during the trial proceedings in Case 002/02 shall any party, counsel, or other individual who reads from, cites, or otherwise uses any of the written records of interview that have been authorized for disclosure in the Disclosure Decision identify the name of the Case 003 or 004 interviewee on the public record;
- d) Any party, counsel, or other individual who reads from, cites, or otherwise uses any of the written records of interview that have been authorized for disclosure in the Disclosure Decision shall identify the Case 003 or 004 witness only by a pseudonym assigned by the Trial Chamber for Case 002/02 or will use only general words reasonably calculated to avoid identifying the witness;³⁰ and

²⁹ See e.g., Notice to parties regarding revised modalities of questioning and Response to Co-Prosecutors' Request for Clarification Regarding the Use of Documents During Witness Testimony (E201), E201/2, 14 June 2012 (addressing the use of witnesses' prior OCIJ statements during trial proceedings).

³⁰ The Trial Chamber has accordingly assigned pseudonyms to those individuals whose written records of interview have been admitted pursuant to this Decision but who did not have already a pseudonym for Case 002/02. The list of these pseudonyms is attached to this Decision.

- e) Where a testifying witness or civil party is examined in Case 002/02 regarding their own Case 003 or 004 written record of interview, the written record of interview shall be identified simply as a prior statement of the individual that was provided to the Office of Co-Investigating Judges.

Phnom Penh, 24 December 2014

President of the Trial Chamber



Nil Nonn
Nil Nonn