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E390/3

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 **Date:** 11 July 2016

FROM: NIL Nonn, President of the Trial Chamber

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

SUBJECT: Decision on Co-Prosecutors' Rule 87(4) Request to Call an Additional Witness and an Additional Civil Party During the Phnom Kraol Security Centre Trial Segment



1. The Trial Chamber is seized of a request filed on 16 March 2016 pursuant to Internal Rule 87(4) by the Co-Prosecutors to call one additional Witness, 2-TCW-1017, and one additional Civil Party, SUN Vuth (2-TCCP-1016), in relation to the Phnom Kraol Security Centre, ("Request") (E390). On 21 March 2016, the Chamber heard oral submissions and responses from the Parties (T., 21 March 2016, pp. 4-19). On 24 March 2016, the Chamber granted the Request in part and decided to call Civil Party SUN Vuth (2-TCCP-1016), with reasons to follow (T., 24 March 2016, pp. 2-3). On 30 March 2016, the Chamber rejected the Request to call Witness 2-TCW-1017 (T., 30 March 2016, pp. 51-52). The Chamber heard the testimony of Civil Party SUN Vuth (2-TCCP-1016) on 30 and 31 March 2016. The Chamber hereby provides the reasons for its decision in relation to Civil Party SUN Vuth (2-TCCP-1016).

2. The Co-Prosecutors submit that three of the six individuals proposed by them in relation to the Phnom Kraol Security Centre are deceased (E390, para 2). They contend that SUN Vuth (2-TCCP-1016) is the only Civil Party who can provide information about this crime site. According to the Co-Prosecutors, SUN Vuth is a former soldier in RAK Division 920 who was detained in a "special" security centre near a mountain in Koh Nhek district (E390, para 7). The Co-Prosecutors further submit that the charges against the Accused in relation to the Phnom Kraol Security Centre include crimes committed at a larger security office under Battalion 2 of Sector 105, located near the Phnom Kraol Dam (E390, para 6). According to the Co-Prosecutors, SUN Vuth (2-TCCP-1016) can testify about the number of prisoners detained at the Phnom Kraol Security Centre, including whether the majority of prisoners were from RAK Division 920 (E390, para 7). While accepting that the testimony of SUN Vuth (2-TCCP-1016) was available prior to the opening of the trial,

the Co-Prosecutors submit that it is in the interests of justice that they be allowed to substitute new individuals for the deceased witnesses and civil parties (E390, para 8).

3. In response, the Civil Party Lead Co-Lawyers do not object to the Request and note that this Civil Party has confirmed his willingness to testify (T., 21 March 2016, p. 8). The NUON Chea Defence also does not object to the Request (T., 21 March 2016, pp. 8-9). The KHIEU Samphan Defence submits that the Request is untimely as it should have been made before this trial topic has started (T., 21 March 2016, p. 10-11). The KHIEU Samphan Defence also contends that Internal Rule 87(4) is exceptional, should only be relied upon to request the testimony of additional individuals who had not been identified before and that relying on Internal Rule 87(4) in the current situation would impact Defence preparation (T., 21 March 2016, pp. 11-12). It further stated that according to the Civil Party's statement, there is no relevant information in relation to Phnom Kraol Security Centre (T., 21 March 2016, p. 14). In reply, the Co-Prosecutors submit that the trial topic on the Phnom Kraol Security Centre commenced earlier because of a unique situation in scheduling and reiterate that the reason for calling this Civil Party is because of the death of other witnesses proposed by the Co-Prosecutors (T., 21 March 2016, p. 16). In relation to the relevance of this Civil Party, the Co-Prosecutors contend that the security centre in which the Civil Party was detained was located at the Phnom Kraol Security Centre (T., 21 March 2016, p. 17).

4. 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, and where the proposed evidence is exculpatory and requires evaluation to avoid a miscarriage of justice (E383/2, para. 3).

5. While the Chamber accepts that the Parties were informed only in February 2016 that half of the Witnesses and Civil Parties proposed by the Co-Prosecutors for this trial topic are deceased (Email from Senior Legal Officer on 5 February 2016), it notes that the Civil Party Application of SUN Vuth (2-TCCP-1016) was available before the start of the trial in Case 002 as it was made in August 2009 and was subsequently placed on the Case File 002 in 2010. Therefore, while acknowledging the uniqueness of these circumstances and noting that the Co-Prosecutors exercised due diligence in making the Request following the e-mail notification of the situation, the Chamber can only find that the request is untimely as the requested testimony was available before the opening of the trial. The Chamber will however consider whether it is in the interests of justice to hear this witness.

6. According to his Civil Party application, SUN Vuth (2-TCCP-1016) was appointed Chairman of Special Company 920 in Mundulkiri province. He was later

arrested and sent to a “special” security office in Koh Nhek district for a period of approximately one year (E3/6760a, p.1). The Chamber notes that although SUN Vuth’s (2-TCCP-1016) Civil Party application does not expressly state that he was detained at the Phnom Kraol Security Centre, the location referred to by the Civil Party corresponds to the location of the Phnom Kraol Security Centre (Closing Order Case 002, para 625-626; E3/6760a, p.1). The Chamber considers that it is important to hear SUN Vuth’s (2-TCCP-1016) testimony because he is the only civil party who can provide evidence about this crime site. It appears that this Civil Party can also provide information relevant to the trial topic of regulation of marriage (E3/6760a, p.2). In relation to the KHIEU Samphan Defence submission that Internal Rule 87(4) should only be used exceptionally, the Chamber considers that this Rule allows the Chamber to hear the testimony of any individual or admit any new evidence which it deems conducive to ascertaining the truth. The Chamber is satisfied that this Civil Party’s evidence is *prima facie* relevant to the topics of Phnom Kraol Security Centre and regulation of marriage. Therefore, the Chamber considers that hearing the evidence of SUN Vuth (2-TCCP-1016) will be conducive to ascertaining the truth and that it is in the interests of justice to hear this witness.

7. The Chamber therefore decides to hear Civil Party SUN Vuth (2-TCCP-1016). This is the Chamber’s official response to E390.