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E445/2

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: 8 November 2016

FROM: Judge NIL Nonn, President of the Trial Chamber



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

SUBJECT: Decision on NUON Chea Defence Internal Rules 87(4) and 93 Request (E445/1)

1. The Trial Chamber is seized of the confidential request filed on 11 October 2016 pursuant to Internal Rules 87(3), 87(4) and 93 by the NUON Chea Defence, seeking the admission of eight documents and requesting investigative action with respect to two documents. The NUON Chea Defence submits that they may use the requested documents to question Stephen MORRIS (2-TCE-98) (E445/1). Oral submissions in response to the request were heard on 13 October 2016 (T., 13 October, pp 73-83, draft).

2. On 17 October 2016, prior to the anticipated testimony of Stephen MORRIS (2-TCE-98), the Trial Chamber issued an oral ruling in which it admitted documents 1 to 7 referred to in E445/1, denied the admission of document 8 and declared moot the related request in response made by the Co-Prosecutor to admit three documents. With respect to document 1, the Chamber instructed the NUON Chea Defence to identify those portions of the 215-page document which were most relevant to the anticipated testimony of 2-TCE-98 and which they intend to use. Having regard to the Rule 93 request, the Chamber noted that it asked WESU to contact the expert to provide a full version of document 1. The Chamber denied the Rule 93 request with respect to document 2 (T., 17 October 2016, pp 51-52, draft). The Chamber hereby provides reasons for its ruling.

3. 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 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 documents are exculpatory and require evaluation to avoid a miscarriage of justice (*See* E319/36/2).

4. At the outset, the Trial Chamber notes that the request was filed in accordance with the 11 October 2016 deadline set by the Chamber (*see* email from Trial Chamber Senior Legal Officer to the Parties, 16 September 2016) for submission of Rule 87 requests in relation to the testimony of Stephen MORRIS (2-TCE-98) and is thus timely.

5. Documents 1 to 7 contain material either authored by or which discuss the work and research of Stephen MORRIS (2-TCE-98). The Chamber finds that these documents are relevant to the expert's knowledge and expertise and are closely related to his expected testimony. Some of the documents may also be used during the questioning of the expert and could be relevant in assessing his credibility. Document 8 is a compilation of letters sent by the late King Norodom Sihanouk to the Prime Minister of Vietnam in October and November 1979. The Chamber notes that it has previously denied the admission of these letters for different reasons (E396/4). In this case, the Chamber notes that document 8 is repetitious of other evidence on the record. The Chamber therefore denies the admission of this document.

6. The Chamber now turns to the two Internal Rule 93 requests. Having regard to the first Rule 93 request, the Chamber notes that the requested document is the full version of document 1, the expert's doctoral thesis, which the Chamber has decided to admit pursuant to Internal Rule 87(4). Accordingly, the Chamber requests WESU to contact Stephen MORRIS (2-TCE-98) to provide a full version of document 1. It considers that this will satisfy the NUON Chea Defence request and does not find it necessary to further conduct a Rule 93 investigation in this instance. The second Rule 93 request relates to the testimony of the expert in 1991 before a sub-committee of the United States House of Representatives. The Chamber finds that it is not necessary or appropriate to order additional investigations at this late stage of proceedings, particularly given that it appears the document in question is not easily or readily available. Further, the NUON Chea Defence had an opportunity to question Stephen MORRIS (2-TCE-98) directly about the content of his testimony.

7. In light of the above and pursuant to Internal Rule 87(4), the Trial Chamber admits documents 1 to 7 referred to in E445/1 and denies the admission of document 8. With respect to documents 1 to 7, the Chamber assigns numbers, E3/10699, E3/10700, E3/10701, E3/10702, E3/10703, E3/10704, E3/10705 respectively. Given that the Chamber denies the admission of document 8, the request in response made by the Co-Prosecutor to admit three documents is moot. Having regard to the Internal Rule 93 request, the Chamber requests WESU to contact the expert to provide a full version of the first requested document. The Chamber denies the Internal Rule 93 request with respect to the second requested document.

8. This constitutes the Chamber's official response to E445/1.