

**Declassified to Public
27 June 2019**



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

**Extraordinary Chambers in the Courts of Cambodia
Chambres Extraordinaires au sein des Tribunaux Cambodgiens**

ឯកសារដើម
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL

ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/Date de reception):
..... 02 11 2016

ម៉ោង (Time/Heure): 16 : 00

មន្ត្រីទទួលបន្ទុកឯកសារ (Case File Officer/L'agent chargé du dossier): JANN PORN

E448/1

**ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ**

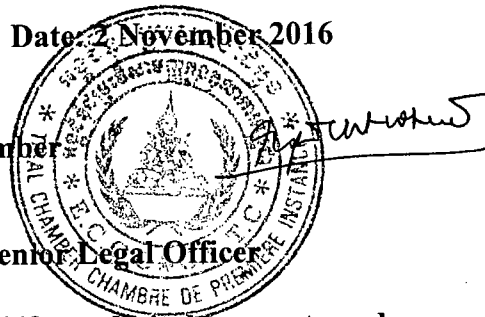
**Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi**

TRIAL CHAMBER

TO: All Parties, Case 002

Date: 2 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 Request E448 to admit documents and call two additional witnesses (CONFIDENTIAL)

1. The Trial Chamber is seised of a request filed confidentially by the NUON Chea Defence on 26 October 2016 pursuant to Internal Rules 87(3) and (4), seeking the admission of two articles prior to the testimony of LONG Sat (2-TCW-1065) (E448.2 and E448.3, respectively) (“Articles”), and to summons two additional witnesses to testify with respect to treasonous rebellion in the Democratic Kampuchea period and in relation to the upcoming testimony of 2-TCW-1065 pertaining to the nature of the armed conflict (E448). The Articles are biographical accounts of the two proposed additional witnesses. Oral submissions in response were heard on 26 October 2016. No party opposed the admission of the Articles. The International Co-Prosecutor noted that while the proposed witnesses are also relevant, it was within the discretion of the Chamber whether to call them given the late stage of the trial proceedings. The KHIEU Samphan Defence had no objection to the request (T., 26 October 2016, pp 106-110, draft). On 27 October 2016, the NUON Chea Defence made an oral request for the admission of the related transcripts of DC Cam interviews of the two requested witnesses which were only available in Khmer (“Transcripts”). No party opposed the admission of the Transcripts (T., 27 October, pp. 60-63, draft).

2. On 27 October 2016, the Trial Chamber issued an oral ruling in which it admitted the Articles and Transcripts and deferred its decision on whether to call the two additional witnesses referred to in the request (T., 27 October, p. 64, draft).

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. The Articles were published in July and August 2015 respectively in the review “Searching for the truth” published by DC Cam. The Transcripts record the interviews conducted by DC Cam with the two proposed additional witnesses. The NUON Chea Defence alleges that the Articles and Transcripts came to their attention only after September 2016 when in an internal ECCC media report, a reference was made to an article of a Cambodian newspaper mentioning these biographical accounts. However, the documents were actually in the public domain for over one year. The request could thus have been made earlier with the exercise of reasonable diligence and is therefore belated. The Chamber considers whether it is nonetheless in the interests of justice for these documents to be admitted.

5. The Chamber finds that the Articles and Transcripts meet the *prima facie* standards of relevance, reliability and authenticity required for admission under Internal Rule 87(3). These documents may be of relevance and used by the NUON Chea Defence to pose questions to and test the evidence of LONG Sat (2-TCW-1065). This justifies their admission in the interests of justice. .

6. The Trial Chamber therefore admits the Articles and Transcripts pursuant to Internal Rule 87(4). The Trial Chamber assigns numbers E3/10714 and, E3/10715 to the Articles and numbers E3/10716 and E3/10717 to the Transcripts respectively. The Chamber defers the decision on whether to call the two additional witnesses referred to in the Request as it needs to hear LONG Sat (2-TCW-1065) to fully assess the Internal Rule 87(3) criteria and whether it would be in the interests of justice to hear these witnesses.

7. This constitutes the Chamber’s official response to E448.