

BEFORE THE TRIAL CHAMBER**EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA****FILING DETAILS****Case No:** 002/19-09-2007-ECCC/TC**Party Filing:** Mr KHIEU Samphan**Filed to:** Trial Chamber**Original Language:** French**Date of Document:** 28 March 2013**CLASSIFICATION****Classification of the Document Suggested by the Filing Party:** Public**Classification by the Trial Chamber:** សាធារណៈ/Public**Classification Status:****Records Officer's Name:****Signature:**

**Internal Rule 87(4) Request to Put Before the Chamber an Interview with the late
Norodom Sihanouk**

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Before:**The Trial Chamber**

Judge NIL Nonn

Judge Silvia CARTWRIGHT

Judge YOU Ottara

Judge Jean-Marc LAVERGNE

Judge YA Sokhan

The Co-Prosecutors

CHEA Leang

Andrew CAYLEY

All Civil Party Lawyers**All Defence Teams**

MAY IT PLEASE THE TRIAL CHAMBER

1. On 30 January 2013, the Co-Prosecutors sent the parties a list of documents they wished to introduce at the hearing on the role of Mr KHIEU Samphan.¹ Among these documents, which the Prosecution considers to be “key” are the statements of deceased witnesses.
2. On the same day, the Defence for Mr KHIEU Samphan objected to the use of witness statements on the acts and conduct of the accused in instances where the witness is unavailable to testify. In particular, the Defence objected to the use of statements on Mr KHIEU Samphan’s role by the late King Father Norodom SIHANOUK. The Defence recalled that it had requested the appearance of this witness at a time when it was still possible, and the Co-Prosecutors had voiced their opposition on the ground that the testimony would be “*void of relevance.*”²
3. During the hearing of 31 January 2013, the President dismissed the Defence objection, and held that the statements of deceased witnesses, which the Co-Prosecutors sought to tender were, *a priori*, reliable and relevant. The President nevertheless indicated that “*any probative value of these statements will be evaluated based on all the circumstances and the legal standards set forth in E96/7.*”³
4. At the same hearing, the Co-Prosecutors showed a video of an interview with the late King SIHANOUK (D299.1.42R).⁴
5. In order to assist the Chamber in determining the probative value to be attributed to the Co-Prosecutors’ video, Mr KHIEU Samphan requests that an additional video interview of the late King Father be put before the Chamber, the content of which is in total contradiction with what was viewed during the hearing. This video clip is essential for an optimal assessment of the statements that the Co-Prosecutors believe are germane to their body of evidence. Above all, the video is necessary for the ascertainment of the truth.

¹ Email from Mr Tarik Abdulhak to all parties dated 30 January 2013 at 9:49 a.m. entitled “*OCP documents to be used in the presentation on the role of KHIEU Samphan*”.

² Transcript of Hearing of 30 January 2013, **E1/167.1**, p. 90 - 93

³ Transcript of Hearing of 31 January 2013, **E1/168.1**, p. 2 lines 14-16.

⁴ *Ibid.*, p. 25 line 19 - p. 26 line 9.

Applicable Law

6. Rule 87(4) of the Internal Rules stipulates that, “[d]uring the trial, either on its own initiative or at the request of a party, the Chamber may summon or hear any person as a witness or admit any new evidence which it deems conducive to ascertaining the truth”.
7. In its decision on new documents, the Chamber ruled that, “in relation to all documents not included in the parties’ lists filed in accordance with the Chamber’s earlier orders, the parties are not, however, precluded from making future applications to tender them pursuant to Internal Rule 87(4) where they consider the interests of justice to so require”.⁵

Admissibility of the Request

8. The video is conducive to the ascertainment of the truth and it is in the interests of justice to admit it into the proceedings.
9. On 31 January 2013, the video presented by the Co-Prosecutors (D299.1.42R) showed the late King Norodom SIHANOUK making the following statement:

*“At the beginning, from [April 1975] until April 1976, I, as head of state, travelled through my country, through Cambodia, together with Khieu Samphan. I saw that the communes were concentration camps. I saw how work went on day and night. When the moon shone, people could not sleep. Sleep was not allowed. People had to work. I saw what people ate, for there was no rice. The rice was mixed with maize and other things, beans, even leaves, the chopped up stocks of banana plants.”*⁶
10. There is no date on this interview.
11. In another interview, broadcast on French television on 5 February 1979 entitled “Norodom SIHANOUK talks about his life under the Khmers Rouges”, the late King makes fundamentally different remarks on the same subject:

⁵ Decision Concerning New Documents and Other Related Issues, 30 April 2012, **E190**, para. 21.

⁶ *Ibid.*, **E1/168.1**, p. 25 – p. 26 lines 1-8.

“[TRANSLATION] *But, with Khieu Samphan, we visited a few rice paddies and we visited a few worksites. But the people did not seem unhappy or terrorized. They were not undernourished.*”⁷

12. The Defence for Mr KHIEU Samphan requests the above-mentioned video be put before the Chamber so that it may be examined in conjunction with the video presented by the Co-Prosecutors during the hearing of 31 January 2013.
13. Mr KHIEU Samphan’s Defence submits that the video, “*Norodom SIHANOUK talks about his life under the Khmers Rouges*” will convince the Chamber to not attribute any probative value to the late King Norodom SIHANOUK’s statements made in the video presented by the Prosecution. In any event, given that it is not possible to proceed with a thorough examination of the witness who is now deceased, the video contributes to the ascertainment of the truth.
14. In its decision on new documents, the Chamber devotes a paragraph to “*Statements of witnesses who are deceased [...]*”⁸. The Chamber recalls that such statements may be tendered into proceedings where, “*the proposed evidence is reliable, and where it [the tribunal] considers that the probative value of this evidence is not substantially outweighed by the need to ensure a fair trial.*”
15. The King was not heard by the Co-Investigating Judges, and did not appear before the Chamber. In an op-ed published upon the death of the King, Expert-Witness Elisabeth BECKER refers to the late Norodom SIHANOUK as “*a king of shifting allegiances*” and one with “*remarkable skills of political adaptation*”.⁹ The two video interviews contain contradictory statements and were likely to have been made within different political contexts. Given that the witness cannot be examined, it would be entirely unjust and counter to the interests of justice for the Chamber to examine only the video recording presented by the Co-Prosecutors. It is in the interests of justice to tender the video into

⁷ The entirety of the video is available on the website of the *Institut National de l’Audiovisuel français* at: <http://www.ina.fr/video/I06065624>. A complete transcript of the video is attached to this Request.

⁸ Decision on Co-Prosecutors’ Rule 92 Submission Regarding the Admission of Witness Statements and Other Documents Before the Trial Chamber, 20 June 2012, **E96/7**, par. 32.

⁹ Article published in the New York Times, “*Norodom Sihanouk, Cambodian Leader Through Shifting Allegiances, Dies at 89*,” 14 October 2012, French translation published in *Courrier international*, “*Norodom Sihanouk, un roi aux multiples alliances*”, Elisabeth Becker, 15 October 2012.

evidence in order to achieve a comprehensive perspective of the successive and contradictory statements made by the late Norodom SIHANOUK.

16. Since it is not possible to determine which of the two statements made by the late Norodom SIHANOUK in the two video interviews can be considered reliable and reflective of the truth, the Defence for Mr KHIEU Samphan submits that the Chamber has no choice but to consider both of these pieces of evidence during its deliberations.
17. If this additional video is not tendered into evidence, Mr KHIEU Samphan requests the Chamber to exclude from the record video D299.1.42R that was presented by the Co-Prosecutors at the hearing of 31 January 2013. This is the only way to guarantee a fair trial to the Accused in the absence of any possibility to examine the witness on contradictory statements made at different times.

18. **WHEREFORE**, the Defence for Mr KHIEU Samphan requests the Trial Chamber to:

- **ORDER** that the video, “*Norodom Sihanouk talks about his life under the Khmer Rouge*” be put before the Chamber;
- **ACKNOWLEDGE** that no probative value can be attributed to the statements made by the late King Norodom SIHANOUK in video D299.1.42R presented by the Co-Prosecutors at the hearing of 31 January 2013.

Alternatively:

- **REMOVE** from the record video D299.1.42R presented by the Co-Prosecutors at the hearing of 31 January 2013.

	Mr KONG Sam Onn	Phnom Penh	[Signed]
	Ms Anta GUISSÉ	Paris	[Signed]
	Mr Arthur VERCKEN	Paris	[Signed]
	Mr Jacques VERGÈS	Paris	[Signed]