

**BEFORE THE TRIAL CHAMBER  
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

**FILING DETAILS**

**Case No:** 002/19-09-2007-ECCC/TC

**Party Filing:** Co-Prosecutors

**Filed to:** Trial Chamber

**Original language:** English

**Date of document:** 8 April 2013

**CLASSIFICATION**

**Classification of the document**

**suggested by the filing party:** PUBLIC

**Classification by the Trial Chamber:**

**Classification Status:**

**Review of Interim Classification:**

**សាធារណៈ / Public**

**Records Officer Name:**

**Signature:**

<b>ឯកសារដើម</b>	
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL	
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**CO-PROSECUTORS' RESPONSE TO KHIEU SAMPHAN'S RULE 87(4) REQUEST**

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## RESPONSE

1. On 28 March 2013, the Co-Lawyers for the Accused Khieu Samphan (“Defence”) submitted a request under Internal Rule 87(4) (“Request”)<sup>1</sup> seeking to put before the Trial Chamber (“Chamber”) excerpts of a videotaped press interview (“Interview”)<sup>2</sup> with the late King Father Norodom Sihanouk. The Defence alleged that statements of the King Father during the Interview contradict his statements in another video (**D299.1.42R**) put before the Chamber by the Co-Prosecutors,<sup>3</sup> negating the probative value of video **D299.1.42R**.<sup>4</sup> In the alternative, the Defence requests the Chamber to order the removal of video **D299.1.42R** from the record.
2. The Co-Prosecutors have no objection, in principle, to the admission of the Interview into evidence in these proceedings. However, the Co-Prosecutors must observe that the Request itself is both inaccurate and insufficiently reasoned.
3. The Request appears to suggest that the Defence first received notice of video **D299.1.42R** on 31 January 2013, making no reference to prior procedural history.<sup>5</sup> In fact, this video was submitted by the Co-Prosecutors in their initial Rule 80 document list on 19 April 2011.<sup>6</sup> The Defence have been on notice of its contents, and the Co-Prosecutor’s intention to place this video before the Chamber, for 24 months. In these circumstances, it is most unlikely that the Defence, as the requesting party, will be able to “satisfy the Chamber that the requested...evidence was not available before the opening of the trial” in terms of Internal Rule 87(4). The Defence offers no reason for why the Interview has been discovered only at this late stage in the proceedings. Indeed, the Request does not address this requirement of Internal Rule 87(4) at all.
4. The Co-Prosecutors must also observe that the Defence routinely object to requests under Internal Rule 87(4), specifically on the basis that this Rule requires Parties to

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<sup>1</sup> **E276** Internal Rule 87(4) request to put before the Chamber an interview with the late Norodom Sihanouk, 28 March 2013.

<sup>2</sup> “Norodom Sihanouk talks about his life under the Khmer Rouge”, 5 February 1979, Antenne 2 (available at: <http://www.ina.fr/video/I06065624>).

<sup>3</sup> **D299.1.42R** Jungle War [date unknown], put before the Chamber on 31 January 2013; see **E1/168.1** Transcript (31 January 2013), p. 25, ln. 19 to p. 26, ln. 9.

<sup>4</sup> **E276** Request, *supra* note 1 at p. 5 (“...no probative value can be attributed to the statements...in video **D299.1.42R**...”).

<sup>5</sup> **E276** *Ibid.* at para. 1.

<sup>6</sup> **E9/31** Co-Prosecutors’ Rule 80(3) trial document list, 19 April 2011.




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“demonstrate how despite the exercise of due diligence, they were unable to convey these documents prior to the start of trial”.<sup>7</sup>

5. For these reasons, the Co-Prosecutors respectfully request the Chamber to:
- a. **reject** the Request; and
  - b. **admit** the Interview on its own initiative under Internal Rule 87(4).

Respectfully submitted,

Date	Name	Place	Signature
8 April 2013	CHEA Leang Co-Prosecutor		
	Andrew CAYLEY Co-Prosecutor		

<sup>7</sup> See e.g. E265/1 Response to the “Co-Prosecutors’ Request to put before the Chamber two letters by Amnesty International addressed to Khieu Samphan and Ieng Sary”, 4 March 2013 at para. 10.