

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

FILING DETAILS

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Objections to the Admissibility of Documents Relating to Population Movements and to the Tuol Po Chrey Site (with annexes)

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Before:

The Trial Chamber
 Judge NIL Nonn
 Judge Silvia CARTWRIGHT
 Judge YOU Ottara
 Judge Jean-Marc LAVERGNE
 Judge YA Sokhan

Co-Prosecutors:

CHEA Leang
 Andrew CAYLEY

All Civil Party Lawyers

All Defence Teams

MAY IT PLEASE THE TRIAL CHAMBER

1. According to ECCC Internal Rule 87(3) , the Trial Chamber may reject a request for evidence where it finds that it is “a) irrelevant or repetitious; b) impossible to obtain within a reasonable time; c) unsuitable to prove the facts it purports to prove; d) not allowed under the law; or e) intended to prolong proceedings or [...] frivolous.”
2. This provision limits the ambit of Rule 87(1) according to which “[u]nless provided otherwise in these IRs, all evidence is admissible.” Accordingly, in addition to meeting the reliability and authenticity criteria, for evidence to be admissible, it must be relevant, non-repetitious, obtainable within a reasonable time, suitable to prove the facts it purports to prove, allowed under the law and not intended to prolong the proceedings or frivolous. Mr KHIEU Samphan is raising his objections based on those criteria.
3. The present submission concerns only those documents which were tendered during the hearings held on 21 and 22 January, which Mr KHIEU Samphan was unable to attend due to ill health. In its Memorandum regarding the scheduling of hearings, the Chamber pointed out that the parties were to be afforded the opportunity to discuss the 48 documents identified by the Co-Prosecutors as not having been subjected to examination by all parties (E223/2/1.1), as well as the 94 documents which the Co-Prosecutors wish to present in respect of the Tuol Po Chrey site and population movements Phases 1 and 2 (as identified in Co-Prosecutors’ Annexes E223/2/1.2, E223/2/1.3 and E223/2/1.4).¹ For the sake of clarity, Mr KHIEU Samphan has attached hereto the said annexes, which are presented in table form with an additional box containing his observations.
4. During the hearing, Mr IENG Sary’s Defence team identified 56 additional documents which were not discussed and provided the parties with a list thereof. The Co-Prosecutors contend that most of the documents have already been subjected to examination by the parties. Mr KHIEU Samphan will not attach a table of these 56 documents, but he will indicate the documents to which he will raise objections in the second part of this introductory document.
5. Mr KHIEU Samphan also points to the fact that contrary to the Co-Prosecutors’ assertion,

¹ E223/3, Memorandum Revised Schedule for Forthcoming Document Hearings (commencing Monday 21 January 2013), para. 3.

not all the new documents they are seeking to put before the Chamber were subjected to examination. As such, some 500 documents are yet to be subjected to examination (E190.1 and E190/2.1), and the Defence is again² requesting the leave of the Chamber to make oral or written submissions regarding the remaining documents.

6. These objections are aimed at saving the Chamber the trouble of examining irrelevant documents during its deliberations. These objections only relate to admissibility and not to probative value.

I. Objections per document categories

7. The Defence adverts to all the arguments contained in the objections to admissibility, which it filed in November 2011,³ concerning confessions⁴, books and documentary films.⁵ It also objects to rogatory letter completion reports containing witness statements taken by investigators of the Office of the Co-Investigating Judges. The tables annexed hereto do not simply rehearse earlier submissions, but provide details about each document indicating why the Chamber should find it inadmissible.

II. 56 documents identified by Mr IENG Sary's Defence team

8. Adding to his oral submissions on the issue, Mr KHIEU Samphan objects to the admission of Document D108/31.28.
9. Document D108/31.28 is a telegram from Met to Duch. It is available in English only. The Co-Prosecutors have not traced the original. The translator of the document is not known, but it emanates from the Documentation Center of Cambodia (DC-Cam). In response to the documents presented by the Co-Prosecutors in respect of Mr KHIEU Samphan's role, the Defence established during the hearing of 5 February 2013 that DC-Cam translations are unreliable. The Co-Prosecutors imputed a speech to Mr KHIEU Samphan in reliance upon an English translation of the document by DC-Cam. This translation refers to a speech delivered by the "*Presidium*" whereas the Khmer version refers to the "*president of the delegates*" (E3/165). The Defence was able to crosscheck

² Transcript of Hearing of 13 March 2012, E1/47.1. pp. 4 and 5.

³ Objections to the Admissibility of Other Parties' Document Lists for the First Session of the First Trial (28 November – 16 December 2011), E136/1, 14 November 2011.

⁴ *Ibidem*, paras. 18-21.

⁵ *Ibid.*, paras. 24-30 and 35-38.

the DC-Cam translation of the speech since the original in Khmer was available, unlike Telegram D108/31.28. This document should be found inadmissible on the ground that it is unsuitable to prove the facts it purports to prove.

10. **FOR THESE REASONS**, the Defence for Mr KHIEU Samphan requests the Trial Chamber to:

- **FIND** Document D108/31.28 and the documents annexed hereto inadmissible, pursuant to Internal Rule 87(3).

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