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du dossier: Sann Rada

E323/1

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

TRIAL CHAMBER

Date: 27 November 2014

TO: All Parties, Case 002

FROM: NIL Nonn, President of the Trial Chamber 

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

SUBJECT: Decision on Civil Party Lead Co-Lawyers' Rule 87(4) Request Regarding Contemporaneous Diary of 2-TCCP-296



1. The Trial Chamber is seized of a request by the Civil Party Lead Co-Lawyers to place Civil Party 2-TCCP-296's handwritten diary on the Case File and admit it into evidence under Internal Rule 87(4). The Lead Co-Lawyers submit that the diary documents the Democratic Kampuchea period, life and work in a number of cooperatives throughout the Tram Kok district and the Civil Party's activities and impressions during the Democratic Kampuchea period, including drawings (E323, para.6). The Lead Co-Lawyers submit that this diary is the original source material for a book already on the Case File, included in document D22/3248 (E323, para.6). The Lead Co-Lawyers argue that their request is timely, that the diary is *prima facie* relevant, reliable, and authentic, and that it is in the interests of justice to admit it (E323, paras 9-14). No party filed a response to the request.

2. According to Internal Rule 87(4), the Trial Chamber may admit any new 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 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 earlier with the exercise of reasonable diligence.

3. However, in certain cases the Trial Chamber will admit evidence that does not strictly satisfy this criteria when the interests of justice so require (E190, paras 19-21; E289/2, para. 3). These instances include where evidence relates closely to material already before the Trial Chamber and where the interests of justice require the sources to be evaluated together, where the proposed evidence is exculpatory and requires

evaluation to avoid a miscarriage of justice, or where the other parties do not object to the evidence (*see e.g.* E190 and E172/24/5/1).

4. The Lead Co-Lawyers concede that the instant request does not conform to the due diligence standard set out in Internal Rule 87(4) since the book based on the diary has “long been on the case file” (E323, para. 11). Nonetheless, the Lead Co-Lawyers filed its request several weeks before the Civil Party’s expected appearance, giving other parties sufficient time to prepare for any examination based on the diary. Additionally, since the diary is the source material for D22/3248, it was written contemporaneously with the events described in D22/3248 and may contain pertinent information not contained therein, the diary would be useful for ascertaining the truth. Additionally, no party has objected to the diary’s inclusion. The Trial Chamber therefore considers it in the interests of justice to include the diary in the Case File and admits it as evidence.

5. This constitutes the Chamber’s official response to E323.