

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: 2 February 2015

CLASSIFICATION

**Classification of the document
suggested by the filing party:** PUBLIC



Classification by Trial Chamber: សាធារណៈ/Public

Classification Status:

Review of Interim Classification:

Records Officer Name:

Signature:

**CO-PROSECUTORS' OBJECTIONS AND RESERVATIONS TO PARTIES'
PROPOSED DOCUMENT LISTS IN RESPONSE TO THE TRIAL CHAMBER'S
MEMORANDUM E327 AND REQUEST TO OBTAIN DOCUMENTS**

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I. INTRODUCTION

1. The Trial Chamber has directed the parties to submit written objections, if any, to the documents proposed by other parties to be admitted for trial in Case 002/02.¹
2. In response to this direction, the Co-Prosecutors: (a) submit their objections to two of the documents proposed by the Defence for Nuon Chea and Khieu Samphan pursuant to Internal Rule 87(3); (b) reserve their position with respect to five documents proposed by the Defence teams that are currently available solely in German or Chinese until their translation into one of the three ECCC official languages; (c) request the Trial Chamber to seek to obtain, from the authors who published it, a document, excerpts of which are proposed by the Nuon Chea Defence; and (d) do not object to the admission of the other documents proposed by the parties.

II. OBJECTIONS

3. The Co-Prosecutors object to a video (and its transcript) proposed by both the Nuon Chea² and Khieu Samphan³ Defence (**E305/12.38R**, **E305/12.32R** and **E305/12.32**). The Defence seek to justify the relevance of this video by submitting that Judge Cartwright talks about the difficulty for some of her Trial Chamber national colleagues to sit through hearings given that they lived through the Democratic Kampuchea regime and experienced child labour, starvation or forced marriage. The video has no relevance to determining the truth of the charges. The Nuon Chea Defence submitted this video and transcript as part of their recent attempt to disqualify Judges of the Trial Chamber⁴ and, therefore, they are already on the Case File. The video has no evidentiary value for Case 002/02, and thus should be rejected pursuant to Internal Rule 87(3).

¹ **E327** Trial Chamber's Memorandum entitled "Scheduling of Objections to Documents Relevant to Case 002/02", 11 December 2014.

² Video **E305/12.38R** Speech given by Judge Cartwright at the "Trying Atrocity Crimes; The Khmer Rouge Trials, Transitional Justice, and the Rule of Law" Symposium, as listed in **E307/5.2** Nuon Chea's Initial Document List for Case 002/02, at no.21.

³ Document **E305/12.32** (transcript) and Video **E305/12.32R** entitled *Trying Atrocity Crimes; The Khmer Rouge Trials, Transitional Justice, and the Rule of Law*, 11 July 2013, as listed in **E305/12.5** Khieu Samphan's proposed list of documents for Case 002/02, Annex IV.C entitled "*Liste de documents supplémentaires en lien avec les personnes proposées pour 002/02*", at FR 00993674.

⁴ **E314/6** Nuon Chea Application for Disqualification of Judges Nil Nonn, Ya Sokhan, Jean-Marc Lavergne, and You Ottara, para.12 & notes 11, 93, 106 and 136-139.

4. The Co-Prosecutors also object to a document proposed by the Defence for Nuon Chea, consisting of excerpts from the book by Marcel Lemonde entitled “*Un Juge Face aux Khmers Rouges*” and referenced as **E189/3/1/7.1.1** up to and including **E189/3/1/7.1.4**.⁵ The excerpts have no evidentiary value for Case 02/02. Various extracts from the same book have previously been rejected by this Trial Chamber for being repetitious, irrelevant, for not being conducive to the ascertainment of the truth or for being unsubstantiated.⁶ The Defence does not put forward any basis for reconsidering these rulings. Nuon Chea also relied on the book in his recent disqualification motion,⁷ which was found ungrounded. As the document proposed does not constitute a piece of substantive evidence, it should be rejected.

III. RESERVATIONS

5. The Co-Prosecutors reserve their position with respect to five documents proposed by the Defence that are currently available on the case file solely in German or Mandarin Chinese, as they are not in a position to assess whether these documents fulfil the requirements of Internal Rule 87(3), and, specifically, whether they are relevant to Case 002/02.
6. Two documents previously proposed by Khieu Samphan in 2011 are available exclusively in German, namely **D359/1/1.1.53**⁸ and **D359/1/1.1.28**.⁹ Further, the summary of the document provided by the Defence for Khieu Samphan is so vague and ambiguous that it does not establish even on a *prima facie* basis that the document is relevant and probative.¹⁰

⁵ **E189/3/1/7.1.1** to **4**, Excerpts from book by Marcel Lemonde entitled “*Un Juge Face aux Khmers Rouges*”, March 2013, as listed in **E307/5.2** Nuon Chea’s Initial Document List for Case 002/02, at no.21.

⁶ **E280/2/1** Trial Chamber Decision on Khieu Samphan Second Request Pursuant to Internal Rule 87(4) to Admit Extracts of Former Co-Investigating Judge Lemonde’s Book (E280/2), paras. 7-19 (at paras. 16-19, the Trial Chamber ruled upon extracts submitted by Nuon Chea to the Supreme Court Chamber, as Khieu Samphan incorporated by reference the submissions made by the Defence for Nuon Chea upon them).

⁷ **E314/6** Nuon Chea Application for Disqualification of Judges Nil Nonn, Ya Sokhan, Jean-Marc Lavergne, and You Ottara, para. 11.

⁸ **D359/1/1.1.53**, relevant excerpt in German only at ERN 00538259, listed by Khieu Samphan on **E305/12.2**, Annex IV.A entitled “*Liste actualisée des documents initialement proposés en 201*”, at FRE ERN 00994088.

⁹ **D359/1/1.1.28**, relevant excerpt in German only at ERN 00537031, listed by Khieu Samphan on **E305/12.2**, Annex IV.A entitled “*Liste actualisée des documents initialement proposés en 2011*”, at FRE ERN 00994095.

¹⁰ The description in French is the following: “*Le Comité Central en 1977 ne s’était toujours pas réuni*”, which could be translated as “The Central Committee in 1977 had not yet met ».

7. The Defence for Nuon Chea proposed one document exclusively in Mandarin Chinese (**E307/5.2.6**).¹¹ In addition to the Co-Prosecutors' reservation due to the lack of translation into any of the three ECCC official languages, on the basis of the description provided this document also seems to be largely irrelevant to the facts at issue in Case 002/02.¹²
8. The Co-Prosecutors also reserve their right to object to two other documents proposed by the Defence for Nuon Chea, which are currently available in German only: **E307/5.2.8**¹³ and **E307/5.2.9**.¹⁴ Moreover, with regards to document **E307/5.2.8**, on the basis of the short description provided by the Defence it appears to be irrelevant to the facts at issue in Case 002/02 unless some of the individuals listed testify in court, in particular 2-TCW-878 and 2-TCW-831. The National Co-Prosecutor reiterates her objections as regards the proposed testimony of these two witnesses.¹⁵

IV. REQUEST

9. The Co-Prosecutors request the Trial Chamber to contact Messrs De Nike, Quigley and Robinson, authors of the book entitled *Genocide in Cambodia: Documents from the Trial of Pol Pot and Ieng Sary*, University of Pennsylvania Press, to obtain one document whose excerpts are proposed to be admitted in Case 002/02 by the Defence for Nuon Chea (Document **E307/5.2.12**).¹⁶ The relevant excerpt is from Meeting Minutes of the Standing Committee of the Party Central Committee, dated 11 April 1977. These Standing Committee meeting minutes excerpts list those attending the meeting¹⁷ and contain the following instruction: "Every unit, service, and ministry should take the initiative, within its

¹¹ **E307/5.2.6**, Excerpts from an article by Weng Ming entitled "Hongse Gaomian de Xingshuai Chenfu", 2000, as listed in **E307/5.2** Nuon Chea's Initial Document List for Case 002/02, at no.6.

¹² The document apparently mainly focuses on the defection by Hun Sen to Vietnam and on his own background.

¹³ **E307/5.2.8** Compilation of 21 short biographies ("kurzbiographies") produced by the German Democratic Republic Ministry of State Security (Stasi), as listed in **E307/5.2** Nuon Chea's Initial Document List for Case 002/02, at no.8.

¹⁴ **E307/5.2.9**, Selected Intelligence reports produced by the German Democratic Republic Ministry of State Security (Stasi), as listed in **E307/5.2** Nuon Chea's Initial Document List for Case 002/02, at no.9.

¹⁵ See **E305/10** National Co-Prosecutor's Objections to the Witnesses and Experts Proposed by the Other Parties, 30 May 2014.

¹⁶ **E307/5.2.12** Excerpts from Minutes of the 11 April 1977, Meeting of the Standing Committee of the Party Central Committee in De Nike, Quigley & Robinson (eds.) (2000) *Genocide in Cambodia: Documents from the Trial of Pol Pot and Ieng Sary*, University of Pennsylvania Press, pp.385-386; 1979 Trial Doc. No. 2.5.06, as listed in **E307/5.2** Nuon Chea's Initial Document List for Case 002/02, at no.12.


¹⁷ Pol, Nuon, Phim, Mok, Von, Van, Nhim, Ke and Khieu.

organization, to continue to purge and sweep away adversaries, and at the same time carry out normal activity". The Co-Prosecutors concur with the Defence for Nuon Chea that this document should be admitted as evidence in Case 002/02, as it is relevant to the role of the Accused and the CPK policies towards perceived enemies. In addition, they request the Trial Chamber to try to obtain a copy of the entire document. As all other Standing Committee meeting minutes on the Case File are dated 1975 or 1976, this is a potentially unique document reflecting key decisions made by this Committee at a period where internal purges had started nationwide in the DK.

V. CONCLUSION

10. Therefore, the Co-Prosecutors respectfully request the Trial Chamber to
- (a) Reject the documents **E305/12.38R** (also referred to as E305/12.32R and transcript E305/12.32) and **E189/3/1/7.1.1** up to and including **E189/3/1/7.1.4**;
 - (b) Defer its decision on documents exclusively available in German or Mandarin Chinese as referred to in paragraphs 6 to 8; and
 - (c) Contact Messrs De Nike, Quigley and Robinson in order to obtain a full version of document **E307/5.2.12**.

Respectfully submitted,

Date	Name	Place	Signature
2 February 2015	CHEA Leang Co-Prosecutor	Phnom Penh	
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