



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

E319/7/CR-1

Request for Correction

Case : 002/19-09-2007-ECCC/TC

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Approved by Greffier (for originals): Roger Phillips

Signature: *[Handwritten Signature]*

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du dossier: **STANNE BANDA**

Co-Investigating Judge authorized him to provide them to the Trial Chamber only recently, on 14 October 2014.⁸

4. The Trial Chamber received no responses to the Rule 87 Request.

2.2. Proposed Procedure for the Use at Trial of Written Records of Interview from Cases 003 and 004

5. In the Disclosure Decision, the International Co-Investigating Judge authorised disclosure of confidential written records of interview from Case 004 under certain restrictive conditions.⁹ The International Co-Investigating Judge also requested that the Trial Chamber ensure that all parties comply with the Disclosure Decision.¹⁰ A preliminary discussion on the use at trial of written records of interview originating from Case 003 and 004 was held during the Trial Management Meeting of 21 October 2014.¹¹

6. To implement the conditions attached by the International Co-Investigating Judge, the International Co-Prosecutor proposes that written records of interview from Cases 003 and 004 that are disclosed for use in Case 002/02 should be admitted into evidence and classified as confidential, following the procedure at trial in Case 002/01.¹² He further proposes that such confidential, written records of interview may be used during public Case 002/02 trial proceedings, including in the examination of witnesses and civil parties, as in Case 002/01.¹³ The International Co-Prosecutor provided a copy of the Proposed Procedure to the Co-Investigating Judges,¹⁴ who have not indicated any objection to it.

7. No written responses to the Proposed Procedure were filed. At the Trial Management Meeting held on 28 October 2014, when asked by the Trial Chamber for objections to the Proposed Procedure, the NUON Chea Defence did not state its position.¹⁵ The KHIEU Samphan Defence noted that the Proposed Procedure is similar to the practice that it has appealed in Case 002/01 and expressed its reservation to the practice of providing the

⁸ Rule 87 Request, para. 3; Disclosure Decision, paras 23-24.

⁹ Disclosure Decision, paras 23-24.

¹⁰ Disclosure Decision, paras 23, 26.

¹¹ T., 21 October 2014, pp. 4-15. The Defence failed to attend to this Trial Management Meeting, in violation of an order to the Trial Chamber. *See* Trial Chamber Memorandum entitled "Warning to Counsel for NUON Chea and KHIEU Samphan", E320, 24 October 2014.

¹² Proposed Procedure, para. 2-3.

¹³ Proposed Procedure, para. 2.

¹⁴ Proposed Procedure, para. 6.

¹⁵ T., 28 October 2014, pp. 17-18.

witnesses their previous statements and giving them the possibility to review these statements before their testimony in court objected to the proposed provision which bars reference to confidential written records of interview as originating from Case 003 or Case 004 during public session. The KHIEU Samphan Defence stated no other objections.¹⁶

3. APPLICABLE LAW

8. All evidence is admissible¹⁷ and, subject to the criteria set out in Internal Rule 87(3) and (4), the parties may propose the admission of evidence at any stage of the trial.¹⁸ The Trial Chamber has broad discretion in determining the evidence to be admitted.¹⁹ All proposed evidence not available at the time the Chamber is seised with the case is considered “new” evidence subject to the requirements of Internal Rule 87(4).²⁰

9. 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.²¹ Before placing new material on the Case File, the Chamber must determine if it is conducive to ascertaining the truth.²² The parties must have the opportunity to subject evidence to adversarial debate and to object to the admission of evidence, even if they do not avail themselves of this opportunity.²³

4. FINDINGS

4.1. Rule 87 Request

10. The Trial Chamber finds that the written records of interview proposed by the International Co-Prosecutor are *prima facie* relevant, as they pertain directly to the issues to

¹⁶ T., 28 October 2014, p. 18. ~~The KHIEU Samphan Defence objected to paragraph “5.1” of the Proposed Procedure. Presumably, the KHIEU Samphan Defence meant to referring to para. 5(ea) of the Proposed Procedure instead.~~

¹⁷ Internal Rule 87(1).

¹⁸ Internal Rules 9(5) and (6), 10(4), 55(6), 55(11), 86.

¹⁹ Case 002/01 Judgement, E313, 7 August 2014, para. 25.

²⁰ Case 002/01 Judgement, E313, 7 August 2014, para. 25.

²¹ *See e.g.*, Decision on Civil Party Co-Lead Lawyers’ Rule 87(4) Request Regarding Contemporaneous Diary of 2-TCC-296, E323/1, 27 November 2014, para. 2.

²² Decision Concerning New Documents and Other Related Issues, E190, E190, 2 May 2012, para. 27, fn. 38.

²³ Case 002/01 Judgement, E313, 7 August 2014, para. 26.