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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

សាធារណៈ / Public

TO: All Parties, Case 002

Date: 29 June 2015

FROM: NIL Nonn, President of the Trial Chamber

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

SUBJECT: Decision on KHIEU Samphan's Request Pursuant to Internal Rule 87(4) to Admit New Documents to Case 002/02



1. The Trial Chamber is seised of a request filed on 9 April 2015 (“Request”) to admit (1) Chapter 2 of the Human Rights Watch Report (“HRW Report”) titled “30 years of Hun Sen, Violence Repression, and Corruption in Cambodia” issued in January 2015; and (2) a study by Dmitry Mosyakov (“Study”) titled “The Khmer Rouge and the Vietnamese Communists: a History of Their Relations as Told in the Soviet Archives” published in 2004 (E347, paras 1-14).¹ The KHIEU Samphan Defence submits that Chapter 2 of the HRW Report contains relevant evidence pertaining to the East Zone of Democratic Kampuchea, in particular to the evolution of the military structures and the Cham rebellion in 1975 (E347, para. 6). It submits that the Study, based mainly on Soviet archives, retraces the evolution of relations between Vietnamese and Cambodian communist parties and is relevant to the armed conflict between these two countries and in particular to measures targeting groups including Vietnamese (E347, paras. 7, 9). It further submits that the Study offers an analysis of the armed conflict from the point of view of the Vietnamese officials, a perspective absent from the record and relevant in light of the fact that Vietnam never responded to repeated requests for cooperation from the Co-Investigative Judge (E347, paras 10-11). Finally, the KHIEU Samphan Defence submits that the HRW Report and the Study contain exculpatory evidence, are relatively short and can be translated within a reasonable time (E347, paras 12-13). No party responded 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. The Chamber will determine the merit of a request to admit new evidence in accordance with the criteria

¹ The documents hold respectively the following ERN numbers: 01086002-01086074 and 01085963-01086001.

in Rule 87(3). Rule 87(4) also requires that any party seeking the admission of new evidence shall do so by a reasoned submission. 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 with the exercise of reasonable diligence. However, in certain cases, the Chamber has admitted evidence which does not strictly speaking satisfy this criterion, including in instances where evidence relates closely to material already before the Chamber and 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 (E276/2, para. 2 referring to E190 and E172/24/5/1).

Chapter 2 of the HRW report

3. The Trial Chamber observes that the HRW Report was published in January 2015 and was therefore not available before the start of the trial in 2011. As the Request to admit this document was filed approximately three months after publication, the Trial Chamber considers it to be timely.

4. The Trial Chamber recalls that the HRW Report is titled “30 years of Hun Sen: Violence, Repression, and Corruption in Cambodia”. It looks at historical events from a relatively narrow perspective, which is of limited use for the purpose of establishing factual findings in the present trial. Moreover, the Trial Chamber notes that the HRW Report appears to be more a summary of the multiple and diverse sources referenced than an assessment of said sources. This format necessitates thorough scrutiny of the referenced material. In this respect, the Trial Chamber observes that some references are particularly vague such as a “Journalist’s interview of local resident” and “NGO interview”, without any indication of the person interviewed (footnotes 55, 75, 88, 101, 107, 116 for instance; See also “according to a person living in the Chiro area” at page 18). Accordingly, the Trial Chamber finds that, as it stands, Chapter II of the HRW Report is unsuitable to prove the facts it purports to prove pursuant to Rule 87(3) and is not conducive to ascertaining the truth pursuant to Rule 87(4).

The Study

5. The Study was published in 2004 and was therefore available before the start of the trial in 2011, as conceded by the KHIEU Samphan Defence (E347, para. 8). While the KHIEU Samphan Defence submits that it was not previously aware of the Study, it does not demonstrate why the document could not have been discovered through the exercise of due diligence. Accordingly, the Chamber finds that the Request in regard to the Study is not timely.

6. However, the Trial Chamber considers that it is in the interests of justice to admit the Study. The Trial Chamber notes that the author Dmitry Mosyakov is an academic whose field of expertise covers the subject matter of the Study as he is a Professor and Head of the Centre for South-East Asia, Australia and Oceania Studies at the Institute of Oriental Studies in the Russian Academy of Sciences. It is *prima facie* relevant as it deals among other issues with the armed conflict between Cambodia and Vietnam as well as its historical background (Closing Order, paras 18-20, 23, 150-155). The Study could be evaluated in conjunction with other documents already on the Case File and relevant to the same issue. In addition, no party objects to the admission of this document. This document therefore satisfies the criteria set out in Rule 87(3) and the Trial Chamber finds that it is conducive to ascertaining the truth pursuant to Rule 87(4).

7. Accordingly, the Trial Chamber grants in part the KHIEU Samphan Defence Request. The Trial Chamber admits into evidence in Case 002/02 the Study. The Trial Chamber rejects the admission of Chapter II of the HRW Report.

8. This constitutes the Chamber's official response to E347.