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

អង្គជំនុំជម្រះសាលាដំបូង
Trial Chamber
Chambre de première instance

សំណុំរឿងលេខ: ០០២/១៩ កញ្ញា ២០០៧/អវតក/អជសង

Case File/Dossier No. 002/19-09-2007/ECCC/TC

Before: **Judge NIL Nonn, President**
Judge Jean-Marc LAVERGNE
Judge YA Sokhan
Judge Claudia FENZ
Judge YOU Ottara

Date: **30 June 2015**
Original language(s): **Khmer/English/French**
Classification: **PUBLIC**

DECISION ON OBJECTIONS TO DOCUMENTS PROPOSED TO BE PUT BEFORE THE CHAMBER IN CASE 002/02

Co-Prosecutors
CHEA Leang
Nicolas KOUMJIAN

Accused
NUON Chea
KHIEU Samphan

Civil Party Lead Co-Lawyers
PICH Ang
Marie GUIRAUD

Lawyers for the Defence
SON Arun
Victor KOPPE
KONG Sam Onn
Arthur VERCKEN
Anta GUISSÉ

1. INTRODUCTION

1. The Chamber is seised of the parties' requests to admit documents in Case 002/02 contained in lists filed pursuant to Internal Rule 80(3). This decision sets forth the Chamber's analysis of these documents and puts before the Chamber the documents contained in the tables annexed to this decision.[1]

2. PROCEDURAL HISTORY

2. The Case File for Case 002 remains the same for all cases based on the same Closing Order.[2] The evidence put before the Trial Chamber in Case 002/01 has already been evaluated according to the requirements of Internal Rule 87.[3] It is therefore unnecessary to here reassess the admissibility of documents admitted at an earlier stage.

3. On 8 April 2014, the Trial Chamber directed all parties to provide updated lists of documents previously filed and updated lists of intended exhibits for Case 002/02.[4] On 13 June 2014, the parties filed their updated document lists.[5] The Civil Parties Lead Co-Lawyers filed a supplemental list of documents on 29 July 2014.[6] The Co-Prosecutors filed a

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[1] On 10 April 2015, in preparation for the key document presentation hearings to be held on 27, 28, and 30 April 2015, the Trial Chamber distributed to the parties courtesy copies of all annexes to this decision, listing documents which the Trial Chamber considers to be put before it and rejected by this decision. The Chamber also distributed revised courtesy copies of these annexes on 24 April 2015. The annexes to this decision have been further revised to include 16 documents (D108/28.329, D108/28.352, D125/180, D359/1/1.1.28, D359/1/1.1.53, E189/3/1/7.1.1, E189/3/1/7.1.2, E189/3/1/7.1.3, E189/3/1/7.1.4, E282.1.14, E282.1.15, E282.1.16, E305/12.32, E305/12.38R, E307/5.2.8, and E307/5.2.9) regarding which decisions were taken by the Chamber after courtesy copies of the annexes were circulated.

[2] Clarification regarding the use of evidence and the procedure for recall of witnesses, civil parties and experts from Case 002/01 in Case 002/02, E302/5 ("Clarification Regarding Evidence and Procedure"), 7 February 2014, para. 7.

[3] Clarification Regarding Evidence and Procedure, para. 7.

[4] Order to File Updated Material in Preparation for Trial in Case 002/02, E305 ("Filing Order"), 8 April 2014, paras 11, 12.

[5] Documents proposés par la Défense de M. KHIEU Samphân pour le procès 002/02, E305/12 ("KHIEU Samphan Document List"), 13 June 2014; Co-Prosecutors' Rule 80(3) Trial Document List, E305/13 ("Co-Prosecutors Document List"), 13 June 2014; Civil Party Lead Co-Lawyers' Updated Rule 80 Lists of Documents & Exhibits for Case 002/02 with Confidential Annex V, E305/14 ("Civil Party Document List"), 16 June 2014; Initial Document List for Case 002/02, E307/5 ("NUON Chea Document List"), 24 July 2014. The parties have each filed their updated document lists, along with several of the documents they submit, as annexes to these filings. In this decision, reference to a party's filing includes the updated documents and exhibits list annexed to the same filing, if applicable.

[6] Civil Party Lead Co-Lawyers' Rule 87(4) Request to Admit into Evidence Oral Testimony and Documents and Exhibits Related to Witnesses, Experts and Civil Parties Proposed to Testify in Case 002/02, E307/6 ("Civil Party Supplemental List"), 29 July 2014.

supplemental list of documents in September 2014.[7] No party proposed any exhibit for admission in Case 002/02.[8]

4. The Co-Prosecutors and the Civil Party Lead Co-Lawyers also filed a joint request seeking to clarify whether Internal Rule 87(4), requiring a reasoned application for each new document or exhibit submitted, would apply to the updated document lists filed pursuant to the Filing Order.[9] The Chamber ruled that on an exceptional basis it would consider the parties' updated document lists to be permissible revisions of their Case 002/01 document lists filed pursuant to the Filing Order.[10] As a result, the lists were not subject to Internal Rule 87(4) and did not require a reasoned submission for each document presented.[11] However, these documents would still be required to meet Internal Rule 87(3) admissibility standards.[12]

5. On 11 December 2014, the Chamber granted the parties the opportunity to submit written objections to documents on the other parties' updated document lists and to rebut the presumption of relevance and reliability accorded to documents cited in the Closing Order.[13] At the same time, the Trial Chamber directed the parties to indicate their intention to use any written statements or transcripts on their updated document lists as evidence of the acts and conduct of the Accused.[14]

6. The Chamber now decides on the admissibility of documents contained in the updated document lists, the parties' objections thereto and on the parties' other submissions.[15]

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7 Co-Prosecutors' Supplemental Rule 80(3) Trial Document List, E305/13/1 ("Co-Prosecutors Supplemental List"), 5 September 2014.

8 Although the Lead Co-Lawyers characterized some of the materials proposed in their lists as exhibits, the Chamber considers it more appropriate to characterize these materials as documents for the purposes of this Decision.

9 Joint Request for a *De Novo* Ruling on the Application of Rule 87(4) in Case 002/02, and a Submission Regarding the Non-Applicability of Rule 87(4) to Material Already on the Case File, E307/1/1 ("Joint Request"), 15 August 2014.

10 Decision on Joint Request for de novo Ruling on the application of Internal Rule 87(4), E307/1/2 ("Decision on the Joint Request"), 21 October 2014, para. 11.

11 Decision on the Joint Request, paras 11, 12.

12 Decision on the Joint Request, paras 11, 12.

13 Scheduling of Objections to Documents Relevant to Case 002/02, E327 ("Order on Objections"), 11 December 2014, paras 4-6.

14 Order on Objections, para. 3.

15 Order on Objections, para. 6.

3. SUBMISSIONS

3.1. The Co-Prosecutors' Submissions

7. The Co-Prosecutors submit a total of 7,447 documents to be put before the Trial Chamber, including several documents previously admitted into evidence in Case 002/01.[16] They also filed a supplemental list, containing 143 documents – mainly written records of interview of witnesses and Civil Parties proposed by the other parties in Case 002/02 – as a result of their trial preparation and in response to the other Parties' witness lists.[17]

8. According to the Co-Prosecutors, the Trial Chamber previously admitted 16 of the 143 documents on the Co-Prosecutors Supplemental List into evidence during Case 002/01.[18] One hundred and one (101) of these documents are currently on the Case File but have not been put before the Trial Chamber.[19] The Co-Prosecutors submit that the remaining 26 documents were newly obtained or only recently published.[20]

9. Both Co-Prosecutors' lists include statements and written records of interview which the Co-Prosecutors intend to use as evidence of the acts and conduct of the Accused.[21] They submit that each of these documents is admissible based on a genuine absence of an opportunity to confront the declarant.[22] The Co-Prosecutors intend to file motions to put additional written statements of interview before the Chamber should a genuine absence of an opportunity for confrontation later arise.[23]

10. The Co-Prosecutors submit that several of their listed documents, objected to by the KHIEU Samphan Defence as repetitive or outside the scope of Case 002/02, are relative and probative to the issues being tried in Case 002/02.[24]

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16 Co-Prosecutors Document List, paras 3-5.
17 Co-Prosecutors Supplemental List, para. 1.
18 Co-Prosecutors Supplemental List, para. 2.
19 Co-Prosecutors Supplemental List, para. 3.
20 Co-Prosecutors Supplemental List, para. 4.
21 Co-Prosecutors' Submission of Statements and Transcripts Intended to Be Used for Acts and Conduct Evidence, E327/2 ("Co-Prosecutors Acts and Conduct Submission"), 12 January 2015, para. 2; Annex A – Statements and Transcripts Submitted for Acts and Conduct, E327/2.2 ("Annex to Co-Prosecutors Acts and Conduct Submission"), 12 January 2015.
22 Co-Prosecutors Acts and Conduct Submission, para. 2.
23 Co-Prosecutors Acts and Conduct Submission, para. 4.
24 Co-Prosecutors' Response to KHIEU Samphan's Admissibility Objections to Documents Proposed for Case 002/02, E327/3/1, 16 February 2015, paras 7-15.

3.2. The Civil Party Lead Co-Lawyers' Submissions

11. The Civil Party Document List includes 1,336 documents, including several documents admitted into evidence in Case 002/01.[25] The Civil Party Supplemental List includes an additional 19 documents.[26] The Civil Party Lead Co-Lawyers submit that the Civil Party Document List highlights probative evidence supplied by the civil parties.[27] The Lead Co-Lawyers for the Civil Parties do not intend to use any document on the Civil Party Document List as evidence of the personal acts and conduct of the accused,[28] but will file motions to put additional written statements of interview before the Chamber should a genuine absence of an opportunity for confrontation later arise.[29]

12. In response to the KHIEU Samphan Defence's request to discuss probative value at the key documents hearing, the Civil Party Lead Co-Lawyers respond that a hearing on the probative value of these documents would be inappropriate at this early stage of trial.[30] They argue that it is for the Chamber to later assess what probative value it will attribute to admitted documents.[31]

13. In response to the KHIEU Samphan Objections, the Civil Party Lead Co-Lawyers submit that the KHIEU Samphan Defence did not provide reasoned analysis to support its claims of inadmissibility but only divided the impugned documents into two separate categories.[32] The Civil Party Lead Co-Lawyers note that several of the documents to which the KHIEU Samphan Defence object have been admitted in Case 002/01 and argue that all other documents are indeed pertinent to the scope of Case 002/02 as described in the Civil Party Document List.[33]

3.3. The NUON Chea Defence's Submissions

14. The NUON Chea Defence initially filed a notice stating that it would not provide an updated documents and exhibits list pursuant to the Filing Order but that it intended to later

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25 Civil Party Document List, paras 15, 19.
26 Civil Party Supplemental List.
27 Civil Party Document List, para. 17.
28 Civil Party Lead Co-Lawyers' Notification Relating to Witness Statements and Transcripts Relevant to Case 002/02, E327/1 ("Civil Party Acts and Conduct Submission"), 12 January 2015, para. 3.
29 Civil Party Acts and Conduct Submission, para. 3.
30 Civil Party Lead Co-Lawyers' Response to E327/3, E327/3/2 ("Civil Party Response"), 18 February 2015, para. 7.
31 Civil Party Response, para. 7.
32 Civil Party Response, para. 3.
33 Civil Party Response, paras 4, 5.

submit new documents and exhibits to the Chamber through Internal Rule 87(4) applications.[34] The NUON Chea Defence later filed the NUON Chea Document List in response to the Decision on the Joint Request, submitting 22 documents to be placed before the Trial Chamber. The NUON Chea Defence submits that the documents on the NUON Chea Document List should be admissible at any time until the end of the trial hearing according to the Cambodian Code of Criminal Procedure.[35] Alternatively, the NUON Chea Defence argues that the documents on the NUON Chea Document List are admissible based on the reasoning of the Joint Request or pursuant to Internal Rule 87(4).[36]

15. Without ruling on the NUON Chea Defence's submissions on the law governing the filing of its updated documents and exhibits list, the Trial Chamber considered the NUON Chea Document List as one of the updated document list filed pursuant to the Filing Order and Decision on the Joint Request.[37]

16. The NUON Chea Defence did not indicate an intent to use any item on its updated document list as evidence of the acts or conduct of the Accused.

3.4. The KHIEU Samphan Defence's Submissions

17. The KHIEU Samphan Document List includes 198 documents, including several documents admitted into evidence in Case 002/01. None of these documents are identified as relevant to the acts or conduct of the Accused.

18. The KHIEU Samphan Defence objects to any presumption of admissibility accorded to documents cited in the Closing Order therein,[38] summarily basing its objection on the Co-Prosecutors' burden to prove the Accused's guilt without providing further elaboration.[39] It

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[34] Notice of Non-Filing of Updated Lists of Documents and Exhibits, E305/3, 8 May 2014, para. 2. The Trial Chamber has previously addressed this filing. *See* Decision on Parties' Joint Request for Clarification regarding Application of Rule 87(4) (E307) and the NUON Chea Defence Notice of Non-Filing of Updated Lists Evidence (E305/3), E307/1, 11 June 2014, para. 6.

[35] NUON Chea Document List, paras 2-4.

[36] NUON Chea Document List, paras 5-7.

[37] Order on Objections, para. 1.

[38] Exceptions d'irrecevabilité portant sur certains documents proposés pour le procès 002/02 et demande d'un véritable débat contradictoire sur la valeur probante, E327/3 ("KHIEU Samphan Objections"), 2 February 2015, para. 5.

[39] KHIEU Samphan Objections, para. 5.

requests that the Chamber rule that documents mentioned in the Closing Order which have not been proposed by the Co-Prosecutors are inadmissible and irrelevant.[40]

19. The KHIEU Samphan Defence objects to all documents on the Co-Prosecutors Supplemental List being put before the Chamber,[41] asserting that the Co-Prosecutors Supplemental List was not filed pursuant to the Filing Order and the Decision on the Joint Request.[42] It further argues that the Co-Prosecutors did not submit the documents on the Co-Prosecutors Supplemental List through an Internal Rule 87(4) application to avoid justifying their lack of diligence, proposing documents which had been available on the Case File or in Documentation Center of Cambodia archives for several years.[43]

20. The KHIEU Samphan Defence also submits that admitting these documents would unduly favour the Co-Prosecutors to the detriment of the KHIEU Samphan Defence and without detailed reasoning, requests that the Chamber summarily reject the Co-Prosecutors Supplemental List or declare all documents submitted therein as inadmissible pursuant to Internal Rules 87(4) and 87(3)(e).[44]

21. Separately, the KHIEU Samphan Defence objects to 86 documents on the Co-Prosecutors' lists and to 193 documents on the Civil Party Document List being put before the Chamber on the basis that they are completely outside the scope of Case 002/02.[45] The KHIEU Samphan Defence also objects to 60 documents on the Co-Prosecutors' lists and to 12 documents on the Civil Party Document List which the KHIEU Samphan Defence claims are repetitive and outside the scope of Case 002/02.[46]

22. Lastly, the KHIEU Samphan Defence makes two requests for clarification. First, it requests an adversarial debate on the probative value of documentary evidence.[47] Noting the Chamber's memorandum informing the parties of the holding of key document presentation

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40 KHIEU Samphan Objections, paras 5, 25.
41 KHIEU Samphan Objections, para. 14.
42 KHIEU Samphan Objections, para. 14.
43 KHIEU Samphan Objections, para. 15.
44 KHIEU Samphan Objections, para. 16.
45 KHIEU Samphan Objections at Annexe A – Exceptions d'irrecevabilité relatives aux documents listés par les co-Procureurs, E327/3.2, 2 February 2015, Annexe B – Exceptions d'irrecevabilité relatives aux documents proposés par les Parties civiles, E327/3.3, 2 February 2015 (collectively, "Annexes to KHIEU Samphan Objections").
46 Annexes to KHIEU Samphan Objections.
47 KHIEU Samphan Objections, paras 21, 23.

hearings,[48] the KHIEU Samphan Defence seeks clarification as to whether or not the parties will be allowed to discuss the probative value of documents presented at key documents hearings.[49] Secondly, the KHIEU Samphan Defence requests that the Chamber issue a decision further clarifying the exact scope of Case 002/02.[50] Specifically, it seeks further clarification from the Chamber in order to refine its selection of documents. It submits that without this clarification, it is unable to formulate objections to proposed documents which may be outside the scope of the trial or object to the relevance of documents based on Internal Rule 87(3).[51] The KHIEU Samphan Defence provides no other basis for this request.

4. APPLICABLE LAW

23. The Trial Chamber may reject a request for the admission of evidence where it finds that the evidence is irrelevant or repetitious; impossible to obtain within a reasonable time; unsuitable to prove the facts it purports to prove; not allowed under the law; or intended to prolong proceedings or is frivolous.[52]

24. In its prior decisions on documents to be put before the Trial Chamber, the Chamber outlined general principles governing the admissibility of documents within the ECCC legal framework.[53]

25. Questions regarding the probative value and thus weight to be accorded to documents are irrelevant to the assessment of their conformity with the Rule 87(3) criteria.[54] The probative value and weight to be accorded to documents shall be considered by the Chamber in its evaluation of all evidence in connection with the verdict.[55] Objections lacking sufficient

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[48] Information on (1) Key Document Presentation Hearings in Case 002/02 and (2) Hearings on Harm Suffered by the Civil Parties in Case 002/02, E315/1 ("Memorandum on Key Document Presentation Hearings"), 17 December 2014.

[49] KHIEU Samphan Objections, para. 23.

[50] KHIEU Samphan Document List, para. 26.

[51] KHIEU Samphan Document List, para. 25.

[52] Internal Rule 87(3).

[53] Decision on Objections to Documents Proposed to be put before the Chamber on the Co-Prosecutors' Annexes A1-A5 and to Documents cited in Paragraphs of the Closing Order Relevant to the First Two Trial Segments of Case 002/01, E185 ("First Framework Decision"), 9 April 2012, paras 30, 33-35. *See also* Decision on Objections to Documents Proposed to Be Put Before the Chamber in Co-Prosecutors' Annexes A6-A11 and A14-A20 and by the Other Parties, E185/1 ("Decision on Objections to Documents Proposed"), 3 December 2012, paras 18-22; Third Decision on Objections to Documents Proposed for Admission before the Trial Chamber, E185/2, 12 August 2013, paras 20-21.

[54] Decision on Objections to Documents Proposed, para. 13.

[55] Decision on Objections to Documents Proposed, para. 13.

specificity as to the basis of the alleged inadmissibility of particular documents or categories of the documents shall be rejected.[56]

26. Written statements or transcripts are generally not admissible for the purpose of proving the acts and conduct of the Accused unless the defence has had the opportunity to examine the declarant in court.[57] The Chamber may admit statements or transcripts in place of oral testimony if, for example, the declarant is deceased, medically unable to testify, or if it is impossible to trace and locate the declarant with reasonable diligence.[58]

5. FINDINGS

5.1. Admission of Documents

27. In accordance with Internal Rule 87(3), this Chamber has reviewed each document on the Parties' updated document lists filed pursuant to the Filing Order for relevance and reliability (including authenticity). The Trial Chamber based its analysis on Internal Rule 87(3), the Trial Chamber's jurisprudence, and the Parties' respective objections and submissions. It considers conforming documents to be placed before the Chamber.

28. The Chamber has listed all documents that it will consider put before the Chamber in in five annexes: Annex A, including documents and exhibits proffered by the Co-Prosecutors; Annex B, including documents and exhibits proffered by the Civil Party Lead Co-Lawyers; Annex C, including documents and exhibits proffered by the NUON Chea Defence; Annex D, including documents and exhibits proffered by the KHIEU Samphan Defence; Annex E, including documents contained in the footnotes of the Closing Order paragraphs that form part of Case 002/02.

29. Several documents that the Chamber will consider put before it by this decision are still not available in all ECCC languages. To assist the Chamber in assessing whether three lengthy German-language documents[59] submitted by the NUON Chea Defence and the KHIEU Samphan Defence are relevant to Case 002/02, and to avoid overburdening the Interpretation and Translation Unit with unnecessary translation requests, the Defence are

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[56] First Framework Decision, para. 23.
[57] Decision on Objections to the Admissibility of Witness, Victim and Civil Party Statements and Case 001 Transcripts Proposed by the Co-Prosecutors and Civil Party Lead Co-Lawyers, E299 ("Decision on Statements and Transcripts"), 15 August 2013, para. 17.
[58] Decision on Statements and Transcripts, para. 18.
[59] *See* E307/5.2.8, D359/1/1.1.28 and D359/1/1.1.53, respectively.

requested to file an indication of which portions of these documents it seeks to put before the Chamber. This should include where possible an expanded description of their nature and contents as well as citations to the relevant points of the Closing Order.[60] Such indication should be filed within 14 days of the filing of this decision.

30. The Chamber reminds the parties that any party introducing a document at trial remains responsible for ensuring its timely availability in all three official languages.[61]

5.2. Documents Rejected by the Trial Chamber

31. The Trial Chamber has rejected documents which it has found to be irrelevant, illegible, duplicates of other documents already on the Case File, or otherwise inadmissible under the requirements of Internal Rule 87(3) and the Chamber's established jurisprudence. Among these are several documents which the Chamber has previously considered and rejected. Documents which the Chamber considers to be inadmissible are listed in Annex F.

5.2.1. *Book by Marcel Lemonde*

32. The NUON Chea Defence proposes to put before the Chamber four excerpts from a memoir by former International Co-Investigating Judge Marcel LEMONDE, titled « Un juge face aux Khmers rouges », an account of his experiences at the ECCC.[62] However, the KHIEU Samphan Defence previously made an application under Internal Rule 87(4) to admit these same excerpts into evidence.[63] The Chamber decided that each of these excerpts, which describe the judge's personal impressions and other experiences not related to the issues to be tried, was not conducive to ascertaining the truth and irrelevant to Case 002.[64] The Chamber therefore denied the request to admit them into evidence.[65] Absent new facts or

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[60] *See* Order to File Material in Preparation for Trial in Case 002/02, E305, 8 April 2014, para. 11.

[61] First Framework Decision, para. 21; Decision on Statements and Transcripts, disposition; Practice Direction ECCC/01/2007/Rev.8, para. 7.1.

[62] NUON Chea Defence List, at Annex A – Initial Document List for Case 002/02 – Nuon Chea Defence Team, E307/5.2 ("NUON Chea Document List Annex"), 24 July 2014, p. 7.

[63] Deuxième demande visant à faire verser aux débats des extraits du livre de M. Marcel LEMONDE, E280/2 ("KHIEU Samphan Lemonde Book Request"), 8 May 2013. *See also* KHIEU Samphan Lemonde Book Request at fn. 39, requesting admission for E189/3/1/7.1.1, E189/3/1/7.1.2, E189/3/1/7.1.3, and E189/3/1/7.1.4. These excerpts were also previously relied upon by the NUON Chea Defence in a request before the Supreme Court Chamber. *See* Request to Consider Additional Evidence, E189/3/1/7, 15 March 2013.

[64] 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), E280/2/1 ("Decision on Lemonde Book Request"), 13 August 2013, paras 17-19.

[65] Decision on Lemonde Book Request, para. 20, disposition.

circumstances, this Chamber does not reconsider its previous decisions.[66] Therefore, these excerpts will not be put before the Chamber.

5.2.2. *Aspen Institute Remarks*

33. The NUON Chea Defence and the KHIEU Samphan Defence propose to put before the Chamber a video of remarks made on 7 November 2013 by Silvia CARTWRIGHT, then a judge of this Chamber, at a conference at the Aspen Institute in Washington, D.C., United States.[67] The KHIEU Samphan Defence also submits a transcript of excerpts of these remarks.[68] The NUON Chea Defence submits that these remarks are pertinent to issues in Case 002/02, including cooperatives and worksites, the regulation of marriage, forced marriage, murder, NUON Chea's role during the relevant period and NUON Chea's fair trial rights.[69] The KHIEU Samphan Defence submits that these remarks are pertinent to historical context and charges related to the regulation of marriage and crimes against humanity.[70]

34. Judge Cartwright's comments at the Aspen Institute concern her experiences while a judge at the ECCC. Her remarks recount information and impressions gained from her duties as a judge during Case 002/01, her conversations with unidentified national colleagues and several personal opinions. Similar to Judge Lemonde's memoir, Judge Cartwright's remarks describing her personal impressions and other experiences not related to the issues to be tried in Case 002/02. The remarks made at the Aspen Institute are irrelevant and unsuitable to prove the facts it purports to prove.[71]

35. Furthermore, the NUON Chea Defence does not substantiate how Judge Cartwright's remarks would affect the Accused's fair trial rights.[72] The Chamber is therefore in no position to address this argument. For these reasons, the video and transcript of Judge Cartwright's remarks before the Aspen Institute will not be put before the Chamber.

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66 Decision on the Joint Request, para. 4.

67 NUON Chea Document List Annex at p. 7; KHIEU Samphan Document List at Annexe IV.D – Liste de documents supplémentaires autrement pertinents pour 002/02, E305/12.5 ("KHIEU Samphan Document List Annex IV.D"), 13 June 2014, p. 19.

68 KHIEU Samphan Document List at Annex 31: Transcript video de Madame Cartwright 00'52'58 to 00'59'20: Trying Atrocity Crimes: The Khmer Rouge Trials, Transitional Justice, and the Rule of Law, date de publication: 11/07/2013, E305/12.32, 13 June 2014.

69 NUON Chea Document List Annex, p. 7.

70 KHIEU Samphan Document List Annex IV.D, p. 19.

71 IR 87(3).

72 The Trial Chamber notes that a Special Panel previously denied the NUON Chea Defence's earlier motion to disqualify the national judges of the Trial Chamber from hearing Case 002/02 based on these remarks. *See* Reasons for Decision on Applications for Disqualification, E314/12/1, 30 January 2015, paras 116-20.

5.3. Findings on Objections

36. The Trial Chamber recalls that the Filing Order and the Decision on the Joint Request explicitly state that the current process for proposing documents to be put before the Chamber is an exception to the regular process for submitting Internal Rule 87(4) applications. The Co-Prosecutors filed the Co-Prosecutors Supplemental List according to these instructions. In the Order on Objections, the Chamber listed the Co-Prosecutors Supplemental List as an updated document list submitted pursuant to the Filing Order.[73] None of the parties objected to the fairness of the Filing Order.[74] The Chamber also ruled that requiring the parties to establish that documents and exhibits on their updated lists were not available before trial would not advance the purposes of Internal Rule 87(4).[75] Accordingly, the Trial Chamber will not revisit its prior decisions permitting the Co-Prosecutors to update its document and exhibit lists or considering the Co-Prosecutors Supplemental List to have been filed in accordance with the Filing Order. The Trial Chamber therefore finds the KHIEU Samphan Defence's request to summarily dismiss the Co-Prosecutors Supplemental List or to otherwise now require the Co-Prosecutors to submit an Internal Rule 87(4) application for the Co-Prosecutors Supplemental List to be without merit.

37. Furthermore, based on its own assessment of the documents submitted by the parties, the Trial Chamber does not find any of the documents named in the KHIEU Samphan Objections to be outside the scope of Case 002/02 or to be repetitive. These documents will therefore be placed before the Chamber.

5.4. Findings on Evidence on Acts and Conduct of the Accused

38. The Chamber notes that all declarants who gave written statements on the acts and conducts of the Accused, listed in the Co-Prosecutors Acts and Conduct Submission, are deceased.[76] The Chamber therefore finds that these written statements may be used at trial as evidence of the acts and conduct of the Accused.[77] Their probative value will be subject to discussion by the parties and will be assessed by the Chamber at a later stage.

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[73] Order on Objections, para. 1.
[74] Decision on the Joint Request, para. 11.
[75] Decision on the Joint Request, para. 11.
[76] Annex to Co-Prosecutors Acts and Conduct Submission.
[77] Decision on Co-Prosecutors' Rule 92 Submission Regarding the Admission of Witness Statements and Other Documents before the Trial Chamber, E96/7, 20 June 2012, paras 32-33.

5.5. Findings on the KHIEU Samphan Defence's Objection to the Admissibility of Documents Cited in the Closing Order and Requests for Clarification

39. The Trial Chamber is seised by an Indictment from the Co-Investigating Judges.[78] The Closing Order, a reasoned decision which includes the Indictment,[79] concludes the judicial investigation in which the parties had access to the Case File and the opportunity to request specific investigative action.[80] The Trial Chamber has previously noted that at the conclusion of their investigation, the Co-Investigating Judges assessed all evidence, particularly documents placed on the Case File and cited in the Closing Order, and accorded them some probative value in its reasoned conclusion sending the charged persons to trial.[81] Therefore, while it is undisputed that the burden to prove the guilt of the Accused lies with the Co-Prosecutors, the Co-Investigating Judges' assessment of the documents cited in the Closing Order serves as a sufficient basis for the Trial Chamber to grant them a presumption of relevance and reliability.

40. In its Order on Objections, the Chamber allowed the parties the opportunity to rebut the presumption of relevance and reliability accorded to documents cited in the Closing Order.[82] The KHIEU Samphan Defence has objected to use of documents cited in the Closing Order but has failed to provide any substantive or reasoned argument which would rebut the presumption of relevance and reliability accorded these documents.[83] The KHIEU Samphan Defence bases its objection on the Co-Prosecutors' burden to prove the Accused's guilt without elaborating. This argument is not self-explanatory. Because the KHIEU Samphan Defence does not support this objection with reasoned argument, the Chamber rejects it.

41. The KHIEU Samphan Defence seeks to clarify whether it may present arguments on the probative value of documentary evidence put before the Trial Chamber.[84] The Trial Chamber previously stated that it would permit the parties and the Accused to comment on the documents presented by the other parties during the key document presentation hearing, if they wish to do so.[85] At the most recent key document presentation hearings, the Chamber

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78 IR 79(1); Closing Order, D427, 16 September 2010.
79 IR 67.
80 IR 55(10).
81 Trial Chamber Decision on Documentary Evidence, para. 3; *see also* IR 67(1), (3).
82 Order on Objections, para. 4.
83 Trial Chamber response to portions of E114, E114/1, E131/1/9, E131/6, E136 and E158, E162 ("Trial Chamber Decision on Documentary Evidence"), 31 January 2012, paras 3, 8-18; *see also* Internal Rule 67(3).
84 KHIEU Samphan Objections, paras 21, 23.
85 Memorandum on Key Document Presentation Hearings, para. 4.

permitted the KHIEU Samphan Defence[86] and the NUON Chea Defence[87] to comment on the probative value of documentary evidence. However, the Chamber will consider the probative value and weight of the documentary evidence only when evaluating the full body of evidence in this trial at the conclusion of the proceedings.[88] The parties should remain mindful that they will have the opportunity to present further in-depth oral argument on the probative value of documentary evidence during their closing statements.

42. Finally, the Trial Chamber denies the KHIEU Samphan Defence's request for a new decision further defining the scope of Case 002/02.[89] The KHIEU Samphan Defence objects to several documents by arguing that they are outside the scope of the trial as currently defined.[90] On 4 April 2014, the Trial Chamber issued a decision on the scope of Case 002/02.[91] The Supreme Court Chamber upheld this decision.[92] Consistent with its established practice refusing reconsideration of its decisions absent new facts or new circumstances,[93] this Chamber has stated that it will not make further general rulings on the scope of Case 002/02 but would instead rule on specific, concrete questions arising during the trial.[94] The KHIEU Samphan Defence presents no such question warranting another decision on the scope of Case 002/02.

FOR THE FOREGOING REASONS, THE TRIAL CHAMBER

CONSIDERS to be put before the Chamber

- all documents listed in Annex A to this decision, which includes documents submitted through the Co-Prosecutors Document List and the Co-Prosecutors Supplemental List,
- all documents listed in Annex B to this decision, which includes documents submitted through the Civil Party Document List and the Civil Party Supplemental List,
- all documents listed in Annex C to this decision, which includes documents submitted through the NUON Chea Document List, and
- all documents listed in Annex D to this decision, which includes documents submitted through the KHIEU Samphan Document List;

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86 T. 30 April 2015, pp. 51-52, 57-58.
87 T. 28 April 2015, pp. 26-30; T. 30 April 2015, pp. 23-25, 45.
88 Decision on Objections to Documents Proposed, para. 13. *See also* T. 28 April 2015, pp 19-20.
89 KHIEU Samphan Document List, para. 26.
90 Annexes to KHIEU Samphan Objections.
91 Decision on Additional Severance of Case 002 and Scope of Case 002/02, E301/9/1, 4 April 2014.
92 Decision on KHIEU Samphân's Immediate Appeal against the Trial Chamber's Decision on Additional Severance of Case 002 and Scope of Case 002/02, E301/9/1/1/3, 29 July 2014, para. 91.
93 Decision on the Joint Request, para. 4.
94 Memo on Severance of Case 002, para. 2. *See also* Decision on Joint Request, para. 4.

DENIES the KHIEU Samphan Defence's request to declare inadmissible documents cited in the Closing Order which were not proposed by the Co-Prosecutors;

AND CONSEQUENTLY CONSIDERS all documents listed in the footnotes of the Closing Order paragraphs listed in Annex E to this decision to be put before the Chamber;

REJECTS all documents listed in Annex F to this decision;

DENIES the KHIEU Samphan Defence's request to declare documents submitted in the Co-Prosecutors' Supplemental List to be inadmissible or subject to Internal Rule 87(4);

DENIES the KHIEU Samphan Defence request for a new ruling on the scope of Case 002/02;

REQUESTS that the KHIEU Samphan Defence and NUON Chea Defence file, within 14 days of this decision, an indication of the portions of D359/1/1.28, D359/1/1.1.53, E307/5.2.8, it wishes to put before the Trial Chamber; and

NOTES that documents already admitted during Case 002/01 are not the subject of this decision.

Phnom Penh, 30 June 2015

President of the Trial Chamber

Nil Nonn