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E319/22/1

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ជាតិ សាសនា ព្រះមហាក្សត្រ

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា / Kingdom of Cambodia
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TRIAL CHAMBER

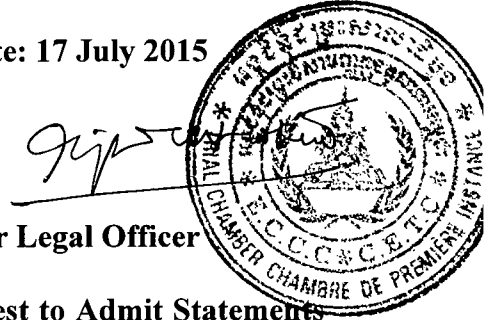
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TO: All Parties, Case 002 **Date:** 17 July 2015

FROM: NIL Nonn, President of the Trial Chamber

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

SUBJECT: Decision on International Co-Prosecutor's Request to Admit Statements Pursuant to Rules 87(3) and 87(4)



1. The Trial Chamber is seized of the International Co-Prosecutor's Motion to Admit Statements Pursuant to Rules 87(3) and 87(4), filed on 25 May 2015 (E319/22). The relevant statements, described in Annex H to the Motion (E319/22.1), are written records of witness interviews from Cases 003 and 004 which were disclosed by the Co-Prosecutors in February, March and April 2015 (see E319/13, E319/15, E319/19, E319/20 and E319/21, respectively). The International Co-Prosecutor submits that the statements are "directly relevant" to the subject matter of Case 002/02; primarily to the Trapeang Thma Dam worksite, the 1st January Dam worksite and the authority, structure and purges of the Northwest and Central (old North) Zones (E319/22, para. 2). The International Co-Prosecutor contends that the statements pertain to interviews conducted after the opening of trial in June 2011 and that he was only authorised by the International Co-Investigating Judge to disclose the statements in Case 002 this year (E319/22, para. 3). Accordingly, he submits that the statements were not available before the opening of the trial (E319/22, para. 3). No party responded to this request/party submissions.

2. Pursuant 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). Rule 87(4) also mandates that any party seeking the admission of new evidence shall do so by 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 earlier with the exercise of reasonable diligence. The Chamber has previously indicated that a document not included on a party's initial Internal Rule 80(3)

list constitutes new evidence subject to the requirements of Internal Rule 87(4) but that it may be admitted where the interests of justice so require (E282/2, para. 3, referring to E190, paras. 19-21).

3. The Trial Chamber recalls that while the lists of documents filed by the parties in 2011 covered the whole of Case 002, it ruled on an exceptional basis that the lists filed in 2014 were a permissible revision to the 2011 lists. The operative date for considering whether evidence was available prior to the opening of the trial in Case 002/02 is 2011 (E307/1/2). The statements listed in Annex H were taken from interviews conducted between 18 August 2011 and 17 March 2015 and were accordingly not available before the opening of the Case. Further, given that the Co-Investigating Judge authorised disclosure of these statements in Case 002/02 after 19 February 2015 at the earliest, these statements could not have been dealt with by the Trial Chamber in E307/1/2.

4. The Trial Chamber notes that the statements were taken by investigators from the Office of the Co-Investigative Judges and therefore meet the *prima facie* standards of reliability and authenticity.

5. The Chamber has reviewed the statements and considers that written records of interview numbered 1-58 in the International Co-Prosecutor's Annex H contain potential information on the Trapeang Thma Dam site, and most also relate to other live issues in Case 002/02 (for example, E319/19.3.11, p. 5 on the treatment of Vietnamese and E319/19.3.8, p. 5 on the regulation of marriage). Accordingly, the Chamber finds that these statements are conducive to ascertaining the truth and are *prima facie* relevant to Case 002/02.

6. The Chamber further considers that the remaining written records of interview contain statements which are relevant to various topics within the scope of Case 002/02. In particular: documents numbered 59-66, 68-69, 75-76, 78-80, 83-86, 88 in the International Co-Prosecutor's Annex H relate to internal purges; document 67 relates to military structures; documents numbered 70-73 relate to administrative structures (specifically, pertaining to Tram Kak); document 74 relates to the regulation of marriage; documents 77, 81, 82 and 87 relate to the treatment of targeted groups; and document 89 relates to Kraing Ta Chan Security Centre. Document 89 was already referred to during the proceedings on 25 March 2015 and its admissibility was not challenged by the parties. Furthermore, most of these documents also relate to other live issues in Case 002/02 (for example, E319/19.3.79 on the treatment of Cham). Accordingly, the Chamber finds that these statements are conducive to ascertaining the truth and are *prima facie* relevant to Case 002/02.

7. The Trial Chamber, therefore, finds that the requirements of Internal Rule 87(4) have been satisfied and grants the International Co-Prosecutor's request to admit all the above-mentioned statements as evidence in Case 002/02. The parties are reminded that the use of these statements is subject to the procedural requirements set out in the Chamber's decision E319/7.

8. This constitutes the Chamber's official response to E319/22.