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du dossier: SANN RADA

E394/1

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

សាធារណៈ / Public

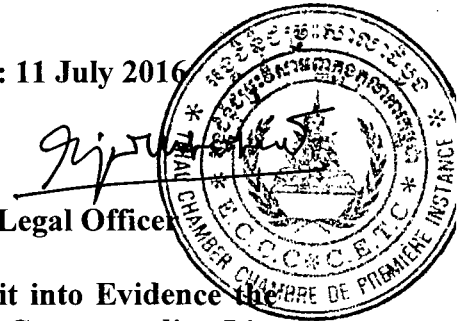
TRIAL CHAMBER

TO: All Parties, Case 002 **Date:** 11 July 2016

FROM: NIL Nonn, President of the Trial Chamber

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

SUBJECT: **Decision on the Co-Prosecutors' Request to Admit into Evidence the Photographs Identified as S-21 Photographs in the Corresponding List Admitted as E3/9214**



1. The Trial Chamber is seised of a request filed by the Co-Prosecutors on 11 April 2016 ("Request", E394) to admit into evidence, pursuant to Internal Rules 87(3) and 87(4), several photographs allegedly taken at the S-21 Security Centre (E394.1). At the hearing of 20 April 2016, the Trial Chamber admitted into evidence the proposed photographs with written reasons to follow (T., of 20 April 2016, pp. 56-57). The other parties did not object to the photographs being admitted (T., of 20 April 2016, p. 57). The Trial Chamber hereby provides its reasons for their admission.

2. According to Internal Rule 87(4), the Trial Chamber may admit, at any stage of the trial, all 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 Chamber determines the merit of a request to admit new evidence in accordance with the criteria 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 the material already before the Chamber and where the interests of justice require the sources to be evaluated together, and where the proposed documents are exculpatory and require evaluation to avoid a miscarriage of justice (E276/2, para. 2 referring to E190 and E172/24/5/1; E260, para.5).

3. The Chamber finds that, although they appear to be contemporaneous to the DK period, the photographs proposed for admission were not available for filing on the

Case File prior to the opening of the trial and that the Co-Prosecutors exercised due diligence in filing the Request within a week of obtaining copies of the photographs from DC-Cam (E394, paras 2-3). Notably, the Co-Prosecutors previously included a reference to these photographs in their Document List for Case 002, specifying that they were unavailable at the time (E305/13.23, No.66), and a detailed index of these photographs was admitted as E3/9214. The Chamber notes that the photographs depict several individuals who apparently were imprisoned at the S-21 Security Centres and bear handwritten annotations. They satisfy on a *prima facie* basis the criteria of reliability and authenticity. In addition the Chamber finds that these photographs relate closely to material already on the Case File, specifically document E3/9214 which is a detailed index of the said photographs. The Chamber therefore admits the photographs into evidence and assigns document reference number E3/9214a to them.

4. This constitutes the Chamber's official response to E394.