

**BEFORE THE TRIAL CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

FILING DETAILS

Case No: 002/19-09-2007-ECCC/TC

Filing Party: Mr KHIEU Samphan

Filed To: The Trial Chamber

Original Language: French

Date of Document: 13 June 2014

CLASSIFICATION

Classification of the Document Suggested by the Filing Party: Public (confidential annexes)

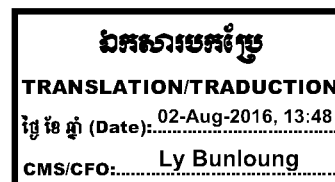
Classification of the Trial Chamber:

Classification Status:

Review of Interim Classification:

Records Officer's Name:

Signature:



Documents proposed by the KHIEU Samphan Defence for the Trial in Case 002/02

Filed by:

Lawyers for Mr KHIEU Samphan

KONG Sam Om
Anta GUISSÉ
Arthur VERCKEN

Assisted by:

SENG Socheata
Marie CAPOTORTO
Soumeya MEDJEBEUR
Pierre TOUCHE
OUCH Sreypath
SENG Lyna
ROUBEIX Cécile

Before:

The Trial Chamber

NIL Nonn
Silvia CARTWRIGHT
YOU Ottara
Jean-Marc LAVERGNE
YA Sokhan

The Co-Prosecutors:

CHEA Leang
Nicholas KOUMJIAN

All Civil Party Lawyers

The Defence for Mr NUON Chea

MAY IT PLEASE THE TRIAL CHAMBER

1. On 4 April 2014, the Trial Chamber (“the Chamber”) severed anew the proceedings in Case 002 and determined the scope of a second trial (002/02).¹
2. On 8 April 2014, in preparation for the trial in Case 002/02, the Chamber ordered the parties to file by Friday 30 May “an updated version of their lists of the documents previously filed”,² including documents admitted in the first trial (002/01) and considered by the Chamber to be automatically admitted in the trial in Case 002/02.³ The Chamber stated that “[a]ny application to add new or additional documents and exhibits which are not already before the Chamber pursuant to Case 002/01, shall be filed in accordance with Internal Rule 87(4).”⁴
3. On 30 April 2014, the parties requested the Chamber to confirm that in the trial in Case 002/02 Internal Rule 87(4) would apply only to new evidence they propose after the opening of the trial in Case 002/02, that is after the upcoming initial hearing.⁵
4. On 2 May 2014, the parties sought the leave of the Chamber (1) not to include in their lists the documents which the Chamber has admitted in the trial in Case 002/02; and (2) to, in the first instance, file their lists in a single language.⁶
5. On 21 May 2014, the Chamber rejected the request of the parties not to include in their list the documents admitted in the trial in Case 002/02. The Chamber granted the parties leave to, in the first instance, file by 13 June 2014 their lists in a single language.⁷

¹ Decision On Additional Severance of Case 002 and Scope of Case 002/02, **E301/9/1**, 4 April 2014.

² Order to File Updated Material in Preparation for Trial in Case 002/02, **E305** (“Order **E305**”), 8 April 2014, para. 11.

³ Order **E305**, para. 11 and footnote 12.

⁴ Order **E305**, para. 14.

⁵ Parties’ Joint Request for Clarification Regarding the Application of Rule 87(4) in Case 002/02, **E307**, 30 April 2014.

⁶ Parties’ Joint Request Regarding the Refiling of Admitted Evidence in Case File 002/02, and Filing in One Language, **E305/1**, 2 May 2014.

⁷ Decision on Joint Request Regarding the Refiling of Admitted Evidence in Case 002/02, and Filing in One

6. On 11 June 2014, the Chamber rejected the parties' request concerning the application of Internal Rule 87(4). It invited the parties to file requests pursuant to the rule in respect of evidence not on their initial lists in 2011.⁸
7. In the circumstances, the KHIEU Samphan Defence ("the Defence") hereby files its non-exhaustive list of documents for the trial in Case 002/02. This list is divided into several categories:
- Documents initially proposed by the Defence in 2011 (Annex IV.A);
 - Documents admitted in 002/01, and hence in 002/02, pertaining to the witnesses and experts whom the Defence has requested to hear in 002/02 (Annex IV.B);
 - Additional documents pertaining to said witnesses and experts (Annex IV.C); and
 - Additional documents that are otherwise relevant to 002/02 (Annex IV.D)

Documents initially proposed in 2011 (Annex IV.A)

8. Annex IV.A includes the documents that were initially proposed by the Defence in 2011.⁹ Although certain documents listed in 2011 were removed, the order of the listing is unchanged from 2011.
9. At the behest of the Chamber,¹⁰ the documents were identified by their current reference numbers and the requested additional information was updated (ERNs in the available languages, summaries and points of the Indictment to which reference is made).

Documents admitted pertaining to the persons proposed for 002/02 (Annex IV.B)

10. Annex IV.B includes documents admitted in the trial in Case 002/01 which concern the persons whom the Defence has requested to hear in the trial in Case 002/02.¹¹

Language, **E305/2**, 21 May 2014 (Mr Kenneth ROBERTS sent a courtesy copy of the English version of the decision to the parties on 7 May 2014).

⁸ Decision on Parties' Joint Request for Clarification regarding the Application of Rule 87(4) (E307) and the NUON Chea Defence Notice of Non-Filing of Updated Lists Evidence (E305/3), **E307/1** ("Decision on application of Rule 87(4) **E307/1**"), 11 June 2014.

⁹ Lists of documents, **E9/29** with Annex **E9/29.2**, 19 April 2011.

¹⁰ Order **E305**, para. 11 and footnotes 11 and 12.

11. Since these documents are now automatically admitted in Case 002/02 and given the time imparted and the large volume of documents already admitted, this Annex cannot be considered exhaustive.

Additional documents (Annexes IV.C and IV.D)

12. Annexes IV.C and IV.D include “additional” documents, in that they were not proposed by the Defence in 2011 or admitted during the trial in Case 002/01.

13. However, certain documents are in Case File 002 as a whole and are available to the Chamber and the parties. These documents were: (1) placed on the SMD (Shared Material Drive); (2) placed on the judicial investigation case file (registered under D); (3) proposed by the parties in their initial lists in 2011; or (4) proposed by the parties during 002/01. They are identified as such in Annexes IV.C and IV.D.

14. Other documents are not contained in the case file but are in the public domain. They are identified as such in Annexes IV.C and IV.D and appended hereto.

15. All of the documents mentioned in these two annexes and not included in the initial lists of the parties in 2011¹² must be considered admissible under Internal Rule 87(4).

16. In accordance with the Chamber’s previous decisions, these documents are very closely connected to other material already in the case file and/or are exculpatory and require evaluation to avoid a miscarriage of justice.¹³

17. The Defence proposes these “additional” documents because they concern persons whom it proposes to call for 002/02¹⁴ (Annex IV.C), they support the Defence case and/or are

¹¹ *Témoins et experts proposés par la Défense de M. KHIEU Samphân pour le procès 002/02*, E305/5, 9 May 2014 and confidential Annexes E305/5.1 (lists) and E305/5.2 (summaries).

¹² Decision on application of Rule 87(4) E307/1, para. 5; Directions regarding documents sought for impeachment purposes, E199, 24 May 2012, para. 3.

¹³ Decision on application of Rule 87(4) E307/1, para. 3; See, for instance, Response to Internal Rule 87(4) Requests to Place New Documents on the Case File concerning the Testimony of Witnesses François PONCHAUD and Sydney SCHANBERG (E243) and Experts Philip SHORT (E226, 226/1 and E230) and Elizabeth BECKER (E232 and E232/1), E260, 18 January 2013, para. 5.

¹⁴ *Témoins et experts proposés par la Défense de M. KHIEU Samphân pour le procès 002/02*, E305/5, 9 May 2014 and confidential Annexes E305/5.1 (lists) and E305/5.2 (summaries).

expedient to the cross-examination of the persons proposed by the other parties for 002/02 (Annex IV.D).

18. In this regard, the Defence underscores that it may have to bolster its list of documents once it is in a position to fine-tune its inquiries, depending on whom the Chamber ultimately calls to testify.

19. Furthermore, the Defence naturally reserves the right to avail itself at trial of any document admitted in 002/1 and now admitted in 002/02.

ERNs of the documents listed in the four annexes

20. Inasmuch as the Chamber requested the parties to mention “where possible” the excerpts identified as relevant of books or other long documents,¹⁵ the Defence did its utmost within the time imparted. At this juncture, the excerpts thus identified will be that much less exhaustive where it will be necessary to adjust to the in-court evidence of the witnesses.

21. Furthermore, the Defence wishes to make clear that it appends hereto the documents that have not been assigned an ERN to date. In the case of books or other long documents, the Defence appends only the excerpts it considers relevant.

Relevance of the documents listed in the four annexes

22. In determining the scope of the trial in Case 002/02, the Chamber stated that:

In Case 002/01, the Chamber heard evidence concerning the historical background; administrative, communication and military structures; joint criminal enterprise policies; and the role and character of the Accused. The resulting evidentiary record serves as a foundation for the trial of the remaining charges in Case 002. However, certain of these matters may not have been fully examined in Case 002/01 due to its limited scope and may also be relevant in the context of Case 002/02. Thus these sections of the Closing Order are expressly included within the scope of Case 002/02 insofar as they contain factual allegations relevant to the factual allegations in this case and not previously or fully examined.¹⁶

¹⁵ Order E305, para. 11, footnote 11.

¹⁶ *Decision on Additional Severance of Case 002 and Scope of Case 002/02*, E301/9/1, 4 April 2014, para. 42.

23. The Defence recently requested the Chamber to specify that which, in its view, it has not previously or fully examined in the trial in Case 002/01.¹⁷

24. As the Defence is still awaiting this clarification that will allow it to narrow down its selection, the Defence herein proposes documents concerning the points of the Indictment in 002/01 and which were further included in 002/02.

25. The Defence would underscore the need for precise answers from the Chamber, absent which the parties will not be in a position to challenge the admissibility of the proposed documents and to address their relevance (Internal Rule 87(3)(a)).

26. **WHEREFORE**, the KHIEU Samphan Defence requests the Chamber to:

- CLARIFY the exact scope of the proceedings in the trial in Case 002/02 by specifying that which, in its view, it has not previously or fully examined in the trial in Case 002/01;
- FIND ADMISSIBLE the proposed documents for the trial in Case 002/02 listed in Annexes IV.A to IV.D

	Mr KONG Sam Onn	Phnom Penh	[signed]
	Ms Anta GUISSÉ	Paris	[signed]
	Mr Arthur VERCKEN	Paris	[signed]

¹⁷ *Opposition de la Défense de M. KHIEU Samphân à la comparution de certaines personnes proposées aux fins d'audition au cours du procès 002/02 et demande de clarification sur la portée exacte des débats suite à la nouvelle décision de disjonction E301/9/1, E305/9, 30 May 2014.*