

E172/24/4/14



**ឯកសារដើម**  
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL

ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/date de reception):  
..... 17 / 07 / 2012 .....

ម៉ោង (Time/Heure) : ..... 11 : 30 .....

មន្ត្រីទទួលបន្ទុកសំណុំរឿង /Case File Officer/L'agent chargé  
du dossier:..... UCH ACUM .....

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**

**TO: IENG Sary Defence**

**Date: 16 July 2012**

សាធារណៈ / Public

**FROM: Susan LAMB, Trial Chamber Senior Legal Officer.**

**CC: President and all judges of the Trial Chamber; all parties, Case 002.**

**SUBJECT: Response of your letter of 21 June 2012 concerning the Trial Chamber's Decision on IENG Sary's Rule 87(4) Request (E172/24/4/1)**

1. Reference is made to this letter, which alleges that the Trial Chamber's Decision E172/24/4 erred in holding that new documents described in that decision as (A)-(C) were not made available to the Chamber or the parties. It further alleges that this Decision is insufficiently reasoned, and adopted a different standard in relation to these documents than to comparable ones tendered by the Office of the Co-Prosecutors pursuant to Internal Rule 87(4).

2. The appropriate modality for challenging a judicial decision is not *via* a letter addressed to the Chamber's Senior Legal Officer but rather an appeal of that decision at the appropriate juncture. This response therefore does not address the substance of allegations of deficiencies in the Chamber's reasoning or other alleged errors. In the interests of the efficient conduct of proceedings, I have nonetheless enquired as to whether Decision E172/24/4 may have been based on an erroneous factual foundation, and whether corrective action may be required in the interests of justice.

3. In relation to new documents (A)-(C), the IENG Sary Defence had indicated that it "*has requested that they be assigned ERNs and placed on the Shared Materials Drive*" (E172/24/3, para. 5 (emphasis added)). While the Chamber will take reasonable steps to verify information provided to it, it will often of necessity rely on statements made by the parties in their filings. The Chamber nonetheless acknowledges that documents (A)-(C) as described in IENG Sary Defence Motion E172/24/3 are available to the parties on the Shared Materials Drive, contrary to what is suggested in paragraph 6 of Decision E172/24/4.

4. As Decision E172/24/4 clearly states, however, the presence or otherwise of this material on the Shared Materials Drive was not the basis of the Chamber's decision. Whilst placing proposed new evidence on the Shared Materials Drive may be a useful first step in making it accessible to the parties and the Chamber, it is not on its own a

substitute for the admission of new documents pursuant to Internal Rule 87(4). This material may only be admitted where the Trial Chamber in its discretion considers the criteria contained in that sub-rule to have been satisfied. In common with findings made in relation to material sought by the Co-Prosecutors, the Chamber in E172/24/4 granted in part the request of the IENG Sary Defence to admit proposed new documents, notwithstanding the earlier availability of these documents (for instance, where the material proposed is closely related to other evidence already before the Chamber) and has today further granted the IENG Sary Defence's Second Rule 87(4) request regarding material which may be used during the examination of Expert David Chandler (E172/24/5) on the same basis.

5. It bears emphasizing that while the Chamber did not consider the remainder of the documents to which E172/24/4 refers to meet the Internal Rule 87(4) criteria, this decision clearly states that there is no barrier to the IENG Sary Defence calling on their contents when formulating questions to the Expert, where the IENG Sary Defence provides advance courtesy copies of this material to the Chamber and the other parties. As the IENG Sary Defence has since provided the ERNs for documents (A)-(C) on the Shared Materials Drive, this latter condition has been satisfied.