



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

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E172/24/4

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

TRIAL CHAMBER

TO: All parties, Case 002

Date: 21 June 2012

FROM: Nil Nonn, President, Trial Chamber.

CC: ~~All judges of the Trial Chamber; Trial Chamber Senior Legal Officer;~~
Witness and Expert Support Unit (WESU).



SUBJECT: Response to Co-Prosecutors' Request to provide Case File 002 Documents to Experts and IENG Sary's Rule 87(4) request regarding material to be used during the examination of Expert David CHANDLER (E172/24/2 and E172/24/3).

1. The Trial Chamber is seized of two requests regarding documents in advance of the testimony of David CHANDLER, which will commence on 16 July 2012.
2. In the first, the Co-Prosecutors request authorization to release to the experts select confidential documents contained in the Case File 002 which the Co-Prosecutors deem necessary to assist the experts in preparation for their testimony. The Co-Prosecutors provide examples of the types of documents in question, and undertake, should the Chamber authorize the release of documentation to the experts, to keep a record of all documentation that it proposes to provide to the experts, to ensure that appropriate assurances are provided with regard to confidentiality, and to ensure that the material is returned and not copied or retained by the experts (E172/24/2).
3. The Trial Chamber agrees that the experts' testimony will be facilitated where they have access to select relevant material in advance of their testimony. However, it is concerned that reference to material such as S-21 confessions and prisoner records may indicate an intention on the part of the Co-Prosecutors to examine one or more expert extensively on details of the functioning of S-21. In addition to the innate limits that govern the use of material obtained under torture as evidence, the Chamber reminds all parties that while they are free to explore or rebut alleged linkages between S-21 and the Accused in this trial, a detailed account of the day-to-day functioning of S-21 is outside the present scope of Case 002/01. In order to assess the relevance and appropriateness of material to be sent to the experts, the Chamber requires all parties to provide an inventory of the material they propose to send to the experts to be approved by the Chamber prior to material being sent.

E172/24/4

4. Subject to these observations, the Chamber grants the Co-Prosecutors' motion E172/24/2. It further indicates that all parties may provide material to the experts in this manner, subject to their compliance with the same procedural conditions (above) in relation to all material proposed for release to the experts in consequence of this order.

5. In its motion E172/24/3, the IENG Sary Defence requests to put eleven documents before the Trial Chamber and to be afforded the opportunity to use this material during the examination of Expert David CHANDLER pursuant to Internal Rule 87(4).

6. The Chamber notes that documents (A)-(C) as detailed in motion E172/24/3 are not presently on the Case File. Although translations of them have been sought by the IENG Sary Defence, to date copies of these articles have not been made available to either the Chamber or the other parties. Further, this material has been in the public domain since 1989, 1994 and 2000, respectively. Although these sources do not meet the criteria contained in Internal Rule 87(4) and therefore cannot be admitted as new documents, the Chamber nonetheless has no objection to the IENG Sary Defence utilizing their contents, where relevant, when formulating questions to the expert, provided that timely advance courtesy copies of these articles are provided to the Chamber and the other parties.

7. Document (D) is a new document authored by Professor CHANDLER which has yet to be located by the Defence. No assessment of its relevance can therefore be undertaken at this stage, and the document has further been in the public domain since 1986. The IENG Sary request to admit this document pursuant to Internal Rule 87(4) is therefore rejected. Should the document be located in time, it may however be utilized in questioning of the experts, subject to the same conditions above (paragraph 5).

8. Documents (E) to (K) are, by contrast, already on the Case File in Case 002. The IENG Sary Defence submits that they were not earlier added to the Defence's document lists because the significance of certain statements made by Professor CHANDLER was not apparent to the Defence at the time it prepared its lists, and their relevance has only since become apparent in the context of other documents and testimony. In view of the lack of prejudice to the other parties by the Defence's use of these documents at trial, the Chamber grants the IENG Sary Defence motion in relation to documents (E) to (K).

9. This constitutes the Chamber's official response to both motions.