

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

FILING DETAILS

Case No: 002/19-09-2007-ECCC/TC **Party Filing:** Co-Prosecutors
Filed to: Trial Chamber **Original Language:** English
Date of document: 17 September 2012

CLASSIFICATION

**Classification of the document
suggested by the filing party:** PUBLIC

Classification by the Chamber: សាធារណៈ/Public

Classification Status:

Review of Interim Classification:

Records Officer Name:

Signature:



**CO-PROSECUTORS' RULE 87(4) REQUEST TO PLACE ON THE CASE FILE AN
AUDIO RECORDING OF A LECTURE BY EXPERT PHILIP SHORT, AND TO USE A
VIDEO RECORDING OF THE LECTURE DURING THE EXAMINATION OF THE
EXPERT**

Filed by:

Co-Prosecutors
CHEA Leang
Andrew CAYLEY

Distributed to:

Trial Chamber
Judge NIL Nonn. President
Judge YOU Ottara
Judge Silvia CARTWRIGHT
Judge YA Sokhan
Judge Jean-Marc LAVERGNE
Reserve Judge THOU Mony
Reserve Judge Claudia FENZ

Civil Party Lead Co-Lawyers
PICH Ang
Elisabeth SIMONNEAU FORT

Accused

NUON Chea
IENG Sary
KHIEU Samphan

Lawyers for the Defence

SON Arun
Michiel PESTMAN
Victor KOPPE
ANG Udom
Michael G. KARNAVAS
KONG Sam Onn
Anta GUISSÉ
Arthur VERCKEN
Jacques VERGÈS

I. INTRODUCTION

1. Further to the advance notice given to the Chamber and the Parties on 5 September 2012¹ and pursuant to Rule 87(4) of the ECCC Internal Rules (“the Rules”), the Co-Prosecutors hereby seek leave to place on the Case File an audio recording of a lecture (“Lecture”) given by the expert witness Philip Short (“Expert”) on 9 March 2005 at the Centre for South East Asian Studies of the University of California, Los Angeles regarding his book “*Pol Pot: The History of a Nightmare*” (“Book”) and his research into the Communist Party of Kampuchea (CPK) and the period of Democratic Kampuchea.
2. The Co-Prosecutors further seek leave to play brief excerpts of a video recording of the Lecture during the Expert’s testimony.

II. PROPOSED EVIDENCE

3. In the Lecture, the Expert provides an overview of the Book and answers questions from an academic audience. He discusses the history of the communist movement in Cambodia, the context in which the CPK came to power, and the policies implemented during the period of its rule from 1975 to 1979. The Lecture is thus directly relevant to the Expert’s testimony before the Chamber.
4. As previously indicated,² the Co-Prosecutors have made contact with the operators of the website which contains recordings of the Lecture, in order to obtain an electronic copy of the video recording. Unfortunately, this recording is only available for purchase on a (DVD) disc, the delivery of which would likely take several weeks. The video recording is otherwise publically available for viewing online.³
5. Since the Co-Prosecutors have been able to obtain an electronic copy of the audio recording of the Lecture from the same website, they respectfully seek leave to place that recording on

¹ E226/2 Response by Co-Prosecutors to Rule 87 Requests by Ieng Sary and Nuon Chea to Use Material During the Examination of Philip Short, 5 September 2012, at paragraph 11.

² Ibid.

³ At <http://www.c-spanvideo.org/program/PolP>.

the Case File, in the interest of giving the Chamber and the parties sufficient time to analyse this material. The Co-Prosecutors also seek leave to play limited excerpts from the video recording (subject to technical availability), or, alternatively, limited excerpts of the audio recording, during the Expert's testimony.

III. LEGAL BASIS FOR THE REQUEST

6. Turning to the criteria applicable under Rule 87(4), the Co-Prosecutors cannot confirm, but do not deny, that the Lecture may have been available online prior to the start of the trial (given the date of the Lecture). The Co-Prosecutors became aware of this recording only recently, in the course of their preparation for the examination of the Expert.
7. The Co-Prosecutors note the Chamber's decision that, material which was available prior to the start of the trial (and which may not technically meet the requirements of Rule 87(4)) may be belatedly admitted if it is relevant and of sufficient importance to justify its late addition. On this basis, the Chamber placed on the Case File certain materials proposed by Nuon Chea after the commencement of the trial.⁴ The Chamber has also held that "[i]n accordance with recognized fair trial principles, the minimum condition for in-court reference to a document not already before the Chamber or proposed to be put before it is therefore a timely application to place that document on the Case File and/or to seek its admission pursuant to this sub-rule."⁵ Finally, the Chamber has permitted the belated placement of material on the Case File (in preparation for the examination of an expert witness) where the new material was closely related to "material properly identified on a party's list and [where] it was in the interests of justice to allow the two sources to be evaluated together."⁶ Finally, the Co-Prosecutors also refer to their recent submissions in relation to Defence Rule 87(4) applications relating to materials to be used in the examination of Mr Short.⁷

⁴ **E190** Decision Concerning New Documents and Other Related Issues, 30 April 2012, at paragraphs 36 and 37.

⁵ **E199** Directions regarding documents sought for impeachment purposes, 24 May 2012, p.1.

⁶ **E172/24/5/1** Response to IENG Sary's second Rule 87(4) request regarding material which may be used during the examination of Expert David Chandler (E172/24/5), 16 July 2012, paragraph 3, referring to E190 (cited above).

⁷ **E226/2** Response by Co-Prosecutors to Rule 87 Requests by Ieng Sary and Nuon Chea to use material during the Examination of Philip Short, 5 September 2012, at paragraph 1.


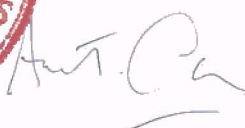
Co-Prosecutors' Rule 87(4) Request Regarding Audio and Video Recordings of a Lecture by Expert Philip Short

8. The Co-Prosecutors respectfully submit that the Lecture is closely related to the Book (which was identified in the Co-Prosecutors' Rule 80 list⁸), and that its placement on the Case File and use during the examination of the Expert will advance the Chamber's search for the truth, while not causing any prejudice to the Accused. This material will facilitate a more comprehensive understanding of Mr Short's research, and allow a more thorough analysis of the Expert's findings on the issues in respect of which he has been summoned to testify.
9. As indicated above, the audio recording of the lecture is immediately available for placement on the Case File while the video recording can be viewed by the Chamber and all parties online.

IV. REQUEST

10. For the foregoing reasons, the Co-Prosecutors respectfully seek leave to:
- Place on the Case File the downloaded audio recording of the Lecture; and
 - Use brief and relevant excerpts of the video (or, in the event of its unavailability, audio) recording of the Lecture during the Expert's testimony.

Respectfully submitted,

Date	Name	Place	Signature
17 September 2012	CHEA Leang Co-Prosecutor	Phnom Penh	
	Andrew CAYLEY Co-Prosecutor		

⁸ E9/31 Co-Prosecutors' Rule 80(3) Trial Document List, Annex 19, item 237.

Co-Prosecutors' Rule 87(4) Request Regarding Audio and Video Recordings of a Lecture by Expert Philip Short