

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

**FILING DETAILS**

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**CO-PROSECUTORS' RULE 87(4) REQUEST REGARDING NEWLY AVAILABLE U.S. STATE  
DIPLOMATIC CABLES**

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## REQUEST

1. Pursuant to Internal Rule 87(4), the Co-Prosecutors respectfully request to put before the Trial Chamber twenty-six diplomatic cables from the United States embassy in Phnom Penh and Secretary of State written during the 1973 to 1975 time period. These declassified documents recently became accessible to the public through a new searchable database, and contain information directly relevant to the forced movements and the execution of Khmer Republic soldiers and officials for which the Accused are on trial in Case 002/01.

### *Criteria for Admission of Newly Discovered Documents*

2. Internal Rule 87(4) allows the admission of new evidence that was “not available before the opening of the trial” and which is “conducive to ascertaining the truth.” The Trial Chamber has ruled that “[o]rdinarily, the requesting party must satisfy the 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 due diligence.”<sup>1</sup> The Chamber has further noted that “[a] lapse of time between the taking of active steps to pursue the documents or an unexplained delay between the discovery of a document’s location and the application to admit it as evidence may indicate a failure to exercise reasonable diligence.”<sup>2</sup>
3. The new documents are from a database of declassified U.S. State diplomatic cables from the 1973-1976 time period made available to the public on the WikiLeaks website on 8 April 2013. New documents discovered through this database were the subject of a series of recent articles in The Cambodia Daily and The Phnom Penh Post, which noted that the documents were “virtually inaccessible before the WikiLeaks publication” as they were part of a group of over 1.7 million diplomatic cables “only available in a raw, unorganized form.”<sup>3</sup> The documents have now been made available in a single electronic database that can be searched for specific subject matters.<sup>4</sup> New documents discovered in this database were the subject of five separate

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<sup>1</sup> **E276/2** Memorandum titled “Response to the Internal Rule 87(4) Requests of the Co-Prosecutors, Nuon Chea and Khieu Samphan,” 10 April 2013, paragraph 3.

<sup>2</sup> **E190** Decision Concerning New Documents and Other Related Issues, 30 April 2012, paragraph 23.

<sup>3</sup> Phnom Penh Post article titled *The Kissinger Cables*, 9 April 2013; Cambodia Daily article titled *Kissinger Cables’ Reveal Cambodia’s Darkest Hours*, 9 April 2013.

<sup>4</sup> The Verge article titled *WikiLeaks ‘Kissinger Cables’ Is Largest Release Ever With Over 1.7 Million Diplomatic Records*, 8 April 2013 (“rather than receiving leaked information from a source, for this release WikiLeaks has created a searchable database of public records. ... In order to make the earlier documents accessible, WikiLeaks obtained all the files from the National Archives and Record Administration (NARA) and collated them into a single, searchable database”).

news articles in The Phnom Penh Post between the 9<sup>th</sup> and 12<sup>th</sup> of April 2013<sup>5</sup> and one article published in The Cambodia Daily on 9 April 2013.<sup>6</sup>

4. The previous unavailability of these documents is also shown by the fact that none of the 26 new documents submitted with this motion were included in the documents obtained by the Co-Investigating Judges (“CIJs”) from the U.S. State Department during the judicial investigation.<sup>7</sup> Moreover, the Co-Prosecutors exercised due diligence by conducting searches on the WikiLeaks website for relevant documents immediately following the public announcement of the database during the week of 8 April 2013, and filing this request promptly following the Khmer New Year’s recess. The Co-Prosecutors thus submit that good cause exists for the admission of these documents under the criteria established by the Trial Chamber for the admission of new documents under Rule 87(4).

*Criteria for Admission under Rule 87(3)*

5. New evidence must also satisfy “the *prima facie* standards of relevance, reliability and authenticity required under Rule 87(3).”<sup>8</sup>
6. The reliability and authenticity of the U.S. State diplomatic cables submitted with this motion are shown by the format of the documents and the identification data included in each document, which are consistent with the other declassified U.S. government documents that have been admitted by the Trial Chamber. Each of the submitted documents starts with summary information from the database (with fields in bold), divided by a line from the original cable text. The original cables are all capital letters, and start with lengthy headers that include the document’s original classification, page numbers, date, the source of the document,

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<sup>5</sup> Phnom Penh Post cover page article titled *The Kissinger Cables*, 9 April 2013; Phnom Penh Post article titled *Bloody Strikes Revealed City’s Growing Angst*, 10 April 2013; Phnom Penh Post article titled *Nol Confused About Enemy, Cables Show*, 11 April 2013; Phnom Penh Post article titled *Leaks Tell Cham General’s Tale*, 11 April 2013 (“The details of this long-ago event were embedded in thousands of previously unclassified but hard-to-access US diplomatic cables published on Monday by anti-secrecy website WikiLeaks”); Phnom Penh Post article titled *Leaks Show Failures, False Hope*, 12 April 2013.

<sup>6</sup> Cambodia Daily cover page article titled *‘Kissinger Cables’ Reveal Cambodia’s Darkest Hours*, 9 April 2013 (“Hundreds of thousands of formerly confidential U.S. diplomatic records from the 1970s, made available by WikiLeaks yesterday, offer previously unseen insight into the turning points of modern Cambodia history”).

<sup>7</sup> The previous documents that were obtained by the Co-Investigating Judges from the U.S. State Department and U.S. Embassy in Phnom Penh were placed on Case File 002 as part of document series D291, D313, D366 or D248. The trial documents that were selected from this group were included in Annex 17 of the Co-Prosecutors’ Rule 80(3)(d) Document List.

<sup>8</sup> **E276/2** Memorandum titled “Response to the Internal Rule 87(4) Requests of the Co-Prosecutors, Nuon Chea and Khieu Samphan,” 10 April 2013, paragraph 2.

all the offices to which it was sent, and lines for “tags” and the subject of the cable. A distinct format is used for the date line (e.g. “P R 021150Z APR 74”). Distinct short-hand references and code names are also used. For example, the header for all documents sent from the U.S. embassy in Cambodia is “FM AMEMBASSY PHNOM PENH.” Each of the diplomatic cables also contains a line near the start of the header with distinct codes such as “ACTION EA-14,” “ACTION AID-59” or “ORIGIN EA-14.” Authenticity can be confirmed by comparing the format of the submitted documents to that of the other diplomatic cables directly obtained from the U.S. government that have already been admitted by the Chamber, such as the weekly report from the U.S. Embassy titled “Khmer Report”<sup>9</sup> and the regular reports sent by the U.S. Secretary of State titled “EA Press Summary.”<sup>10</sup>

7. The relevance of the submitted documents is demonstrated in **Annex A**, which contains a description of each document and the sections of the Closing Order to which the document is relevant. These documents are of particular relevance to the core crimes of Case 002/01: the forced movement of the Cambodian population, the treatment of residents of cities and towns as enemies, and the targeted executions of officials and soldiers of the Khmer Republic.
8. For example, a number of the documents describe attacks by CPK forces on other cities and towns, such as Kompong Cham and Oudong, in which civilian populations were forced by violence to leave their homes and moved into CPK controlled areas (e.g., Annex A, Documents No. 1-9, 17). A 14 September 1973 report titled “Impact of Battle for Kompong Cham” (based on a visit to the city by three embassy officers) states that CPK forces “fired rockets and artillery shells point-blank into houses, so as to force out the residents hiding inside” and that “those who survived were then rounded up, divided according to age, occupation, etc. and marched out of the city.” A further report on 24 September 1973 references “eyewitness reports of the execution of elementary school teachers, the killing of hospital patients, the defrocking of monks,” noting that after the government regained control of Kompong Cham, 1,200 of the city’s 2,000 elementary teachers were missing, 60 of the 100 civil servants from the provincial administrative office had been captured by the enemy, and as many as thirty to forty thousand civilians had been abducted by the CPK. A report dated 18 March 1974

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<sup>9</sup> Examples of the weekly U.S. Embassy Khmer Report that have been admitted by the Trial Chamber are **E3/3294** (D313/1.2.268), **E3/3305** (D313/1.2.30), **E3/195** (D313/1.2.32) and **E3/3334** (D313/1.2.49).

<sup>10</sup> Examples of the EA Press Summaries that have been admitted by the Trial Chamber are **E3/3312** (D313/1.2.34), **E3/194** (D313/1.2.38), **E3/3551** (D366/7.1.727) and **E3/3343** (D313/1.2.66).

describes the fall of Oudong to CPK forces that day, including casualties in the civilian population, and a further report two days later notes aerial observation of the “population being led away to the southwest.” Subsequent documents dated 2 April 1974 and 13 July 1974 describe reports and evidence of atrocities committed by CPK forces against military and civilians captured in Oudong.

9. Further evidence of the CPK plans and policy towards the urban population of Cambodia and persons who refused to join or support the CPK is provided by reports describing refugee movements and CPK rocket attacks on the civilian population of Phnom Penh and other cities. CPK shellings of the city of Kampot in March and April 1974 killed and wounded many civilians, and created 8,000 new refugees as people fled from the areas attacked by the CPK (Documents No. 4 & 11). A 27 February 1974 US Embassy report titled “Influx of Refugees in Provinces” states that over 27,500 villagers fled CPK-controlled areas during the past several weeks. Those refugees reported that the CPK had “forcibly relocated many villagers into the hinterlands,” food was insufficient because “all crops had to be given to insurgent organized cooperatives,” “disease was widespread,” “all religious ceremonies and festivals were banned” and “criticism was not tolerated and those who did complain were in many cases sent to the ‘higher organization’ and never seen again” (Document No. 3).
10. A 3 January 1975 report from the US Embassy titled “Refugee Situation in Wake of Recent KC Attacks” states that CPK attacks around Phnom Penh had forced over 13,000 persons to abandon their homes and flee towards the capital, and that refugees captured by CPK forces had been executed “on the spot.” A 13 January 1975 cable from the US Embassy reports that “in the past 12 days, over 100 107mm rockets have been fired upon the city and the airport areas, many landing in well-populated areas,” such as the Central Market. On 6 February 1975, the US Embassy reported that 8 children had been killed and 50 injured by a CPK rocket attack that hit a school near the Phnom Penh railway station. An 8 February 1975 Refugee Situation report describes an attack by CPK forces on the Tuol Trach refugee camp in Kompong Speu, in which the camp was burned and 10 villagers killed, including six children who were “brutally executed by knife and bayonet after being captured.” The report notes that the CPK had burned “many” refugee resettlement villages since October 1974 as part of a strategy to punish civilians who refused to join the CPK, and states that CPK forces were ignoring FANK defensive positions and instead “concentrat[ing] their attacks on villages,

directing their fire at villagers instead of at soldiers.” These documents assist in proving the purpose of CPK attacks on cities and towns, and refute the Defense position that the CPK had humanitarian goals or intentions in regards to the civilian and refugee population of Phnom Penh.

11. Another group of documents assist in proving that Khieu Samphan and Ieng Sary ended a foreign trip and returned to Cambodia in June 1974, in time for Central Committee meetings at which the evacuation of Phnom Penh was discussed and decided. The US Embassy’s 21 May 1974 Khmer Report states that the GRUNK delegation led by Khieu Samphan which had just visited 11 countries returned to Peking on 20 May 1974, expressing surprise at the “seemingly abrupt termination of the tour” (Document No. 10). A series of subsequent reports document the timing of Khieu Samphan’s return trip to Cambodia, noting that he arrived in Hanoi on 27 May 1974 (Document No. 12), visited Pathet Lao headquarters in Sam Neua province from 2 to 8 June 1974 “on his way back to Cambodia from China” (Documents No. 14 & 15) and stopped in the Quang Tri liberated zone from 11 to 13 June 1974 before finally returning to Cambodian soil (Document No. 16). Ieng Sary conceded in this case that he returned to Cambodia in 1974,<sup>11</sup> and Phy Phuon has testified that Ieng Sary returned to the country in 1974 for meetings of the Centre held in June or July which were also attended by Khieu Samphan and Nuon Chea.<sup>12</sup> The above documents provide significant corroboration confirming Phy Phuon’s testimony that Ieng Sary and Khieu Samphan attended the June 1974 Central Committee meeting.
12. Finally, a telegram from the US Secretary of State (Document No. 26) describes reports that 87 Khmer Republic (FANK) officers and non-commissioned officers had been killed in Poipet on 29 May 1975 after returning to the country from Thailand, and that another 247 FANK personnel who had returned from Thailand to Poipet had been executed on 2 June 1975. This document is relevant to proving the CPK policy targeting former officials and soldiers of the Khmer Republic regime.

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<sup>11</sup> **E9/21.3** Annex 3 to Co-Prosecutors’ Response to Trial Chamber Order Regarding “Uncontested Facts,” 25 March 2011, paragraph 999.

<sup>12</sup> **E1/97.1** Transcript of Trial Proceedings, 26 July 2012, 09.30.50 to 09.33.36, 11.36.22 to 11.41.43 [testifying that the 1974 Central Committee meeting was held in the rainy season in June or July, and was attended by Ieng Sary and Khieu Samphan]; **E3/24** Written Record of Interview of Phy Phuon, 5 December 2007, at ENG 00223581, KHM 00204068-69, FRE 00503920-21.

13. The Co-Prosecutors accordingly request that the documents set forth in **Annex A** be placed before the Trial Chamber and admitted as evidence. Requests for translation of the relevant excerpts of these documents will be submitted to CMS.

Respectfully submitted,

Date	Name	Place	Signature
22 April 2013	CHEA Leang Co-Prosecutor	Hanoi, Vietnam	
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