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E432/1

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

ភាពឆ្លាតវៃ: / Public

TRIAL CHAMBER

TO: All Parties, Case 002 **Date:** 30 August 2016

FROM: Judge Ya Sokhan, for the President of the Trial Chamber

CC: All Trial Chamber Judges; Trial Chamber Senior Legal Officer

SUBJECT: Decision on International Co-Prosecutor's Request to Admit Interview of 2-TCW-914



1. The Trial Chamber is seised of a request pursuant to Internal Rules 87(3) and 87(4) filed confidentially by the International Co-Prosecutor on 24 August 2016 to admit into evidence four audio recordings (“Audio Recordings”) and a written record of interview (“Interview”) (together the “Materials”) relating to 2-TCW-914 (“Request”) (E432). The International Co-Prosecutor notes that the Interview was conducted in April 2008 by the Office of the Co-Prosecutors, but submits that it was entered into CaseMap under a different spelling of the witness’ name and was consequently inadvertently overlooked during the prior review for relevant documents to be put before the Trial Chamber. The International Co-Prosecutor further submits that in accordance with the established practice of the Chamber to admit statements of witnesses selected to testify, the Materials should be admitted (E432, para. 2, referring to E319/47/3). No other Party responded to the Request.

2. According to Internal Rule 87(4), the Trial Chamber may admit, at any stage of the trial, all evidence that it deems conducive to ascertaining the truth, where that evidence also satisfies the *prima facie* standards of relevance, reliability and authenticity required under Rule 87(3). The Chamber determines the merit of a request to admit new evidence in accordance with the criteria in Rule 87(3). Rule 87(4) also requires that any party seeking the admission of new evidence shall do so by a reasoned submission. The requesting party must satisfy the Trial 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 reasonable diligence. However, in certain cases, the Chamber has admitted evidence which does not strictly speaking satisfy this criterion, including in instances where evidence relates closely to the material already before the Chamber and where the interests of justice require the sources to be evaluated together, and where the proposed

documents are exculpatory and require evaluation to avoid a miscarriage of justice (E276/2, para. 2 referring to E190 and E172/24/5/1; E260, para. 5).

3. The Chamber considers that the Materials constitute statements of witness 2-TCW-914, who is scheduled to testify in this case. Admission of the Materials would allow for a complete assessment of his testimony and should be admitted in the interests of justice. The Chamber notes that the fourth of the Audio Recordings uploaded on the Shared Materials Drive (T00185892-T00185892) is blank and does not contain any relevant audio and thus should not be admitted. The Chamber is satisfied that the remaining Audio Recordings are relevant and relate to the Interview of 2-TCW-914. The Interview is a transcription of the third Audio Recording (T00185891-T00185891), which has already been translated into English and French. The first two Audio Recordings have neither been transcribed nor translated. Considering that 2-TCW-914 is scheduled to testify shortly, the Chamber decides to admit the Materials even though the Audio Recordings have yet to be fully transcribed or translated from Khmer. The Chamber however, instructs the Office of the Co-Prosecutors that the transcription and translation of the first two Audio Recordings should be completed as a matter of urgency.

4. In light of the above, the Request is granted with respect to the Materials. The Chamber assigns E3/10650R to the first three Audio Recordings and E3/10651 to the Interview.

5. This constitutes the Chamber's official response to E432.