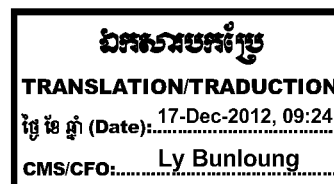


BEFORE THE TRIAL CHAMBER**EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA****FILING DETAILS****Case No:** 002/19-09-2007-ECCC/TC**Party filing:** Mr KHIEU Samphân**Filed to:** The Trial Chamber**Original Language:** French**Date of document:** 22 November 2012**CLASSIFICATION****Classification of the document suggested by the filing party:** Public**Classification by the Trial Chamber:** សាធារណៈ/Public**Classification Status:****Review of Interim Classification:****Records Officer's Name:****Signature:**

**Response to Co-Prosecutors' Rule 87(4) Request to Place on the Case File Books Authored
by Witnesses François Ponchaud and Sydney Schanberg**

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To:**The Trial Chamber**

Judge NIL Nonn

Judge Silvia CARTWRIGHT

Judge YOU Ottara

Judge Jean-Marc LAVERGNE

Judge YA Sokhan

Co-Prosecutors

CHEA Leang

Andrew CAYLEY

All Civil Party Lawyers**All Defence Teams**

MAY IT PLEASE THE TRIAL CHAMBER

1. On 13 November 2012, the Co-Prosecutors sought leave from the Chamber to place on the Case File and put before the Trial Chamber¹ 1) *Cambodia: Year Zero*, by François Ponchaud (1978)² and 2) *The Killing Fields: The Facts Behind The Film*, by Sydney Schanberg (1984).³

2. In addition, the Co-Prosecutors gave notice to the Chamber that they wanted that two other books authored by Sydney Schanberg, namely *The Death and Life of Dith Pran* (1980), and *Beyond the Killing Fields* (2010), be placed on the case file if suitable copies could be obtained in a timely manner.⁴

3. The Co-Prosecutors noted that while the Case File already contains excerpts from Mr Ponchaud's book, the parts which deal with the evacuation of Phnom Penh are not currently on the Case File.⁵ This is why they submit that it would in the interests of justice to allow the entire book to be placed on the Case File since "it will assist both in the examination of the Witness and in a more complete understanding of materials which are already on the Case File".⁶ They make the same request in regard to Mr Schanberg's book.⁷

4. Mr KHIEU Samphân's Defence objects to this request. Most notably, the Defence wishes to stress that it considers that it is unacceptable for entire books to be considered "placed on the Case File" at any stage of the proceedings. In fact, only clearly identified pages or passages ought to be considered as placed on the Case File.

¹ Co-Prosecutors' Rule 87(4) Request to Place on the Case File Books Authored by Witnesses François Ponchaud and Sydney Schanberg, 13 November 2012, **E243** (the "Request"), para. 1.

² François Ponchaud, *Cambodia: Year Zero*, New York: Holt, Rinhart and Winston, 1978.

³ Sydney Schanberg, *The Killing Fields: The Facts behind The Film*, Coronet Books, 1984.

⁴ Request, para. 2.

⁵ Request, para. 4.

⁶ Request, para. 4.

⁷ Request, para. 7.

5. It is noteworthy that the books in question contain numerous references to documents that are not placed on the Case File, as well as to accounts by persons who will not appear before the Chamber. Such information is nothing more than “hearsay”. Its reliability should therefore be open to effective testing by the Defence. However, this cannot be done if entire books are placed on the Case File or put before the Chamber. For the Accused to adequately prepare their defence, the Co-Prosecutors should select the exact passages that they intend to use.

6. The Defence is of the view that before considering these books as having been placed on the case file and assigning them E3 status, both the Chamber and the parties ought to be afforded the opportunity to question their authors in relation to any documents and accounts they used as sources or as supporting documents in writing their books.

7. Thus, if the Co-Prosecutors’ Request to place these books **in their entirety** on the Case File were granted, Mr KHIEU Samphân’s Co-Lawyers would be denied the opportunity to raise all these questions, and their placement on the Case File would cause serious prejudice to the rights of their client.

8. Further, the Co-Prosecutors claim that they are unable to provide a French translation of the book authored by Mr Sydney Schanberg, namely *The Killing Fields: The Facts Behind The Film*.⁸

9. Mr KHIEU Samphân’s Co-Lawyers cannot but emphasize once again that French is one of the ECCC official languages, and hence, their **working language**. In any event, the Co-Prosecutors’ claim that they cannot provide a translation of an entire book is further ground for the Chamber to reject their request and to order them to select the exact passages which they intend to place on the Case File and put before the Chamber.

⁸ Request, para. 12.

10. This is all the more crucial, considering that the Co-Prosecutors have themselves indicated that they intend to use “only those parts of the book which relate to the events in 1975 (...)” and that “[t]he parts of the book which contain Mr Schanberg’s personal accounts or other probative information on the events which took place in April 1975 are easily identifiable”.⁹

11. **FOR THESE REASONS**, Mr KHIEU Samphân’s Defence requests the Trial Chamber to:

- **REJECT** the Co-Prosecutors’ request to place these entire books on the Case File;
- **ORDER** the Co-Prosecutors to select the exact passages of the books which they intend to use in questioning the above-named witnesses and to provide a translation of those passages into all three ECCC official languages.

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	Jacques VERGÈS	Paris	[<i>signed</i>]
Date	Name	Place	Signature

⁹ Request, para.7