

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

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**CIVIL PARTY LEAD CO-LAWYERS' RULE 87(4) REQUEST REGARDING
CONTEMPORANEOUS DIARY OF 2-TCCP-296**

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Before:

Trial Chamber

Judge NIL Nonn, President
Judge YOU Ottara
Judge YA Sokhan
Judge Jean-Marc LAVERGNE
Judge Claudia FENZ

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I. INTRODUCTION

1. Pursuant to Rule 87(4) of the ECCC Internal Rules, the Civil Party Lead-Co Lawyers (“Lead Co-Lawyers”) respectfully request that the Trial Chamber (“the Chamber”) place on the Case File and admit into evidence 2-TCCP-296’s contemporaneous diary.
2. The civil party’s diary will assist the Chamber in ascertaining the truth and it is in the interests of justice that it be admitted into evidence, as it is highly relevant to the Case 002/02 Closing Order allegations on the Tram Kok Cooperatives and closely relates to documents already on the case file as well as oral testimony that she and other witnesses, experts and civil parties will give on this topic.

II. APPLICABLE LAW

3. The Internal Rules of the Court grant the Chamber broad discretion to admit documents into evidence,¹ where the documents meet the criteria of relevance, reliability and authenticity established in Internal Rule 87(3).² The Chamber has held that evidence considered under Rule 87(3) must meet a *prima facie* standard of relevance, reliability and authenticity.³ In making a determination on reliability, the Chamber has indicated that “[a]lthough not required under the ECCC legal framework, indicia of reliability [...] may nonetheless assist the Chamber in its assessment of whether the evidence in question satisfies the criteria contained in Internal Rule 87(3).”⁴

¹ Internal Rule 87(1), Internal Rules of the Extraordinary Chambers in the Courts of Cambodia, Rev. 8, 3 August 2011 (stipulating that “unless provided otherwise in these rules, all evidence is admissible”).

² Internal Rule 87(3), *Ibid.*, (establishing that “The Chamber may reject a request for evidence where it finds that it is: a) irrelevant or repetitious; b) impossible to obtain within a reasonable time; c) unsuitable to prove the facts it purports to prove; d) not allowed under the law; or e) intended to prolong proceedings or is frivolous.”).

³ Trial Chamber Memorandum “Trial Chamber Response to portions of E114, E114/1, E131/1/9, E131/6, E136 and E158,” **E162**, 31 January 2012, para. 2. *See also* Trial Chamber Memorandum “Response to Internal Rule 87(4) Requests of the Co-Prosecutors, NUON Chea, and KHIEU Samphan (E236/4/1, E265, E271, E276, and E276/1,” **E276/2**, para. 2, 10 April 2013 (hereinafter “New Documents Memo”).

⁴ Decision on Co-Prosecutors’ Rule 92 Submission Regarding the Admission of Witness Statements and Other Documents before the Trial Chamber, **E96/7**, para. 29, 20 June 2012. *See also* Co-Prosecutors’ Rule 92 Submission Regarding Indicia of Reliability of the 978 Documents Listed in Connection with Those Witnesses and Experts Who May be Called During the First Three Weeks of Trial, **E158**, para. 3, 23 December 2011 (providing a non-exhaustive list of indicia of reliability, including internal features (e.g., reference code markings, an identified author, internal consistency in the document’s content) and external features (e.g., corroboration, identification, and discovery)).

4. Internal Rule 87(4) permits the Trial Chamber to admit new evidence which is conducive to ascertaining the truth and comports with Internal Rule 87(3), if such evidence was either unavailable prior to the opening of the trial or could not have been discovered with the exercise of due diligence.⁵ The Chamber will consider documents that were not included in a party's initial Rule 80(3) list to be new evidence under Rule 87(4).⁶
5. As an exception to Rule 87(4), the Chamber may admit new evidence that does not meet the timeliness and due diligence requirements of the rule, if the evidence relates closely to material already before it or to the upcoming testimony of a witness, expert or civil party and the interests of justice require that the sources be evaluated together.⁷ Where evidence is sought to be admitted on the basis of its relationship to upcoming testimony, the Rule 87(4) request must be filed before the Chamber at least two weeks prior to such testimony.⁸

III. DISCUSSION

6. The new evidence sought to be admitted by the Lead Co-Lawyers comprises a handwritten diary which was kept by 2-TCCP-296 throughout the Democratic Kampuchea ("DK") period. The diary includes dated, handwritten entries beginning on 14 April 1975 through the early months of 1979. The diary entries briefly describe events taking place at the time, as well as the activities and impressions of the civil party who lived and worked under Khmer Rouge rule in a number of cooperatives throughout Tram Kok district. Additionally, the diary includes sketches, a map of housing arrangements at one site and a chart used to track calendar dates. The diary served as the basis for the

⁵ New Documents Memo, para. 3.

⁶ *Ibid.*, para. 2.

⁷ *Ibid.* See also Decision Concerning New Documents and Other Related Issues, **E190**, 30 April 2012, para. 21; and Trial Chamber Memorandum "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.

⁸ Trial Chamber Memorandum "Scheduling of Trial Management Meeting to Enable Planning of the Remaining Phases in Case 002/01 and Implementation of Further Measures Designed to Promote Trial Efficiency", **E218**, 3 August 2012, para. 22. See also New Documents Memo, para. 2.

book written by the civil party which has already been placed on the case file and comprises the narrative portion of her Victim Information Form.⁹

A. The Lead Co-Lawyers' request is timely put before the Chamber and appropriate steps have been taken to ensure the accessibility of the evidence to the parties.

7. 2-TCCP-296's oral testimony has been indefinitely postponed due to the Defense's boycott of proceedings and the Chamber's subsequent cancellation of the start of evidentiary hearings.¹⁰ In light of these developments, the order in which testimony will be heard,¹¹ the reduced hearing schedule the Chamber has announced¹² and the additional trial management meeting scheduled,¹³ even if evidentiary hearings were set to start on 3 November 2014, the civil party would not be heard within the next two weeks. Consequently, this request is timely filed before the Chamber.
8. In order to facilitate the parties' expedited access to the contents of the diary, the Lead Co-Lawyers have requested that the Interpretation and Translation Unit translate the document into the English and French languages on a "top priority" basis.

B. The diary is prima facie relevant, reliability and authentic.

9. The diary is *prima facie* relevant to the Case 002/02 proceedings, as it provides evidence germane to criminal allegations at the Tram Kok cooperatives. The document describes the organization of the cooperatives, forced labor, living and working conditions throughout a number of cooperatives and worksites throughout Tram Kok district, and marks several important dates during the DK period, including the announcement of the new constitution and the national election.

⁹ See Civil Party Application of OUM Suphany 09-VU-03554, **D22/3248**, 17 April 2009, ERNs 00562753-00562947.

¹⁰ Trial Chamber Memorandum: Warning to Counsel for NUON Chea and KHIEU Samphan, **E320**, 24 October 2014, para. 10 (hereinafter "Warning Memorandum").

¹¹ E-mail from Ken Roberts, Senior Legal Officer, to parties, "Further Information Regarding First Witnesses and Civil Parties", 10 October 2014 (indicating that 2-TCCP-296 is slated to be heard on the fourth day of evidentiary hearings).

¹² Scheduling Order for Hearings on the Substance in Case 002/02, **E316**, 19 September 2014, p. 2 (noting that the Trial Chamber will sit on a reduced schedule of 3 days per week and will not sit from 31 October 2014 through 11 November 2014).

¹³ Warning Memorandum, para. 8.

10. The diary is *prima facie* reliable and authentic. It demonstrates numerous internal and external indicia of reliability. The diary was prepared contemporaneously to the events described therein on the basis of the author's first-hand experiences. Additionally, the document is written in the author's own handwriting, the content and style of the entries in the document are internally consistent, and the paper and binding show signs of deterioration and wear consistent with its age and provenance. Furthermore, the diary is consistent with information set out in numerous other documents already on the case file. On examination, the civil party will verify that she is the author of the diary, that it was stored in her custody throughout the Democratic Kampuchea period and that it has remained in her possession since the fall of the regime.

C. It is in the interests of justice that the diary be admitted into evidence.

11. The Lead Co-Lawyers concede that the instant request does not likely conform to the due diligence standard set out in Internal Rule 87(4), as references which suggest the existence of a contemporaneously written diary are made in the book annexed to the civil party's victim information form, which has long been on the case file.
12. The Lead Co-Lawyers seek to put the contemporaneous diary before the Chamber under its established practice of exceptionally admitting evidence that does not meet the due diligence standard, where the Chamber considers it in the interests of justice to do so and such evidence closely relates to similar evidence before the Chamber.
13. The diary is a rare contemporaneously prepared document which details events as they were taking place in the Tram Kok cooperatives and the timeline on which they occurred. The information documented in 2-TCCP-296's diary serves as the basis for and will corroborate the evidence detailed in her book, which is already on the case file and the Lead Co-Lawyers have sought to put before the Chamber. Furthermore, the information contained in the diary closely relates to other evidence already on the case file concerning the Tram Kok cooperatives as well as the oral testimony she and other witnesses, experts and civil parties will give on the establishment, operation and conditions at these cooperatives.


14. Consequently, the interests of justice demand that 2-TCCP-296's contemporaneous diary be placed on the case file and admitted into evidence so that it may be evaluated alongside these other sources.

IV. REQUEST

WHEREFORE, the Lead Co-Lawyers respectfully request that the Trial Chamber:

- (1) **FIND** that it is in the interests of justice that 2-TCCP's diary be admitted into evidence;
- (2) **PLACE** the diary on the Case 002 case file; and
- (3) **ADMIT** the diary into evidence.

Respectfully submitted,

Date	Name	Place	Signature
3 November 2014	PICH ANG Lead Co-Lawyer	Phnom Penh	
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