

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

**FILING DETAILS**

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**NUON CHEA'S RULE 87(4) REQUEST FOR ADMISSION INTO EVIDENCE OF 12  
PRIOR STATEMENTS OF KAING GUEK EAV ALIAS DUCH BEFORE THE  
CAMBODIAN MILITARY COURT**

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## I. INTRODUCTION

1. Pursuant to Rule 87(4), the Co-Lawyers for Mr. Nuon Chea (the “Defence”) submit this request (“Request”) to have admitted into evidence 12 previous statements of the witness Kaing Guek Eav alias Duch (2-TCW-916) (“Duch”) prior to its cross-examination of that witness. The requested documents (“Documents”) are Cambodian Military Court Written Records of Interview of Duch dating from 1999 to 2003.

## II. APPLICABLE LAW

2. All evidence is admissible, unless otherwise provided in the Internal Rules.<sup>1</sup> The Chamber may reject a request for evidence where it finds that the evidence is irrelevant or repetitious; impossible to obtain within a reasonable time; unsuitable to prove the facts it purports to prove; not allowed under the law; or if it is intended to prolong proceedings or is frivolous.<sup>2</sup> To satisfy the requirements of Rule 87(3), the proposed evidence needs only be *prima facie* relevant and reliable.<sup>3</sup> Pursuant to Rule 87(4), at any stage during the trial a party may request the Chamber to “admit any new evidence which it deems conducive to ascertaining the truth”, subject to the general requirements of Rule 87(3).<sup>4</sup> While Rule 87(4) states that the requested evidence must not have been available before the opening of the trial, the Trial Chamber has interpreted it as also encompassing evidence which was available before the opening of the trial but which could not have been discovered earlier with the exercise of due diligence.<sup>5</sup>
3. In certain situations, evidence which did not “strictly speaking” satisfy this criterion has been admitted: where the evidence was closely related to material already before the Chamber and where the interests of justice required the sources to be evaluated together; where the proposed evidence was exculpatory and required evaluation to avoid a miscarriage of justice; or where the other parties did not object to the evidence.<sup>6</sup>
4. In an email of 2 June 2016, the Trial Chamber clarified to the Parties that:

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<sup>1</sup> Rule 87(1) of the Internal Rules.

<sup>2</sup> Rule 87(3) of the Internal Rules.

<sup>3</sup> **E289/2**, ‘Decision on Civil Party Lead Co-Lawyers’ Internal Rule 87(4) Request to Put Before the Chamber New Evidence (E289) and KHIEU Samphan’s Response (E289/1)’, 14 Jun 2013, para. 26 (“Decision on Rule 87(4) Requests”).

<sup>4</sup> A year into the Case 002/02 trial, the TC held that the parties must submit Rule 87(4) Requests for documents which were on the case file but which had not been included in the list of documents admitted by the Trial Chamber, even if those had been disclosed by the Prosecution subsequently to the initial documents filings, *see* Draft Transcript of Proceedings, 26 Jan 2016, p. 24.

<sup>5</sup> **E313**, ‘Case 002/01 Judgement’, 7 Aug 2014, para. 25; **E289/2**, Decision on Rule 87(4) Requests, para. 3.

<sup>6</sup> **E289/2**, Decision on Rule 87(4) Requests, para. 3.

[Parties's formal Rule 87(4) requests] shall identify the specific documents and the fact that their admission is sought as prior statements of an individual testifying in Case 002/02. No further reasoning is required.<sup>7</sup>

### III. ARGUMENTS

#### A. Overview of the Documents

5. The Documents are Written Records of Interviews of Duch recorded from 1999 to 2003 for the Cambodian Military Court proceedings. They are available on the case file and are listed below.

Document number	Date
D288/6.52/4.6	10, 13, 14 May 1999
D288/6.52/4.7	10 May 1999
D288/6.52/4.11	15 May 1999
D288/6.52/4.17	4 June 1999
D288/6.52/4.23	27 May 1999
D288/6.52/4.27	14 September 1999
D288/6.52/4.30	17 December 1999
D288/6.52/4.31	12 January 2000
D288/6.52/4.32	13 January 2000
D288/6.52/4.40	29 May 2002
D288/6.52/4.44	10 July 2002
D288/6.52/4.45	21 February 2003

#### B. The Documents are Prior Statements of an Individual Testifying in Case 002/02

6. The Documents are Written Records of Interview of Duch, who is scheduled to start testifying in Case 002/02 on 7 June 2016.

### IV. RELIEF

7. For the reasons stated above, the Defence requests the Trial Chamber to admit the Documents into evidence in Case 002/02 pursuant to Rule 87(4) of the Internal Rules.

CO-LAWYERS FOR NUON CHEA



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<sup>7</sup> Email from Trial Chamber Senior Legal Officer to the Parties, 2 Jun 2016 (**Attachment 1**).