

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

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LEAD CO-LAWYERS' RULE 87(4) REQUEST REGARDING 2-TCCP-243

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Before:

Trial Chamber

Judge NIL Nonn, President
Judge YA Sokhan
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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 the document in Annex A, a book authored by Civil Party 2-TCCP-243.

II. APPLICABLE LAW

2. 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

3. 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

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) 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**, 10 April 2013 (hereinafter “New Documents Memo”), para. 2.

⁴ Decision on Co-Prosecutors’ Rule 92 Submission Regarding the Admission of Witness Statements and Other Documents before the Trial Chamber, **E96/7**, 20 June 2012, para. 29. *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**, 23 December 2011, para. 3 (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)).

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

4. The Chamber may also admit new evidence that does not meet the timeliness and due diligence requirements of Rule 87(4), 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

III. DISCUSSION

5. The Lead Co-Lawyers submit that Civil Party 2-TCCP-243 was proposed to testify by both the Lead Co-Lawyers⁸ and the Co-Prosecutors⁹ on the trial topic S-21 Security Centre. On 4 April 2016, the Trial Chamber scheduled the testimony of 2-TCCP-243 to take place on 18 April 2016.¹⁰

6. Civil Party 2-TCCP-243 has authored a book titled "Survivor: The Triumph of an Ordinary Man in the Khmer Rouge Genocide". The book describes, *inter alia*, the living conditions of his imprisonment in S-21 and relates to the proposed testimony.

7. The book has been published by the Documentation Center of Cambodia. It is available in all three languages of the court. Annex A contains the details of the document and how it relates to the points of indictment in Case 002/02.

8. Certain portions of the book relate closely to 2-TCCP-243's proposed testimony. Annex B is a scanned copy of the excerpts from the book that are authored by the Civil Party, relate closely to his proposed testimony, and are not already available in the Case File.

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; 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 Civil Party Lead Co-Lawyers' Rule 80 Witness, Expert and Civil Party Lists for Case 002/02 with Confidential Annexes, E305/7, 9 May 2014. See further Annex III – Updated Summaries of Witnesses, Civil Parties and Experts (no protective measures sought), E305/7.1.3, entry 11, p. 8.

⁹ Co-Prosecutors' Proposed Witness, Civil Parties and Expert List and Summaries for the Trial in Case File 002/02, E305/6, 9 May 2014. See further Annex III – OCP Updated Witness, Civil Party and Expert Summaries, E305/6.4, entry 1, p. 37.

¹⁰ Email from Senior Legal Officer to Parties titled "Scheduling 18-28 April 2016" dated 4 April 2016 at 04:02 PM.

Annex B contains these excerpts in all three official languages of the ECCC. The Lead Co-Lawyers submit that these excerpts are relevant and *prima facie* reliable.

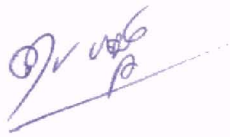
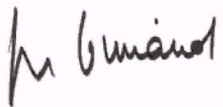
9. The book was published in 2012 and was therefore, unavailable prior to the opening of the trial in Case 002/02.¹¹ However, it was not included in the Lead Co-Lawyers Rule 80 list.

10. The Trial Chamber has previously admitted excerpts from a published book, which was published approximately one year before a request was filed under Rule 87(4).¹² The Lead Co-Lawyers submit that it is in the interest of justice that the oral testimony be evaluated together with the contents of the book.¹³ Allowing the present request would further the ascertainment of the truth without prejudice to the rights of the parties to the proceedings.

IV. REQUEST

11. For reasons outlined above, the Lead Co-Lawyers respectfully request that the Trial Chamber:

- (i) **ADMIT** into the Case-File, the document appended as Annex B pursuant to Rules 87(3) and 87(4).

Date	Name	Place	Signature
11 April 2016	PICH ANG Lead Co-Lawyer	Phnom Penh	
	Marie GUIRAUD Lead Co-Lawyer	Phnom Penh	

¹¹ Decision on Parties' Joint Request for Clarification regarding Application of Rule 87(4) (E307) and the Nuon Chea Defence Notice of Non-Filing of Updated Lists Evidence (E305/3), **E307/1**, 11 June 2014, para. 2.

¹² Decision on Co-Prosecutors' Request to Admit Excerpt of Book relevant to Case 002/02 pursuant to Rules 87(3) & 87(4), **E342/3**, 25 May 2015, para. 4.

¹³ *Ibid*, para. 5.