

**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 THE
VICTIMS SUPPORT SECTION'S REPORT ON THE APPLICATION OF CIVIL
PARTY 2-TCW-236**

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I. INTRODUCTION

1. Pursuant to Rule 87(4) of the Internal Rules, the Co-Lawyers for Mr. Nuon Chea (the “Defence”) submit this request (“Request”) to have admitted into evidence the report prepared by the Victims Support Section (“VSS”) in relation to the civil party application of 2-TCW-236, prior to its cross-examination of this Civil Party.

II. APPLICABLE LAW

2. All evidence is admissible, unless otherwise provided in the Internal Rules.¹ 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.² To satisfy the requirements of Rule 87(3), the proposed evidence needs only be *prima facie* relevant and reliable.³ 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).⁴ 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.⁵
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.⁶
4. In addition, the Trial Chamber has held that “consideration of the prior statements of witnesses called to testify will assist in evaluating their credibility and that it is in the

¹ Rule 87(1) of the Internal Rules.

² Rule 87(3) of the Internal Rules.

³ **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”).

⁴ 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* T. 26 Jan 2016 (Oral Ruling), p. 24, lns 11-13.

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

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

interests of ascertaining the truth that the Chamber and the parties have access to all of the statements of witnesses and Civil Parties who will be heard in Case 002/02”.⁷

5. In an email of 2 June 2016, the Trial Chamber clarified to the Parties that, in situations where a party is requesting the admission into evidence of a witness’ prior statement, it “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.”⁸

III. ARGUMENTS

6. The Document is a Victims Support Section’s report on the civil party application of 2-TCCP-236, dated 26 March 2010 and bearing the number D22/2479/1.⁹ It contains a summary of the criminal acts as alleged by 2-TCCP-236, who is scheduled to testify on Monday 27 June 2016. The document is presented as a summary of his civil party application, contained in E3/4950.¹⁰ However, it contains a mention of the Civil Party’s uncle which does not appear in E3/4950, and about which the Defence would like to examine 2-TCCP-236.
7. Since the requested document contains information which emanate from the witness, the Defence submits that it qualifies as a prior witness statement, despite its summary form, and is clearly relevant in assessing 2-TCCP-236’s credibility.¹¹ It is therefore submitted that its admission into evidence is necessary to ascertain the truth.

⁷ **E319/36/2**, ‘Decision on International Co-Prosecutor’s Request to Admit Written Records of Interview Pursuant to Rules 87(3) & (4) and to Call Four Additional Witnesses for Upcoming Case 002/02 Segments’, 25 May 2016, para. 15.

⁸ **E411.1.1**, Email from Trial Chamber Senior Legal Officer to the Parties, ‘Re: Oral Submissions on the Admission of Four Disclosure Documents (Correction)’, 2 Jun 2016.

⁹ **D22/2479/1**, ‘Report on Civil Party Application’, 26 Mar 2010.

¹⁰ **E3/4950**, ‘Civil Party Application of 2-TCCP-236’, 18 May 2009, at 01057923-7924 (EN), 00550646-0647 (KH) and 00895317 (FR).

¹¹ **E319/36/2**, ‘Decision on International Co-Prosecutor’s Request to Admit Written Records of Interview Pursuant to Rules 87(3) & (4) and to Call Four Additional Witnesses for Upcoming Case 002/02 Segments’, 25 May 2016, para. 15.


IV. RELIEF

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

CO-LAWYERS FOR NUON CHEA



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