

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

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**LEAD CO-LAWYERS' RESPONSE TO NUON CHEA DEFENCE'S REQUEST FOR  
ADMISSION OF THE VICTIMS SUPPORT SECTION'S REPORT ON THE  
APPLICATION OF CIVIL PARTY 2-TCW-236**

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**Before:**

**Trial Chamber**

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

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## I. INTRODUCTION

1. The Lead Co-Lawyers for the Civil Parties (“Lead Co-Lawyers”) hereby respond to the Nuon Chea Defence’s Rule 87(4) request for admission into evidence of the report by the Victims Support Section (“VSS”) on the civil party application of 2-TCCP-236.<sup>1</sup>

## II. APPLICABLE LAW

2. Internal Rule 87(4) grants the Chamber, the liberty to summon or hear any person as a witness, whose evidence it deems conducive to ascertaining the truth upon a reasoned request by a party to the proceedings. The same rule subjects such a request to the criteria set out in Rule 87(3) which mandates, *inter alia*, that such testimony not be “irrelevant or repetitious”.<sup>2</sup> In addition, such party must also satisfy the Chamber that the requested testimony was not available before the opening of the trial.<sup>3</sup>

3. The Trial Chamber has previously refused to call individuals where it considered that the proposed testimony was (i) likely to duplicate the testimony of witnesses who had already testified,<sup>4</sup> (ii) would otherwise not shed light on the role of the Accused in relation to the concerned events;<sup>5</sup> (iii) is likely to be merely corroborative and thus, unnecessary to hear at trial;<sup>6</sup> or (iv) is repetitive of other evidence before the Chamber.<sup>7</sup>

4. Internal Rule 12 states that “[t]he Office of Administration shall establish a Victims Support Section and a Civil Party Lead Co-Lawyers’ Section. [...] It also provides necessary administrative support to the Civil Party Lead Co-Lawyers’ Section and all Civil Party lawyers.”

5. Internal Rule 12*bis* (1)(b) provides that the Victims Support Section shall, *inter alia*, “[u]nder the supervision of the Co-Investigating Judges, assist victims in submitting Civil Party applications”.

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<sup>1</sup> 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-TCCP-236, **E419**, 24 June 2016 (“Request”).

<sup>2</sup> Internal Rule 87(3)(a). *See also* Final Decision on Witnesses, Experts and Civil Parties to be heard in case 002/01, **E312**, 7 August 2014 (“Final Decision on WECP in Case 002/01”), para. 124; Duch Trial Judgement, **E188**, 26 July 2010, para. 41.

<sup>3</sup> Internal Rule 87(4).

<sup>4</sup> Final Decision on WECP in Case 002/01, para. 71.

<sup>5</sup> *Ibid*, para. 75.

<sup>6</sup> *Id.*

<sup>7</sup> *Ibid*, paras 75, 78, 82, 133.

### III. RESPONSE

6. The Request argues for admission of “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” as 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”.<sup>8</sup> The Request adds that “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”.<sup>9</sup>

7. The Lead Co-Lawyers clarify that the document in question (“VSS Summary Report”) does not emanate from the Civil Party and does not qualify as a prior witness statement for the purposes of use during trial. This statement is not prepared by the Civil Party or the Civil Party Lawyer. Neither is it signed by the Civil Party or the Civil Party Lawyer affirming the truth of its contents. It is an English summary prepared by the VSS at a stage when the VSS does not have direct contact with the Civil Party.

8. The Lead Co-Lawyers explained on 26 March 2015 the nature of the reports created by the VSS:

“I would like to make a clarification on the nature of the document. There's usually the application for civil party. The application is the information form of the civil party that is in English and then you have a second document which is drafted by the victims unit, and that document is established after the application and it is simply a summary drawn up by the victims unit, as is the case with all civil party application. And that document is not signed by the victim him or herself. So, there is a time lapse -- there's a time lapse between the time when the victim's information sheet is established and the report, which is prepared by the victims support section. I just wanted to make this clarification so that we should understand the process whereby those documents are established.”<sup>10</sup>

9. As further clarified by the Lead Co-Lawyers in court:

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<sup>8</sup> Request, para. 6.

<sup>9</sup> Request, para. 7.

<sup>10</sup> Transcripts dated 26 March 2015, **E1/283.1**, pp. 51-52; *see original* quote in French at [11.34.49] « *Je voulais simplement faire une précision en fait sur la nature de ce document. Il y a la demande de constitution de partie civile qui s'appelle le "Victim Information Form", en anglais, qui est un document qui est signé par la partie civile. Et vous avez ensuite un deuxième document qui est un document qui a été rédigé par l'Unité des victimes, qui est postérieur à la demande d'application et qui est simplement un résumé qui a été fait par l'Unité des victimes, comme elle l'a fait d'ailleurs pour toutes les demandes de constitution de partie civile, et ce document n'est pas signé par la victime elle-même. Donc, vous avez un décalage entre - et je parle de manière générale pour que tout le monde comprenne de quel document il s'agit... entre les formulaires qui sont signés par les victimes et le rapport qui en est fait par... par ce qu'on appelle la... la Section de soutien aux victimes. C'est juste la précision que je voulais faire pour comprendre la différence entre les deux documents.* »

“these reports that are prepared by the Victims Support Section are reports, which means that there is no direct contact between the victims unit and the civil party. It is simply a summary of the civil party's application. I want this point to be clear because at this point in time, there is no contact between the victim's unit and the civil party.”<sup>11</sup>

10. Document D22/2479/1 is merely a summary; the original of which emanates from the civil party application (D22/2479; E3/4950). The original civil party applications are signed and dated by the civil party applicant as well as a witness; they contain a sworn declaration that the statements are, to the best of the applicant's knowledge and believe, true and correct. The original civil party application of 2-TCCP-236 has been translated by the Interpretation and Translation Unit in all three languages of the court. It is this original document that is authentic and authoritative, and is now available in all three languages for the parties' reference.

11. The Lead Co-Lawyers submit that the reports of the civil party application are generated by the VSS as per their mandate in Internal Rule 12 to offer administrative support to Civil Party Lawyers and the Office of the Co-Investigating Judges. These reports are merely a tool to aid the facilitation of the work of the Co-Investigating Judges and international Civil Party Lawyers when dealing with a vast number of civil party applications in the absence of the certified translation of the original. They are not meant to serve as evidence.

12. As noted by the Request, the Khmer original version of the civil party application does not contain any reference to the Civil Party's uncle.<sup>12</sup> The official English translation reflects the same.<sup>13</sup>

13. The Lead Co-Lawyers acknowledge that occasionally, these reports contain information that is not present in the original on account of translation errors. As explained in the Lead Co-Lawyers first Rule 80 filing:

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<sup>11</sup> Transcripts dated 8 December 2015, **E1/364.1**, p. 4; *see original* quote in French at [09.09.23] « Une courte observation sur la nature du document qui a été lu par notre confrère. Comme je l'ai dit à plusieurs reprises dans cette audience, ces rapports, qui sont effectués par la Section de soutien aux victimes, sont des rapports, c'est-à-dire qu'il n'y a pas de contact direct entre l'unité des victimes et la partie civile. C'est simplement un résumé qui est fait de la constitution de partie civile, simplement pour que ce soit clair, parce que, à ce moment-ci, il n'y a pas de contact entre l'Unité des victimes et la partie civile. »

<sup>12</sup> Compare E3/4950 KH ERN 00550646-00550647 with D22/2479/1 EN ERN 00550638.

<sup>13</sup> Compare E3/4950 KH ERN 00550646-00550647 with EN ERN 01057923-01057924.

“[w]hile they have proved to be of invaluable assistance to the civil party lawyers, these individual reports may contain inconsistencies and translation errors. It would thus be inaccurate to translate the summary into Khmer as the vast majority of the original applications are in Khmer.”<sup>14</sup>

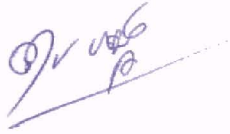
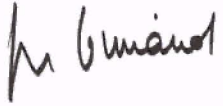
14. The Lead Co-Lawyers submit that the VSS Summary Report does not contain the indicia of reliability required under Internal Rule 87(3). For this reason, such reports were not included in the final Rule 80 list of documents and evidence submitted by the Lead Co-Lawyers.<sup>15</sup>

15. Considering that the reason why the Nuon Chea Defence seeks the admission of the VSS report is unfounded, the Lead Co-Lawyers submit that the Request is liable to be dismissed. The Lead Co-Lawyers however, submit to the wisdom of the Trial Chamber in its admission.

#### IV. REQUEST

16. The Lead Co-Lawyers respectfully request that the Trial Chamber take into consideration the concerns outlined in the present response when determining the Request.

Respectfully submitted,

Date	Name	Place	Signature
01 July 2016	PICH ANG Lead Co-Lawyer	Phnom Penh	
	Marie GUIRAUD Lead Co-Lawyer	Phnom Penh	

<sup>14</sup> Civil Party Lead Co-Lawyers Lists of Documents and Exhibit (7 and 8), **E9/32**, 19 April 2011, para. 31.

<sup>15</sup> Civil Party Lead Co-Lawyers' Updated Rule 80 Lists of Documents and Exhibits for Case 002/02 with Confidential Annex V, **E305/14**, 13 June 2014, para. 16.