

BEFORE THE TRIAL CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

FILING DETAILS

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CO-PROSECUTORS' REQUEST TO ADMIT TWO DOCUMENTS PURSUANT TO RULES 87(3) & 87(4) RELATING TO THE UPCOMING TESTIMONY OF 2-TCE-82

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I. Introduction

1. On 3 June 2016, the Trial Chamber notified the parties that it had decided to hear the testimony of 2-TCE-82 (Nakagawa Kasumi) during the Regulation of Marriage segment in Case 002/02.¹ The Chamber subsequently affirmed that 2-TCE-82 would testify as an expert and therefore could be questioned on all matters within her knowledge or expertise relevant to the regulation of marriage trial topic.²
2. Pursuant to Rules 87(3) and (4) and the Trial Chamber's instruction,³ the Co-Prosecutors request to have admitted into evidence two documents relevant to 2-TCE-82's testimony, which is scheduled to begin on 13 September 2016. The first document is a study by Nakagawa Kasumi entitled *Gender-Based Violence Against Sexual Minorities during the Khmer Rouge Regime*. The second is a book, also by Nakagawa Kasumi, entitled *Motherhood at War: Pregnancy during the Khmer Rouge Regime*. Both documents (hereafter called the "Materials") are available in English on the Shared Materials Drive in Zylab, using ERN ranges 01322766-01322839 and 01322840-01322893, respectively.

II. Submissions

3. This Chamber recently reiterated the applicable law concerning the admission of new evidence:

The Chamber recalls that according to Internal Rule 87(4), the Trial Chamber may admit, at any stage of the trial, all evidence that it deems conducive to ascertaining the truth, where that evidence also satisfies the *prima facie* standards of relevance, reliability, and authenticity required under Rule 87(3). The Chamber determines the merit of a request to admit new evidence in accordance with the criteria in Rule 87(3). Rule 87(4) also requires that any party seeking the admission of new evidence shall do so by a reasoned submission. The requesting party must satisfy the Trial Chamber that the proposed evidence was either unavailable prior to the opening of the trial or could not have been discovered with the exercise of reasonable diligence. However, in certain cases, the Chamber has admitted evidence which does not strictly speaking satisfy this criterion, including in instances where evidence relates closely to

¹ Email entitled *List of Witnesses, Civil Parties and Experts on the Regulation of Marriage*, sent by the Trial Chamber Senior Legal Officer on 3 June 2016 at 1:51 p.m.

² **E431** Decision on Designation of 2-TCE-82, 23 August 2016.

³ Email entitled *Preparation for experts – 2-TCE-81 and 2-TCE-82*, sent by the Trial Chamber Senior Legal Officer on 12 August 2016 at 2:35 p.m.

material already before the Chamber and where the interests of justice require the sources to be evaluated together...⁴

4. The Co-Prosecutors submit that the requested Materials meet the *prima facie* criteria for admission laid out in Rule 87(3). They are directly relevant, as they are articulations of 2-TCE-82's continued research into gender-based violence during the Democratic Kampuchea ("DK") period, supplementing her 2008 study already admitted into evidence.⁵ More specifically, the Materials are relevant because they discuss marriages that took place under the Khmer Rouge and the circumstances surrounding those marriages, sexual violence that often occurred within those marriages, and the impact that both had on the victims. In addition, the Materials are reliable and authentic, as they are published with 2-TCE-82's approval and are publicly available.
5. As for the Rule 87(4) requirements, the Trial Chamber has held that for Case 002/02, the opening of trial occurred in June 2011.⁶ The Materials were published in 2015 and therefore were not available before the trial opened. Finally and most importantly, the Materials represent a more informed view of the events that occurred during the DK period than the 2008 study already on the Case File, as they are the product of an additional seven years of focused research and study. Additional case studies support 2-TCE-82's assertions, and any refinement of the views she held in 2008 can be discussed during her testimony.

⁴ **E390/2** Decision on Nuon Chea's First Rule 87(4) Request to Call One Additional Witness and to Admit One Interview for the Case 002/02 Trial Segment on Phnom Kraol Security Centre, 4 May 2016, para. 3.

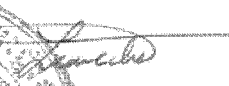
⁵ **E3/2959** *Gender-Based Violence During the Khmer Rouge Regime: Stories of survivors from the Democratic Kampuchea (1975-1979)* by Nakagawa Kasumi, December 2008.

⁶ **E307/1** 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), 11 June 2014; **E307/1/2** Decision on Joint Request for *de novo* Ruling on the application of Internal Rule 87(4), 21 October 2014, para. 10.

III. Relief Requested

6. The Co-Prosecutors therefore respectfully request, pursuant to Rules 87(3) and (4), that the Trial Chamber admit into evidence in Case 002/02 the Materials identified above that are relevant to the testimony of 2-TCE-82.

Respectfully submitted,

Date	Name	Place	Signature
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