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E415/3/2



ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា
Extraordinary Chambers in the Courts of Cambodia
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

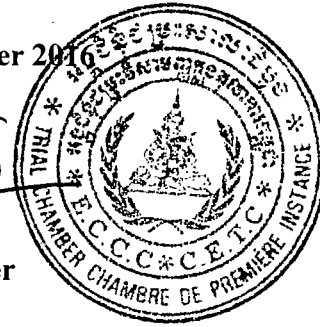
TRIAL CHAMBER

សាធារណៈ / Public

TO: All Parties, Case 002

Date: 7 September 2016

FROM: Judge YA Sokhan, for the President of the Trial Chamber



CC: All Trial Chamber Judges; Trial Chamber Senior Legal Officer

SUBJECT: Decision on NUON Chea's Rule 87(4) Request to Admit into Evidence a Document Related to the Testimony of Expert Henri LOCARD (2-TCE-90)

1. The Trial Chamber is seised of an Internal Rule 87(4) request filed on 8 August 2016 by the NUON Chea Defence ("Request", E415/3, paras 1, 10) to admit into evidence a document relating to the testimony of expert Henri LOCARD (2-TCE-90). The document is a press article entitled "French Historian Accuses Tribunal Lawyers of 'Cold Torture'", published by *The Cambodian Daily* ("Document", E415/3.1.1). The Defence submits that the Request is timely as the Document was published on 3 August 2016, subsequent to Mr. LOCARD (2-TCE-90)'s testimony in Case 002/02 (E415/3, para. 7). It further submits that *The Cambodian Daily* is "a serious and reliable Cambodian newspaper" and that the Document reports statements made by Mr. LOCARD (2-TCE-90) that are relevant to his impartiality and credibility as an expert (E415/3, paras 5, 8-9).

2. On 16 August 2016, the Co-Prosecutors filed a response to the Request (E415/3/1). While the Co-Prosecutors do not agree with the conclusions drawn by the NUON Chea Defence in relation to the Document, they do not object to its admission into evidence (E415/3/1, para. 2). The Co-Prosecutors submit that the Document does not demonstrate bias or partiality in Mr. LOCARD (2-TCE-90)'s academic work or his testimony, and that he has met the standards of reliability required by an expert (E415/3/1, paras 4-5).

3. 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 the material already before the Chamber and where the interests of justice require the sources to be evaluated together, and where the proposed documents are exculpatory and require evaluation to avoid a miscarriage of justice (E276/2, para. 2 referring to E190 and E172/24/5/1; E260, para.5).

4. The Chamber finds that the Document was unavailable prior to the opening of the trial and that the Defence exercised due diligence in filing the Request within 5 days of its publication. The Request is therefore timely. The Document published by *The Cambodia Daily* also satisfies the *prima facie* standards of reliability and authenticity required under Rule 87(3). The Chamber finds that the Document is relevant as it provides information related to Mr. LOCARD (2-TCE-90)'s testimony before the ECCC. As for the Defence's submission that the Document illustrates Mr. LOCARD (2-TCE-90)'s "deep contempt towards the Accused and the institution of the Defence in general" (E415/3, para. 1), the Chamber recalls that challenges regarding bias of an expert relate to the evaluation of evidence and not to its admissibility (E215, para. 15).

5. The Chamber therefore finds that the requirements of Internal Rule 87(4) have been satisfied and admits the Document into evidence, assigning it document number E3/10649.