



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

អង្គជំនុំជម្រះសាលាដំបូង
Trial Chamber
Chambre de première instance

សំណុំរឿងលេខ: ០០២/១៩ កញ្ញា ២០០៧/អវតក/អជសជ
Case File/Dossier No. 002/19-09-2007/ECCC/TC

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

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DECISION ON DESIGNATION OF 2-TCE-90

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1. INTRODUCTION

1. The Co-Prosecutors propose to call 2-TCE-90 (Henri Locard) as an expert in Case 002/02 in relation to a number of subjects including the CPK policy concerning enemies; security offices; and the use of political slogans during the Democratic Kampuchea period.¹ The Trial Chamber previously selected 2-TCE-90 (Henri Locard) to testify in Case 002/01, but having considered that his testimony would be more relevant to later cases, it subsequently decided to defer calling him.²

2. On 8 April 2016, the Trial Chamber notified the parties that it had selected 2-TCE-90 (Henri Locard) to be heard during the trial topic on the Security Centres and Internal Purges.³ The Trial Chamber hereby decides on the designation of 2-TCE-90 (Henri Locard).

2. SUBMISSIONS

3. The Co-Prosecutors propose that 2-TCE-90 (Henri Locard) be examined on the following subjects:

The origins and evolution of the CPK policy for the identification and destruction of enemies; the existence, operation and structure of an organised, nationwide network of security offices during the DK period; and the use of political slogans during the DK period.⁴

4. In support of 2-TCE-90 (Henri Locard)'s qualification as an expert, the Co-Prosecutors note that 2-TCE-90 (Henri Locard) is a historian, a political scientist and a visiting Professor at the Royal University of Phnom Penh. He has done extensive research on the network of security centres during the Democratic Kampuchea period and has authored, individually and jointly, numerous books and reports on this topic. The Co-Prosecutors further note that 2-TCE-90 (Henri Locard) conducted research on the propaganda used by the Democratic Kampuchea regime to

¹ Annex III OCP Updated Witness, Civil Party and Expert Summaries, E305/6.4, 9 May 2014, p. 44.

² Decision on assignment of experts, E215, 5 July 2012, para 3; Final decision on witness, experts and civil parties to be heard in Case 002/01, E312, 7 August 2014, para 58.

³ Email from the Senior Legal Officer of 8 April 2016.

⁴ Annex III OCP Updated Witness, Civil Party and Expert Summaries, E305/6.4, 9 May 2014, p. 44.

transmit CPK policy, which is reflected in his book, *Pol Pot's Little Red Book: The Sayings of Angkar*.⁵ No other Party made submissions in relation to 2-TCE-90 (Henri Locard).

3. APPLICABLE LAW

5. The Chamber recalls that Internal Rule 31 establishes that a Chamber may seek expert opinion “on any subject deemed necessary to [...] proceedings before the ECCC” (IR 31(1)) and shall appoint the expert by order setting out the exact assignment of the expert (IR 31(3)). Pursuant to Internal Rule 80*bis* (2): “Where the Chamber considers that the hearing of a proposed [...] expert would not be conducive to the good administration of justice, it shall reject that such person be summoned.” The Internal Rules do not provide a definition of expert or set out the minimum qualifications or experience an individual must possess in order to be appointed as expert before the ECCC.⁶

6. According to international jurisprudence, an expert is an individual that has specialised knowledge, experience or skills that could assist a Chamber in its understanding of specific issues in dispute requiring special knowledge in a specific field.⁷ Experts provide clarification, context, or additional assistance for the purpose of a Chamber’s assessment of the evidence.⁸ The Chamber has found that where an expert also has personal knowledge of facts relevant to the Democratic Kampuchea period, in addition to being called as expert, he or she may be questioned on those facts.⁹

⁵ Annex III OCP Updated Witness, Civil Party and Expert Summaries, E305/6.4, 9 May 2014, p. 44; *See also Le Petit Livre Rouge de Pol Pot: The Sayings of Angkar*, E3/2812.

⁶ Decision on Designation of 2-TCE-88, E388, 9 May 2016, para. 9 (Decision on Designation of 2-TCE-88); Decision on Designation of 2-TCE-95, E367, 21 September 2015, (Decision on Designation of 2-TCE-95), para. 6.

⁷ *See* Decision on Designation of 2-TCE-88, para. 10; Decision on Designation of 2-TCE-95, para. 7; Decision on Assignment of Experts, E215, 5 July 2012, (Decision on Assignment of Experts), para. 16; *Prosecutor v. Popovic et al.*, Case No. IT-05-88-T, Decision on Defence Rule 94 *bis* notice regarding Prosecution Expert Witness Richard Butler, 19 September 2007, (Decision on Richard Butler ICTY), para. 23; *Nahimana v. Prosecutor*, Case No. ICTR-99-52-A, Judgement, 28 November 2007, para. 198.

⁸ Decision on Designation of 2-TCE-88, para. 10; Decision on Designation of 2-TCE-95, para. 7; Decision on Assignment of Experts, para. 16.

⁹ Decision on Designation of 2-TCE-95, para. 7; Decision on Assignment of Experts, para. 18; Decision on Designation of TCE-33, E283, 26 April 2013, (Decision on Designation of TCE-33), para. 16.

7. It is for the Trial Chamber to decide whether an individual may be called to testify as an expert. The question before the Trial Chamber is whether the proposed expert has relevant skill or knowledge that might assist the Chamber as finder of fact in understanding the evidence before it.¹⁰ In determining whether the proposed expert possesses the relevant skill or knowledge of an expert, the Trial Chamber may consider the individual's curriculum vitae, articles, publications or other information, including the proposed expert's former and current positions.¹¹ Further, the fact that a proposed expert has had previous association with an external organisation or is currently employed by an office within the ECCC does not disqualify him or her from being called as an expert.¹²

4. ANALYSIS

8. The Trial Chamber notes that 2-TCE-90 (Henri Locard) was an English teacher at the French Lyceé Descartes in Phnom Penh from 1965 to 1967. During this period he wrote articles for the *Kambuja Magazine*, a glossy magazine edited by CHAU Seng, the Head of the Cabinet for His Majesty King NORODOM Sihanouk.¹³

9. The Trial Chamber notes that 2-TCE-90 (Henri Locard) held several positions as a lecturer and fellow throughout his career, including at universities in Cambodia. From 2005 to 2012, he was a guest professor at the History Department of the Royal University of Phnom Penh, where he lectured on Cambodian history. Previously, between 2002 and 2005, he taught a Master of Arts course in Cultural Studies at the Buddhist Institute and Royal University of Phnom Penh. In

¹⁰ Decision on Designation of 2-TCE-88, para. 11; Decision on Designation of 2-TCE-95, para. 8; *KAING Guek Eav alias Duch*, Case 001/18-07-2007/ECCC/TC, Decision on Protective Measures for Witnesses and Experts and on Parties' Request to Hear Witnesses and Experts Reasons, E40/1, 10 April 2009, para. 26; *see also* Decision on Assignment of Experts, para. 16.

¹¹ Decision on Designation of 2-TCE-88, para. 11; Decision on Designation of 2-TCE-95, para. 8; Decision on Assignment of Experts, para. 15. *See also* *Prosecutor v. Zdravko Tolimir*, Case No. IT-05-88/2-T, Decision on Admission of Expert Report of Ratko Skrbic with Separate Opinion of Judge Mindua and Dissenting Opinion of Judge Nyambe, 22 March 2012, para. 14; Decision on Richard Butler ICTY, paras 23-24; *Prosecutor v. Vojislav Seselj*, Case No. IT-03-67-T, Decision on expert status of Reynaud Theunens, 12 February 2008, (Decision Reynaud Theunens ICTY), para. 28.

¹² Decision on Designation of 2-TCE-95, para. 8; Decision on Assignment of Experts, para. 15; Decision on Designation of TCE-33, para. 13; *KAING Guek Eav alias Duch*, Case 001/18-07-2007/ECCC/TC, Decision on Protective Measures for Witnesses and Experts and on Parties' Request to Hear Witnesses and Experts Summary, E40, 3 April 2009, p. 5; Decision Reynaud Theunens ICTY, para. 29.

¹³ Curriculum Vitae of Henri Locard, E215.4. The Curriculum Vitae was obtained by WESU in February 2012. The Trial Chamber has requested an updated version of Mr. Locard's Curriculum Vitae. This will be placed in the case file as attachment to this decision as soon as available.

1995, he was a Visiting Fellow at the Department of Political Sciences of the Australian Defence Force Academy, Canberra. From August 1993 to September 1994, he lectured in history at the Royal University of Phnom Penh. From 1992 to 1994, he conducted field research in various Cambodian provinces on the prison networks established during Democratic Kampuchea. In 1989, 2-TCE-90 (Henri Locard) conducted a seminar on Human Rights at the Royal University of Phnom Penh. Outside of Cambodia, in October 1967 and from 1970 to 2000, he held the position of lecturer at the University of Lumière-Lyon, where he lectured in British modern history and political science. From 1969 to 1970, 2-TCE-90 (Henri Locard) undertook a Florey European Scholarship at The Queen's College, Oxford.¹⁴

10. The Trial Chamber also notes that 2-TCE-90 (Henri Locard) has given several talks at conferences and workshops on topics related to the Khmer Rouge. These include a presentation at the AFRASE Conference at the Sorbonne University in September 2004 entitled '*Kompong Thom and Siam Reap Provinces in the grip of the Khmer Rouge*'; a presentation entitled '*State violence in Democratic Kampuchea (1975–1979) and retribution (1979–2004)*' at the Genocide and its Aftermath Workshop held in April 2004 in Manchester; and a presentation at the Berlin Conference on Genocide in March 2004 entitled '*State-sponsored crimes against humanity & genocide in Cambodia (1975-1979)*'.¹⁵ In 1989, he was commissioned by French authorities, in conjunction with Lyon University, to write a report about higher education needs in Cambodia.

11. The Chamber also notes that 2-TCE-90 (Henri Locard) is the author of numerous publications on the Democratic Kampuchea period. Some of these publications have been already admitted in this trial, including *Pol Pot's Little Red Book: The Sayings of Angkar* (E3/2812), *Prisoner of the Khmer Rouge* (E3/2419) and *The Khmer Rouge Gulag* (E3/2811).¹⁶

12. The Trial Chamber further notes that, while not mentioned in the Curriculum Vitae he provided to WESU, 2-TCE-90 (Henri Locard) was previously commissioned by the Office of the Co-Prosecutors to compile a series of reports on the nationwide network of security centres

¹⁴ Curriculum Vitae of Henri Locard, E215.4.

¹⁵ Curriculum Vitae of Henri Locard, E215.4.

¹⁶ See also Henri Locard, *Short's History of a Nightmare draws a Locard*, E3/7281, 11 March 2005; Henri Locard, *Yes, indeed! Why did they kill (so many)?*, E3/9717, 9 September 2005; Henri Locard, *Don't blame 'village chiefs' for KR leaders' crimes*, E3/7282, 24 November 2000.

during the DK regime.¹⁷ Regarding any concern of potential bias due to his previous engagement with the Co-Prosecutors, the Chamber recalls that challenges, if any, on an expert's independence and impartiality are matters related to the evaluation of his evidence.¹⁸ The Chamber also recalls that it is not bound by the evidence or conclusions given by an expert,¹⁹ and that these will be subject to the same rules and open to the same scrutiny as any other piece of evidence put before the Chamber.

13. In light of the extensive work and research experience described above, the Trial Chamber is satisfied that 2-TCE-90 (Henri Locard) is qualified as an expert, and that he possesses specialised knowledge and experience that may assist the Chamber for the purpose of its assessment of the evidence.

¹⁷ Annex III OCP Updated Witness, Civil Party and Expert Summaries, E305/6.4, 9 May 2014, p.44; *See also* Henri Locard, *Kompong Cham province East Bank*, E3/3209, undated; *Report – Trankak District in the grip of the Khmer Rouge*, E3/8299, December 1996; *Report - Kompong Som: Sihanoukville Municipality*, E3/3237, May 2007; *Research Notes on Democratic Kampuchea Prison Network: Northwest Region*, E3/2071, May 2007; *Report – Preah Vihear: Sector or Zone 103*, E3/3244, 31 May 2007; *Report – Siamreap Province: New North Region*, E3/3863, 30 May 2007; *Report – Kompong Thom: Uddor Region*, E3/3218, 2 June 2007; *Report – Kompong Cham: West bank of the Mekong*, E3/2649, 5 June 2007; *Report – Northeast: Eisan Region*, E3/3255, 14 June 2007; *Report – Stung Treng*, E3/3265, 16 June 2007; *Report – Kratieh – 505: Special zone*, E3/3274, 24 June 2007; *Report – Northeast: Eisan Region – Mondolkiri*, E3/3219, 27th June 2007; *Report – Nireday Region: The Southeast – Kandal province, Saang District*, E3/3232, 11 July 2007; *Report – S-21 & Phnom Penh under DK*, E3/3214, 11 July 2007; *Report – S-21 & Phnom Penh under DK*, E3/3215, 11 July 2007.

¹⁸ *See* Decision on Designation of 2-TCE-88, paras 12, 16; Decision on Designation of 2-TCE-95, paras 8-9, 11; Decision on Designation of TCE-33, paras 13-15.

¹⁹ *See* Decision on Designation of 2-TCE-95, para. 11; Decision on Assignment of Experts, para. 16.

FOR THE FOREGOING REASONS, THE TRIAL CHAMBER:

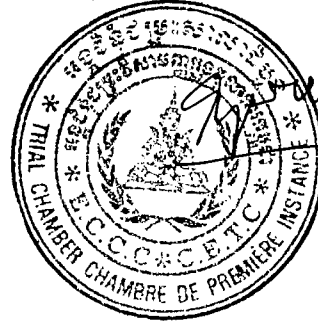
AFFIRMS that it will hear evidence from 2-TCE-90 (Henri Locard) as an expert;

DETERMINES that 2-TCE-90 (Henri Locard) may be questioned on all matters within his knowledge or expertise relevant to the trial topic of Security Centres and Internal Purges and other subjects falling within the scope of Case 002/02 as set out by the Co-Prosecutors in E305/6.4; and

DIRECTS the Co-Prosecutors to lead the in-court questioning of 2-TCE-90 (Henri Locard) pursuant to Internal Rules 91 and 91*bis*.

Phnom Penh, 16 June 2016

President of the Trial Chamber



Nil Nonn