

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

FILING DETAILS

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**NUON CHEA'S RULE 87(4) REQUEST TO ADMIT DOCUMENTS IN RESPECT OF
CIVIL PARTY OUM SUPHANY**

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Pursuant to Rule 87(4) and a direction from the Trial Chamber during trial proceedings on Monday, 26 January 2015, the Co-Lawyers for Mr. Nuon Chea (the “Defence”) submit this request to admit documents in respect of Civil Party Om Suphany (the “Request”):

I. BACKGROUND

1. On 22, 23 and 26 January 2015, Civil Party Om Suphany testified in Case 002/02 trial proceedings. During its cross-examination of Ms. Suphany, the Defence referred to an interview Ms. Suphany gave to the *Phnom Penh Post* in 2013, information about which was readily available in the public domain and which the Defence did not place on the trial documents interface. After lengthy objections and exchanges between the parties, during the first morning session on 26 January 2015, the Trial Chamber ruled that questions concerning documents not on the case file would not be allowed “for the time being”. However, if the Defence thought it had documents concerning Ms. Suphany’s testimony which satisfied the requirements of Rule 87(4), it had 48 hours to put these documents on the “shared drive” for parties’ review. After such review, Ms. Suphany could be recalled for further testimony, if necessary.¹

II. ARGUMENT

A. Preliminary Matters

2. As a preliminary matter, the Defence notes that it already submitted the documents which are the subject of this Request to be added to the Shared Materials Drive earlier today, the ERNs of which are cited below. The Defence considers that this formally fulfils the direction given to it by the Trial Chamber on 26 January 2015. However, as the Chamber’s direction specifically mentioned Rule 87(4), the Defence submits this Request in order to assist the Chamber by providing further information in this regard.
3. As an additional preliminary matter, the Defence maintains its consistent position that under the properly applicable law, there is no “advance-notice requirement” governing the admission of documentary evidence in the ECCC.² On the contrary, this Initial Document List and any further documentary evidence proffered by the Defence is admissible at any point until the end of the trial in Case 002/02. The Defence refers to

¹ ‘Transcript of Proceedings’ (released only in draft at this stage and without an E1 number as yet), 26 Jan 2015 (“Draft Transcript – 26 Jan 2015”), p. 13, ln. 10 – p. 14, ln. 3.

² See, e.g., E131/1/13, ‘List of Documents to be Put Before the Chamber During the First Mini-Trial’, 31 January 2012, para. 5.

its previous arguments in this regard, including, *inter alia*, in its appeal against the Judgement in Case 002/01³ (the “Appeal”) and its initial documents list in respect of Case 002/02.⁴ The Defence wishes to refer in particular to its arguments in the Appeal with respect to prior notice regarding documents to be used for impeachment purposes and to emphasise that these arguments are particularly pertinent in respect of the testimony of civil parties, who are not only permitted to have access to their lawyers prior to and during their testimony but are not currently required to testify under oath.

B. Documents Sought for Admission

4. The Defence seeks to put forward five documents in relation to Ms. Om Suphany. Descriptions as to those documents’ relevance follow. Despite its position as articulated in paragraph 2, the Defence also includes arguments in respect of Rule 87(4).
5. The Defence seeks the admission of the following five documents (the “Five Documents”) in connection with Ms. Suphany’s testimony:
 - (a) **Document 1: *Under the Drops of Falling Rain*:**⁵ In 2011, Boeng Tonle Sap Publishers released an English-language edition of a book Ms. Suphany authored, entitled *Under the Drops of Falling Rain*. Its cover indicates that the book is “[a] non-fiction story” while in the book’s preface, Ms. Suphany indicates that the book “tells the story of my life”. In it, Ms. Suphany describes, *inter alia*, her forced marriage on 18 November 1977 to a man named Pichet who was five years her junior, who she did not previously know.
 - (b) **Document 2: Press Release from Association for Khmer Rouge Victims in Cambodia:**⁶ On 24 June 2011, ahead of the initial hearings in Case 002/01, a civil party organisation known as the Association for Khmer Rouge Victims in Cambodia (“AKRVC”) issued a press release (the “Press Release”) detailing the background and DK biographies of its leadership. Ms. Suphany, listed as an “AKRVC Officer”, was among them. The press release described how Ms. Suphany was forcibly married on 18 November 1977 to “Pichet, a Khmer Rouge cadre five years her junior”. It also included a direct quote from Ms. Suphany

³ F16, ‘Nuon Chea’s Appeal Against the Judgement in Case 002/01’, 29 Dec 2014, paras. 88-104.

⁴ E307/5, ‘Initial Document List for Case 002/02’, 24 Jul 2014, paras. 2-4.

⁵ This document is available on the Shared Materials Drive at ERNs 01058323-01058332.

⁶ This document is available on the Shared Materials Drive at ERNs 01058310-01058316.

lamenting that “I was furious and decided that I was perhaps willing to die, since it was more than a husband being forced on me”.

- (c) **Document 3: *National Radio* Article:**⁷ On 28 June 2011, a website entitled “National Radio” published an article on the Internet about Ms. Suphany which directly quoted the AKRVC Press Release’s description of Ms. Suphany.
- (d) **Document 4: *Phnom Penh Post* Article:**⁸ The 10-16 May 2013 edition of the *Phnom Penh Post*’s weekly *7 Days* publication includes an article, ‘You & me: During Pol Pot, I didn’t want to write in public’ detailing an interview Ms. Suphany and her son gave to the reporter Rosa Ellen. In it, Ms. Suphany was quoted, *inter alia*, describing her marriage as “part of a “determination” [...] married in front of Angkar”. The journalist, in the caption describing the interview, notes that Ms. Suphany “underwent a forced marriage”.
- (e) **Document 5: Book Review of *Under the Drops of Falling Rain*:**⁹ On what appears to be 19 April 2014, an Internet website named *The Modern Novel* published a review of Ms. Suphany’s book *Under the Drops of Falling Rain*. *Inter alia*, the anonymous reviewer details his or her view that Ms. Suphany’s book “is presumably autobiographical” and describes how she is forcibly married with a man five years her junior named Pichet.

C. Relevance and Admissibility of the Documents

6. The Five Documents appear *prima facie* to indicate that Ms. Suphany has herself issued or at least endorsed public statements to be made indicating that she was forcibly married to a Khmer Rouge cadre. Parts of these documents directly contradict Ms. Suphany’s testimony in her DK-era diary which has been admitted on the case file and which her lawyer referred to at length in examining Ms. Suphany. The Five Documents are therefore highly relevant, as they directly and fundamentally affect the credibility of Ms. Suphany’s testimony in general and thus may assist in ascertaining the truth.
7. Where documents were available before the opening of the trial, the Chamber has permitted their admission “where the interests of justice so require, in particular where

⁷ This document is available at ERNs 01058317-01058319.

⁸ This document is available at ERN 01058320.

⁹ This document is available at ERNs 01058321-01058322.

it is exculpatory and requires evaluation in order to avoid a miscarriage of justice”¹⁰ or where they “closely relate to material already before the Chamber and ... the interests of justice require the sources to be evaluated together.”¹¹

8. All five documents at issue were created prior to the “opening of the trial”. The Defence obtained Documents 2, 4 and 5 in late November 2014 in preparation for Ms. Suphany’s testimony which had initially been scheduled to take place at that time. The Defence previously searched for Document 1 and requested Ms. Suphany’s lawyer to provide a copy prior to her testimony, a request which was declined. It was subsequently provided with a copy of the book by a member of the public following Ms. Suphany’s initial testimony on 22 January 2015. The Defence only obtained Document 2 after conducting additional research in relation to Ms. Suphany following her 22 January 2015 testimony. However, even if these documents were strictly available before the opening of the Case 002/02 trial, the Defence submits that they should be added to the case file now in the interests of justice as they go directly to Ms. Suphany’s testimony and documents already on the case file which relate to Ms. Suphany. Therefore, in this instance, “the interests of justice require the sources to be evaluated together”.

III. RELIEF

9. For the above reasons, the Defence requests the Trial Chamber to admit the Five Documents to the case file.

CO-LAWYERS FOR NUON CHEA



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¹⁰ E307/1, para. 3, and *see*, E190, ‘Decision Concerning New Documents and Other Related Issues’, 30 April 2012, para. 36.

¹¹ 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 June 2013, para. 3.