

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

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**NUON CHEA'S RULE 87(4) REQUEST FOR ADMISSION OF THREE LETTERS, ONE VIDEO AND ONE AUDIO IN RELATION TO THE LATE KING FATHER NORODOM SIHANOUK**

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## I. INTRODUCTION

1. Pursuant to Rule 87(4), the Co-Lawyers for Mr. Nuon Chea (the “Defence”) submit this request for the admission of three letters authored by the late King Father Norodom Sihanouk (the “late King Father”) as well as one video and one audio recording of the late King Father’s speeches into evidence for the trial of Case 002/02.

## II. BACKGROUND

2. On 15 March 2016, during the testimony of “expert witness” Alexander Hinton, the Defence questioned Hinton whether it was his opinion that “the mere word ‘Yuon’ or the use of the word ‘Yuon’ means that you are racist and therefore inclined to, at one point-in-time, commit genocide against a group of Vietnamese”.<sup>1</sup> In his lengthy response, Hinton stated that “the word ‘Yuon’ is deployed in different ways” and “[i]n terms of the use of the word ‘Yuon’ in CPK discourses, [...] there are things like ‘Land-swallowing “Yuon”’. In other words, it’s not as if the word ‘Yuon’ is decontextualized and used alone in a statement to say something to effect [...]”.<sup>2</sup>
3. The Defence, therefore, asked if in Hinton’s opinion the late King Father was racist towards the Vietnamese when he talked about “land swallowing” during his speech before the United Nations Security Council (“UNSC”) in January 1979.<sup>3</sup> Hinton answered, among other things, that “[o]ut of respect for the late king, I don’t necessarily want to address that directly and I’d also think that you would need to introduce the specific context in which it was said, the specific statement.”<sup>4</sup>
4. On 16 March 2016, the Defence read out excerpts from the late King Father’s speech before the UNSC on 11 January 1979<sup>5</sup> where the late King Father, *inter alia*, condemned Vietnam’s aggression of Cambodia, dismissed the assertion that it was only a civil war, and denounced Vietnam’s “old traditions” and “ultimate goal” of “shamelessly swallowing up small neighbours”.<sup>6</sup> The gist of Hinton’s lengthy response to this was that it was not “appropriate to try and draw a parallel between what the late King Father said and what is said in a [DK] broadcast like that” because the said speech

<sup>1</sup> T. 15 Mar 2016 (Alexander Hinton, **E1/402.1**), p. 134, lns. 5-8.

<sup>2</sup> T. 15 Mar 2016 (Alexander Hinton, **E1/402.1**), p. 134, lns. 11-12, and p. 135, lns. 8-12.

<sup>3</sup> T. 15 Mar 2016 (Alexander Hinton, **E1/402.1**), p. 135, lns. 14-19.

<sup>4</sup> T. 15 Mar 2016 (Alexander Hinton, **E1/402.1**), p. 135, lns. 20-23.

<sup>5</sup> **E3/7335**, Minutes of the 2108<sup>th</sup> Meeting of the United Nations Security Council, 11 Jan 1979 (“King Sihanouk’s UNSC Speech”).

<sup>6</sup> T. 16 Mar 2016 (Alexander Hinton, **E1/403.1**), p. 28, ln. 13 – p. 31, ln. 18.

of the late King Father was made “immediately after the fall of the DK regime while he was under the coercive pressure of the Khmer Rouge” and also “King Father does not use the word ‘Yuon’.”<sup>7</sup> When questioned whether it was his opinion that the late King Father was under pressure to say what he said before the UNSC and that those words were put in his mouth, Hinton said that he could not provide a certain answer and that the late King Father’s biographer Julio Jeldres would be the person to whom to ask this question.<sup>8</sup>

### III. APPLICABLE LAW

5. Rule 87(4) enables the Chamber to, at its own initiative or on a party’s request, summon a person as a witness who “it deems conducive to ascertaining the truth”. The rule requires the Chamber to consider the request’s merits in accordance with criteria set out in Rule 87(3). The requesting party, for its part, must satisfy the Chamber that the testimony was unavailable before the opening of the trial.<sup>9</sup> The Chamber has held that where the relevance of a person’s testimony was revealed but by “minimal information” before the opening of the trial while more detailed information was only available after the opening of the trial, the testimony in question will be considered unavailable before the opening of the trial.<sup>10</sup> Where testimony was available before the opening of the trial, the Trial Chamber has held that it may nevertheless be admitted “where the interests of justice so require, in particular where it is exculpatory and requires evaluation in order to avoid a miscarriage of justice”<sup>11</sup> or where it “closely relate[s] to material already before the Chamber and ... the interests of justice require the sources to be evaluated together.”<sup>12</sup> To satisfy the requirements of Rule 87(3), evidence put before the Trial Chamber need only be *prima facie* relevant and reliable.<sup>13</sup>

<sup>7</sup> T. 16 Mar 2016 (Alexander Hinton, **E1/403.1**), p. 31, ln. 20 – p. 34, ln. 5.

<sup>8</sup> T. 16 Mar 2016 (Alexander Hinton, **E1/403.1**), p. 34, ln. 15 – p. 35, ln. 17.

<sup>9</sup> The Chamber specified that the opening of the trial in Case 002 was the initial hearing, which started on 27 June 2011.

<sup>10</sup> T. 7 Dec 2015 (TC Ruling, **E1/363.1**), p. 49, lns. 2-8.

<sup>11</sup> **E307/1**, ‘Decision on Parties’ Joint Request for Clarification Regarding the Application of Rule 87(4) (E307) and the Nuon Chea Defence Notice of Non-Filing of Updated Lists Evidence (E305/3)’, 11 Jun 2014, para. 3; *accord* **E190**, ‘Decision Concerning New Documents and Other Related Issues’, 30 Apr 2012 (“Decision on New Documents”), para. 36.

<sup>12</sup> **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 Jun 2013, para. 3; *accord* **E190**, Decision on New Documents, para. 32.

<sup>13</sup> **E313**, ‘Case 002/01 Judgement’, 7 Aug 2014, para. 26.

#### IV. ARGUMENT

6. Contrary to what was suggested by Hinton, the late King Father's views on the Vietnamese and Vietnam's invasion of Cambodia were very consistent, regardless of the occasion on which they were expressed. To demonstrate this point, the Defence has selected three letters authored by the late King Father in late 1979, and two recordings of speeches by the late King Father presumably given years after 1980.

##### A. Letters to Pham Van Dong Written in October and November 1979 (Attachment 1)

7. The late King Father wrote three letters to Prime Minister of Vietnam Pham Van Dong in October and November 1979 – long after the fall of DK, requesting sincere peace talk between the two leaders. The letters were annexed to *Shadow over Angkor* – the late King Father's memoir edited by Julio Jeldres.<sup>14</sup> Considering the time and circumstances in which the letters were written as well as the fact that the late King Father agreed to them being published in his memoir, the Defence submits that these letters manifest the late King Father's free opinions.

##### i) Letter dated 7 October 1979

8. In his first letter to Pham Van Dong dated 7 October 1979,<sup>15</sup> the late King Father wrote:

[...] the occupation of the entire Khmer territory for which your government has not set any time-limit whatever. In reality, this is colonization, with the confiscation of land in favour of your compatriots, the annexation of the strategically important coastal islands, and the appropriation of the natural resources as well as the artistic and cultural wealth of my country.<sup>16</sup> (emphasis added)

9. The late King Father commented that instead of letting Cambodian people take “their destiny into their own hands”,

Vietnam preferred to install, in Phnom Penh, a small team of Khmer Communists who had changed sides to serve you and were, in an authoritative manner, made into the “Government of People's Kampuchea” by you.

It is with this government that came along as baggage with the train of the Vietnamese army and which is controlled on all levels by Vietnamese civilian and military authorities, without any popular support, that you signed agreements. This is like signing on Vietnam's behalf with your right hand and on Kampuchea's with your left.<sup>17</sup>

<sup>14</sup> J. Jeldres, *Shadow over Angkor: Memoirs of His Majesty King Norodom Sihanouk of Cambodia* (Monument Books, 2005) (“Shadow over Angkor”).

<sup>15</sup> *Shadow over Angkor*, pp. 264-268 (**Attachment 1**, pp. 3-5).

<sup>16</sup> *Shadow over Angkor*, p. 266 (**Attachment 1**, p. 4).

<sup>17</sup> *Shadow over Angkor*, p. 266 (**Attachment 1**, p. 4).

ii) *Letter dated 23 October 1979*

10. Obtaining no response from Pham Van Dong, the late King Father wrote a second letter on 23 October 1979,<sup>18</sup> in which the late King Father stated, *inter alia*, the following:

Mr. Heng Samrin's crew only exists through you and has no opinion other than your own [...]

My compatriots, taken all in all, are definitely hostile to your occupation which is becoming colonization from Month to month. They have understood that in Cambodia Vietnam did not act out of altruistic motives but in the spirit of domination and conquest. [...]

The international opinion, which is now well informed, is rising in anger against the Vietnamese government. It reproaches your government not only to have the intention of annexing Cambodia but also to share responsibility with the Pol Pot people for the genocide of the Khmer people.<sup>19</sup> (emphasis added)

iii) *Letter dated 11 November 1979*

11. Again ignored by Pham Van Dong, the late King Father wrote a third letter on 11 November 1979,<sup>20</sup> in which he stated, *inter alia*,

From being oppressed, it has become the oppressor. From colonized it has become the colonizer. It invades, occupies, it annexes its weak neighbours, Cambodia and Laos. This Vietnam that used to enjoy almost universal sympathy, confronts currently, with an indifference which borders on cynicism, an almost general reprobation. [...]

The Vietnamese government cannot any longer pretend that their only aim was to "punish" the Red Khmers for their provocations against the Vietnamese people and to rid Cambodia of their cruel domination. [...]

The Vietnamese government should think again, as it was the author in the years 1960s, of the affirmation according to which a small people cannot be vanquished by a bigger one if they consent to all sacrifices for their independence and freedom. Because today's Cambodia is, in connection to Vietnam, in a similar situation to that in which Vietnam found itself vis-à-vis the United States of America.<sup>21</sup> (emphasis added)

12. Despite the absence of the precise expression of "land-swallowing", the three letters clearly demonstrate that the late King Father held exactly the same position in this regard as he did before the UNSC in January 1979. Indeed, there is a striking similarity between what the late King Father wrote in the third letter – "It invades, occupies, it annexes its weak neighbours, Cambodia and Laos"<sup>22</sup> – and what he said before the

<sup>18</sup> Shadow over Angkor, pp. 269-271 (**Attachment 1**, pp. 5-6).

<sup>19</sup> Shadow over Angkor, pp. 270-271 (**Attachment 1**, p. 6).

<sup>20</sup> Shadow over Angkor, pp. 272-274 (**Attachment 1**, pp. 7-8).

<sup>21</sup> Shadow over Angkor, pp. 272-273 (**Attachment 1**, p. 7).

<sup>22</sup> Shadow over Angkor, p. 272 (**Attachment 1**, p. 7).

UNSC – “the ‘good’ old traditions of shamelessly swallowing up small neighbours whenever the opportunity presents itself”.<sup>23</sup>

### **B. Video Recording of The Late King Father’s Speech (Attachment 2)**

13. In the short video clip attached to this request, the late King Father is seen addressing certain Cambodian audience about his concern over the threat posed by Vietnam. The precise time of the speech is unclear. However, based on the content, the speech must have been made years after 1980 and before the signing of the 1991 Paris Peace Accords.<sup>24</sup>
14. In the speech recorded on this video clip, the late King Father exclusively used “Yuon” and “contemptible Yuon” to refer to the Vietnamese. Within the 9 minutes and 50 seconds’ recording, the late King Father can be seen and heard using the word “Yuon” for 36 times.
15. The late King Father expressed in this speech his deep concern over the reluctance of Vietnam to withdraw from Cambodia. He drew the attention of the audience to the menacing tendency that the “Yuon” were gradually taking up all kinds of duties in Cambodia and that the Cambodians who lost their spouses in DK period would marry the “Yuon” just like what happened in Laos.<sup>25</sup> The late King Father warned the audience that the greatest danger to Cambodia was not Pol Pot but the “Yuon” who would be living throughout Cambodian territory in about ten years’ time.<sup>26</sup> The late King Father said that although the “Yuon” did not kill any of his children or grandchildren – unlike Pol Pot, he feared the “Yuon” more than he feared Pol Pot.<sup>27</sup>

### **C. Audio Recording of The Late King Father’s Speech (Attachment 3)**

16. In the short audio clip attached to this request, The late King Father is recorded as saying:

<sup>23</sup> E3/7335, King Sihanouk’s UNSC Speech, para. 79, ERN 01001643. Read out by the Defence in court to Hinton, *see*, T. 16 Mar 2016 (Alexander Hinton, E1/403.1), p. 29, lns. 24-25.

<sup>24</sup> In the speech, King Sihanouk discussed the reluctance of Vietnam to withdraw from Cambodia. He also mentioned that some Vietnamese people lived in Cambodia for five or six years and some lived there “since 1980”. *See*, Attachment 2, ‘Sihanouk’s concerns about Vietnamese occupation of Cambodia’, V01219576-V01219576, 04:25-04:29. The video is also available at: [https://youtu.be/p\\_LQemEEyuo](https://youtu.be/p_LQemEEyuo). The transcript in Khmer is available on the Shared Material Drive (ERN 01221752-01221755).

<sup>25</sup> Attachment 2, V01219576-V01219576, 02:40-04:16; 07:56-08:37.

<sup>26</sup> Attachment 2, V01219576-V01219576, 08:50-09:00.

<sup>27</sup> Attachment 2, V01219576-V01219576, 09:10-09:32.

I used to remind His Excellency Hun Sen that I helped Youn until I lost my throne, until the group of Lon Nol, Sirik Matak, Cheng Heng and American capitalist overthrew me because I love my nation. I helped Youn because Youn fight for their national independence to consolidate their country, North Vietnam and South Vietnam. Youn is a crocodile, they are ungrateful, blasphemous and they mock me every day.<sup>28</sup>

17. The precise time of this speech is unclear. However, based on the content, the speech must have been made after the fall of DK and after Hun Sen had become a leading figure in Cambodia.

#### **D. Relevance and Reliability**

18. The three letters as well as the video and audio recordings are *prima facie* reliable and relevant. They are relevant not only to the credibility of “expert witness” Mr. Hinton’s opinion evidence, but also to the charges within the scope of Case 002/02, in particular those concerning the treatment of the Vietnamese. With the assistance of the proposed evidence, the Chamber would be in a position to assess by itself whether parallels could be drawn between the late King Father’s speeches and the “CPK discourses” in terms of their positions towards Vietnam and the Vietnamese as well as the use of the word “Youn”, and whether Hinton’s assertion – that despite the various implications the word “Youn” could have when used by anyone else, “in the context of DK it was an incitement to genocide”<sup>29</sup> – is of any value at all. In addition, the proposed evidence would, *inter alia*, provide the Chamber with the relevant historical and political context in which the intention behind certain expressions at that time is to be interpreted. This is relevant to the charges within the scope of Case 002/02 regardless of Hinton’s evidence.
19. While the proposed evidence is technically available before the beginning of the trial, the Defence submits that the instant request is timely because it was triggered by Hinton’s testimony in relation to the late King Father’s UNSC speech, which was unforeseeable for the Defence before his appearance.
20. In the case that the Chamber is not satisfied with the reliability of the video and audio recordings, the Defence moves the Chamber to exercise its authority under Rule 93 to conduct additional investigations into the background information and sources of the

<sup>28</sup> **Attachment 3**, ‘Cambodia news today – Sihanouk talk about Vietnam to Cambodia – Khmer hot news today’, V01219575-V01219575, unofficial translation by the Defence. The audio is also available at: <https://youtu.be/1kYeSXMQdXk>. The transcript in Khmer is available on the Shared Material Drive (ERN 01221751-01221751).

<sup>29</sup> T. 17 Mar 2016 (Alexander Hinton, **E1/404.1**), p. 83, lns. 7-10.

recordings before making decisions on whether to admit them into evidence. Such investigations, the Defence submits, are necessary for the ascertaining of the truth and are required by the interest of justice.

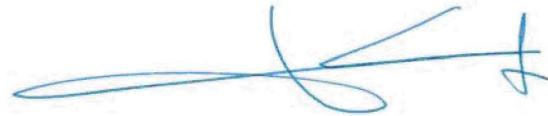
**V. RELIEF**

21. For the above reasons, the Defence requests that the Trial Chamber admit into evidence the three letters authored by the late King Father (Attachment 1), as well as the video and the audio recordings (Attachments 2 and 3) of the late King Father's speeches.

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