

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

**FILING DETAILS**

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**NUON CHEA'S REPLY TO CO-PROSECUTORS' RESPONSE TO NUON CHEA'S  
RULE 87 (4) REQUEST TO ADMIT EVIDENCE IN RELATION TO THE LATE KING  
FATHER NORODOM SIHANOUK**

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## I. INTRODUCTION

1. Pursuant to Internal Rule 92 and Article 8.4 of the Practice Direction on Filing of Documents Before the ECCC, the Co-Lawyers for Mr. Nuon Chea (the “Defence”) submit the instant reply to the Co-Prosecutors’ response to Mr. Nuon Chea’s Rule 87 (4) request to admit evidence in relation to the late King Father Norodom Sihanouk (“late King Father”).

## II. BACKGROUND

2. On 8 April 2016, the Defence filed a Rule 87 (4) request seeking the admission of three letters as well as one video and one audio document in relation to the late King Father (the “Request”).<sup>1</sup> On 11 April 2016, the Defence circulated a courtesy copy of the Request as well as its attachments to the Trial Chamber (the “Chamber”) and the parties before the Request was officially notified through the electronic filing system to the parties on 12 April 2016.<sup>2</sup>
3. On 20 April 2016, Mr. Khieu Samphan filed his support to the Request (the “Support”), without adding substantial or new arguments.<sup>3</sup>
4. On 22 April 2016, which was the deadline for the parties to file responses to the Request, the Co-Prosecutors sought permission from the Chamber to respond to the Request and the Support “in one combined response” by 26 April 2016.<sup>4</sup> Despite the Defence’s objection to this request, which in effect amounts to an unjustified request by the Co-Prosecutors for a four day extension of time to file their response,<sup>5</sup> the Chamber granted the Co-Prosecutors’ request “[o]n an exceptional basis”.<sup>6</sup>

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<sup>1</sup> **E396**, ‘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’, 8 Apr 2016 (the “Request”).

<sup>2</sup> Email from the Defence Legal Consultant to the Trial Chamber Senior Legal Officer, 11 Apr 2016 (Attachment 1).

<sup>3</sup> **E396/1**, ‘Soutien de M. KHIEU Samphan à la requête E396 « 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 »’, 20 Apr 2016.

<sup>4</sup> Email from the Deputy Co-Prosecutor to the Trial Chamber Senior Legal Officer, 22 Apr 2016 (Attachment 2).

<sup>5</sup> Email from the Defence Legal Consultant to the Trial Chamber Senior Legal Officer, 22 Apr 2016 (Attachment 3).

<sup>6</sup> Email from the Trial Chamber Senior Legal Officer to the Parties, 22 Apr 2016 (Attachment 4).

5. On 26 April 2016, the Co-Prosecutors filed their response to the Request and the Support (the “Response”).<sup>7</sup> The Response was notified to the parties through the electronic filing system on 28 April 2016.

### III. REPLY

#### A. Alleged Coercion and the Relevance of the Proposed Evidence

6. The Co-Prosecutors argue that the evidence proposed by the Defence in the Request (“Proposed Evidence”) does not undermine the credibility of Alexander Hinton’s testimony for two reasons. First, Mr. Hinton did not claim that the late King Father’s statement to the United Nations Security Council (the “UNSC”) in January 1979 was *definitely* made under coercion. Second, Mr. Hinton “strongly contested” the Defence’s suggestion that the 1979 UNSC statement is comparable to the statements made by the CPK.<sup>8</sup>
7. The first point raised by the Co-Prosecutors is a misinterpretation of the Defence’s submissions. The Defence fully understands that Mr. Hinton is not in a position to give *factual* evidence as to whether the 1979 UNSC statement was made under coercion. Neither is the Defence suggesting that Mr. Hinton lacks credibility because he gave false testimony as to this fact. What the Defence argues is that some of Mr. Hinton’s “*opinion* evidence”<sup>9</sup> is not credible because it was partly based on a mistake of fact. Specifically, Mr. Hinton’s conclusion that the 1979 UNSC statement is not comparable to the CPK statements was mostly based on his belief that the late King Father’s 1979 UNSC statement was made under coercion.<sup>10</sup> Therefore, evidence which suggests that the 1979 UNSC statement truthfully reflected the late King Father’s genuine opinion would undermine the basis of Mr. Hinton’s aforementioned conclusion, hence casting doubt on the credibility of his opinion evidence in this regard.
8. The second point raised by the Co-Prosecutors is beyond the Defence’s comprehension. The Co-Prosecutors seem to suggest that as long as the witness “strongly contested” the Defence’s case, the evidence adduced by the Defence to support its case – hence

<sup>7</sup> E396/2, ‘Co-Prosecutors’ Response to Nuon Chea’s and Khieu Samphan’s Rule 87(4) Request to Admit Evidence in Relation to the Late King Father Norodom Sihanouk’, 26 Apr 2016 (the “Response”).

<sup>8</sup> E396/2, Response, para. 5.

<sup>9</sup> E396, Request, para. 18 (emphasis added).

<sup>10</sup> See, e.g., T. 16 Mar 2016 (Alexander Hinton, E1/403.1), p. 33, lns. 7-18: Hinton: “If you take the context of a speech like that, the DK – the speech from DK that I just read [...] and you compare it to the words of the late King Father that were given immediately after the fall of the DK regime while he was *under the coercive pressure* of the Khmer Rouge at the time, it seems to me vastly different” (emphasis added).

challenging that very witness's credibility – will as a result be of “no probative value”.<sup>11</sup> This is against reason, against legal principles and against the rights of the accused. As the Defence made clear in the Request, it is ultimately for the Chamber to decide at the end of the trial, with the assistance of all the evidence available including the new evidence proposed by the Defence, whether a parallel could be drawn between the late King Father's statements and certain statements of the CPK.<sup>12</sup> It is premature to take sides between the Prosecution case and the Defence case at the stage of admitting evidence.

9. Moreover, evidence which is related to the alleged coercion is admissible irrespective of its relevance to the credibility of Mr. Hinton's evidence. The Chamber has held that it may admit evidence which “closely relate[s] to material already before the Chamber and ... the interests of justice require the sources to be evaluated together.”<sup>13</sup> The evidence proposed by the Defence is closely related to the reliability of the 1979 UNSC statement which is already before the Chamber and which the Defence seeks to rely on. The Defence submits that the proposed evidence should be admitted also on this basis.

#### **B. The Context of the Language and the Relevance of the Proposed Evidence**

10. Citing Mr. Hinton's testimony that the context of the language is important in interpreting its implication, the Co-Prosecutors assert that the proposed evidence has no probative value in determining whether the accused used the word “Yuon” to incite racial hatred and violence against the Vietnamese because of the “different context, purpose and time in which the late King Father's speeches were given”.<sup>14</sup>
11. The Defence does not contest that the implication of the use of language must be interpreted in its context. However, it does contest strongly the way in which Mr. Hinton interprets the context and accordingly his conclusions based on such interpretation. It is ironic for Mr. Hinton to claim on the one hand that the use of language must be interpreted in its context, while on the other hand making a sweeping conclusion that any use of the word “Yuon” “in the context of DK was an incitement to

<sup>11</sup> E396/2, Response, paras. 5-6.

<sup>12</sup> E396, Request, para. 18.

<sup>13</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 Concerning New Documents and Other Related Issues’, 30 Apr 2012, para. 32.

<sup>14</sup> E396/2, Response, paras. 7-8.

genocide”.<sup>15</sup> Treating the DK as a “context” without looking into the specific circumstances (micro-context) of each and every statement made by DK leaders is of no difference in terms of absurdity from asserting that any member of a racial group is as such inferior to that of another group. The Defence seeks to contest Mr. Hinton’s method and conclusion by, *inter alia*, proposing the Chamber to admit and consider speeches of the late King Father which the Defence submits are comparable to certain statements of the CPK leaders. The similarity lies in, *inter alia*, that both the late King Father and the CPK leaders were concerned over Vietnam’s ambition to swallow up Cambodia and both warned the Cambodian people about the threat and danger posed by the “Yuon”.

12. Whether or not a parallel could be drawn – which is apparently a live issue given that the Co-Prosecutors and the Defence strongly dispute it – is an issue for the Chamber to decide at the end of the trial with the benefit of all evidence available. It is premature and legally erroneous to ask the Chamber to make its decision on this issue at the stage of admitting evidence, let alone using such a decision to reject evidence.
13. Therefore, the Co-Prosecutors’ argument that the proposed evidence is not admissible because those speeches of the late King Father were made in different context and with different purpose – which the Defence disagrees – is of no merit.

### **C. Relevance of the Evidence of the Act of a Third Party**

14. The Co-Prosecutors contend that whether the late King Father’s speeches employed racist language is irrelevant to the determination of the charges against the accused.<sup>16</sup>
15. It is extremely ironic for the Co-Prosecutors to contend that such evidence is irrelevant when it is the Co-Prosecutors who introduced Mr. Hinton’s opinion evidence which to a large extent is based on the alleged parallel he draws between what happened in DK and the genocides that took place in Nazi Germany and Rwanda, as well as between the languages used by DK and that used by Nazi Germany and Rwanda in their genocidal propaganda.<sup>17</sup>

<sup>15</sup> T. 17 Mar 2016 (Alexander Hinton, **E1/404.1**), p. 83, lns. 7-10 (emphasis added).

<sup>16</sup> **E396/2**, Response, para. 8.

<sup>17</sup> See, e.g., T. 14 Mar 2016 (Alexander Hinton, **E1/401.1**), p. 40, ln. 2; p. 63, lns. 3-20; and p. 92, ln. 21 – p. 93, ln. 6; T. 16 Mar 2016 (Alexander Hinton, **E1/403.1**), p. 112, ln. 18 – p. 113, ln. 13.

16. Evidence of the act of a third party is generally irrelevant in an ordinary case. However, when an expert witness uses the method of comparison to arrive at his conclusions, the accused is entitled to draw similar comparisons in order to test the credibility of the methodology and conclusions of the said expert, which is exactly what the Defence seeks to do.

#### IV. RELIEF

17. For the above reasons, the Defence requests that the Trial Chamber dismiss the arguments made by the Co-Prosecutors in the Response and admit into evidence the documents proposed by the Defence in its Rule 87 (4) Request.

CO-LAWYERS FOR NUON CHEA



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