

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

**FILING DETAILS**

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**NUON CHEA'S RULE 87(4) REQUEST FOR ADMISSION INTO EVIDENCE OF A  
DOCUMENT RELEVANT TO ALEXANDER LABAN HINTON'S TESTIMONY  
(2-TCE-88)**

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## I. INTRODUCTION

1. Pursuant to Rule 87(4) of the ECCC Internal Rules, the Co-Lawyers for Mr. Nuon Chea (the “Defence”) submit this request to have admitted into evidence a document relating to the testimony of Alexander Laban HINTON (2-TCE-88) (“Mr. Hinton”) and to his evidence as a whole. The requested document relates to Mr. Hinton’s impartiality, as it demonstrates he had already pre-judged the guilt of Mr. Nuon Chea before testifying before the Court. Its admission into evidence would permit the Defence to challenge Mr. Hinton’s credibility, and would therefore be conducive to ascertaining the truth.

## II. APPLICABLE LAW

2. All evidence is admissible, unless otherwise provided in the Internal Rules.<sup>1</sup> The Chamber may reject a request for evidence where it finds that the evidence is irrelevant or repetitious; impossible to obtain within a reasonable time; unsuitable to prove the facts it purports to prove; not allowed under the law; or if it is intended to prolong proceedings or is frivolous.<sup>2</sup> To satisfy the requirements of Rule 87(3), the proposed evidence needs only be *prima facie* relevant and reliable.<sup>3</sup> Pursuant to Rule 87(4), at any stage during the trial a party may request the Chamber to “admit any new evidence which it deems conducive to ascertaining the truth”, subject to the general requirements of Rule 87(3).<sup>4</sup> While Rule 87(4) states that the requested evidence must not have been available before the opening of the trial, the Trial Chamber has interpreted it as also encompassing evidence which was available before the opening of the trial but which could not have been discovered earlier with the exercise of due diligence.<sup>5</sup>
3. In certain situations, evidence which did not “strictly speaking” satisfy this criterion has been admitted: where the evidence was closely related to material already before the Chamber and where the interests of justice required the sources to be evaluated

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<sup>1</sup> Rule 87(1) of the Internal Rules.

<sup>2</sup> Rule 87(3) of the Internal Rules.

<sup>3</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. 26 (“Decision on Rule 87(4) Requests”).

<sup>4</sup> A year into the Case 002/02 trial, the TC held that the parties must submit Rule 87(4) Requests for documents which were on the case file but which had not been included in the list of documents admitted by the Trial Chamber, even if those had been disclosed by the Prosecution subsequently to the initial documents filings, *see* Draft Transcript of Proceedings, 26 Jan 2016, p. 24.

<sup>5</sup> **E313**, ‘Case 002/01 Judgement’, 7 Aug 2014, para. 25; **E289/2**, Decision on Rule 87(4) Requests, para. 3.

together; where the proposed evidence was exculpatory and required evaluation to avoid a miscarriage of justice; or where the other parties did not object to the evidence.<sup>6</sup>

### III. ARGUMENTS

#### A. Overview

4. The requested document is a press article titled *Rutgers Professor Testifies at UN-backed trial of Senior Leaders of the Khmer Rouge*, published on 5 May 2016 by Lawrence Lerner in Rutgers Today (the “Document”). It is contained in **Attachment 1 Public**. The Document summarises Mr. Hinton’s experience of testifying at the ECCC, and features statements made by him following his testimony.
5. Importantly, Mr. Hinton is presented as having made several statements which show that he clearly believes that Mr. Nuon Chea is guilty of the crimes charged. When describing Mr. Nuon Chea, Mr. Hinton is reported as stating that:

[...] here was **one of the architects of the genocide, a legendary mass murderer**.<sup>7</sup>

6. Mr. Hinton further allegedly stated that:

I think [Nuon Chea] still believes in their movement and **what he did**.<sup>8</sup>

7. Finally, Mr. Hinton reportedly concluded that:

It’s important to remember [that Nuon Chea is a human being] as we consider this tragedy and **the crimes he and his cohorts committed**.<sup>9</sup>

8. Through these statements Mr. Hinton is thereby providing clear evidence that he had already prejudged key elements of the case – namely the existence of genocide and other crimes, and Mr. Nuon Chea’s role in their alleged commission. These statements demonstrate Mr. Hinton was biased and did not provide neutral and objective evidence during his testimony at trial – as required from an expert witness – thereby limiting the weight, if any, to be given to his evidence.

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<sup>6</sup> E289/2, Decision on Rule 87(4) Requests, para. 3.

<sup>7</sup> Emphasis added.

<sup>8</sup> Emphasis added.

<sup>9</sup> Emphasis added.

**B. The Document Was Not Available Prior to the Start of the Trial and Should be Admitted Into Evidence in the Interests of Justice**

9. The Trial Chamber held that the trial in Case 002/02 commenced in June 2011.<sup>10</sup> The Document was created after 2011 and was therefore not available prior to the start of the trial. Further, it was published on 5 May 2016, subsequent to Mr. Hinton's testimony, and hence was not included in the Defence's previous motion of 3 March 2016 for the admission into evidence of documents in relation to Mr. Hinton to be used during the Defence's cross-examination.<sup>11</sup>
10. The Document is a publication reporting what Mr. Hinton allegedly stated and is related to his opinions and stance in relation not only to the expert testimony he gave at trial but also his evidence as a whole. It therefore goes to the probative value of his statements. Its admission to the case file will therefore be conducive to the ascertainment of the truth.

**C. The Document is Relevant to Case 002/02**

11. Mr. Hinton was appointed as an expert witness by the Trial Chamber with a duty to testify on all matters within his knowledge and expertise with the utmost neutrality and objectivity.<sup>12</sup> As an expert witness, Mr. Hinton could not express opinions on ultimate issues of fact,<sup>13</sup> a role which is reserved for the Trial Chamber.<sup>14</sup>
12. However as stated above, the Document demonstrates that Mr. Hinton had already reached his conclusion on the fundamental issues of the case – namely that there was a genocide in Cambodia and that Mr. Nuon Chea was its “architect”. Importantly, it confirms the bias of Mr. Hinton which was already evident from his testimony at trial when he made multiple statements pertaining to the existence of genocide in Cambodia during the Democratic Kampuchea regime.<sup>15</sup>

<sup>10</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 of Evidence (E305/3)’, 11 Jun 2014, para. 2; **E307/1/2**, ‘Decision on Joint Request for *de novo* Ruling on the Application of Internal Rule 87(4)’, 21 Oct 2014, para. 6.

<sup>11</sup> **E387**, ‘Nuon Chea’s Rule 87(4) Request for Admission into Evidence of 17 Documents Relevant to Alexander Laban Hinton’s Testimony (2-TCE-88)’, 3 Mar 2016.

<sup>12</sup> **E215**, ‘Decision on Assignment of Experts’, 5 Jul 2012 (“Experts Decision”), para. 15.

<sup>13</sup> **E215**, Experts Decision, para. 16.

<sup>14</sup> **E215**, Experts Decision, para. 16.

<sup>15</sup> **E1/401.1**, page 27, 10.07.40; **E1/402.1**, page 9, 09.18.55; page 50, 11.00.45; page 122, 15.37.47; page 129, 15.50.04; **E1/403.1**, page 61, 11.15.40; page 66, 11.23.06; page 95, 14.12.24; page 114, 14.45.29; page 127, 15.30.50; **E1/404.1**, page 71, 11.41.08, page 82, 12.08.52.

13. Further, the statements in the Document make it clear that Mr. Hinton is and likely has always been convinced of Mr. Nuon Chea's guilt. This precludes him from being a neutral and objective expert witness and thereby seriously affects his credibility. Accordingly, it limits the weight, if any, to be given to his evidence as whole.

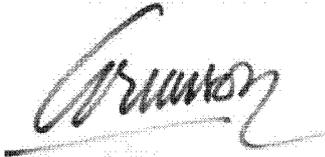
**D. The Document is Reliable and Authentic**

14. The Document bears *prima facie* indicia of reliability. It was published by Rutgers Today, an online media outlet which is the official source of news and information relating to Rutgers-Newark University (USA), where Mr. Hinton is a professor.

**IV. RELIEF**

15. For the reasons stated above, the Defence requests the Trial Chamber to admit the Document into evidence in Case 002/02 pursuant to Rule 87(4) of the Internal Rules.

CO-LAWYERS FOR NUON CHEA



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