

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

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**NUON CHEA'S RULE 87(4) REQUEST FOR ADMISSION INTO EVIDENCE OF A
DOCUMENT RELEVANT TO HENRI LOCARD'S TESTIMONY (2-TCE-90)**

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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”) hereby submit this request to have admitted into evidence a document relating to the evidence of Henri LOCARD (2-TCE-90) (“Mr. Locard”). The requested document relates to Mr. Locard’s impartiality, and illustrates his deep contempt towards the Accused and the institution of the Defence in general. It confirms that Mr. Locard had already pre-judged the guilt of Mr. Nuon Chea¹ and supports the Defence’s position that his testimony was not impartial or neutral and therefore fails to meet the criteria required to be considered expert evidence. The admission into evidence of the document goes to the weight of Mr. Locard’s evidence, and would therefore be conducive to ascertaining the truth.

II. APPLICABLE LAW

2. All evidence is admissible, unless otherwise provided in the Internal Rules.² 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.³ To satisfy the requirements of Rule 87(3), the proposed evidence needs only be *prima facie* relevant and reliable.⁴ 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).⁵ 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.⁶

¹ See also **E415/1**, ‘Nuon Chea’s Rule 87 (4) Request and Rule 93 Request in Relation to Henri Locard (2-TCE-90’, 13 July 2016.

² Rule 87(1) of the Internal Rules.

³ Rule 87(3) of the Internal Rules.

⁴ **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”).

⁵ 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.

⁶ **E313**, ‘Case 002/01 Judgement’, 7 Aug 2014, para. 25; **E289/2**, Decision on Rule 87(4) Requests, para. 3.

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 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.⁷

III. ARGUMENTS

A. Overview

4. The requested document is a press article titled “*French Historian Accuses Tribunal Lawyers of ‘Cold Torture’*”, published on 3 August 2016 by George Wright in The Cambodian Daily (the “Document”). It is contained in *Public Attachment 1*.⁸ The Document summarises Mr. Locard’s experience of testifying at the ECCC, and features statements made by him during and following his testimony.
5. Importantly, Mr. Locard is presented as having made several statements which show that he clearly despises the Defence and the Accused. When asked questions about his methodology, Mr. Locard accused the Defence lawyers of subjecting him to ‘*cold torture*’⁹ during his time at the stand, and compared his treatment at the tribunal to that of Cambodians who returned from abroad during the Democratic Kampuchea regime. He then made the following declaration to the press:

“It [the tribunal] should have been no more than three years, because of these completely **perverse people who are what we call deniers, negationists** - they deny reality”.¹⁰

6. Mr. Locard further reportedly accused the Defence lawyers of “ridiculing” Cambodian witnesses and civil parties and branded their behaviour as “criminal”:

“These people are **criminal** because they are making the tribunal waste hours and weeks, days and months”.¹¹

⁷ E289/2, Decision on Rule 87(4) Requests, para. 3.

⁸ The Defence informs the Trial Chamber and the Parties that it has requested the French and Khmer translations of the document on 3 August 2016.

⁹ *Emphasis added.*

¹⁰ *Emphasis added.*

¹¹ *Emphasis added.*

B. The Document Was Not Available Prior to the Start of the Trial

7. The Trial Chamber held that the trial in Case 002/02 commenced in June 2011.¹² The Document was published on 3 August 2016, the day after Mr. Locard's testimony ended, and was therefore not available prior to the start of the trial.

C. The Document is Relevant to Case 002/02

8. Through these statements attacking the Defence lawyers, who are representing the voice of the Accused, Mr. Locard provides clear evidence of his bias and prejudice against Mr. Nuon Chea and Mr. Khieu Samphân. As an expert witness, Mr. Locard was bound to testify with the utmost neutrality and objectivity.¹³ The proposed document – particularly when taken together with Mr. Locard's comments and attitude in the Courtroom¹⁴ – demonstrate that he was unable to provide neutral and objective evidence during his testimony at trial, thereby limiting the weight, if any, to be given to his evidence on the security centres and internal purges segment.

D. The Document is Reliable and Authentic

9. The Document bears *prima facie* indicia of reliability, as it was published by The Cambodian Daily, a serious and reliable Cambodian newspaper.

¹² 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.

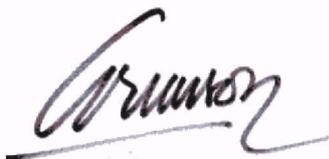
¹³ E215, 'Decision on Assignment of Experts', 5 Jul 2012, para. 16. ("Experts Decision")

¹⁴ See e.g. Draft Transcripts 1 Aug 2016 (Henri LOCARD), p. 22, at 09.52.27: "The question is irrelevant; therefore, I will not answer it."; A few minutes later (at 09.51.29), Mr. Locard stated: "I think you make this Court for the people who are listening to me behind me waste their time by useless totally -- asking me totally useless questions. You said earlier that your time is limited, so if your time is limited, please ask me relevant questions"; Draft Transcripts 29 Jul 2016 (Henri LOCARD), p.120, at 15.50.15: "They [the Accused] were schizophrenic"; Draft Transcripts 2 Aug 2016 (Henri LOCARD), p. 4 at 09.05.10 : "I didn't sleep very well this night, so it might be difficult for me to answer you because yesterday, you practised cold torture on me, and now I know what the cold torture means.", [09.06.28] "So if you want to continue with cold torture, after three days [...]"

IV. RELIEF

10. 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



SON Arun



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