

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

**FILING DETAILS**

**Case No:** 002/19-09-2007-ECCC/TC  
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**CLASSIFICATION**

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**NUON CHEA'S RULE 87(4) REQUEST TO ADMIT ONE DOCUMENT IN RELATION  
TO WITNESS 2-TCW-850**

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## I. INTRODUCTION

1. Pursuant to Internal Rules 87(3) and 87(4) as well as the recent practice of the Trial Chamber in Case 002/02,<sup>1</sup> the Co-Lawyers for Mr. Nuon Chea (the “Defence”) submit the instant request before the Trial Chamber, seeking the admission of one document which they may use to question the upcoming witness 2-TCW-850.

## II. BACKGROUND

2. Based on the Trial Chamber’s latest notification of the trial schedule, witness 2-TCW-850 is expected to testify on 22 August 2016.<sup>2</sup>

## III. APPLICABLE LAW

3. According to Rule 87(1), all evidence is admissible, unless otherwise provided in the Internal Rules. Pursuant to Rule 87(3), 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. To satisfy the requirements of Rule 87(3), the proposed evidence needs only to be *prima facie* relevant and reliable.<sup>3</sup>
4. Pursuant to Rule 87(4), a party may, at any stage during the trial, request the Chamber to “summon or hear any person as a witness or 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,<sup>4</sup> the Trial Chamber has interpreted this provision 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 can be

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<sup>1</sup> A year into the trial of Case 002/02, the Trial Chamber held that the parties must make formal Rule 87(4) requests for documents not yet in evidence *before* being able to use them to question a witness, even if such documents are available on the case file and have been notified to the Chamber and the other parties in advance of the appearance of the said witness. *See*, T. 26 Jan 2016 (TC Ruling, **E1/382.1**), p. 24, lns. 8-17.

<sup>2</sup> Email from Trial Chamber Senior Legal Officer to the Parties, 17 Aug 2016.

<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, paras. 3, 6 (“Decision on Rule 87(4) Requests”).

<sup>4</sup> The Chamber specified that the opening of the trial in Case 002 was the initial hearing, which started on 27 June 2011. **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 (“Decision on Joint Request for Clarification”), 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.

admitted.<sup>5</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>6</sup>

6. Where evidence was available before the opening of the trial, the Trial Chamber has held that it may nevertheless be admitted where the interest of justice so require, in particular where it is exculpatory and requires evaluation in order to avoid a miscarriage of justice,<sup>7</sup> where it closely relates to material already before the Chamber and the interest of justice requires that the sources be evaluated together,<sup>8</sup> or where the other parties do not object to the evidence.<sup>9</sup>
7. On 2 June 2016, the Trial Chamber clarified to the Parties that:

[Parties's formal Rule 87(4) requests] shall identify the specific documents and the fact that their admission is sought as prior statements of an individual testifying in Case 002/02. No further reasoning is required.<sup>10</sup>

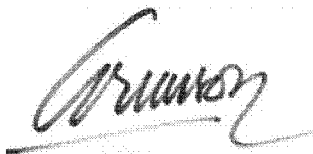
#### IV. ARGUMENT

8. The document in question, **E319/33.3.9**, is a written record of interview of witness 2-TCW-850 who is scheduled to testify in Case 002/02 on 22 August 2016.

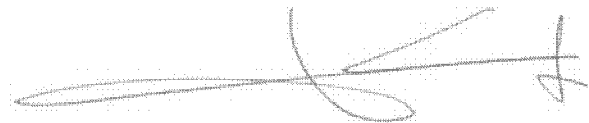
#### V. RELIEF

9. Based on the foregoing, the Defence requests that the Trial Chamber admit document **E319/33.3.9** into evidence in Case 002/02.

CO-LAWYERS FOR NUON CHEA



SON Arun



Victor KOPPE

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

<sup>6</sup> T. 7 Dec 2015 (TC Ruling, **E1/363.1**), p. 49, lns. 2-8.

<sup>7</sup> **E307/1**, Decision on Joint Request for Clarification, para. 3; *accord* **E190**, 'Decision Concerning New Documents and Other Related Issues', 30 Apr 2012 ("Decision on New Documents"), para. 36; **E289/2**, Decision on Rule 87(4) Requests, para. 3.

<sup>8</sup> **E289/2**, Decision on Rule 87(4) Requests, para. 3; *accord* **E190**, Decision on New Documents, para. 32.

<sup>9</sup> **E289/2**, Decision on Rule 87(4) Requests, para. 3.

<sup>10</sup> Email from Trial Chamber Senior Legal Officer to the Parties, 2 Jun 2016.