

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

**FILING DETAILS**

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**NUON CHEA'S RULE 87(4) REQUEST TO ADMIT FOUR DOCUMENTS IN  
RELATION TO CIVIL PARTIES 2-TCCP-274 AND 2-TCCP-28**

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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 present request before the Trial Chamber, seeking the admission of four documents which they may use to question the upcoming witness 2-TCCP-274 and 2-TCCP-28.

## II. APPLICABLE LAW

2. 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>2</sup>

3. 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).

4. While Rule 87(4) states that the requested evidence must not have been available before the opening of the trial,<sup>3</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 admitted.<sup>4</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

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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> **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>3</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.

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

only available after the opening of the trial, the testimony in question will be considered unavailable before the opening of the trial.<sup>5</sup>

5. 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>6</sup> where it closely relates to material already before the Chamber and the interest of justice requires that the sources be evaluated together,<sup>7</sup> or where the other parties do not object to the evidence.<sup>8</sup>

6. On 2 June 2016, the Trial Chamber clarified 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>9</sup>

### III. ARGUMENT

7. The Defence seeks the admission into evidence of four documents, two related to the civil party application of 2-TCCP-274 and two related to that of 2-TCCP-28:

- i. A supplementary information form from 2-TCCP-274, dated 29 June 2013, contained at pages 01027323-01027324 (KH) 01143513 (EN) of E319/45.4.11;<sup>10</sup>
- ii. A scan of the ID card of 2-TCCP-274, which is different from that contained in her civil party application contained in E3/6011, and which can be found at page 01027325 (KH), 01143514 (EN) of E319/45.4.11;<sup>11</sup>
- iii. A supplementary information form from 2-TCCP-28, dated 29 June 2013 and contained at pages 01049384-9685 (KH) and 01139641 (EN) of E319/45.4.8;<sup>12</sup>
- iv. A scan of the ID card of 2-TCCP-28, contained at page 01049386 (KH), 01139648 (EN) of E319/45.4.8.<sup>13</sup>

<sup>5</sup> T. 7 Dec 2015 (TC Ruling, **E1/363.1**), p. 49, lns. 2-8.

<sup>6</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>7</sup> **E289/2**, Decision on Rule 87(4) Requests, para. 3; *accord* **E190**, Decision on New Documents, para. 32.

<sup>8</sup> **E289/2**, Decision on Rule 87(4) Requests, para. 3.

<sup>9</sup> Email from Trial Chamber Senior Legal Officer to the Parties, 2 Jun 2016.

<sup>10</sup> See Confidential Attachment 1. The French translation has been requested on 19 August 2016.

<sup>11</sup> See Confidential Attachment 2. The French translation has been requested on 19 August 2016.

<sup>12</sup> See Confidential Attachment 3. The French translation has been requested on 19 August 2016.



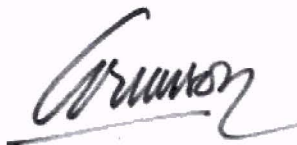
8. Document (i) was authored and signed by 2-TCCP-274 and document (ii) by 2-TCCP-28. The Defence submits that they amount to the equivalent of a prior witness statement, and are clearly relevant in assessing their credibility.<sup>14</sup> It is therefore submitted that their admission into evidence is necessary to ascertain the truth.

9. Further, all documents are closely related to material already on the case file, namely the civil party applications of 2-TCCP-274 and 2-TCCP-28, contained in respectively E3/6011 and E3/5010.

#### IV. RELIEF

10. Based on the foregoing, the Defence requests that the Trial Chamber admit the four above mentioned documents into evidence in Case 002/02.

CO-LAWYERS FOR NUON CHEA



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<sup>13</sup> See Confidential Attachment 4. The French translation has been requested on 19 August 2016.

<sup>14</sup> E319/36/2, 'Decision on International Co-Prosecutor's Request to Admit Written Records of Interview Pursuant to Rules 87(3) & (4) and to Call Four Additional Witnesses for Upcoming Case 002/02 Segments', 25 May 2016, para. 15.