



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

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ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

TRIAL CHAMBER

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TO: All Parties, Case 002

Date: 14 September 2016

FROM: YA Sokhan, Presiding Judge of the Trial Chamber



CC: All Trial Chamber Judges; Trial Chamber Senior Legal Officer

SUBJECT: Decision on KHIEU Samphan's Rule 87(4) Request to Admit into Evidence Documents Related to the Testimony of Expert Henri LOCARD (2-TCE-90)

1. The Trial Chamber is seised of an Internal Rule 87(4) request, filed on 23 August 2016 by the KHIEU Samphan Defence, to admit into evidence two documents relating to the testimony of expert Henri LOCARD (2-TCE-90) (“Request”, E415/4, paras 6, 37). The Chamber notes that one of the documents has already been admitted under document number E3/10649 and the matter is therefore moot (*see* E415/3/2). The second document is a press article entitled “ECCC Defense Support Section Rejects Claim That Lawyers Are ‘Criminal’”, published by *The Cambodian Daily* (“Article”, E415/4.2). The KHIEU Samphan Defence submits that the Request is timely as the Article was published on 6 August 2016, subsequent to the opening of trial proceedings (E415/4, para. 7). It further submits that the Article reports statements made by Mr. LOCARD (2-TCE-90) that are relevant to his experience testifying before the ECCC as an expert (E415/4, para. 12). The KHIEU Samphan Defence then relates the proposed documents to Mr. LOCARD (2-TCE-90)’s testimony in claiming he is profoundly biased against the Accused (E415/4, paras 13-36). None of the other Parties filed a response.

2. According to Internal Rule 87(4), the Trial Chamber may admit, at any stage of the trial, all evidence that it deems conducive to ascertaining the truth, where that evidence also satisfies the *prima facie* standards of relevance, reliability and authenticity required under Rule 87(3). The Chamber determines the merit of a request to admit new evidence in accordance with the criteria in Rule 87(3). Rule 87(4) also requires that any party seeking the admission of new evidence shall do so by a reasoned submission. The requesting party must satisfy the Trial Chamber that the proposed evidence was either

unavailable prior to the opening of the trial or could not have been discovered with the exercise of reasonable diligence. However, in certain cases, the Chamber has admitted evidence which does not strictly speaking satisfy this criterion, including in instances where evidence relates closely to the material already before the Chamber and where the interests of justice require the sources to be evaluated together, and where the proposed documents are exculpatory and require evaluation to avoid a miscarriage of justice (E276/2, para. 2 referring to E190 and E172/24/5/1; E260, para.5).

3. The Chamber finds that the Request is timely as it was filed shortly after the publication of the Article which followed Mr. LOCARD (2-TCE-90)'s testimony. The Article published by *The Cambodia Daily* also satisfies the *prima facie* standards of reliability and authenticity required under Rule 87(3). Moreover, the Chamber finds that the Article is relevant as it provides information related to Mr. LOCARD (2-TCE-90)'s testimony before the ECCC and as it may have an impact on the discussion of the probative value of this testimony which will take place at a later stage. As for the KHIEU Samphan Defence's submissions that the Article illustrates Mr. LOCARD (2-TCE-90)'s lack of objectivity, the Chamber recalls that challenges regarding bias of an expert relate to the evaluation of evidence and not to its admissibility (E215, para. 15).

4. The Chamber finds that the requirements of Internal Rule 87(4) have been satisfied for the Article and admits it into evidence, assigning it document number E3/10653. The Chamber considers that the request in relation to the first document (E3/10649) is moot. The Chamber denies the remainder of the Request.

5. This constitutes the Chamber's official response to E415/4.