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E419/2

**ព្រះរាជាណាចក្រកម្ពុជា**  
**ជាតិ សាសនា ព្រះមហាក្សត្រ**

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

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

**សាធារណៈ / Public**

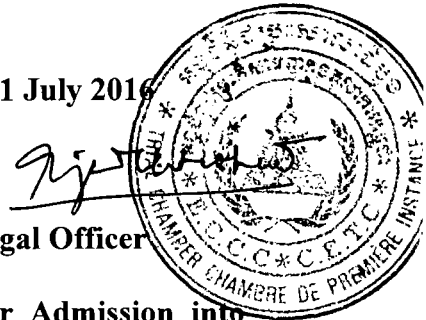
**TRIAL CHAMBER**

**TO:** All Parties, Case 002 **Date:** 11 July 2016

**FROM:** NIL Nonn, President of the Trial Chamber

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

**SUBJECT:** Decision on NUON Chea's Rule 87(4) Request for Admission into Evidence of the Victims Support Section's Report on the Application of Civil Party 2-TCCP-236



1. The Trial Chamber is seized of a request pursuant to Internal Rule 87(4), circulated as a courtesy copy on 23 June 2016 and subsequently filed by the NUON Chea Defence on 24 June 2016 ("Request", E419), to admit into evidence the report prepared by the Victims Support Section ("VSS") in relation to the Civil Party application of CHHUN Samorn (2-TCCP-236) ("Report"; D22/2479/1). On 1 July 2016, the Lead Co-Lawyers filed their response to the Request, previously circulated to all parties as a courtesy copy on 27 June 2016, objecting to the Report being admitted into evidence (E419/1). At the hearing of 28 June 2016, prior to the testimony of 2-TCCP-236, the Trial Chamber admitted the Report into evidence with written reasons to follow (Draft T., of 28 June 2016, p. 3). The Trial Chamber hereby provides the reasons for its admission.

2. The Report consists of a summary of the information contained in the Civil Party application of 2-TCCP-236, which has already been admitted into evidence in this case and filed as E3/4950. The Defence submits that the Report contains a reference to 2-TCCP-236's uncle which does not appear in E3/4950 (E419, para. 6). It therefore requests to use the Report in its examination of 2-TCCP-236. The Defence further submits that the Report qualifies as a prior witness statement and is clearly relevant to assessing 2-TCCP-236's credibility (E419, para. 7).

3. The Lead Co-Lawyers submit that the Report does not qualify as a witness statement as it is prepared for administrative purposes by VSS without any direct contact with the concerned Civil Party, who neither reviews nor signs it (E419/1, paras 7-11). The Lead Co-Lawyers assert that the Report does not contain the indicia of reliability required under Internal Rule 87(3) and it should not be admitted into evidence (E419/1, paras 11, 14).

4. 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).

5. The NUON Chea Defence provides no explanation as to why it did not seek to admit the Report, which is dated 26 March 2010, prior to the opening of the trial. The Chamber, therefore, finds that the Request is untimely. It will, however, consider whether the Report should be admitted notwithstanding the NUON Chea Defence's lack of due diligence.

6. The Chamber notes the Lead Co-Lawyers' submissions that the Report was prepared by VSS on the sole basis of the Civil Party application documents and was not endorsed by 2-TCCP-236. As such, the Chamber considers that the Report does not qualify as a witness statement. Nonetheless, the Chamber finds that it is *prima facie* relevant, reliable and closely relates to other material already on the Case File, notably the Civil Party application of 2-TCCP-236 admitted as E3/4950. The Chamber further notes that other VSS reports of Civil Party applications have been admitted in Case 002 (*see e.g.* E3/6242; E3/5840; E3/4620; E3/1731) and that using these reports in court is subject to any objections raised by the other parties (*see e.g.* T., of 28 August 2012, pp. 68-69). The probative value of this report will be assessed at judgement stage in light of the testimony of the concerned Civil Party and other evidence put before the Chamber, if any. Despite the untimeliness of the Request, it is in the interests of justice to admit the Report because it is ancillary to 2-TCCP-236's Civil Party application. The Chamber, therefore, grants the Request and admits the Report as document E3/4950a.

7. This constitutes the Chamber's official response to E419.