

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

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**RULE 87 REQUEST TO USE DOCUMENTS DURING CROSS-EXAMINATION
OF WITNESS PHILIP SHORT**

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1. Pursuant to ECCC Internal Rule 87(4),¹ counsel for Nuon Chea (the ‘Defence’) hereby submits this request (‘Request’) to use the following documents during its cross-examination of expert witness Philip Short (the ‘Documents’):
 - A. Blythe Yee, ‘Navigating Darkness’, Asian Wall Street Journal, 1 April 2005
 - B. ‘Charlie Rose’ (Transcript of Interview), 29 March 2005
 - C. Brendan Brady, ‘Cambodia Confronts the ‘G’ Word’, Foreign Policy, 8 January 2010
 - D. ‘Former Khmer Rouge Chief Charged with Genocide’, Press TV, 18 December 2009

2. Multiple defence teams and the Co-Prosecutors have noted that parties could not have included ‘every single statement, biography or commentary by each witness proposed at a time where the list of Trial Chamber’s witnesses was not established yet and testimonies were not yet scheduled. Due to limited resources ... [parties] were not able to prepare in full for the questioning of all proposed witnesses until effectively scheduled.’² The Chamber has seemingly ceded to that view, admitting into evidence documents that were strictly speaking available prior to trial when they were submitted with sufficient notice in advance of the scheduled testimony and caused no prejudice to other parties.³ Indeed, the Chamber has admitted into evidence documents tendered by the Co-Prosecutors absent any effort to satisfy Rule 87(4) on the grounds that those

¹ As the Defence has repeatedly argued, it is entitled to use any relevant document for the purpose of impeaching the credibility of a witness. There is no limitation in the Internal Rules or Cambodian criminal procedure on counsel’s reference to the previously recorded statements of a witness during cross-examination. The Defence is therefore entitled to make use of the document for that limited purpose. *See* Document No. **E-206**, ‘Notice of Impeachment Material for TCW-487’, 28 May 2012, ERN 00811080-00811083, paras 1-2; Document No. **E-206.2**, ‘Annex B: Previous Defence Submissions on Impeachment Material’, 28 May 2012, ERN 00812802-00812805.

² Document No. **E-216**, ‘Co-Prosecutors’ Rule 87(4) Request to Admit Three Documents Written by TCW-694’, 5 July 2012, ERN 00823196 – 00823202, para. 8(c). *See also*, Document No. **E-172/24/3**, ‘Ieng Sary’s Rule 87(4) Request Regarding Material Which May Be Used During the Examination of Expert David Chandler’, 13 June 2012, ERN 00815937-00815941, paras 6, 8; Document No. **E-172/27/1**, ‘Rule 87 Request to Use Documents During Cross-Examination of Expert Witness Professor David Chandler’, 12 July 2012, ERN 00823751-00823756, paras 14-16.

³ Document No. **E-172/24/4**, Trial Chamber Memorandum re ‘Response to Co-Prosecutors’ Request to Provide Case File 002 Documents to Experts and Ieng Sary’s Rule 87(4) Request Regarding Material to be Used During the Examination of Expert David Chandler (E172/24/2 and E172/24/3)’, 21 June 2012, ERN 00818308-00818309, para. 8.

documents ‘appear to be statements of individuals who are scheduled to testify before the Chamber’.⁴

3. Each of the Documents includes an interview with or statements of Mr. Short concerning subjects presently at issue before the Trial Chamber. They raise no new factual or legal issues requiring investigation by the parties and will merely serve to refresh the recollection or challenge the testimony of the witness. Admitting these documents will cause no prejudice to any party. As Mr. Short is scheduled to testify on October 1,⁵ this Request satisfies the two-week notice requirement recently imposed by the Chamber⁶ and provides a period of notice similar to other such requests previously granted to other parties.⁷ The relevant portions have been translated into Khmer and French and are attached along with the original English.
4. The Documents also satisfy the five-factored test set out in Rule 87(3) and incorporated into Rule 87(4). All four documents are relevant. Document A contains statements concerning Mr. Short’s research methodology which bears on the reliability and hence probative value of his testimony. Documents B, C and D contain statements concerning Mr. Short’s view of the alleged DK policy of targeting minority groups as such, which bears on the responsibility of the Accused for genocide and persecution, crimes with which he is charged in Case 002.⁸ Document B furthermore contains statements concerning the responsibility of officials subordinate to the Accused, which similarly bears on the extent of his criminal responsibility.
5. For similar reasons, the Documents are not frivolous or intended to prolong proceedings, and constitute suitable evidence of the facts it purports to prove (namely,

⁴ Document No. **E-190**, ‘Decision Concerning New Documents and Other Related Issues’, 30 April 2012, ERN 00804367-00804382, para. 39.

⁵ Document No. **E-172/24**, Trial Chamber Memorandum re ‘Updated information regarding scheduling of proposed experts’, 25 May 2012, ERN 00810603.

⁶ Document No. **E-218**, TC Memorandum re ‘Scheduling of Trial Management Meeting to enable planning of the remaining trial phases in Case 002/01 and implementation of further measures to promote trial efficiency’, 3 August 2012, ERN 00831321-00831326, para. 22.

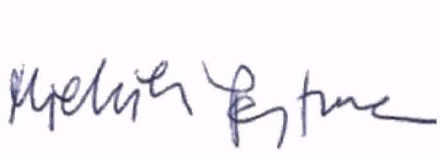
⁷ Document No. **E-172/24/4**, Trial Chamber Memorandum re ‘Response to Co-Prosecutors’ Request to Provide Case File 002 Documents to Experts and Ieng Sary’s Rule 87(4) Request Regarding Material to be Used During the Examination of Expert David Chandler (E172/24/2 and E172/24/3)’, 21 June 2012, ERN 00818308-00818309, para. 8. (granting a request filed roughly one month prior to the testimony of the witness).

⁸ Persecution is furthermore included in the Case 002/01 mini-trial. See Document No. **E-124/7.2**, ‘Annex: List of Paragraphs and Portions of the Closing Order Relevant to Trial One in Case 002’, 30 November 2011, ERN 00754117-00754119, point 4(iii). See also, Document No. D-427, ‘Closing Order’, 15 September 2010, ERN 00604508-00605246, para. 1415 (‘People were targeted on account of their real or perceived membership of a group as defined by the CPK authorities, based on political, racial or religious grounds.’).

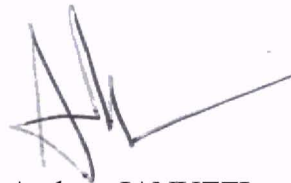
what the witness has previously said). There are no reasons why the Documents are otherwise disallowed under the law.

6. The Defence respectfully requests to put the documents before the Trial Chamber and to use those documents during its examination of Philip Short.

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