

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

Filing details

File No.: 002/19-09-2007-ECCC/TC

Party Filing: Civil Party Lead Co-Lawyers

Before: Trial Chamber

Original language: English translation Khmer

Date of document: 16 May 2013



CLASSIFICATION

Classification of document suggested by the filing party: PUBLIC

Classification by the Co-Investigating Judges or the Chamber: សាធារណៈ/Public

Classification Status:

Review of interim Classification:

Records Officer Name:

Signature:

**LEAD CO-LAWYERS' RULE 87(4) REQUEST TO PLACE ON THE CASE FILE
AND ADMIT INTO EVIDENCE DOCUMENTS WHICH ARE RELEVANT TO
THE HEARINGS ON VICTIM IMPACT**

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Before:

Trial Chamber

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I. INTRODUCTION

1. Pursuant to Rule 87(4) of the ECCC Internal Rules, the Lead-Co Lawyers for Civil Parties respectfully request that the Trial Chamber (“the Chamber”) place on the Case File and admit into evidence the following publications:
 - a) Beth Van Schaack, Daryn Reicherter and Youk Chhang, eds., *Cambodia’s Hidden Scars: Trauma Psychology in the Wake of the Khmer Rouge*, (Phnom Penh: DC-Cam, 2011) (hereinafter “Cambodia’s Hidden Scars”);
 - b) Eunice C. Wong et al, “The Unusually Poor Physical Health Status of Cambodian Refugees Two Decades After Resettlement,” *Journal of Immigrant Minority Health* 13 (2011): 876 (hereinafter “Wong Article”); and
 - c) Grant N. Marshall et al, “Mental Health of Cambodian Refugees 2 Decades After Resettlement in the United States,” *Journal of the American Medical Association* 294 (2005): 571 (hereinafter “Marshall Article”);
 - d) Nadine Stammel et al, “Prolonged Grief Disorder Three Decades Post Loss in Survivors of the Khmer Rouge Regime in Cambodia,” *Journal of Affective Disorders* 144 (2013): 87 (hereinafter Prolonged Grief Article”);
 - e) Committee Against Torture, *General Comment No. 3* (United Nations, 2012) (hereinafter “CAT Comment”); and
 - f) Sotheary Yim, *The Past and the Present of Forced Marriage Survivors*, (Phnom Penh: CDP, 2013) (hereinafter “Forced Marriage Publication”).
2. The aforementioned documents will assist the Trial Chamber in ascertaining the truth concerning the facts alleged in the Indictment and/or the harm experienced by the Civil Parties as a consequence of the facts alleged in the Indictment and it is in the interests of justice that they be placed on the case file and admitted into evidence.

II. APPLICABLE LAW

A. Rule 87(3) Criteria of Relevance, Reliability and Authenticity

3. The Internal Rules of the Court grant the Chamber broad discretion to admit documents into evidence,¹ so long as the documents meet the criteria of relevance, reliability and authenticity established in Internal Rule 87(3).² The Chamber has held

¹ Internal Rule 87(1), Internal Rules of the Extraordinary Chambers in the Courts of Cambodia, Rev. 8, 3 August 2011 (stipulating that “unless provided otherwise in these rules, all evidence is admissible”).

² Internal Rule 87(3), *Ibid.*, (establishing that “The Chamber may reject a request for evidence where it finds that it is: a) irrelevant or repetitious; b) impossible to obtain within a reasonable time; c) unsuitable to prove the

that the evidence considered under Rule 87(3) must meet a *prima facie* standard of relevance, reliability and authenticity.³ In making a determination on reliability, the Chamber has indicated that “Although not required under the ECCC legal framework, indicia of reliability...may nonetheless assist the Chamber in its assessment of whether the evidence in question satisfies the criteria contained in Internal Rule 87(3).”⁴ Furthermore, it has ruled that analytical reports and books “may be considered relevant” for the purposes of meeting the criteria laid out in Internal Rule 87(3) and “are not excluded as a category.”⁵

B. Rule 87(4) Criteria for Admission of Documents

4. Internal Rule 87(4) permits the Trial Chamber to admit new evidence that is conducive to ascertaining the truth when that evidence meets the *prima facie* standard of relevance, reliability and authenticity set forth in Internal Rule 87(3). The Chamber will consider documents that were not included in a party’s initial Internal Rule 80(3) list to be new evidence under Rule 87(4).⁶ The Chamber’s jurisprudence sets out to two circumstances under which it may admit new evidence and which are relevant to the present request: 1) if the new evidence was either unavailable prior to the opening of the trial or could not have been discovered with the exercise of due diligence⁷ or 2) if the evidence relates closely to material already before the Chamber or to the upcoming testimony of a witness, expert or civil party and the interests of justice require the sources to be evaluated together.⁸ Where evidence is sought to be admitted

facts it purports to prove; d) not allowed under the law; or e) intended to prolong proceedings or is frivolous.”).

³ Trial Chamber Memorandum “Trial Chamber Response to portions of E114, E114/1, E131/1/9, E131/6, E136 and E158,” **E162**, para. 2, 31 January 2012. *See also*, Trial Chamber Memorandum “Response to Internal Rule 87(4) Requests of the Co-Prosecutors, NUON Chea, and KHIEU Samphan (E236/4/1, E265, E271, E276, and E276/1,” **E276/2**, para. 2, 10 April 2013 (hereinafter “New Documents Memo”).

⁴ Decision on Co-Prosecutors’ Rule 92 Submission Regarding the Admission of Witness Statements and Other Documents Before the Trial Chamber, **E96/7**, para. 29, 20 June 2012. *See* Co-Prosecutors’ Rule 92 Submission Regarding Indicia of Reliability of the 978 Documents Listed in Connection with Those Witnesses and Experts Who May be Called During the First Three Weeks of Trial, **E158**, para. 3, 23 December 2011 (providing a non-exhaustive list of indicia of reliability, including internal features (e.g., reference code markings, an identified author, internal consistency in the document’s content) and external features (e.g., corroboration, identification, and discovery)).

⁵ Decision on Objections to Documents Proposed to be Put Before the Chamber on the Co-Prosecutor’s Annexes A1-A5 and to Documents Cited in Paragraphs of the Closing Order Relevant to the First Two Trial Segments of Case 002/01, **E185**, para. 21(5), 9 April 2012 (hereinafter “Framework Documents Decision”).

⁶ New Documents Decision, para. 19-21, New Documents Memo, para. 2.

⁷ New Documents Memo, para. 3.

⁸ *Ibid.* *See also* New Documents Decision and Trial Chamber Memorandum “Response to IENG Sary’s Second Rule 87(4) request regarding material which may be used during the examination of Expert David Chandler,” **E172/24/5**, 16 July 2012 (hereinafter “Response to IENG Sary”).

on the basis of its relationship to upcoming testimony, the Rule 87(4) request must be filed before the Chamber at least two weeks prior to such testimony.⁹

III. DISCUSSION

A. Cambodia's Hidden Scars, Wong Article, Marshall Article, Stammel Article and CAT Comment

5. The documents Civil Parties seek to put before the Chamber in items (a), (b), (c) and (d) of paragraph 1 are conducive to ascertaining the truth and relevant to the present proceedings because they present scientific findings on the continued psychological harms suffered by survivors of the Democratic Kampuchea period.¹⁰
6. All four items also fulfill the requirements of reliability and authenticity required by Internal Rule 87(3). They each display common internal markings that establish their reliability. Item (a) displays an ISBN and copyright date as well as the names of the editors and the publisher of the book. Items (b), (c), and (d) display the name of the authors, copyright details, dates of publication and the name of the publishing journal. The admission of these documents is in the interests of justice for the reasons described below.
7. *Cambodia's Hidden Scars* is a book published in September 2011, after Civil Party Lawyer's 80(3) list of evidentiary documents was submitted to the Chamber in April 2011. As such, the document was unavailable prior to the opening of the trial and thus Civil Party Lawyers could not have included it on its initial list of documents, even with due diligence. The book contains the work of independent scholars and mental health experts and researchers which addresses the impact of the events which occurred in Democratic Kampuchea on the victims who survived the period. *Cambodia's Hidden Scars* is published by the Documentation Center of Cambodia (DC-Cam), an independent, non-governmental organization. Consequently, this book is both relevant to the proceedings in Case 002/01 as well as being a reliable source of evidence for the Chamber's consideration.

⁹ *Ibid.*, para. 8 (admitting new evidence sought by the NUON Chea defense which "relates closely to the upcoming testimony of TCW-110, ..., and was presented more than two weeks before his re-scheduled testimony.").

¹⁰ See Decision on Request to Recall Civil Party TCCP-187, for Review of Procedure Concerning Civil Parties' Statements on Suffering and Related Motions and Responses (E240, E240/1, E250, E250/1, E267, E267/1 and E267/2), **E267/3**, 2 May 2013 (allowing that civil parties who testify before the Chamber may make statements on suffering which pertain to the "entirety of the Democratic Kampuchea period").

8. Further, Civil Parties have submitted the author of one of the chapters, TCE-12, as expert witnesses for the Hearings on Victim Impact. The book's contents relate closely to the proposed testimony of this expert. This expert witness will provide testimony on the mental health implications of the crimes alleged in Case 002/01 on the civil parties and the broad impact of the trauma endured by Cambodian survivors of the conflict. The Chamber has previously allowed a new document to be placed on the case file on the grounds that it was closely related to material properly identified on the party's list and it was in the interests of justice to allow the two sources to be evaluated together.¹¹ It is thus in the interests of justice to add *Cambodia's Hidden Scars* to the Case File and to consider it alongside the expert testimony as to the victims' harms.
9. The Wong Article and the Marshall Article discuss the mental health implications of Khmer Rouge-era atrocities on Cambodian victims living in the United States. There are 52 victims living in the United States that have been admitted as civil parties in Case 002/01. These articles will provide valuable information on the psychological damage that these victims continue to suffer as a consequence of their experiences during the Democratic Kampuchea period. Both articles are published in peer-reviewed academic journals and are the work of independent academic research teams using rigorous research methods in the course of conducting face-to-face interviews with victim/survivors of Democratic Kampuchea. Therefore, the Wong Article and Marshall Article are relevant to and are a reliable source of evidence for the Case 002/01 proceedings.
10. Furthermore, the Wong and Marshall Articles are closely related to the testimony of TCCP-4, a civil party living in the United States who has been called by the Chamber to testify at the Hearings on Victim Impact. These articles will be used to support her testimony regarding the serious mental health disorders facing survivors in the Cambodian diaspora, as well as that of the expert witness discussed above. As noted previously, the Chamber permits new documents to be placed in the Case File when those documents closely relate to material property identified on the party's list and it

¹¹ See e.g. Decision Concerning New Documents and Other Related Issues, **E190**, para. 32, 30 April 2012 (hereinafter "New Documents Decision") (allowing a book entitled *Behind the Killing Fields: A Khmer Rouge Leader and One of His Victims* to be added to the Case File because a documentary that had already been submitted was "based on, and thus closely related to, the Book," and therefore "the Chambers considered it to be in the interests of justice to evaluate these sources together."). See also Response to IENG Sary, para. 3.

is in the interests of justice to allow the two sources to be evaluated together.¹² Because the articles on the mental health of Cambodian victims currently living in the United States are closely related to the “statements of individuals who are scheduled to testify before the Chamber,” like the new evidence previously admitted by the Chamber, the interests of justice also require that the two articles put forward here be added to the Case File and considered alongside the civil party and expert testimony.

11. As described in paragraph 5 above, the Stammel Article identified in item (d) of paragraph 1 is conducive to ascertaining the truth and relevant to the Case 002/01 because it presents scientific findings on the continuing psychological harms suffered by survivors of the Democratic Kampuchea period, particularly the phenomenon of prolonged grief disorder in this population. In addition to displaying the internal indicia of reliability already identified for this document in paragraph 6 above, the Stammel Article is also published in a peer-reviewed academic journal and is the work of an independent research team which used rigorous research methods and face-to-face victim interviews as the basis of their findings.
12. The Stammel Article was published in January 2013. It was not available at the opening of the trial and Civil Parties have met the Chamber’s requirement of due diligence in seeking to tender it as new evidence. Additionally, this document complements, expands upon and is closely related to material already put before the Chamber, such as document number E9.32.2.18, which addresses psychological trauma of the victims of the Khmer Rouge living in Cambodian-Thai refugee camps.¹³ Finally, the document also closely relates to the upcoming testimony of TCE-12. Accordingly, Civil Parties have met the criteria set forth in Internal Rule 87(4) and the Chamber’s jurisprudence.
13. The CAT Comment identified in item (e) is conducive to ascertaining the truth and relevant to the present proceedings because it provides details on the reparative process, particularly the concept of rehabilitation, as well as the value and conditions of victim participation in the redress process. These are all issues which closely link to the expert testimony of TCE-12 scheduled to take place during the Hearings on Victim

¹² See e.g. New Documents Decision, para. 39 (finding that “the [Co-Prosecutors’] other two documents appear to be the statements of individuals who are scheduled to testify before the Chamber at a later date. Despite the belated identification of these documents, the Chamber will also exceptionally permit this material to be placed on the Case File and to be put before the Chamber.”).

¹³ The Effect of Trauma and Confinement on the Functional Health and Mental Health Status of Cambodians Living in Thailand-Cambodia Border Camps, **E9/32.2.18**, 4 August 1993.

Impact as well as the intended purpose of these hearings to establish evidence on the suffering experienced by civil parties which ultimately goes toward supporting their Final Claim for reparations to address this suffering. As a consequence, it is in the interests of justice that this material be placed on the Case File and admitted into evidence so that it may be considered in conjunction with the examination of TCE-12.

B. Forced Marriage Publication

14. The Forced Marriage publication identified in item (f) of paragraph 1 fulfills the requirements of reliability and authenticity required by Internal Rule 87(3). This document displays internal markings that establish its reliability, such as the back cover which clearly displays the logo and name of the publisher. The document is accessible on the publisher's website, rendering clear its provenance.¹⁴ Further, the Forced Marriage Publication is *prima facie* reliable in that it was published by an independent non-governmental organization and the interviews were conducted by an experienced psychologist with no affiliation to any of the parties to the proceeding.
15. The Forced Marriage Publication summarizes individual in-depth interviews conducted with eight female victims of forced marriage under the Khmer Rouge regime following their participation in a one-year therapeutic intervention in the form of a self-help group. Each woman's experience is briefly outlined followed by a description of the impact of the marriage on their lives and the effect of the intervention.
16. The Forced Marriage Publication is *prima facie* relevant to Case 002/01 as the information contained therein sheds light on the policy on the regulation of marriage which forms the basis of the alleged joint criminal enterprise in the present case.¹⁵ In addition, the accounts on the impact of forced marriage reflected in the Forced Marriage Publication are relevant to the Hearings on Victim Impact which form an integral part of the concluding phases of Case 002/01.¹⁶
17. The Forced Marriage publication was written in October 2012 and made public in April 2013.¹⁷ It was not available before the opening of the trial and Civil Parties have

¹⁴ See <http://gbvkr.org/news/>.

¹⁵ See Decision on Severance of Case 002 Following Supreme Court Chamber Decision of 8 February 2013, **E284**, 00902354, 26 April 2013 (reinstating the prior severance and establishing the relevant paragraphs of the Closing Order as identified in E124/7.3).

¹⁶ **E236/5** Memorandum to the Parties "Further Information Regarding Trial Schedule", 7 February 2013, par. 2.

¹⁷ See *Ibid.* for announcement of the publication's release, dated 9 April 2013.

met the Chamber's requirement of due diligence in seeking to tender it as new evidence shortly following its public availability. Thusly, it satisfies the criteria set forth in Internal Rule 87(4) of the Court and the Chamber's jurisprudence.

C. Timeliness

18. Where documents are herein sought to be admitted on the basis of their relationship to the upcoming testimony of TCE-12 and TCCP-4, this request has been timely made, as the earliest hearing of either of these individuals will be on 4 June 2013.¹⁸

D. Translation

19. Two of the documents named in paragraph 1 are already available in two of the Court's three official languages.¹⁹ Civil Parties will ensure the timely translation into the three official languages of the Court the relevant portion of each of the documents they seek to tender into evidence, should the Chamber admit them.

IV. REQUEST

20. Wherefore, the Civil Parties respectfully request that the Trial Chamber:

- a) place the publications identified in paragraph 1 of this submission on the Case File; and
- b) admit the same into evidence.

Respectfully submitted,

Date	Name	Place	Signature
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¹⁸ See Lead Co-Lawyers' Request to Call the Civil Parties' Revised List of Civil Parties & Experts to Testify During the Hearings on Impact, Annex 1, **E236/5/3/1.1**, 6 May 2013. See also E-mail from Wendy Lobwein, WESU Chief, "Urgent TCE-12," 8 May 2013 (indicating that the expert will be available to testify on 4 June 2013, but not 27 June 2013 as originally planned).

¹⁹ The Forced Marriage article is available in a combined English and Khmer language version and the CAT Comment is available in separate English and French versions.

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