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E407/2

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

TRIAL CHAMBER

សាធារណៈ / Public

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 to Admit into Evidence a Document Related to the Testimony of Expert Alexander HINTON



1. The Trial Chamber is seised of an Internal Rule 87(4) request filed on 20 May 2016 by the NUON Chea Defence ("Request", E407) to admit into evidence a document relating to the testimony of expert Alexander HINTON (2-TCE-88). The document is a press article published by the online media outlet Rutgers Today and it relates to Mr. HINTON's experience testifying before the ECCC (E407.1.1). The Defence submits that it is in the interests of justice to admit the document into evidence because it reports statements made by Mr. HINTON that are relevant to his impartiality and credibility as an expert (E407, paras 1, 8, 13). The Defence further submits that the Request is timely as the article was published on 5 May 2016, subsequent to Mr. HINTON's testimony in Case 002/02 (E407, para. 9).

2. On 2 June 2016, the Co-Prosecutors filed a response to the Request objecting to the document being admitted into evidence (E407/1). The Co-Prosecutors submit that the document does not affect Mr. HINTON's objectivity or credibility (E407/1, para. 3) and that experts are entitled to their own opinions in relation to the topics of their testimony (E407/1, paras 3-5). The Co-Prosecutors further submit that the document contains no new information since Mr. HINTON's book "discusses genocide extensively" (E407/1, para. 6).

3. 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).

4. The Chamber finds that the document was unavailable prior to the opening of the trial and that the Defence exercised due diligence in filing the Request within 15 days of its publication. The Request is therefore timely. The document was published by the official media outlet of Rutgers-Newark University, where Mr. HINTON is a professor, and it therefore satisfies the *prima facie* standards of reliability and authenticity required under Rule 87(3). The Chamber also finds that the document is relevant as it provides an overview of Mr. HINTON's personal experience in testifying as an expert before the ECCC. As for the Defence's submission that the document presents Mr. HINTON "as having made several statements" in relation to NUON Chea's guilt (E407, para. 5), the Chamber recalls that challenges regarding bias of an expert relate to the evaluation of his evidence and not to its admissibility (E215, para. 15).

5. The Chamber therefore finds that the requirements of Internal Rule 87(4) have been satisfied and admits the proposed document into evidence, assigning document reference number E3/10619 to it.