

BEFORE THE TRIAL CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

FILING DETAILS

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**CO-PROSECUTORS' RESPONSE TO NUON CHEA'S RULE 87(4) REQUEST TO
ADMIT INTO EVIDENCE A DOCUMENT AN ARTICLE CONCERNING
HENRI LOCARD (2-TCE-90)**

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RESPONSE

1. The Co-Prosecutors respond as follows to the Rule 87(4) request filed by Nuon Chea to admit into evidence a press article concerning Henri Locard's testimony ("the Request").¹
2. The Co-Prosecutors do not object as such to the admission of this document, a Cambodia Daily's press article entitled "*French Historian Accuses Tribunal Lawyers of 'Cold Torture'*" ("the Document"), published on 3 August 2016.² However, they do not share the conclusions drawn by Nuon Chea that Henri Locard would "have already pre-judged the guilt of Mr. Nuon Chea", that "his testimony was not impartial or neutral and therefore fails to meet the criteria required to be considered expert evidence"³ and that Henri Locard provided "clear evidence of his bias and prejudice against Mr. Nuon Chea and Khieu Samphan".⁴
3. It was inappropriate for Henri Locard to state at the hearing that Counsel Guissé subjected him the day before to "cold torture"⁵ during her examination or to describe the defence lawyers in a press interview as "perverse" for denying reality or "criminal" for making the tribunal waste time.⁶ The questions asked by Counsel Guissé to Henri Locard were legitimate and aimed at assisting the Trial Chamber in ascertaining the truth. Equality of arms, as well as the credibility and fairness of criminal proceedings, largely depend on the possibility for the defence to exercise their rights in an independent manner.
4. Nevertheless Henri Locard's oversensitivity to challenges to his expertise does not demonstrate bias or partiality in his academic work or his testimony. For nearly three days, Henri Locard provided very detailed and nuanced testimony to the Chamber which summarized research he conducted since 1991 in the field, interviewing hundreds of Democratic Kampuchea witnesses and victims, and reviewing all academic articles and books published on the subject since then. He explained in detail the substance of his doctoral thesis, passages of the books and articles he published and provided the sources of

¹ E415/3 Nuon Chea's Rule 87(4) Request for Admission into Evidence of a Document Relevant to Henri Locard's Testimony (2-TCE-90), 8 August 2016.

² E415/3.1.1, Cambodia Daily's Article entitled "French Historian Accuses Tribunal Lawyers of 'Cold Torture'", 3 August 2016 ("The Document").

³ E415/3, para.1.



⁴ E415/3, para.8.

⁵ Trial Chamber Draft Transcript, 2 August 2016, at [09.05.10] and at [09.06.28].

⁶ Document, at EN 01311297.

his information where he could recall them. He offered, at the request of Khieu Samphan's defence, to provide the court with his audio recordings and handwritten notes of interviews with Phy Phuon and So Hong alias Saloth Ban, subject to the approval of the latter.⁷ He provided objective information in his testimony which was beneficial to all parties.

5. The Trial Chamber had previously recognized that Henri Locard possessed such "specialised knowledge and experience that may assist the Chamber for the purpose of its assessment of the evidence".⁸ Henri Locard, as a historian, political scientist, professor and author, demonstrated this specialised knowledge and experience in his testimony and consequently met the standards of reliability required by an expert.
6. Respectfully submitted,

Date	Name	Place	Signature
16 August 2016	CHEA Leang Co-Prosecutor	Phnom Penh	
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⁷ Trial Chamber Draft Transcript, 2 August 2016, from [09.37.42] through [09.52.40].

⁸ E415, Trial Chamber Decision on Designation of 2-TCE-90, 16 June 2016, para.13.