

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

FILING DETAILS

Case No: 002/19-09-2007-ECCC/TC

Party Filing: Civil Party Lead Co-Lawyers

Filed to: Trial Chamber

Original Language: English

Date of Document: 13 June 2014

CLASSIFICATION

Classification of the document:

Public

suggested by the filing party:

សាធារណៈ/Public

Classification by Chamber:

Classification Status:

Review of Interim Classification:

Records Officer Name:

Signature:



**CIVIL PARTY LEAD CO-LAWYERS' UPDATED RULE 80 LISTS OF
DOCUMENTS & EXHIBITS FOR CASE 002/02
WITH CONFIDENTIAL ANNEX V**

Filed by:

Lead Co-Lawyers for Civil Parties

PICH Ang
Marie GUIRAUD

Co-Lawyers for Civil Parties

CHET Vanly
HONG Kim Suon
KIM Mengkhy
KONG Phallack
KONG Pisey
LOR Chunthy
MOCH Sovannary
SIN Soworn

Before:

Trial Chamber

Judge NIL Nonn, President
Judge Silvia CARTWRIGHT
Judge YA Sokhan
Judge Jean-Marc LAVERGNE
Judge YOU Ottara

Distribution to:

Office of the Co-Prosecutors

CHEA Leang
Nicholas KOUMJIAN
YET Chakriya

SAM Sokong
VEN Pov
TY Srinna
YUNG Phanith
Emmanuel ALTIT
Pascal AUBOIN
Olivier BAHOUUNE
Patrick BAUDOIN
Laure DESFORGES
Ferdinand DJAMMEN NZEPA
Elodie DULAC
Isabelle DURAND
Françoise GAUTRY
Emmanuel JACOMY
Martine JACQUIN
Michael Y. LIU
Daniel LOSQ
Christine MARTINEAU
Barnabé NEKUIE
Lyma NGUYEN
Elisabeth RABESANDRATANA
Julien RIVET
Fabienne TRUSSES NAPROUS
Nushin SARKARATI
Beini YE

William SMITH

The Accused

KHIEU Samphan
NUON Chea

Co-Lawyers for the Defence

SON Arun
Victor KOPPE

KONG Sam Onn
Anta GUISSÉ
Arthur VERCKEN

Co-Lawyers for Civil Parties

I. INTRODUCTION

1. In accordance with the “Order to File Updated Material in Preparation for Trial in Case 002/02,” the Civil Parties hereby submit to the Trial Chamber their lists of documents and exhibits relating to the scope of Case 002/02. Herein, the Civil Parties respectfully request that the Trial Chamber receive these documents as put before the Chamber and admit them into evidence in accordance with the applicable law of the Court.
2. The Civil Parties’ documents and exhibits lists have been carefully formulated in accordance with the Trial Chamber’s directives and the court’s applicable law on evidence in order to provide the Chamber with a careful selection of highly probative evidence which directly relates to the charges and factual allegations within the scope of Case 002/02.

II. PROCEDURAL BACKGROUND

3. On 17 January 2011, the Trial Chamber filed the “Order to File Material in Preparation for Trial.”¹ Pursuant to that Order, the Civil Parties submitted their original lists of documents and exhibits on 19 April 2011.²
4. On 4 April 2014, the Trial Chamber severed the proceedings in Case 002 for the second time and determined the scope of Case 002/02 to include, with limitations, the movement of the population (phase two: treatment of the Cham); one cooperative; three worksites; four security centres, among which S-21 Security Centre is included;

¹ Order to File Material in Preparation for Trial, **E9**, 17 January 2011.

² Civil Party Lead Co-Lawyers Lists of Documents and Exhibit (7 and 8), Civil Party Lead Co-Lawyers, **E9/32**, 19 April 2011; Annex 7a (i): Request for Specific Documents in Case File by the Co-Lawyers for Civil Parties, Civil Party Lead Co-Lawyers, **E9/32.2**, 19 April 2011; Annex 7a (ii): Case 002 Closing Order Endnote Documents, Civil Party Lead Co-Lawyers, **E9/32.3**, 19 April 2011; Annex 7a (iii): Victim Information Forms, Civil Party Lead Co-Lawyers, **E9/32.4**, 19 April 2011; Annex 8: Documentary Evidentiary Chart, Civil Party Lead Co-Lawyers, **E9/32.5**, 19 April 2011.

- the treatment of Buddhists, the Cham, and the Vietnamese; and the regulation of marriage.³
5. On 8 April 2014, the Trial Chamber filed the “Order to File Updated Material in Preparation for Trial in Case 002/02,” which called upon the parties to provide an updated to their lists of documents and exhibits previously filed and appropriately identified.⁴ The Order also indicated that any application to add new or additional documents and exhibits which were not already before the Chamber through the original document lists or Case 002/01 proceedings must be sought to be put before the Chamber in accordance with Internal Rule 87(4).⁵
 6. On 30 April 2014, the Parties submitted a joint request for clarification regarding the application of rule 87(4) in the context of Case 002/02.⁶ The request reiterates that Internal Rule 87(4) applies only after the *opening of the trial* which commences with the Initial Hearing, and as a consequence of the severance of Case 002 and the Chamber’s indication that it will schedule an Initial Hearing for Case 002/02, it argues that rule 87(4) may only be applied once this hearing has been held.⁷
 7. On 2 May 2014, the Parties requested the Trial Chamber to amend the “Order to File Updated Material in Preparation for Trial in Case 002/02.”⁸ The Parties sought to not be required to include documents already admitted to Case 002/02 (E3 documents) in their revised document and evidence lists for this case, as well as to be permitted file these lists in a single language.⁹

³ See Decision on Additional Severance of Case 002 and Scope of Case 002/02, Trial Chamber, **E301/9/1**, 4 April 2014; and Annex: List of Paragraphs and Portions of the Closing Order relevant to Case 002/02, **E301/9/1.1**, 4 April 2014.

⁴ Order To File Updated Material In Preparation For Trial in Case 002/02, **E305**, 8 April 2014, paras. 11-13.

⁵ *Ibid.*, para. 14.

⁶ Parties’ Joint Request for Clarification regarding the application of Rule 87(4) in Case 002/02, Civil Party Lead Co-Lawyers, Co-Prosecutors, Defense for Khieu Samphan, and Defense for Nuon Chea, **E307**, 30 April 2014 [hereinafter “Joint Request on New Evidence and Testimony”].

⁷ *Ibid.*, paras. 7 – 9.

⁸ Parties’ Joint Request Regarding the Refiling of Admitted Evidence in Case 002/02, and Filing in One Language, Civil Party Lead Co-Lawyers, Co-Prosecutors, Defense for Khieu Samphan, and Defense for Nuon Chea, **E305/1**, 2 May 2014 [hereinafter “Joint Request to Amend”].

⁹ *Ibid.*, paras. 3-5.

8. On 21 May 2014, the Trial Chamber decided on the Joint Request to Amend, granting the request in part by allowing the Parties to submit their document lists in a single language and extending the filing deadline to 13 June 2014, but apparently denying the request to omit E3 documents from the list.¹⁰
9. On 11 June 2014, the Trial Chamber rendered a decision on the Parties' Joint Request on New Evidence and Testimony in which it rejects the arguments put forward by the Parties, asserts that "proceedings in Case 002/02 shall be seen as being part of a whole case where general preliminary matters were taken into account at the opening of the trial in Case 002," and notes that Rule 87(4) applications must be filed for any new evidence the Parties wish to put before the Chamber.¹¹

III. APPLICABLE LAW

10. Pursuant to Rule 80(3) of the Internal Rules on the preparation of the trial, the Chamber may order the parties, prior to the Initial Hearing, to file documents including "[a] list of new documents which they intend to put before the Chamber with a brief description of their contents and a list of documents already on the case file, appropriately identified [...]."¹²
11. Pursuant to Internal Rule 87(3), the Trial Chamber may reject a Party's request to put evidence before the Chamber on the basis that the evidence is irrelevant, repetitious, or intended to prolong the proceedings. As interpreted by the Chamber, the Rule 87(3) requires the evidence to satisfy the *prima facie* standards of relevance, reliability and authenticity.¹³

¹⁰ Decision on Joint Request Regarding the Refiling of Admitted Evidence in Case 002/02, and Filing in One Language, **E/305/2**, 21 May 2014.

¹¹ Trial Chamber Memorandum: Decision on Parties' Joint Request for Clarification Regarding the Application of Rule 87(4) (E307) and the NUON Chea Defense Notice of Non-Filing of Updated Lists of Evidence (E305/3), **E307/1**, 11 June 2014, paras. 2 and 5, respectively.

¹² Internal Rules (Rev. 8), Extraordinary Chambers in the Courts of Cambodia, 3 August 2011.

¹³ Decision on Co-Prosecutors' Rule 92 Submission Regarding the Admission of Witness Statements and Other Documents before the Trial Chamber, Trial Chamber, **E96/7**, 20 June 2012. *See also*, Response to the Internal Rule 87(4) Requests of the Co-Prosecutors, NUON Chea, and KHIEU Samphan (E236/4/1, E265, E271, E276, E276/1), **E276/2**, 10 April 2013, and Decision on the Civil Party Lead Co-Lawyers' Internal Rule 87(4) Request to Place on the Case File and Admit New Evidence Relevant to the Victim Impact (E285), **E285/1**, 31 May 2013, para. 2.

12. The Trial Chamber's jurisprudence permits the admission of written statements and transcripts in lieu of oral testimony and sets out factors which favor affording probative value to such evidence.¹⁴ These include, *inter alia*, written evidence which demonstrates: a) the cumulative nature of the written statement or transcript with oral testimony on similar facts; b) the relevance to historical, political or military background, c) crime-base evidence or proof of threshold elements of international crimes; d) the impact of crimes upon victims; and e) the author of which is deceased or is unable to give oral testimony.¹⁵

IV. DISCUSSION

A. Overview of Documents and Exhibits Lists

13. The Civil Parties respectfully submit their annex containing the documents and exhibits which they wish to put before the Chamber: ***Confidential Annex V: Updated Rule 80 Document and Exhibit Lists for Case 002/02***. The list has been prepared in accordance with the directives of the Trial Chamber to include: current document number; title; available language/s; brief description of the document's nature and contents; as well as relevant points of the Indictment including, where possible, exact paragraph/s of the Closing Order and specific count/s.¹⁶
14. With respect to the points of indictment and specific counts, the Civil Parties include a non-exhaustive listing of points and counts in order to meet the *prima facie* standard of relevance set out by the Internal Rules and jurisprudence of the Court. In line with the Chamber's wish to be able to assess translation needs related to the Parties' document and exhibits lists and, where a document is lengthy and is not already available in relevant part in all three official languages of the Court, indicative references to more specific ERNs are listed.¹⁷ Notwithstanding this, the Civil Parties

¹⁴ Decision on Co-Prosecutors' Rule 92 Submission Regarding the Admission of Witness Statements and Other Documents before the Trial Chamber, *op. cit.*, note 13, paras. 23-25.

¹⁵ *Ibid.*, para. 24.

¹⁶ *See supra*, note 5.

¹⁷ Email from Matteo Crippa, Trial Chamber Legal Officer: Clarification re: Documents & Exhibits Template, 19 May 2014 (indicating the Chamber's request that parties specify ERN excerpts for lengthy documents in part in order to "facilitate the assessment of any outstanding translation needs for Case 002/02.") (emphasis added).

reserve the right to rely on any material contained in the documents contained in their document and exhibits lists.

15. The documents included in Annex V have been selected from among those included in the Civil Parties' original lists of Case 002 documents and;¹⁸ documents already admitted into evidence in Cases 002/01 and 002/02 (E3 documents);¹⁹ and documents admitted into evidence, but not assigned an E3 number.²⁰
16. In their lists, the Civil Parties include the following types of documents and exhibits:
- a) Civil party written statements, including the victim information forms, supplementary information and annexes which comprise the civil party application and are related to both the civil parties proposed to testify and those not proposed to testify, including written statements of civil parties who are deceased, each of which are identified as such in the accompanying annex;²¹
 - b) written records of interview of witnesses and civil parties taken by the Office of the Co-Investigating Judges;
 - c) transcripts of interviews taken by the Documentation Center of Cambodia, Voice of America, researchers and other sources;
 - d) DK era contemporaneous documents; and
 - e) analyses, books and reports, including press reports.

¹⁸ See Civil Party Lead Co-Lawyers' Rule 80 Witness, Expert, and Civil Parties Lists, including Confidential Annexes 1, 2a, 2b, 3a, 3b, and 4, Civil Party Lead Co-Lawyers, **E9/4/3**, 14 February 2011.

¹⁹ Decision on Objections to the Admissibility of Witness, Victim and Civil Party Statement and Case 001 Transcripts Proposed by the Co-Prosecutors and Civil Party Lead Co-Lawyers, Confidential Annex A: Statement and Transcripts Put Before the Chamber, Trial Chamber, **E299/1**, 15 August 2013, and Clarification Regarding the Use of Evidence and the Procedure for Recall of Witness, Civil Parties and Experts from Case 002/01 in Case 002/02, **E302/5**, 7 February 2014.

²⁰ Lead Co-Lawyers' Update to the Trial Chamber on the Translation Status of Written and Other Evidence (with Confidential Annex), Civil Party Lead Co-Lawyers, **E223/2/7/1**, 26 April 2013, and Confidential Annex 1: List of All Documents Tendered & All Material Proffered, Civil Party Lead Co-Lawyers, **E223/2/7/1.1**, 26 April 2013.

²¹ Where a civil party is deceased a bracketed notation has been made in the description field of the annex.

B. Selection Considerations

17. The Lead Co-Lawyers and civil party lawyers conducted a thorough analysis of the available evidence in order to select the documents and exhibits which will best assist the Trial Chamber in ascertaining the truth regarding to the charges and factual allegations comprising the scope of Case 002/02. Following consultation with civil party lawyers, the lead co-lawyers finalized lists of documents and exhibits which focuses primarily, but not exclusively, on a representative sample of civil party evidence. In so doing, the Civil Parties highlight the highly probative evidence supplied by the victims who are civil parties to these proceedings and the central role that their evidence will play in proving Case 002/02 allegations, as well as ensuring the meaningful participation of civil parties in these proceedings.
18. The Civil Parties' lists of documents and exhibits consist of evidence which goes toward proving the factual allegations related to each of the named sites and topics within the scope of Case 002/02, the chapeau elements of the corresponding criminal charges, and the existence of the common plan and five policies which comprise the alleged joint criminal enterprise. Additionally, the Civil Parties' were guided in making their selections by the indicia of reliability upon which the Trial Chamber has relied and the factors set out by the Chamber for assessing the admissibility and probative value of evidence tendered in the form of written statements or transcripts.²²

C. Previously Admitted Evidence

19. The Civil Parties have made a review of evidence previously admitted in Cases 001 and 002/01 and included these documents and exhibits in the annex attached herewith, as appropriate. Where such documents have been afforded an E3 number by the Trial Chamber, such number is indicated in the annex. The Civil Parties also include a number of documents which were properly tendered into evidence in the course of Case 002/01 proceedings, but which have not yet been assigned an E3

²² See *supra*, paras. 11-12.

number by the Trial Chamber. These documents are identified in the Annex V with an asterisk (*).

V. CONCLUSION

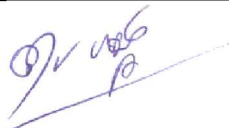
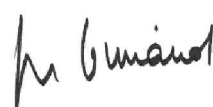
20. In accordance with the Internal Rules,²³ the well-established practice of the Trial Chamber²⁴ and the previous submissions made by the Civil Parties on this point,²⁵ they reserve the right to put documents not specified in Annex V before the Chamber throughout the course of Case 002/02 trial proceedings and, particularly, in conjunction with the examination of civil parties, witnesses and experts.

VI. REQUEST

WHEREFORE, the Civil Parties respectfully request that the Trial Chamber:

- (1) **PUT** before the chamber; and
- (2) **ADMIT** into evidence the documents and exhibits contained in the Civil Parties' Annex V.

Respectfully submitted,

Date	Name	Place	Signature
13 June 2014	PICH ANG Lead Co-Lawyer	Phnom Penh	
	Marie GUIRAUD Lead Co-Lawyer	Paris	

²³ See e.g. Internal Rule 87(3) (“Evidence from the case file is considered put before the Chamber or the parties if its content has been summarized, read out, or appropriately identified in court.”).

²⁴ See e.g. Trial Chamber Response to Portions of E114, E114/1, E131/1/9, E131/6, E136 and E158, E162, 31 January 2012, para. 2.

²⁵ See e.g. Lead Co-Lawyers' Response to Trial Chamber Directives on the Tendering into Evidence of Civil Party Written Statements & Other Documents (with Confidential Annexes), E223/2/7,4 March 2013, para. 20; and Lead Co-Lawyers' Update to the Trial Chamber on the Translation Status of Written & Other Evidence (with Confidential Annex), E223/2/7/1, 26 April 2013, para. 5.