

BEFORE THE TRIAL CHAMBER  
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA



**FILING DETAILS**

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**CO-PROSECUTORS' SUBMISSION OF STATEMENTS AND TRANSCRIPTS  
INTENDED TO BE USED FOR ACTS AND CONDUCT EVIDENCE**

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**Co-Prosecutors**

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**Distributed to:**

**Trial Chamber**

Judge NIL Nonn, President  
Judge Jean-Marc LAVERGNE  
Judge YA Sokhan  
Judge Claudia FENZ  
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## I. RESPONSE

1. The Co-Prosecutors hereby respond to the Trial Chamber's directive of 11 December 2014 (the "Order"), which instructed parties to indicate by 12 January 2015 any written statements or transcripts included in their proposed documents lists for Case 002/02 that are intended to be used as evidence of the acts and conduct of the Accused.<sup>1</sup>
2. The Trial Chamber has held that, generally, evidence in statements or transcripts from witness interviews or prior testimony that goes to proof of the acts and conduct of an accused are "not allowed under the law" pursuant to Rule 87(3)(d) absent an opportunity for the parties to question the witness in court.<sup>2</sup> This does not preclude the admission of relevant statements and transcripts also containing evidence of matters other than the acts and conduct of the Accused that comply with Rule 87(3), and where it is in the interests of justice and expeditious proceedings that they be admitted.<sup>3</sup> The admission of acts and conduct evidence in statements or transcripts is not precluded, however, where there is a "genuine absence of an opportunity for confrontation"<sup>4</sup>, which includes the individual's death, the inability to trace the individual with the exercise of reasonable diligence, the individual's medical inability to testify orally, and unavailability due to threats, intimidation or other improper influence.<sup>5</sup> In this filing, the Co-Prosecutors identify the documents on which they wish to rely for evidence of the Accused's acts and conduct that fall under this exception to the general rule.
3. The term "acts and conduct" for these purposes "applies only to a statement or transcript that, on its face and taken by itself, goes to proof of the personal acts and conduct of the Accused as charged."<sup>6</sup> Moreover, the heightened admissibility standard regarding acts and conduct evidence applies only to written statements and transcripts and does not affect the admissibility of any other evidence, which need only be *prima facie* relevant and reliable pursuant to Internal Rule 87(3).<sup>7</sup>

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<sup>1</sup> **E327** Scheduling of Objections to Documents Relevant to Case 002/02, 11 December 2014.

<sup>2</sup> **E299** Decision on Objections to the Admissibility of Witness, Victim and Civil Party Statements and Case 001 Transcripts Proposed by the Co-Prosecutors and Civil Party Lead Co-Lawyers, 15 August 2013, para. 17.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.* para. 18

<sup>5</sup> *Ibid.* paras. 17, 18.

<sup>6</sup> *Ibid.* para. 19 (internal quotes omitted).



<sup>7</sup> *Ibid.* para. 31.

4. In response to the Trial Chamber's Order, the Co-Prosecutors have endeavoured to identify the statements and transcripts of those individuals they know to be unavailable to testify, and that contain evidence of the acts and conduct of the Accused on which the Co-Prosecutors wish to rely. Those documents are identified in the attached **Annex A**. However, the Co-Prosecutors note that before the conclusion of Case 002/02, they may become aware of additional individuals who are unavailable to testify and whose statements and/or transcripts contain evidence of the acts and conduct of the Accused on which the Co-Prosecutors wish to rely. The Co-Prosecutors therefore anticipate that it may be necessary to supplement this filing during the course of Case 002/02.

## II. REQUESTED RELIEF

5. Therefore, the Co-Prosecutors respectfully request that the Trial Chamber admit the evidence of the Accused's acts and conduct contained in the witness statements and transcripts identified in the attached **Annex A**.

Respectfully submitted,

| Date            | Name                               | Place      | Signature   |
|-----------------|------------------------------------|------------|---|
| 12 January 2015 | CHEA Leang<br>Co-Prosecutor        | Phnom Penh |  |
|                 | Nicholas KOUMJIAN<br>Co-Prosecutor |            |  |