

**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: 18 February 2015

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' RESPONSE TO E327/3

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Before:

Trial Chamber

Judge NIL Nonn, President
Judge YA Sokhan
Judge Jean-Marc LAVERGNE
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I. INTRODUCTION

1. On 11 December 2014, the Trial Chamber (“the Chamber”) issued E327, outlining the procedure to be followed as to the scheduling of objections to documents in Case 002/02. On 2 February 2015, the Co-Lawyers for Mr. Khieu Samphan (“the Defence”) filed its *Exceptions d’irrecevabilité portant sur certains documents proposés pour le procès 002/02 et demande d’un véritable débat contradictoire sur la valeur probante* (“the Objections”).¹ The Civil Party Lead-Co Lawyers (“Lead Co-Lawyers”) respectfully respond that the Trial Chamber (“the Chamber”) reject the Defence’s Objections.

II. APPLICABLE LAW

2. The Internal Rules of the Court grant the Chamber broad discretion to admit documents into evidence,² where the documents meet the criteria of relevance, reliability and authenticity established in Internal Rule 87(3).³ The Chamber has held that evidence considered under Rule 87(3) must meet a *prima facie* standard of relevance, reliability and authenticity.⁴ In making a determination on reliability, the Chamber has indicated that “[a]lthough 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).”⁵

¹ *Exceptions d’irrecevabilité portant sur certains documents proposés pour le procès 002/02 et demande d’un véritable débat contradictoire sur la valeur probante*, **E327/3**, 2 February 2015.

² 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”).

³ 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 facts it purports to prove; d) not allowed under the law; or e) intended to prolong proceedings or is frivolous.”).

⁴ Trial Chamber Memorandum “Trial Chamber Response to portions of E114, E114/1, E131/1/9, E131/6, E136 and E158,” **E162**, 31 January 2012, para. 2. *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”).

⁵ 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 also* 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)).

III. DISCUSSION

3. Annex B of the Objections contains specific document numbers that the Defence takes issue with respect to documents appearing on the Lead Co-Lawyers' proposed document and evidence list⁶ and its new evidence motion.⁷ The Lead Co-Lawyers note that no reasoned analysis is provided with respect to the documents listed, except as to divide the documents into columns, challenging their degree of relevance to the scope of Case 002/02.
4. First, the Lead Co-Lawyers respond that the majority of the documents objected to have E3 numbers assigned to them and have been put before the Chamber in Case 002/01. As stated by the Trial Chamber "Case 002 Case File remains the same for both phases of trial and the evidence already put before the Chamber in Case 002/01 shall serve as a foundation for Case 002/02. E3 numbers assigned to evidence during the proceedings in Case 002/01 will remain the same for Case 002/02".⁸ Therefore, they have already been determined to be *prima facie* relevant, reliable and probative.
5. Second, the Lead Co-Lawyers have already established that the documents objected to and appearing on the *Civil Party Lead Co-Lawyers' Updated Rule 80 Lists of Documents & Exhibits for Case 002/02 with Confidential Annex V*⁹ are within the scope of Case 002/02. Annex V¹⁰ of these submissions provides a brief description of their nature and contents as well as specific reference to the relevant points of indictment for each document proposed pursuant to the Trial Chamber *Order to File Updated Material in Preparation for Trial in Case 002/02*.¹¹

⁶ Civil Party Lead Co-Lawyers' Updated Rule 80 Lists of Documents & Exhibits for Case 002/02 with Confidential Annex V, **E305/14**, 13 June 2014 and Confidential Annex V, Updated Document and Exhibit Lists, **E305/14.1.1**.

⁷ Civil Party Lead Co-Lawyers' Rule 87(4) Request to Admit into Evidence Oral Testimony and Documents and Exhibits Related to Witnesses, Experts and Civil Parties Proposed to Testify in Case 002/02, **E307/6**, 29 July 2014.

⁸ Trial Chamber Memorandum entitled: Clarification regarding the use of evidence and the procedure for recall of witnesses, civil parties and experts from Case 002/01 in Case 002/02, **E302/5**, 7 February 2014, para. 7.

⁹ Civil Party Lead Co-Lawyers' Updated Rule 80 Lists of Documents & Exhibits for Case 002/02 with Confidential Annex V, **E305/14**, 13 June 2014 and Confidential Annex V, Updated Document and Exhibit Lists, **E305/14.1.1**.

¹⁰ Confidential Annex V, Updated Document and Exhibit Lists, **E305/14.1.1**, 13 June 2014.

¹¹ Trial Chamber Order to File Updated Material in Preparation for Trial in Case 002/02, **E305**, 8 April 2014, paras 11-12.

6. Third, with respect to the three documents objected to that appear in the Lead Co-Lawyers' new evidence motion,¹² the Lead Co-Lawyers note that the Defense appear to challenge their relevance to the scope of Case 002/02. The Lead Co-Lawyers reiterate their submissions of 29 July 2014 and recall: (i) E307/6.1.2, the Supplementary Information of 2-TCCP-286, relates to the Civil Party's forced marriage;¹³ (ii) E307/6.1.3, the Testimonial Therapy Narrative of 2-TCCP-283, describes the Civil Party's forced marriage, forced sexual intercourse, the targeting of ethnic Vietnamese women for sexual violence;¹⁴ and (iii) E307/6.1.10, the Supplementary Information of 2-TCCP-267 describes a Civil Party's experience at S-21 and her forced marriage.¹⁵ The regulation of marriage, targeting of ethnic Vietnamese and S-21 fall squarely within scope of Case 002/02.¹⁶
7. Fourth, the Lead Co-Lawyers submit that an oral hearing with respect to the probative value of these documents would be inappropriate at this early stage. The Lead Co-Lawyers note that the Chamber will base "its findings on evidence put before it and subjected to adversarial debate."¹⁷ As some of the documents relate to civil parties who are proposed to testify, it would be premature to argue the probative value of the documents at this stage. The Lead Co-Lawyers note that documents not be subjected to in-court examination by the parties may nevertheless be admitted and afforded probative value where the documents are of a cumulative nature, concern crime-base evidence, or relate to victim impact.¹⁸ It is for the Chamber to later assess what, if any, probative value will ultimately be ascribed to the admitted documents.¹⁹

¹² The Objections identify **E307/6.1.2**, **E307/6.1.3** and **E307/6.1.10** as partially falling outside the scope of Case 002/02. *See*, Annexe B – Exceptions d'irrecevabilité relatives aux documents proposés par les Parties civiles, **E327/3.3**, 2 February 2015.

¹³ Civil Party Lead Co-Lawyers' Rule 87(4) Request to Admit into Evidence Oral Testimony and Documents and Exhibits Related to Witnesses, Experts and Civil Parties Proposed to Testify in Case 002/02, **E307/6**, 29 July 2014, paras 30 and 31.

¹⁴ Civil Party Lead Co-Lawyers' Rule 87(4) Request to Admit into Evidence Oral Testimony and Documents and Exhibits Related to Witnesses, Experts and Civil Parties Proposed to Testify in Case 002/02, **E307/6**, 29 July 2014, paras 37 and 38.

¹⁵ Civil Party Lead Co-Lawyers' Rule 87(4) Request to Admit into Evidence Oral Testimony and Documents and Exhibits Related to Witnesses, Experts and Civil Parties Proposed to Testify in Case 002/02, **E307/6**, 29 July 2014, para. 54.

¹⁶ *See*, Decision on Scope of Case 002/02, Annex: List of paragraphs and portions of the Closing Order relevant to Case 002/02, **E301/9/1.1**, 4 April 2014.

¹⁷ Case 002/01, Judgement, **E313**, 7 August 2014, para. 34.

¹⁸ Decision on Co-Prosecutors' Request to Admit Witness Statements, **E96/7**, 20 June 2012, para. 24.

¹⁹ Decision on Co-Prosecutors' Request to Admit Witness Statements, **E96/7**, 20 June 2012, para. 25.

8. Finally, with respect to the translation status of the Lead Co-Lawyers proposed documents, all documents identified in E305/14 and E307/6 have either been requested for translation or are in the process of being manually submitted for translation.

IV. REQUEST

WHEREFORE, the Lead Co-Lawyers respectfully request that the Trial Chamber:

- (1) **DISMISS** the Objections.

Respectfully submitted,

Date	Name	Place	Signature
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