

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

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**CO-PROSECUTORS' REQUEST FOR RECONSIDERATION OF THE DECISION  
REGARDING THE DENIAL OF THE REQUEST TO RECALL  
CIVIL PARTY SAR SARIN**

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## I. INTRODUCTION AND PROCEDURAL HISTORY

1. The Co-Prosecutors respectfully request the Trial Chamber to reconsider its “Disposition of All Requests for Protective Measures Sought in Case 002/01 and Response to Co-Prosecutors’ Request for the Recall of Civil Party Sar Sarin and an Order for a Formal Assessment of the Need for Protective Measures (E286)” issued on June 28, 2013 (“Rejection Decision”)<sup>1</sup> whereby the Trial Chamber found that it would not be conducive to ascertaining the truth or in the interests of justice to recall Civil Party Sar Sarin (TCCP-186).
2. In his detailed interview with the Documentation Centre of Cambodia (DC Cam) on 5 and 6 May 2009, Sar Sarin recounted specific facts directly related to the issues before this Chamber in Case 002/01 including information regarding the acts and conduct of both Accused.<sup>2</sup> During Sar Sarin’s testimony in Case 002/01 on 29 April 2013, he raised a concern for the first time about his personal security and requested assistance to ensure his safety.<sup>3</sup> He refused to provide further testimony without the particular protective measures he requested.<sup>4</sup> The Trial Chamber denied the request and released him from the courtroom.<sup>5</sup> The Co-Prosecutors filed a Request for the Recall of Civil Party Sar Sarin and an Order for a Formal Assessment of the Need for Protective Measures on 20 May 2013 (E286).<sup>6</sup> The Khieu Samphan Defence opposed this request for recall (E286/1).<sup>7</sup>
3. In the Rejection Decision the Chamber found, after consultation with the Witnesses/Experts Support Unit (WESU), that Sar Sarin was not a person whose appearance before the Chamber was “liable to place their life or health or that of their family members or close relatives in serious danger.”<sup>8</sup> The Trial Chamber thus made a reasoned order and determined that protective measures for Sar Sarin were not warranted under Internal Rule 29 because “[d]espite the subjective concerns expressed by this Civil Party, WESU was unable to identify any tangible or objective basis for these fears.”<sup>9</sup>

<sup>1</sup> **E293** Disposition of All Requests for Protective Measures Sought in Case 002/01 and Response to Co-Prosecutors’ Request for the Recall of Civil Party SAR Sarin and an Order for a Formal Assessment of the Need for Protective Measures (E286) 28 June 2013, paragraph 13. (“Rejection Decision”).

<sup>2</sup> **D230/1.1.874c** Transcript of DC-Cam Interview with Sar Sarin, 5-6 May 2009 at ERN 00739511, ERN 00739514, ERN 00739547-8, ERN 00739554, ERN 00739555.

<sup>3</sup> **E1/185.1** Transcript, 29 April 201, at pp. 37-39.

<sup>4</sup> *Ibid.* at p. 50-52.

<sup>5</sup> *Ibid.* at p. 64.

<sup>6</sup> **E286** Co-Prosecutors’ Request for the Recall of Civil Party Sar Sarin and an Order for a Formal Assessment of the Need for Protective Measures, 20 May 2013, (“Co-Prosecutors’ Request”).

<sup>7</sup> **E286/1** Réponse à la Demande des Co-Procureurs Demandant le Rappel de la Partie Civile SAR Sarin et l’Evaluation de son Besoin de Mesures de Protection, 30 May 2013.

<sup>8</sup> Rule 29(2).

<sup>9</sup> **E293** Rejection Decision at para. 12.

4. Sar Sarin indicated during his statement to the Trial Chamber on 29 April 2013<sup>10</sup> and during follow up WESU interviews that he was unwilling to provide further evidence without the provision of certain protective interventions, namely four body-guards for the remainder of his life, or an international relocation for himself and his family.<sup>11</sup> Following receipt of a report from WESU, the Trial Chamber held that the “recall of Sar Sarin is unlikely to be conducive to ascertaining the truth or otherwise in the interests of justice” and that Sar Sarin cannot be “compelled to testify” under Internal Rule 23(4) of the ECCC legal framework.<sup>12</sup>
5. The Co-Prosecutors respectfully request reconsideration of the Rejection Decision in light of the ;
- 1) erroneous interpretation of Internal Rule 23(4) as applied in this case prohibiting the Trial Chamber from compelling Civil Party Sar Sarin to provide evidence at trial; and
  - 2) the injustice that is caused either by depriving the Chamber of relevant, probative evidence provided by Sar Sarin’s testimony on key issues in this case, or by depriving the Accused of their fair trial rights to confront the evidence against them by having the opportunity to question Sar Sarin.

## II. LAW

### *A. Legal Test for Reconsideration*

6. The Pre-Trial Chamber has held that “an application for reconsideration may only succeed if there is a legitimate basis for the Pre-Trial Chamber to reconsider its previous decision.”<sup>13</sup> Furthermore, citing the jurisprudence of international tribunals, the Pre-Trial Chamber found that it has an inherent power to reconsider one of its previous decisions in three circumstances: 1) when a change of circumstance permits it; 2) when the court finds its previous decision was erroneous or 3) when the decision has caused an injustice.<sup>14</sup>

<sup>10</sup> E1/185.1 Transcript, 29 April 2013, at p. 50-52.

<sup>11</sup> E1/185.1 Transcript, 29 April 2013, pp. 37-42, 52 and 54; E29/460 WESU Report p. 3.

<sup>12</sup> E293 Rejection Decision at para. 13.

<sup>13</sup> C22/I/41 Decision on Admissibility of Civil Party General Observations, 24 June 2008 (Pre Trial Chamber) at paras. 3, 25; C22/I/68 Decision on Application for Reconsideration of Civil Party's Application to Address the Pre-Trial Chamber in Person, 28 August 2008 at para. 25; D99/3/41 Decision on Ieng Sary's Motion for Reconsideration of Ruling on the Filing of a Motion in the Duch Case File, 3 December 2008 at para 6.

<sup>14</sup> *Ibid.*; For international jurisprudence, see *Prosecutor v Stanislav Galić*, IT-98-29-A, Decision on Application by Prosecution for Leave to Appeal (ICTY Appeals Chamber), 14 December 2001 at para. 13; *Prosecutor v Fulgence Kayishema*, ICTR-01-67-R11bis, Decision on Prosecutor's Request for Reconsideration and, in the Alternative, for Certification of Interlocutory Appeal (ICTR Trial Chamber), 3 February 2011 at para. 3. *Prosecutor v Stanislav Galić*, IT-98-29-A, Decision on Defence Request for Reconsideration (ICTY Appeals Chamber), 16 July 2004 at p. 2.

### ***B. Appearance of a Civil Party at Trial***

7. According to the Rules of the ECCC,<sup>15</sup> it is not explicitly stated whether the Chamber can compel a Civil Party to give evidence at trial. However, on analysis, it is clear the Chamber possesses this power. The Trial Chamber may summon a Civil Party to appear before the ECCC, either on its own initiative or at the request of a Party,<sup>16</sup> as long as the summons “set[s] out the capacity in which the person is being summoned.”<sup>17</sup> Certainly a Civil Party victim may be summoned in the capacity of a Civil Party.<sup>18</sup> A Civil Party has a right be represented at trial through the Civil Party Lead Co-Lawyers<sup>19</sup> and thus the Rules do not require a Civil Party to be present at trial.<sup>20</sup>

### ***C. Testimony of a Civil Party at Trial***

8. The Rules establish that a Civil Party has the right testify at trial.<sup>21</sup> Similarly under the Cambodian and the French Procedure Codes,<sup>22</sup> a Civil Party has a right to make a statement during the trial. While Rule 23(4) explicitly states that a Civil Party “cannot be questioned as a simple witness in the same case and, subject to Rule 62 relating to Rogatory Letters, may only be interviewed under the same conditions as a Charged Person or Accused,” this Rule alone is not sufficient to determine whether a Civil Party may be compelled to provide evidence at trial. However, an analysis of the Rules as whole, and a consideration of other relevant sources of law,<sup>23</sup> clearly indicate that Civil Parties may be compelled to testify and their rights with respect to the issue of questioning vary to the rights of the Accused.
9. At the outset, in many respects the rights of Civil Parties at trial are similar to those of the Accused. An Accused may be compelled to appear for trial,<sup>24</sup> and a properly summoned Civil Party may also be compelled to appear for trial.<sup>25</sup> An Accused may offer an

<sup>15</sup> Extraordinary Chambers of the Courts of Cambodia, Internal Rules (Rev. 8), as revised on 3 August 2011 (“Rules”).

<sup>16</sup> See Rule 41, Rule 80*bis*.

<sup>17</sup> Rule 41(1).

<sup>18</sup> Rule 41(1) “A summons is an order to any person to appear before the ECCC. It may be issued to a ... Civil Party or witness and shall set out the capacity in which the person is being summoned.” *Ibid*.

<sup>19</sup> Rule 23(3).

<sup>20</sup> Rule 83 governing the appearance by Civil Parties was repealed on 9 February 2010.

<sup>21</sup> Rule 91(1). “The Chamber shall hear the Civil Parties...in the order it considers useful.” *Ibid*.

<sup>22</sup> Cambodia Code Crim. Proc. Art. 326, 335 (2008), Code de Procédure Pénale Art. 346 (2013)

<sup>23</sup> Article 312 of the French Procedure Code allows “the public prosecutor and the parties’ advocates [to] put questions directly to the accused, *the Civil Party*, witnesses or anyone else *called to testify*.” Code de Procédure Pénale Art. 312 (2013)(emphasis added). This language supports the interpretation that Civil Parties may be called to testify during trial. Code de Procédure Pénale Art. 346 (2013). (“The witnesses summoned by the public prosecutor or the parties are heard in the course of the debate.”).

<sup>24</sup> Rule 81.

<sup>25</sup> See *supra* paras. 10-12.

unsworn statement,<sup>26</sup> be questioned,<sup>27</sup> and assert the right against self-incrimination.<sup>28</sup> Likewise, a Civil Party may offer an unsworn statement,<sup>29</sup> be questioned,<sup>30</sup> and assert the right against self-incrimination.<sup>31</sup>

10. However, unlike a Charged Person or Accused, a Civil Party does not have the right to remain silent generally.<sup>32</sup> The right of the Accused to remain silent is explicitly rooted in international instruments and the ECCC Law, and may be exercised without a specific reason.<sup>33</sup> A Civil Party, on the other hand, can only refuse to answer questions where answers would tend to incriminate him or her. In other words, a Civil Party cannot refuse to answer questions based on an unwarranted protection request that is presented to the Chamber as an ultimatum.
11. As noted above, Rule 23(4) states that a Civil Party “may only be interviewed under the same conditions as a Charged Person or Accused.”<sup>34</sup> While at first glance the Rule seems to indicate that a Civil Party must be interviewed under conditions identical to those allowed or required for an Accused at trial, an analysis of this Rule in the context of the Rules as a whole clearly demonstrates that that interpretation is erroneous.
12. **Judicial Investigation Phase** : In the judicial investigation phase, the Rules permit the questioning of Civil Parties to occur under conditions different from those applicable to a Charged Person. The Co-Investigating Judges may take “any investigative action conducive to ascertaining the truth” including summoning and questioning Charged Persons, Victims and witnesses.<sup>35</sup> Rule 58 governs the interview of a Charged Person and Rule 59 governs the interview of a Civil Party. The Rules set out some significantly

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<sup>26</sup> Rule 94(d).

<sup>27</sup> Rule 90. *See also* Rule 89bis(2).

<sup>28</sup> Rule 21(d); ECCC Law, Article 35 new (g).

<sup>29</sup> Rule 91(1).

<sup>30</sup> Rule 91(2).

<sup>31</sup> Rule 28.

<sup>32</sup> Rule 21(d). “Every person suspected or prosecuted ... shall be informed of his/her right to remain silent.” *Ibid.*

<sup>33</sup> Article 35 new (g) of the ECCC Law; Rule 21(d). International Covenant on Civil and Political Rights Art 14(3)(g).

<sup>34</sup> In addition, the ability to interview a Civil Party is subject to Rule 62 relating to Rogatory Letters. Rule 24(4). Rule 62 allows the Co-Investigating Judges to issue a Rogatory Letter requiring any Investigator from their Office, or the Judicial Police, to conduct investigative action. In this circumstance, the conditions for interviewing Charged Person and a Civil Party are not the same. According to Rule 62(3)(b) both the Judicial Police and Investigators are prohibited from interviewing a Charged Person. By contrast, Investigators are allowed to interview Civil Parties under certain requisite conditions. Rule 62(3)(b) These conditions include the Civil Party’s agreement to be interviewed, the Civil Party’s waiver of the lawyer’s presence, and the absence of other parties during the questioning. Rule 59(6).

<sup>35</sup> Rule 55(5). Note that during the judicial investigation, some victims may be in the process of applying to be admitted and joined as Civil Parties. *See* Rule 23 *bis*.

different requisite conditions for these investigative interviews.<sup>36</sup> For example, Rule 59 allows a Civil Party to be interviewed without the presence of his or her lawyer if the lawyer failed to appear after being validly summoned.<sup>37</sup> Rule 58, on the other hand, states that a Charged Person shall only be questioned in the presence of a lawyer unless the Charged Person waives the right to the presence of a lawyer<sup>38</sup> or when the Charged Person consents in an emergency situation.<sup>39</sup>

13. Another significant difference relates to who may be present during the interview. When the Charged Person is to be interviewed, the Co-Investigating Judges must notify the Co-Prosecutors who then may attend the interview and request that questions be put to the Charged Person.<sup>40</sup> By contrast, unless the Co-Investigating Judges decide to confront the Civil Party directly with any other party or witness, the other parties shall not be present during the interview of the Civil Party.<sup>41</sup>
14. **Trial Phase :** In the trial phase, while several conditions for the examination of Accused and Civil Parties are the same or similar (such as that both may be compelled to appear at trial,<sup>42</sup> give unsworn statements,<sup>43</sup> be represented by counsel,<sup>44</sup> and assert the right against self-incrimination<sup>45</sup>), in several respects, the conditions are not identical. While a Civil Party must be informed of his / her right against self-incrimination,<sup>46</sup> the Accused must be informed of all his or her rights under Rule 21(1)(d), including the right to remain silent.<sup>47</sup> This is reflective of the underlying difference in the substantive rights of Civil Parties and Accused as discussed above: a Civil Party may only refuse to answer questions on the basis of a valid exercise of the right against self-incrimination.<sup>48</sup> Furthermore, certain procedures that apply to questioning of the Accused are distinct from those for Civil Parties. While questioning of the Accused by the Judges must be done through the

<sup>36</sup> See e.g., Rule 25 which requires The Co-Prosecutors and Co-Investigating Judges to record an interview with a Charged Person whenever possible.

<sup>37</sup> Rule 59(2).

<sup>38</sup> Rule 58(2)

<sup>39</sup> Rule 59(3)

<sup>40</sup> Rule 58(4).

<sup>41</sup> Rule 59(3).

<sup>42</sup> Rule 81; *supra* paras. 10-12.

<sup>43</sup> Rule 94(d); Rule 91(1).

<sup>44</sup> Rule 23*ter*; Rule 21(d).

<sup>45</sup> Article 35 new (g) of the ECCC Law; Rule 28. International Covenant on Civil and Political Rights Art 14(3)(g), directly applicable at the ECCC pursuant to Article 33 new of the ECCC Law; European Convention on Human Rights Article 6(1).

<sup>46</sup> Rule 28(2).

<sup>47</sup> Rule 90(1) referencing Rule 21(d) (“Every person suspected or prosecuted shall be presumed innocent as long as his/her guilt has not been established. Any such person has the right to be informed of any charges brought against him/her, to be defended by a lawyer of his/her choice, and at every stage of the proceedings shall be informed of his/her right to remain silent.”)

<sup>48</sup> Rule 28.

President (Rule 90(2)), the same does not apply to the questioning of Civil Parties (Rule 91(2)). Finally, while the Chamber may order that the Accused be questioned at his or her location (in the presence of the lawyers), when he / she is unable to appear before the Chamber,<sup>49</sup> there is no such provision for the questioning of a Civil Party.

15. Consequently, it is respectfully submitted that there are significant differences both in the procedural rights of an Accused and Civil Parties and in the conditions under which they are questioned at the various stages of the proceedings. Therefore, the conclusion that Sar Sarin could not be “compelled to testify” under Internal Rule 23(4) of the ECCC legal framework<sup>50</sup> due to his status as a Civil Party is erroneous. A Civil Party whose evidence the Chamber finds conducive to ascertaining the truth of the allegations in the Closing Order may be compelled to appear at trial for questioning.
16. The President of the Chamber has the duty to “preside over the proceedings” so that they are “conducive to ascertaining the truth.”<sup>51</sup> In addition, the President must “maintain good order during the trial.”<sup>52</sup> Pursuant to Rule 35, the Trial Chamber has the authority to order sanctions against anyone who interferes with the administration of justice, including “any person who knowingly and wilfully interferes with the administration of justice” by failing to comply with an order to attend, or produce documents or other evidence before it.<sup>53</sup> Other international courts have used their authority to hold witnesses in contempt for interfering with the administration of justice.<sup>54</sup> In particular, courts have found witnesses in contempt for refusal to testify.<sup>55</sup>

Given that the Chamber has considered the risk of harm asserted by Sar Sarin and formally denied him protective measures, his request for unfounded wide-sweeping protection measures does not constitute a “just excuse” that would allow him to refuse to attend and provide evidence to the Chamber.<sup>56</sup> Thus, upon recall, Sar Sarin must testify

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<sup>49</sup> Rule 81(6).

<sup>50</sup> **E293** Rejection Decision at para. 13.

<sup>51</sup> Rule 85(1).

<sup>52</sup> Rule 85(2).

<sup>53</sup> Rule 35(1)(b).

<sup>54</sup> See e.g., *Prosecutor v Nshogoza*, No. ICTR-07-91-T, *Judgement* (7 July 2009); *Prosecutor v Marijačić & Rebić* No. IT-95-14-A, *Judgement* (27 September 2006).

<sup>55</sup> See e.g., *Prosecutor v Milošević*, No. IT-01-54-A, *Decision on Interlocutory Appeal of Kosta Bulatovic Contempt Proceedings* (29 August 2005); *Contempt Proceedings Against Dragan Jokić*, No. IT-05-88-R77.1, *Judgement on Allegations of Contempt* (27 March 2009); *In the Contempt Case of Milan Tupajić*, No. IT-95-5/18-R77.2, *Judgement on Allegations of Contempt* (24 February 2012).

<sup>56</sup> **E1/185.1** Transcript, 29 April 2013.

in this case. If he refuses to do so without just excuse, the Chamber has the authority to sanction his interference with the administration of justice.<sup>57</sup>

### III. ARGUMENT

#### *A. The Testimony of Civil Party Sar Sarin Is Relevant and Probative and Necessary for the Trial Chamber to Ascertain the Truth*

17. To fulfil the Trial Chamber's duty to consider evidence and "ascertain[] the truth,"<sup>58</sup> the Chamber should consider all relevant probative evidence.<sup>59</sup> Further, the Trial Chamber has the duty "ensure that trials are fair...with full respect for the rights of the accused and for the protection of victims and witnesses."<sup>60</sup> A fair evaluation of the evidence includes the testimony of Sar Sarin.
18. In his detailed interview with the Documentation Centre of Cambodia (DC Cam) on 5 and 6 May 2009, Sar Sarin stated that he was present during education sessions during the DK period, where both Nuon Chea and Khieu Samphan gave speeches advocating the killing of supposed external and internal enemies.<sup>61</sup> In this interview, Sar Sarin also gave evidence regarding a) CPK Party Centre's orders to execute soldiers of the Khmer Republic throughout the country, as well as the implementation of that order in his commune, and b) the enforcement of the CPK enemy policy through security centres.<sup>62</sup>
19. Given that the onus is on the Co-Prosecutors to prove the guilt of the accused beyond a reasonable doubt, the Chamber should consider all evidence put before it unless the Chamber finds the request for evidence is "irrelevant or repetitious; impossible to obtain within a reasonable time; unsuitable to prove the facts it purports to prove; not allowed under the law; or intended to prolong proceedings or is frivolous."<sup>63</sup>

<sup>57</sup> Rule 35(1)(b) The ECCC may sanction "any person who knowingly and wilfully interferes with the administration of justice, including any person who ...without just excuse, fails to comply with an order to attend, or produce documents or other evidence before the Co-Investigating Judges or the Chambers."

<sup>58</sup> Rule 87(4). *See also*, Code de Procédure Pénale Art. 310 (2013). The French Procedure Code empowers the president with broad discretionary power by which he may "take any measure he believes useful for the discovery of the truth." *Ibid.* The President has the authority to "summon in the course of the hearing ... any person ... he deems useful for the discovery of the truth." *Ibid.* While "[w]itnesses summoned in this way do not take an oath and their statements are only considered as a source of information," the French Procedure Code may allow the president to summon a Civil Party as "any person" who may be "useful for the discovery of the truth" and consider the unsworn testimony as a source of information. *Ibid.*

<sup>59</sup> Rule 87.

<sup>60</sup> ECCC Law, Article 33 new.

<sup>61</sup> **D230/1.1.874c** Transcript of DC-Cam Interview with Sar Sarin, 5-6 May 2009 at ERN 00739547-8, ERN 00739554.

<sup>62</sup> *Ibid.*, at ERN 00739511, ERN 00739514, ERN 00739555.

<sup>63</sup> Rule 87(3)



20. The Chamber has granted the Co-Prosecutors' request to summon Sar Sarin because receiving his evidence would be "conducive to the good administration of justice."<sup>64</sup> At this stage of the trial, his unoffered evidence is still "conducive to ascertaining the truth" and should be heard by the Chamber.
21. Civil Party Sar Sarin was released from the court after the Judges, the Co-Lead Lawyers, and the Co-Prosecutors had an initial opportunity to question him - but before the Defence was given the opportunity to cross examine him on the evidence presented against their clients.<sup>65</sup> The Trial Chamber should therefore also recall Sar Sarin to testify in order to uphold the fair trial rights of the defence and to allow the Chamber to consider all relevant and probative evidence in its search for the truth.
22. In addition, the Co-Prosecutors have submitted a prior statement made by Sar Sarin as evidence in this case.<sup>66</sup> Because he has provided statements directly concerning the acts and conduct of the accused, these statements have been redacted. Some of the most relevant and probative evidence in these statements is necessarily contained within the redacted sections. If the Trial Chamber declines to recall Sar Sarin to testify, the Chamber may be prevented from its ability to consider key evidence in its determination of the truth in this case.

***B. Sar Sarin's Status as a Civil Party Should Be Reconsidered***

23. Further and in the alternative, the Co-Prosecutors submit that the Chamber should reconsider Sar Sarin's Civil Party status, especially if he again refuses to testify. Sar Sarin has qualified as a Civil Party in this case based on his application according to Rule 23bis.<sup>67</sup> If a guilty verdict is rendered, the Civil Party status makes Sar Sarin eligible for reparations.<sup>68</sup> Yet, Sar Sarin has refused to give evidence that has been determined by the Co-Prosecutors and the Chamber to be conducive to ascertaining the truth. His refusal to provide evidence in accordance with a valid order of this Chamber is effectively a withdrawal of the Civil Party claim.<sup>69</sup>

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<sup>64</sup> Rule 81 bis(2). Note Rule 24 prohibits the Chamber from calling as a witness "any person against whom there is evidence of criminal responsibility," but there are exceptions as provided in Rule 28. Rule 24(4).

<sup>65</sup> E1/185.1 Transcript, 29 April 2013.

<sup>66</sup> D230/1.1.874c Transcript of DC-Cam Interview with Sar Sarin, 5-6 May 2009.

<sup>67</sup> D404/2/4 Decision on Appeals Against Orders of the Co-Investigation Judges on the Admissibility of Civil Party Applications, 24 Jun 2011.

<sup>68</sup> Rule 23 quinquies.

<sup>69</sup> Rule 23bis(5) "At any time during the trial stage and beyond, a Civil Party may withdraw from the consolidated group."



24. The Chamber has the duty “to always safeguard the interests”<sup>70</sup> of the victims and “preserve a balance between the rights of the parties.”<sup>71</sup> Through his refusal, Sar Sarin is jeopardising the interests of other Civil Parties, whose position the Chamber should take into account in considering the exercise of its discretion on this issue. If Sar Sarin is no longer a Civil Party in this case, he forgoes the benefits of Civil Party status and he becomes a simple witness who must testify under oath.

#### IV. RELIEF SOUGHT

25. For the reasons outlined above, the Co-Prosecutors respectfully request the Chamber to reconsider the decision regarding the denial of the request to recall Civil Party Sar Sarin and:

- 1) Summon Sar Sarin to testify, additionally informing him that:
  - a) his request for protection has been assessed and found to be unsubstantiated;
  - b) he has a duty to give evidence
  - c) a refusal to testify can lead to the imposition of Rule 35 sanctions; and
- 2) If Sar Sarin continues to refuse to testify:
  - a) reconsider his status as a Civil Party; and
  - b) impose sanctions against him pursuant to Rule 35;

Respectfully submitted,

Date	Name	Place	Signature
18 July 2013	CHEA Leang Co-Prosecutor	Phnom Penh	
	Andrew CAYLEY Co-Prosecutor		

<sup>70</sup> Rule 21 (1).

<sup>71</sup> Rule 21(1(a)).