

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

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**CIVIL PARTY LEAD CO-LAWYERS' REQUEST RELATING TO THE HEARING ON
THE ACCUSED'S FITNESS TO STAND TRIAL**

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Before:

Trial Chamber

Judge NIL Nonn, President
Judge YA Sokhan
Judge Jean-Marc LAVERGNE
Judge YOU Ottara
Judge Claudia FENZ

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I. INTRODUCTION

1. The Civil Party Lead Co-Lawyers (“Lead Co-Lawyers”) declare with this motion their intent to reserve their right to question Dr. CHAN Kin Ming and Dr. HUOT Lina during the hearing on Accused’s Fitness to Stand Trial (“Hearing”) currently scheduled for 23 January 2015. The Lead Co-Lawyers and Civil Party Lawyers have enjoyed the right to question experts during previous hearings on fitness;¹ and the erosion of this right during the forthcoming hearing would fundamentally compromise the ability of the Lead Co-Lawyers to represent the interests of the consolidated group of civil parties in Case 002/02.

II. PROCEDURAL BACKGROUND

2. On 18 December 2014, the Trial Chamber issued an Order Assigning Experts to Assess the Accused’s Fitness to Stand Trial (“Order”).² The Trial Chamber ordered Dr. CHAN Kin Ming and Dr. HUOT Lina (“Experts”) to assess Nuon Chea and Khieu Samphan (“Co-Accused”), and thereafter to provide information to the Trial Chamber in the form of Experts’ reports based on the criteria delineated in the *Strugar* case.³
3. The Order scheduled the Hearing for 23 January 2015 to allow the Experts to present their findings and to be questioned by the Defence and Co-Prosecutors.⁴ The Order did not state whether the Lead Co-Lawyers are similarly permitted to question the Experts on their findings.

¹ Transcript to the Proceedings for Case 002, **E1/9.1**, 30 August 2011, ERN 00738784- 00738794, Transcript to the Proceedings for Case 002, **E1/10.1**, 31 August 2011, ERN 00729295-00739398, Transcript to the Proceedings for Case 002, **E1/12.1**, 20 October 2011, ERN 00749134-00749146, Transcript to the Proceedings for Case 002, **E1/118.1**, 30 August 2012, ERN 00844881- 00844884, Transcript to the Proceedings for Case 002, **E1/119.1**, 31 August 2012, ERN 00845044-00845064, Transcript to the Proceedings for Case 002, **E1/143.1**, 12 November 2012, ERN 00861449-00861452.

² Order Assigning Experts to Assess the Accused’s Fitness to Stand Trial, **E329**, 18 December 2014.

³ Order Assigning Experts, paras 6-8.

⁴ Order Assigning Experts.

III. SUBMISSIONS

- A. The Lead Co-Lawyers for Civil Parties reserve their right to question the Experts on the conclusions drawn in their Experts' reports regarding the Co-Accused's fitness to stand trial.**
4. Civil Parties in Case 002 are those victims whose Civil Party applications were deemed admissible by the Co-Investigating Judge or the Pre-Trial Chamber and the Civil Parties are a party to the proceedings just like the Accused and the Co-Prosecutors.⁵
 5. The ECCC Internal Rules ("Internal Rules") expressly recognise the need to safeguard the interests of both the Accused and the Victims⁶ appearing before the ECCC and in furtherance of that objective, the Lead Co-Lawyers are tasked with providing effective representation of the unique interests of the consolidated group of civil parties⁷.
 6. The Trial Chamber has previously recognised the need to maintain a fair and adversarial process that balances the rights of the parties⁸ during similar hearings on fitness to stand trial, by allowing the Lead Co-Lawyers as well the Co-Prosecutors and Defence to question the Experts on the conclusions drawn in their Experts' Reports.⁹
 7. In order to ensure that civil parties' standing as a party to the proceedings is not undermined and that their interests continue to be effectively represented, there is a need to maintain the adversarial nature of the hearing, with the inclusion of the Lead Co-Lawyers.

IV. REQUEST

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

⁵ Internal Rules, p. 81 "Party".

⁶ *Ibid*, Rule 21(1).

⁷ *Ibid*, 12ter.


⁸ *Ibid*, Rule 21(1)(a).

⁹ Scheduling Order for Preliminary Hearing on Fitness to Stand Trial, **E110**, 11 August 2011, ERN 00725388, Trial Chamber Memorandum entitled "Scheduling of reassessment and hearing on IENG Thirith fitness to stand trial", **E318/1/7/13**, 22 June 2012, ERN 00818576; Decision on Accuseds' Fitness to Stand Trial and Order Assigning Experts, **E301/10**, 17 February 2014, para 16, ERN 00975156.

Civil Party Lead Co-Lawyers' Request Relating To The Hearing On The Accused's Fitness To Stand Trial

- (1) **REAFFIRM** the Lead Co-Lawyers' right to question the assigned Experts during the scheduled fitness to stand trial hearing.

Respectfully submitted,

Date	Name	Place	Signature
12 January 2015	PICH ANG National Lead Co- Lawyer	Phnom Penh	
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