

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

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**CIVIL PARTY LEAD CO-LAWYERS' RESPONSE TO THE JOINT REQUEST BY THE DEFENCE
TEAMS ON CERTAIN PRACTICES CONCERNING WITNESSES AND EXPERTS**

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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. The Lead Co-Lawyers for Civil Parties (“Lead Co-Lawyers”) hereby respond to the joint request by the defence teams of Nuon Chea and Khieu Samphan (collectively, “the Defence”) dated 29 July 2015 concerning certain trial practices involving examination of witnesses and experts (“Request”).¹

II. PROCEDURAL BACKGROUND

2. On 17 November 2011, the Trial Chamber guided by concerns of efficiency of proceedings, decided to provide witnesses an opportunity to refresh their memories by reviewing their prior statements.² It directed the Witness and Expert Support Unit (“WESU”) to provide each witness with his or her prior statements so that they may review them in advance of their testimony.³

3. On 5 December 2011, the Trial Chamber further elaborated that the purpose of this practice was to ensure that witnesses are able to refresh their memories as to what they had said before during investigations, which had often taken place often “many months ago”.⁴ The Trial Chamber added that the said statements would not be used in court by the witness and would be taken away from them by WESU as soon as they finished reading them.⁵ Further, the witnesses would not be able to use any statements that they have in their possession to refresh their memories in court.⁶

4. On 13 June 2012, pursuant to a request for clarification by the Co-Prosecutors on the use of documents during the in-court examination of witnesses,⁷ the Trial Chamber issued a notice to parties regarding revised modalities of questioning.⁸ It decided that:

¹ Demande conjointe des équipes de Défense visant à revenir sur certaines pratiques relatives aux dépositions à la barre, **E355**, 29 July 2015.

² Response to issues raised by parties in advance of trial and scheduling of informal meeting with Senior Legal Officer on 18 November 2011, **E141**, 17 November 2011, p. 4.

³ *Id.*

⁴ **E1/16.1** dated 5 December 2011, p. 59.

⁵ *Id.*

⁶ *Id.*

⁷ Co-Prosecutors’ Request for Clarification Regarding the Use of Documents During Witness Testimony, **E201**, 30 May 2012.

⁸ Notice to parties regarding revised modalities of questioning and Response to Co-Prosecutors’ Request for Clarification Regarding the Use of Documents During Witness Testimony, **E201/2**, 13 June 2012 (“TC Memo on Use of Documents”).

“The Trial Chamber reminds the parties that in the interests of ensuring the expeditiousness of proceedings, it has recently commenced the questioning of each witness by asking whether the witness is familiar with the statement they gave before the Co-Investigating Judges (OCIJ) and whether this represents an accurate statement of their evidence. Where the witness indicates that s/he does recall their statement and that its contents as recorded in the OCIJ written record are true, parties shall not repeatedly request the witness to confirm this fact or otherwise attempt to force the witness to merely repeat the contents of that statement. The parties should instead focus their efforts on other questions (for instance, on matters beyond the contents of the statement) or in posing specific challenges to the credibility of the statement or the witness' evidence.”⁹

5. On 29 December 2014, the Defence filed their respective appeal briefs¹⁰ against the Trial Judgement¹¹ to which the Co-Prosecutors responded on 24 April 2015.¹² The Nuon Chea Appeal Brief challenged certain trial practices, *inter alia*, alleging errors in law in permitting witnesses to review prior statements before testifying and answer leading questions based on those statements.¹³ The Khieu Samphan Appeal Brief similarly challenged these practices.¹⁴ The Co-Prosecutors responded to these alleged errors in their Response Brief.¹⁵

6. On 8 January 2015, the Khieu Samphan Defence registered their objection to the practice of witnesses reading over their prior statements arguing that it altered their testimony in court.¹⁶ The Nuon Chea Defence, referring to the arguments in their appeal brief, also objected to this practice in respect of witnesses and civil parties as it was “counterproductive to the ascertainment of the truth”.¹⁷

7. The Trial Chamber took note of the objections and decided to continue with the practice in Case 002/01, which allowed witnesses and civil parties to read their prior statements in order to refresh their memory before their testimony in court.¹⁸ To expedite the

⁹ TC Memo on Use of Documents, p. 1.

¹⁰ Nuon Chea's Appeal against the Judgement in Case 002/01, **F16**, 29 December 2014 (“Nuon Chea Appeal Brief”); Mémoire d'appel de la Défense de M. KHIEU Samphan contre le jugement rendu dans le procès 002/01, **F17**, 29 December 2014 (“Khieu Samphan Appeal Brief”).

¹¹ Case 002/01 Judgment, **E313**, 7 August 2014, (“Trial Judgment”).

¹² Co-Prosecutors' Response to Case 002/01 Appeals, **F17/1**, 24 April 2015 (“Co-Prosecutors' Response Brief”).

¹³ Nuon Chea Appeal Brief, Grounds 15-16, paras 135-147.

¹⁴ Khieu Samphan Appeal Brief, para. 26.

¹⁵ Co-Prosecutors' Response Brief, paras 81-83.

¹⁶ **E1/247.1** dated 8 January 2015, p. 31.

¹⁷ *Ibid*, p. 32.

¹⁸ *Ibid*, p. 34.

proceedings, the Trial Chamber advised the Defence to put their objections and requests in writing.¹⁹

8. On 16 January 2015, the Nuon Chea Defence filed their objections, *inter alia*, to the practice of permitting Civil Parties to review prior statements before testifying and answering questions based on those statements.²⁰ The Lead Co-Lawyers opposed such request on the grounds that not only was it contradictory to the explicit provisions of the Internal Rules, but would also amount to a substantial variation in the substantive and procedural rights granted to the civil parties.

9. On 17 June 2015, the Supreme Court Chamber issued directions as to the conduct of hearings on appeal concerning the examination of three witnesses requested by the Nuon Chea Defence. The Supreme Court Chamber prohibited the parties from asking “leading questions in contentious subject areas, unless so authorized by the Chamber”; and instructed the parties to not conduct the questioning of witnesses by “merely reading out passages of their prior statements to them and then seeking confirmation thereof”.²¹ It allowed the use of prior statements to “test witnesses’ credibility or [to] clarify discrepancies between different statements”.²² These directions were issued without prejudice to the grounds of appeal raised by the Defence as the Chamber emphasized that these directions “have no bearing on any of the grounds of appeal raised by the Defence”.²³

10. On 27-28 July 2015, the issue of review of prior statements by witnesses arose again in court following oral rulings from the Trial Chamber.²⁴

III. APPLICABLE LAW

11. Internal Rule 85(1) states that the President of the Chamber, in consultation with the other judges, “may exclude any proceedings that unnecessarily delay the trial, and are not conducive to ascertaining the truth”.²⁵

¹⁹ *Id.*

²⁰ Nuon Chea’s Request Regarding Certain Practices to be Undertaken When Examining Upcoming Civil Party 2-TCCP-271 and Other Case 002/02 Witnesses and Civil Parties Generally, **E336**, 16 January 2015.

²¹ Directions on the Conduct of the Hearing, **F26**, 17 June 2015, p. 4.

²² *Id.*

²³ *Ibid*, p. 3.

²⁴ Draft Transcript dated 28 July 2015, pp. 63-64; Draft Transcripts dated 27 July 2015 (French), pp. 66-67.

12. Internal Rule 91(1) states that “Judges may ask any questions and the Co-Prosecutors and all the other parties and their lawyers shall also be allowed to ask questions with the permission of the President”. It adds that “all questions shall be asked through the President of the Chamber”. Internal Rule 91(3) allows the Co-Prosecutors and all other parties and their lawyers to object to the continued hearing of the testimony of any witnesses, if they consider that such testimony is not conducive to ascertaining the truth.

V. DISCUSSION

13. The Lead Co-Lawyers respond to the current Request as it concerns the obligation of the Lead Co-Lawyers to coordinate with the Civil Party Lawyers on the mode of examination of witnesses and experts stemming from their ultimate responsibility to the court for the overall advocacy, strategy and in-court presentation of the interests of the consolidated group of Civil Parties during trial.²⁶ Further, in this particular instance, the manner of conduct of proceedings has a bearing on the fair trial rights of Civil Parties which, amongst other interests and concerns, rest on expediency and trial efficiency.

14. The Defence base their Request on the directions issued by the Supreme Court Chamber during the hearing of additional witnesses on appeal.²⁷ Therefore, at the outset, the Lead Co-Lawyers submit that the Request is unfounded. Firstly, such directions were issued without prejudice to the grounds of appeal raised by the Defence;²⁸ and the Supreme Court Chamber did not issue a reasoned decision on why these practices were proscribed by them. Suppositions as to the reasons for such directions, regardless of whether the practice reflected the proper conception of trial proceedings or not, amount to speculation at this stage. The Lead Co-Lawyers submit that altering an established practice before the Trial Chamber merely on these grounds is not appropriate. Therefore, the Request should be dismissed on this account.

²⁵ Cf. the French version of Internal Rule 85(1): « Le Président de l’audience dirige les débats et facilite l’intervention des autres juges. Il veille au libre exercice des droits de la défense. Après consultation des autres juges, le Président peut exclure des débats tout ce qui tend à les prolonger inutilement sans contribuer à la manifestation de la vérité. » (emphasis added)

²⁶ See Internal Rules 12ter (6) read with 12ter (5)(b).

²⁷ Request, paras 9-11 referring to Directions on the Conduct of the Hearing, **F26**, 17 June 2015.

²⁸ Directions on the Conduct of the Hearing, **F26**, 17 June 2015, p. 4.

15. The Lead Co-Lawyers argue that based on the collective reading of the Internal Rules and the practice adopted by the Trial Chamber, it is clear that the Trial Chamber permits all parties to make objections on grounds that the question(s) asked are not conducive to ascertaining the truth and/or would unnecessarily delay the proceedings.

16. Further, for the purposes of the present response, the Lead Co-Lawyers note that the two issues raised by the Request concerning the asking of leading questions and the practice of reviewing of prior statements before testimony, although related, are independent issues and have been dealt with separately in this response.

(a) Review of Prior Statements by Witnesses

17. The Lead Co-Lawyers submit that to prohibit witnesses from reading their own statement(s) that were taken, in many instances, years ago concerning events that took place decades ago will cause unnecessary delays in the examination of witnesses on account of loss of memory, age and health of the witnesses. Considering that the primary principles governing the conduct of hearings at the ECCC are the “ascertain[ment] of the truth”²⁹ and the avoidance of “unnecessar[y] delay [during] the trial”,³⁰ the Lead Co-Lawyers submit that there are no reasonable grounds from altering the current practice before the Trial Chamber.

18. The Trial Chamber has prohibited the use of the witnesses’ own copies of prior statements for review and instead required the WESU to provide them with the official copy of their prior statements for their review.³¹ Furthermore, the witnesses are not permitted to use their prior statements during their examination in court for refreshing their memory,³² except at the instance of the examining party.³³ The Lead Co-Lawyers submit that the current practice marks a compromise between the two competing interests in these particular instances i.e. unnecessary delays during trial and ascertaining the truth. Therefore, the Lead

²⁹ Internal Rules 85(1), 91(3).

³⁰ Internal Rule 85(1).

³¹ E1/16.1 dated 5 December 2011, p. 59: “The Chamber notes that there is already a -- there was a practice [sic] at the investigation stage whereby the witnesses were provided with copies of their statements, and this practice is put in place simply to ensure that witnesses are able to refresh their memories as to what was said now many months ago. Those statements will not be able to be used in Court. They will be taken from the witnesses by WESU as soon as they have finished reading them, and of course they will not be able to use any statements that they have in their own possession to refresh their memories in Court.”

³² *Id.*

³³ See e.g. E1/268.1 dated 24 February 2-15, p. 19; E1/280.1 dated 19 March 2015, p. 20; E1/296.1 dated 4 May 2015, pp. 82-83.

Co-Lawyers urge the Trial Chamber to reject the Request in respect of review of prior statements by the witnesses.

(b) Leading Questions

19. The Request urges the Trial Chamber to preclude the parties from posing questions to witnesses that suggest a response over matters that are contested between the parties.³⁴

20. In this respect, the Lead Co-Lawyers interpret the Request to seek either that (i) the Trial Chamber impose a blanket ban on the parties to ask leading questions or that (ii) the Trial Chamber permits all parties to make reasoned objections to questions from other parties that appear “leading” or suggesting a response. The Lead Co-Lawyers respond to both the suppositions.

21. In respect of the former, Lead Co-Lawyers contend that such a practice would run counter to the procedure at the ECCC.

22. The Lead Co-Lawyers submit that, in principle, the concept of “leading questions” is not found in civil law system owing to the inquisitorial nature of the proceedings, the absence of defined rules of evidence, and the fact that all evidence is considered admissible.³⁵

23. In common law, the primary purpose of restricting leading questions during the examination of a witness is twofold – to shield the ears of the jury and/or of the judge who is/are hearing the evidence relevant to the parties’ case for the first time in open court and to avoid influencing the witness(es). Additionally, the defence case largely depends on the case presented by the prosecution before the judge (or jury). The Defence Counsel(s) are allowed to ask leading questions to prosecution witnesses following their “examination-in-chief” in order to further the dialectic process in the common law courts and aid the judges and juries in reaching their verdict as to the defendant’s culpability. Similar rules apply to the witnesses produced by the defence before the court when the Defence presents its case.

24. However, under civil law systems, as is the case at the ECCC, the judges determining the guilt of the accused have access to the case-file as soon as they are seized of the case.³⁶

³⁴ Request, p. 5.

³⁵ Cf. Internal Rule 87(1): “[u]nless provided otherwise in these IRs, all evidence is admissible.”

³⁶ Internal Rule 69 read with Internal Rule 79(1).

They are cognisant of the facts and the related investigations before them. They are not tasked with ascertaining only the verity of the “prosecution case” but rather to ascertain the truth concerning the facts of which they are seized. For this reason, the judges themselves are at liberty to ask questions.³⁷ Significantly, these facts are those arising from an independent investigation of both inculpatory and exculpatory information by the Co-Investigating Judge.

25. The Trial Chamber has time and again emphasised that the witnesses that are called before it must be treated as the witnesses of the Chamber. The parties do not have an automatic right to ask questions during examination; and all questions asked by the Co-Prosecutors and the lawyers are required to be asked “*through* the President of the Chamber”.³⁸ The parties may only object when the question is not “conducive to ascertaining the truth”³⁹ and does not conform to the criteria set out in Internal Rule 87(3). The practice at the ECCC, as it has evolved in the context of leading questions, is guided by this tenet and not the idea that leading questions are tied to “examination-in-chief” *versus* “cross-examination”. Therefore, the Lead Co-Lawyers submit that such a blanket prohibition at the ECCC would dilute the inquisitorial procedure in place.

26. In respect of the latter supposition, i.e. that parties be permitted to make reasoned objections on the basis that a question is suggestive of the answer, the Lead Co-Lawyers submit that such practice has already been put in place by the Trial Chamber. Exercising his privilege under these rules, the President of the Trial Chamber in Case 002/01 has ruled orally on the examination of witnesses via leading questions and the necessity to ask open and simple questions.⁴⁰ In Case 002/02, the President of the Trial Chamber also ruled on the reasoned objections made by the parties on various occasions, as exemplified below:

Example 1:

³⁷ Internal Rule 91(2).

³⁸ Internal Rule 91(2) (emphasis added).

³⁹ Internal Rule 91(3).

⁴⁰ See e.g. **E1/54.1** dated 27 March 2012, p. 80: Judge Cartwright on behalf of the President: “The prosecutor is asked to ensure that questions do not appear to be leading by clarifying, for example, that in answer to an earlier question the witness said Pang told us the seven names -- told me the seven names of the Central Committee members and then follow up with a question. It is essential that it's clear to the Chamber and to the parties that these are not leading questions so I ask the prosecutor to make sure that it is clear to everyone that he is not putting words in the mouth of this witness.” **E1/64.1** dated 9 April 2012, p. 10: Judge Cartwright on behalf of the President: “leading questions are not permitted”.

“Q. Of course, I asked you about the distance between the one set of five prisoners to another set of five prisoners, as you stated that the distance was more than 2 metres and you stated that the five prisoners were bundled together and there was no room for them to move within this set and then another set would be bundled and the distance between these two sets would be 2 metres or 1.5 metres. Am I correct this time? [11.29.02]

MR. PRESIDENT: Witness, you do not need to respond to this question and it also a leading question and Counsel please move on.”⁴¹

Example 2:

“[9.59.58] Q. Am I correct to say that you were forced to get married with the one you hated and you did not know well?

MR. PRESIDENT: Please hold on, Madam Witness. The Counsel for Nuon Chea (sic), you may proceed.

MR. KONG SAM ONN: I am Kong Sam Onn. I would like to object to this question. This is a leading question. The Witness said already that she got married involuntarily. She did not say she was forced to get married. The Co-Prosecutor asked a leading question. So it is not a proper question to put to the Witness.

MS. SONG CHORVOIN: I would like to respond that she did not volunteer to get married and I hope, Mr President, can decide on that.[10.01.11]

MR. PRESIDENT: The objection raised by the Defence Counsel is sustained, and Witness you do not need to respond to the last question posed to you by the National Co-Prosecutor. And National Co-Prosecutor please move on.”⁴²

Example 3:

“Q. For you, was the objective of the marriage to also produce children for Angkar? Was that something that was explained to you? And does it today resonate as a logical reason?

MR. PRESIDENT: Witness please, hold on. Please, Mr. Kong Sam Onn, you may proceed.

MR. KONG SAM ONN: Thank you, Mr. President. I would like to object this question because the Witness did not respond that she married to deliver a child for Angkar. So this is a leading question.[14.04.45]

MS. GUIRAUD: Thank you, Mr. President. That was not a leading question. I was just asking what the Witness' impression was. It's absolutely fundamental to understand why these people were forced to marry. You understand that forced marriage is one of the charges in this trial. You were fully aware that the question is entirely relevant to the case file.

MR. PRESIDENT: In Khmer language, the question was leading. So, the objection sustained -- is appropriate. So there might be translation problem. And the English speaking Judge feel that it is not appropriate. So could you please reframe your question for this purpose, Counsel? [14.05.56]”⁴³

Example 4:

“Q. These documents that I've shown you from four different communes in Tram Kak district are all from the same time period, April to early May 1977. Do these documents refresh your recollection about the timing of the meeting you attended where instructions were provided on the purge of Lon Nol officers? And specifically, do you remember when in relation to April 1977 that meeting took place? Was it before April '77, or was it after April 1977? [11.32.14]

MR. PRESIDENT: Mr. Witness, please wait and Counsel Koppe, you have the floor.

MR. KOPPE: I object to this question. You would look in the dictionary for a textbook leading question, there we have one. This is not the way to ask a witness questions by feeding him all kinds of details around dates and

⁴¹ E1/250.1 dated 22 January 2015, pp. 32-33.

⁴² E1/254.1 dated 29 January 2015, pp. 20-21.

⁴³ E1/254.1 dated 29 January 2015, pp. 57-58.

then ask him to confirm. What's the purpose of this line of questioning?

MR. LYSAK: If I may respond, Your Honour, the purpose of documents is they help witnesses remember dates. The question was not leading. I asked the witness whether the meeting was before or after April 1977. That is not leading question; that is the exact opposite of a leading question.

MR. PRESIDENT: The objection raised by the Defence Counsel is overruled, as the Chamber needs to hear the response from the witness to the last question put to him by the International Deputy Co-Prosecutor. And Witness, please respond. [11.33.36]⁴⁴

Example 5:

“Q. Do you remember, maybe if I can try to refresh your memory, whether Khom, when she came back, said something to the effect that people who had belonged to the former Lon Nol regime, should be put out of the framework, should be scattered, rather than killed? [14.37.39]

MR. PRESIDENT: The Chamber agrees to the observation made by the Deputy Co-Prosecutor, that that question was a leading question. And Witness, please do not respond to that question. And Counsel Koppe, please rephrase your question and try to avoid any leading questions, which are prohibited in the proceedings before this Chamber.”⁴⁵

Example 6:

“Q. And if these ranking officers were not to be harmed, did that necessarily, automatically imply that the lower ranking soldiers were of course not to be harmed? [10.01.26]

MR. LYSAK: I would have no objection to an open-ended question, but he's leading the witness, trying to put words in his mouth.

MR. KOPPE: Again, Mr. President it's standing practice in this Court, so I think I am allowed to do that, to ask whether this is the implication; I don't see any problems with this question.

MR. PRESIDENT: You are not allowed to put that kind of question to the witness, as it is a kind of leading question that would elicit a suggestion or a conclusion from the witness.[10.02.23]

MR. KOPPE: Maybe I can seek some guidance. Maybe I just simply do not understand the concept of leading questions, Mr. President. If the Prosecution reads a passage from a statement and then asks to confirm, isn't that also a leading question? Maybe I need to have some instruction as to what exactly a leading question is in this courtroom.

MR. PRESIDENT: It is clear in the Chamber's view that that question was a leading question, and Witness, you are instructed not to answer the last question by Nuon Chea's defence as it is considered a leading question by the Chamber.⁴⁶

Example 7

“Q. And also on the point that you just said regarding the working hours, and you also mention that in your statement before the OCIJ investigator -- that is, in document D166/38 at Khmer ERN at 00239930; in English, 00244164; and in French, 00283909; you said that the work began at 3 o'clock in the morning and it continued until 12 noon. It resumed again from 1.00 p.m. until 5.00 p.m., and at night-time, it started from 6.00 p.m. and continued until 12 midnight. From what you said regarding the working hours, you work about nine hours -- that is, during the morning from 3 o'clock a.m. until 12.00., and then 4 o'clock in the afternoon -- rather four hours in the afternoon and five hours at night. So the total number of hours is 19 hours. Is it due to this long extensive working hours you regarded the workplace as a hot battlefield? [11.31.53]

⁴⁴ E1/278.1 dated 17 March 2015, pp. 44-45.

⁴⁵ E1/291.1 dated 23 April 2015, pp. 70-71.

⁴⁶ E1/292.1 dated 24 April 2015, pp. 22-23.

MR. PRESIDENT: Witness, please hold on. And Counsel Kong Sam Onn, you may proceed.

MR. KONG SAM ONN: Thank you, Mr. President. I object to this question as it is really a leading question.

MR. SREA RATTANAK: In my opinion, this is not a leading question as the witness already confirmed the worksite was a hot battlefield and she described the working hours. And what I just made in my last question is just to total the number of working hours.

MR. PRESIDENT: Deputy Co-Prosecutor, please move on or rephrase your question as this is a leading question. [11.32.50]⁴⁷

27. The Lead Co-Lawyers submit that the Defence does not show how the current practice concerning leading questions, does not already serve the ends of the Request. In light of the fact that this practice binds all parties equally, the Request does not demonstrate how this practice prejudices the Defence. Therefore, the Lead Co-Lawyers submit that the practice in place by the Trial Chamber is compliant with Internal Rules 91(1), 91(3) read with Internal Rules 85 and 87(3) maintains the balance of right of all parties.

28. The Defence further requests the Trial Chamber to prohibit the parties from reading the extracts of their prior statements in order to confirm the truth of those extracts, adding that prior statements of witnesses should be allowed to be used only to test the credibility of the witness and to shed light on the discrepancies between different versions of the statements.

29. The Trial Chamber has been unambiguous on the use of prior statements during examination merely to confirm the truth of their contents.⁴⁸ The current practice allows for use of prior statements to confront the witnesses and/or to refresh their memories.⁴⁹ The Lead Co-Lawyers submit that this practice complies with the requirements of Internal Rule 91 and

⁴⁷ E1/304.1 dated 25 May 2015, pp. 57-58.

⁴⁸ Draft Transcripts dated 27 July 2015 (French), pp. 66-67: “*La Chambre de première instance comprend la recommandation formulée par la Chambre de la Cour suprême comme tendant à éviter une pratique générale durant l’interrogatoire d’un témoin ou d’une partie civile qui consisterait à citer de façon répétée et extensive les déclarations faites précédemment par la personne entendue - et ceci, effectivement, n’est pas une façon appropriée de conduire un interrogatoire. Cependant, pour des raisons limitées, notamment pour rafraîchir la mémoire d’un témoin ou d’une partie civile, ou pour mettre à l’épreuve sa crédibilité, il est possible de se référer et de citer des déclarations faites précédemment par la personne entendue. Toutefois, il faut que ceci soit dit clairement, et, pour cette raison, il serait bon que, par exemple, la dernière question formulée par l’avocat des parties civiles soit reformulée afin de faire apparaître clairement quel est l’objectif de cette citation. Voilà. Donc, en l’occurrence, je pense qu’il serait clair... il serait important qu’il soit clair pour tout le monde que l’objectif était de demander à la partie civile si elle se souvient d’avoir dit ce qui a été lu et si cela correspond effectivement à ce qu’il a effectivement en mémoire. Donc, peut-être que ceci pourrait être la pratique suivie pour l’avenir.*”

⁴⁹ *Id.*

87(3) as it avoids presentation of the repetitive evidence⁵⁰ before the Trial Chamber and is conducive to the efficient conduct of proceedings.


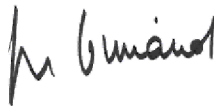
30. However, the Lead Co-Lawyers consider that inasmuch as the asking of leading questions tie into the use of prior statements in court,⁵¹ it is a separate issue and the one that would benefit from further clarification from the Trial Chamber.

IV. REQUEST

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

- (1) **Reject** the Request regarding reviewing of previous statements by witnesses;
- (2) **Hold** that the current practice on open-ended questions, which allows the parties to make reasoned objections, serves the ends of the Request; and
- (3) **Provide** clarification on the introduction/use of prior statements during examination of witnesses.

Respectfully submitted,

Date	Name	Place	Signature
10 August 2015	PICH ANG Lead Co-Lawyer	Phnom Penh	
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⁵⁰ See e.g. **E1/250.1** dated 22 January 2015, pp. 20-21; **E1/261.1** dated 11 February 2015, p. 28; **E1/267.1** dated 23 February 2015, pp. 82-83; **E1/279.1** dated 18 March 2015, pp. 65-66.

⁵¹ See example Draft Transcript dated 28 July 2015, pp. 63-64: MR. PRESIDENT: “The Chamber wishes to inform the Parties that this issue is a partition of the previous issue and it is not a minor issue that we have to deal with and in order to make it clear, all Parties are instructed to ask open questions to the witnesses and civil parties upon the responses of the witnesses and the civil parties, and if they are contradictory to their previous statement then follow up questions can be or can incorporate extract of his or her statement in order to clarify the matter. That is the first point and the second point is that, if previous statement is read out, it is more or less similar to a form of a leading question and that should be avoided. So all Parties please refrain yourselves from doing and ask open questions to the witnesses and civil parties and as I said if there is any discrepancy then extract from the previous statement can be used as a follow up question.”