

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

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**CIVIL PARTY LEAD CO-LAWYERS' REQUEST FOR CLARIFICATION ON THE SCOPE OF IN-COURT EXAMINATION OF CIVIL PARTIES**

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**Filed by:**

**Civil Party Lead Co-Lawyers**

PICH Ang  
Marie GUIRAUD

**Co-Lawyer for Civil Party**

CHET Vanly  
HONG Kim Suon  
KIM Mengkhy  
LOR Chunthy  
MOCH Sovannary  
SIN Soworn  
SAM Sokong  
VEN Pov

**Before:**

**Trial Chamber**

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

**Distribution to:**

**Office of the Co-Prosecutors**

CHEA Leang  
Nicholas KOUMJIAN

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Martine JACQUIN  
Yiqiang Y. LIU  
Daniel LOSQ  
Christine MARTINEAU  
Lyma NGUYEN  
Mahesh RAI  
Nushin SARKARATI

**The Accused**

KHIEU Samphan  
NUON Chea

**Co-Lawyers for the Defence**

SON Arun  
Victor KOPPE  
KONG Sam Onn  
Anta GUISSÉ  
Arthur VERCKEN

**Standby Counsel**

TOUCH Voleak  
Calvin SAUNDERS

**Co-Lawyer for Civil Party**

Beini YE

## I. INTRODUCTION

1. The Lead Co-Lawyers for Civil Parties (“Lead Co-Lawyers”) hereby seek written clarification at the direction of the Trial Chamber concerning the scope of in-court examination of Civil Parties.<sup>1</sup>

## II. PROCEDURAL BACKGROUND

2. On 13 September 2010, Nhiep Horl (D22/3050) was admitted as a Civil Party by the Office of the Co-Investigating Judges<sup>2</sup> along with 49 other individuals on grounds of having established *prima facie* personal harm as a direct consequence of the crimes described in paragraph 46 of the Introductory Submission relevant to Trapeang Thma Dam Worksite.<sup>3</sup>

3. The respective Defence teams (collectively, the “Defence”) did not file any appeals against the admission of the concerned Civil Party despite appeals filed by the Civil Party Co-Lawyers against the rejection of certain civil party applicants from the same group.<sup>4</sup>

4. On 17 January 2011, the parties were requested by the Trial Chamber to file material in preparation for trial directing that the said evidence be categorized as per the evidentiary issues at trial (as suggested by the Closing Order).<sup>5</sup>

5. On 9 May 2014, when filing the updated lists of witnesses, civil parties, and experts, the Lead Co-Lawyers had proposed Nhiep Horl (then assigned TCCP-96) to testify on facts concerning the Trapeang Thma Dam Worksite; the parties and the Trial Chamber were notified that his testimony would be relevant, *inter alia*, to the following points in the Indictment:

“[...] 22. Alleged existence and structure of Cooperative and Worksites, Trapeang Thma Dam Worksite, para. 323-332, 334-335.

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<sup>1</sup> Transcript, E1/336.1 (25 August 2015), p. 26.

<sup>2</sup> Order on Admissibility of Civil Party Applicants from Current Residents of Banteay Meanchey Province, D416, 13 September 2010, p. 11; *see also* D146.1 Annex 2, p. 26.

<sup>3</sup> Order on Admissibility of Civil Party Applicants from Current Residents of Banteay Meanchey Province, D416, 13 September 2010, para. 22.

<sup>4</sup> *See e.g.* Directions to the Co-Lawyers for Khieu Samphan to file a response to the Appeals lodged by the Civil Party applicants, D416/8/2, 4 May 2011.

<sup>5</sup> Order to File Material in Preparation for Trial, E9, 17 January 2011; *see also* Annex I – List of Evidentiary Issues, E9.1, 17 January 2011.

23. Alleged working and living (including group weddings) conditions in Cooperative and Worksites, paras. 336-345. [...]”<sup>6</sup>

6. In the submission to which this list was annexed, the Lead Co-Lawyers reasoned that the civil parties sought to be called before the Trial Chamber were those who would “substantially assist the Trial Chamber in ascertaining the truth concerning the allegations to be tried in Case 002/02, particularly in establishing the crime-base evidence and assisting the Chamber to assess the gravity of the alleged crimes and the harm endured by civil parties.”<sup>7</sup>

7. On 19 August 2015, the Trial Chamber summoned Civil Party Nhip Horl (assigned the pseudonym 2-TCCP-269 for Case 002/02) to appear in court on 25 August 2015 to be questioned.<sup>8</sup>

8. On 25 August 2015, during the examination of Civil Party Nhip Horl (2-TCCP-269) by the Civil Party Lawyer, discussions arose on the scope of his in-court examination.<sup>9</sup>

9. On the said day, the questioning by the Civil Party Lawyer on whether the Civil Party had observed “any marriages” during his time at the Trapeang Thma Dam Worksite<sup>10</sup> prompted an observation by the Nuon Chea Defence that the Civil Party could only “give testimony as to what his injuries were which were the direct effect of his working at the Trapeang Thma Dam site”.<sup>11</sup> In support of this observation, the Nuon Chea Defence then quoted the criteria for admissibility of civil parties i.e. “in order for a civil party action to be admissible, the injury must be a) physical, material, or psychological; and b) a direct consequence of the offence, personal and have actually come into being.”<sup>12</sup> The Nuon Chea Defence remarked that “none of the questions [asked during the examination] so far have any bearing on his admission as a Civil Party directly related to the dam”.<sup>13</sup> The Nuon Chea

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<sup>6</sup> Annex III – Updated Summaries of Witnesses, Civil Parties and Experts (no protective measures sought), **E305/7.1.3**, p. 30 entry no. 33 corresponding to entry no. 23 in Annex I – List of Evidentiary Issues, **E9.1**, 17 January 2011, p. 4.

<sup>7</sup> Civil Party Lead Co-Lawyers’ Rule 80 Witness, Expert and Civil Party Lists for Case 002/02 with Confidential Annexes, **E305/7**, 9 May 2014, para. 9.

<sup>8</sup> Summons – Civil Party, **E202/211**, 19 August 2015.

<sup>9</sup> Transcript, **E1/336.1** (25 August 2015), pp. 22-25.

<sup>10</sup> *Ibid*, p. 20.

<sup>11</sup> *Ibid*, p. 21.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

Defence questioned why the civil party was not being heard “just as a normal witness” and that the Civil Party Lawyers should focus on the specific segment.<sup>14</sup>

10. The Khieu Samphan Defence added that during the testimony on 25 August 2015, “no distinction [was] being made between a normal witness who should testify as to facts and a civil party whose status is completely different.”<sup>15</sup> The comment specifically dealt with an issue different from that raised by the Nuon Chea Defence i.e. that “points not mentioned in the civil party’s application should not be mentioned before this Chamber during these hearings”.<sup>16</sup> In the afternoon session, the Khieu Samphan Defence added that

“[w]e cannot challenge the credibility of this civil party because he has not been interviewed by a Co-Investigating Judge. He has been admitted prior, maybe during the investigation, but however without having been questioned substantially by the Investigating Judge. So you cannot discuss his credibility because this person is already a civil party. And you cannot challenge the link that there may be between his harm and the facts being tried. Because if there's going to be reparation, this is going to be a group reparation.”<sup>17</sup>

11. This prompted the President to direct the Lead Co-Lawyers to file written submissions in order to address the issue formally.<sup>18</sup>

### III. APPLICABLE LAW

#### *A. Admissibility of Civil Party Applications*

12. Internal Rule 23*bis*(1) states that “When considering the admissibility of the Civil Party application, the Co-Investigating Judges shall be satisfied that facts alleged in support of the application are more likely than not to be true.”

13. Internal Rule 23*bis*(3) states that “the Co-Investigating Judges shall decide on the admissibility of all remaining Civil Party applications by a separate order. This order shall be open to expedited appeal by the parties or the Civil Party applicants as provided in Rule 77*bis*.”

14. Internal Rule 23*bis*(4) clarifies the nature of form and content of civil party applications, explaining that “[a]ll Civil Party applications must contain sufficient information to allow verification of their compliance with these IRs. In particular, the application must provide

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<sup>14</sup> *Id.*

<sup>15</sup> *Ibid*, p. 24.

<sup>16</sup> *Id.*

<sup>17</sup> *Ibid*, p. 55.

<sup>18</sup> *Ibid*, p. 26.

details of the status as a Victim, specify the alleged crime and attach any evidence of the injury suffered, or tending to show the guilt of the alleged perpetrator.”

15. Internal Rule 74(3)(i) provides that the Charged Person or the Accused may appeal the decision of the Co-Investigating Judges “declaring a Civil Party application admissible” before the Pre-Trial Chamber. Internal Rule 77*bis* provides that appeals pursuant from Internal Rule 73(3)(i) shall be considered expeditiously.

***B. Civil Party Action during Trial***

16. Internal Rule 23*bis*(3) states that “[a]ll Civil Parties admitted by the Co-Investigating Judges or by the Pre-Trial Chamber upon the expedited appeal described in this Rule shall form a single, consolidated group at the trial stage and beyond, pursuant to IR 23(5).”<sup>19</sup>

17. The Supreme Court Chamber, acknowledging “the full range of participation rights available to civil parties under the 2007 [Cambodian] Code of Criminal Procedure and the Internal Rules in the pre-trial, trial, and appeal phases of a case” has confirmed that Civil Parties are vested with distinct array of procedural rights tailored to their specific functions and responsibilities in the [ECCC] proceedings.<sup>20</sup>

18. Under Internal Rule 12*ter*(5), the Lead Co-Lawyers are tasked with representing the interests of the consolidated group of Civil Parties in court during the trial stage. Internal Rule 12*ter*(6) elaborates these functions to include, *inter alia*, “examination of their clients” with the support of the concerned Civil Party Lawyer.

19. In addition, Civil Party participation during criminal proceedings are subject to Internal Rules 21(1)(a) and (4), 85, 87(3) and (4) and 91(3).<sup>21</sup>

<sup>19</sup> See further, Trial Chamber response to Motions E67, E57, E56, E58, E23, E59, E20, E33, E71 and E73 following Trial Management Meeting of 5 April 2011, E74, 8 April 2011, p. 2 clarifying that “[p]ursuant to Rule 23(3), which was introduced in February 2010 as part of Revision 5 of the Internal Rules, ‘Civil Parties at the trial stage and beyond shall comprise a single, consolidated group, whose interests are represented by the Civil Party Lead Co-Lawyers.’ This rule marks a shift from the pre-trial stage, in which the Civil Parties participated individually. The new legal framework establishes a system whereby the consolidated group of Civil Parties is instead represented in the proceedings by the Civil Party Lead Co-Lawyers, rather than individual Civil Party lawyers.”

<sup>20</sup> Decision on Civil Party Lead Co-Lawyers’ Request Relating to the Appeals in Case 002/01, F10/2, 26 December 2014, para. 11.

<sup>21</sup> Trial Chamber response to Motions E67, E57, E56, E58, E23, E59, E20, E33, E71 and E73 following Trial Management Meeting of 5 April 2011, E74, 8 April 2011, pp. 2-3. See further Ieng Sary’s Motion Requesting

20. Further, concerning Civil Party action relating to the civil claim for reparations, Internal Rule 23*quinquies*(1) states that the Chambers “may award only collective and moral reparations to Civil Parties” and clarifies that collective and moral reparations are measures that “acknowledge the harm suffered by Civil Parties as a result of the commission of the crimes for which an Accused is convicted” and “shall not take the form of monetary payments to Civil Parties”. Further, Internal Rule 12(1)(c) obliges the ECCC to “ensure that victims are kept informed and that their rights are respected throughout the proceedings”.

### ***C. Civil Party In-Court Examination***

21. In Case 002/01, the Trial Chamber permitted Civil Parties to provide “testimony on the facts at issue” emerging from their experiences during the Democratic Kampuchea with one limitation that it is “confined to the scope of Case 002/01 and subject to adversarial argument”.<sup>22</sup> Noting that it was “only statements of suffering that have been unconstrained by the limits of the severance order and related decisions”, the Trial Chamber directed the Lead Co-Lawyers to “ensure that Civil Parties are asked to testify before the Chamber only in relation to matters relevant to Case 002/01”.<sup>23</sup>

22. On 17 December 2014, the Trial Chamber provided instructions and guidelines on the conduct and scope of in-court examination of Civil Parties on facts and during the hearings on the impact of crimes in Case 002/02:

“8. The Chamber recalls its practice of distinguishing between Civil Party hearings on facts at issue in a case and general statements of suffering (*see e.g.*, E267/3, para. 14). Pursuant to this practice, the Chamber will require the hearing of Civil Parties to be confined to facts relevant to Case 002/02, while statements of suffering will not be required to differentiate between harm suffered in consequence of facts within the scope of the case and overall harm suffered during the DK period, to the extent that this does not infringe the Accused's right to a fair trial. In the event that Civil Party statements on suffering introduce new facts or allegations against the Accused which have not been subject to adversarial debate, the Chamber may consider it to be in the interests of justice to allow the parties an opportunity to question the relevant Civil Party in relation to those allegations.”<sup>24</sup>

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Guidelines for Civil Party Participation, E23, 24 January 2011, p.8 in which the Ieng Sary Defence sought, *inter alia*, to limit Civil Party intervention to matters which relate to both the charges and the Civil Party's civil interest and are exclusively for the purpose of establishing harm suffered.

<sup>22</sup> Decision on Request to Recall Civil Party TCCP-187, for Review of Procedure concerning Civil Parties' Statements on Suffering and related motions and responses (E240, E240/1, E250, E250/1, E267, E267/1 and E267/2), E267/3, 2 May 2013, para. 14.

<sup>23</sup> *Ibid.* para. 17.

<sup>24</sup> Information on (1) Key Document Presentation Hearings in Case 002/02 and (2) Hearings on Harm Suffered by the Civil Parties in Case 002/02, E315/1, 17 December 2014, para. 8.

## V. DISCUSSION

23. Whilst the Nuon Chea Defence clarified that they “don't have an objection to the last question because obviously it's a relevant question as to circumstances at the dam”,<sup>25</sup> the Khieu Samphan Defence understood this to be an “objection”<sup>26</sup> and made further comments on the scope of Civil Party testimony. However, for the purposes of the present submission, the Lead Co-Lawyers note that the comments by the respective Defence teams were not objections pursuant to Internal Rule 87(3) as none of the criteria mentioned therein was invoked. In this respect, the Lead Co-Lawyers urge clarification from the Trial Chamber limited to the issues raised as directed by the President, generally.

24. Further, the Lead Co-Lawyers address the issues raised by the respective Defence teams separately as they each invoke different provisions in the Internal Rules and the jurisprudence of the ECCC.

25. As reiterated by the Lead Co-Lawyers in their previous filings, support to the *prosecution* (as opposed to merely the “Office of the Co-Prosecutors”) predicates the civil parties' ability to participate in the criminal proceedings by testifying on facts within their knowledge. The Lead Co-Lawyers import by reference their previous submissions on this aspect.<sup>27</sup> It is added that the guiding principle behind hearing Civil Party testimony is that it contributes to the ascertainment of the truth,<sup>28</sup> as confirmed by the President in court.<sup>29</sup>

26. At the outset, the Lead Co-Lawyers add that, at trial, the Civil Parties participate through the consolidated group represented by the Lead Co-Lawyers with the support of the Civil Party Lawyers<sup>30</sup> against those responsible for crimes within the jurisdiction of the ECCC. By virtue of being a party to the criminal proceedings as part of the said consolidated group,<sup>31</sup> they do not testify as witnesses.<sup>32</sup> Civil Parties maintain parity in their legal status

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<sup>25</sup> Transcript, **E1/336.1** (25 August 2015), p. 21.

<sup>26</sup> *Ibid*, p. 23: “Mr. Victor Koppe's objection occurs at the time when the civil party lawyer is questioning this gentleman on something that is not referred to in the civil party application”.

<sup>27</sup> Civil Party Lead Co-Lawyers' Response to Nuon Chea Defence Request re Certain Trial Practices Concerning Examination of Witnesses and Civil Parties, **E336/1**, 23 January 2015, paras 22-26.

<sup>28</sup> Internal Rule 91(3).

<sup>29</sup> Transcript, **E1/336.1** (25 August 2015), p. 35.

<sup>30</sup> Internal Rule 23(3).

<sup>31</sup> *See further* Internal Rules, p. 80 “Civil Party”, p. 81 “party”.



with the Accused or the Charged Person and *not* a witness. This is in accordance with the Internal Rules,<sup>33</sup> Cambodian law,<sup>34</sup> and French law.<sup>35</sup>

#### ***A. Observations by the Nuon Chea Defence***

27. The Lead Co-Lawyers submit that the Internal Rules and the jurisprudence of the ECCC is unambiguous on the three distinct issues raised by the Nuon Chea Defence – (i) admissibility of Civil Parties; (ii) the extent of Civil Party participation in criminal proceedings; and (iii) difference between the role of the Civil Parties and Witnesses.

28. The Lead Co-Lawyers submit that there is no bar on a Civil Party testifying on the facts at issue to limit it to “injuries were [*sic*] which were the direct effect of his working at the Trapeang Thma Dam site” as stated by the Nuon Chea Defence.<sup>36</sup> Further, there are no obligations binding the Lead Co-Lawyers and the Civil Party Lawyers to solely “focus on that specific segment” whilst examining the Civil Party on facts in court.<sup>37</sup>

29. Relying on the jurisprudence of the ECCC and the related filings from the period when the parties were proposing witnesses, experts, and civil parties to testify, it is clear that witnesses and civil parties testifying on the facts at issue may do so as long as those facts are within the scope of Case 002/02, respect the severance decisions and comply with the requirements of Internal Rules 85 and 87.

30. In Case 002/01, as per E267/3, the only limitation on Civil Parties who testify before the Chamber, with the exception of their general statement on suffering, is that their testimony must relate to “matters relevant to Case 002/01”.<sup>38</sup> There is no explicit or implicit

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<sup>32</sup> Internal Rule 23(4).

<sup>33</sup> Internal Rule 23 states that: “The 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.” *See also* Internal Rule 24(2), which provides that close family members of an Accused, Charged Person, or Civil Party do not testify under oath.

<sup>34</sup> Article 312 of the Code of Criminal Procedure of the Kingdom of Cambodia stipulates that: “A civil party may never be heard as a witness.”

<sup>35</sup> Under French law, it is not possible to be both a party to the proceedings and a witness. A civil party, once he or she has joined as such, can thus not be heard as a witness. *See* French Code of Criminal Procedure, Article 422.

<sup>36</sup> Transcript, E1/336.1 (25 August 2015), p. 21.

<sup>37</sup> *Id.*

<sup>38</sup> Decision on Request to Recall Civil Party TCCP-187, for Review of Procedure concerning Civil Parties’ Statements on Suffering and related motions and responses (E240, E240/1, E250, E250/1, E267, E267/1 and E267/2), E267/3, 2 May 2013, para. 17.

obligation imposed on the Civil Parties, the Civil Party Lawyers, or the Lead Co-Lawyers to restrict their examination to only the issues affecting the admissibility of the Civil Parties, the specific harm suffered and outlined in their civil party application and/or the criminal allegations raised in their civil party applications. In Case 002/02, the Trial Chamber has been categorical in terms of the scope of the testimony provided by Civil Parties, “distinguishing between Civil Party hearings on facts at issue in a case and general statements of suffering” requiring the hearing of Civil Parties to be confined to the “facts relevant to Case 002/02”.<sup>39</sup>

31. During this particular instance, the Lead Co-Lawyers confirmed in court that the Civil Party was “testifying within the framework of the consolidated group of civil parties participating in this Trial” and that the Civil Party “was talking about his experience within the scope of the trial”.<sup>40</sup> It was added that “[s]ince the start of the trial of Case 002/02 (sic) and Case 002/02, and also in relation to Case 001, civil party has the right to make mention of any facts as long as those facts are within the scope of this Trial.”<sup>41</sup> In particular, the Lead Co-Lawyers submit that the examination of the Civil Party on the facts concerning the possible criminal allegations of Forced Marriage at the Trapeang Thma Dam Worksite both of which are within the scope of Case 002/02, were therefore, in line with the jurisprudence of the ECCC.

32. The Lead Co-Lawyers consider the Nuon Chea Defence’s concluding observations that the Civil Party should instead testify as a witness to be in complete disregard of the established jurisprudence and practice of the ECCC and, in the absence of a formal challenge to the admissibility of the civil party in due time, an affront to Civil Party participation during trial.

33. Furthermore, the Lead Co-Lawyers when proposing the concerned Civil Party had put the Trial Chamber and the parties on notice that the Civil Party’s testimony would address

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<sup>39</sup> Information on (1) Key Document Presentation Hearings in Case 002/02 and (2) Hearings on Harm Suffered by the Civil Parties in Case 002/02, **E315/1**, 17 December 2014, para. 8.

<sup>40</sup> Transcript, **E1/336.1** (25 August 2015), pp. 22-23.

<sup>41</sup> *Id.*

“[a]lleged working and living (including group weddings) conditions in Cooperative and Worksites” as contained in paras 336-345 of the Closing Order.<sup>42</sup>

34. Therefore, the Lead Co-Lawyers submit that there was no prejudice caused to the parties on account of the Civil Party Lawyer’s lines of questioning concerning the criminal allegations of Forced Marriage. Without expressing the specific prejudice caused to the Co-Accused by the general established practice or by the particular instance in question, to make observations that imply impropriety in the procedure only serves to delay the proceedings.

### ***B. Observations by the Khieu Samphan Defence***

35. Like the Khieu Samphan Defence, the Lead Co-Lawyers have also previously argued in favour of the distinction between witnesses and Civil Parties,<sup>43</sup> consistent with Internal Rules,<sup>44</sup> Cambodian law,<sup>45</sup> and French law<sup>46</sup> which provide that it is not possible to be both a party to the proceedings and a witness.<sup>47</sup> To reiterate, in the context of Civil Parties providing evidence through in-court “testimony”, there is only one explicit proscription that they may *never* be heard as a witness or questioned as a simple witness but may only be interviewed under the *same* conditions as the Charged Person or Accused.

36. However, the assertion of the Khieu Samphan Defence that civil parties cannot testify as to the “points not mentioned in the civil party’s application [...] before this Chamber during these hearings” is erroneous in theory and in practice.

37. The Lead Co-Lawyers submit that under the Cambodian Code of Criminal Procedure, all types of evidence are admissible as a matter of principle during a criminal trial, and no

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<sup>42</sup> Annex III – Updated Summaries of Witnesses, Civil Parties and Experts (no protective measures sought), **E305/7.1.3**, p. 30 entry no. 33.

<sup>43</sup> Civil Party Lead Co-Lawyers’ Response to Nuon Chea Defence Request re Certain Trial Practices Concerning Examination of Witnesses and Civil Parties, **E336/1**, 23 January 2015, para. 24 *citing* Code of Criminal Procedure of the Kingdom of Cambodia, Article 312 read with Internal Rule 23.

<sup>44</sup> Internal Rule 23 states that: “The 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.” *See also* Internal Rule 24(2), which provides that close family members of an Accused, Charged Person, or Civil Party do not testify under oath.

<sup>45</sup> Article 312 of the Code of Criminal Procedure of the Kingdom of Cambodia stipulates that: “A civil party may never be heard as a witness.”

<sup>46</sup> Under French law, it is not possible to be both a party to the proceedings and a witness. A civil party, once he or she has joined as such, can thus not be heard as a witness. *See* French Code of Criminal Procedure, Article 422.

<sup>47</sup> *See* French Code of Criminal Procedure, Article 422.

rule restricts the manner in which civil parties can be heard by the judges.<sup>48</sup> The judges in Cambodian courts are bound to “listen to the statements of civil parties, civil defendants, victims, witnesses and experts in the order which he deems useful.”<sup>49</sup> Similarly, French law does not put any restrictions on the extent or content of civil party testimony during trial – these statements may go to the charges alleged in the case and/or impact of crimes.<sup>50</sup>

38. Nevertheless, the Trial Chamber has adopted a stricter approach, in the interest of the rights of the accused, confining the testimony on facts to the facts relevant for the criminal allegations within the scope of Case 002/02 and the related severance decisions.<sup>51</sup> With respect to the statements of sufferings, the Chamber has not required civil parties “to differentiate between harm suffered in consequence of facts within the scope of the case and overall harm suffered during the DK period, to the extent that this does not infringe the Accused’s right to a fair trial.”<sup>52</sup>

39. The Lead Co-Lawyers urge that the current standard as set and elaborated by the Trial Chamber in its written decisions on the scope of Civil Party testimony on facts and statements of suffering satisfy the requirements of fair trial rights and are not prejudicial to the Co-Accused.

40. On matters concerning the challenges to the “credibility” of Civil Parties without “having been questioned substantially by the Investigating Judge”,<sup>53</sup> the Lead Co-Lawyers submit that neither Defence teams were or have been barred from examining the Civil Party on the contents of their previous statements, whether they exist in the form of Civil Party

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<sup>48</sup> Article 321 Cambodian Court of Criminal Procedure: “Unless it is provided otherwise by law, in criminal cases all evidence is admissible. The court has to consider the value of the evidence submitted for its examination, following the judge’s intimate conviction. The judgment of the court may be based only on the evidence included in the case file or which has been presented at the hearing”.

<sup>49</sup> Article 326 of the Code of Criminal Procedure of the Kingdom of Cambodia stipulates that: “The presiding judge shall listen to the statements of civil parties, civil defendants, victims, witnesses and experts in the order which he deems useful.”

<sup>50</sup> Article 346 of the French Code of Criminal Procedure: “When the investigation made in the course of the hearing is ended, the civil party or his advocate is heard. The public prosecutor makes his submissions. The accused and his advocate present their defence arguments. The civil party and the public prosecutor may reply, but the accused and his advocate will always have the final word”. This is unlike witnesses, who are requested to testify only “in respect of the matters alleged against the accused, or in respect of his personality or morality” (Article 331 French Code of Criminal Procedure).

<sup>51</sup> *Ibid.* para. 17.

<sup>52</sup> Information on (1) Key Document Presentation Hearings in Case 002/02 and (2) Hearings on Harm Suffered by the Civil Parties in Case 002/02, **E315/1**, 17 December 2014, para. 8.

<sup>53</sup> Transcript, **E1/336.1** (25 August 2015), p. 55.

Applications, Written Records of Interview taken by the Co-Investigating Judges or statements taken by entities external to the ECCC.

41. Further, the Lead Co-Lawyers note that the Trial Chamber accords limited probative value to Civil Party Applications.<sup>54</sup> The Defence are at complete liberty to use them during their examination to confront and clarify the facts provided in court, a prerogative that they have exercised often even in relation to the circumstances in which the Civil Party Applications was taken.<sup>55</sup> Therefore, the Lead Co-Lawyers submit that the Defence has occasioned no prejudice on this account to justify the Trial Chamber to revisit the established practices concerning the in-court examination of Civil Parties.

42. Contrary to the perception projected by the Defence, the current practice is not detrimental to the defence of the Co-Accused. In fact, considering the legal restrictions on the ability of the Lead Co-Lawyers to file supplementary information as “new evidence” that does not go into acts and conduct of the accused,<sup>56</sup> the current practice permits the Trial Chamber to receive all the facts and information within the scope of Case 002/02 from the Civil Parties to further the ascertainment of the truth, while simultaneously allowing the Defence teams to challenge such information within the framework elaborated above.

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<sup>54</sup> Trial Chamber Guidelines on the Disclosure of Case 003 and 004 Civil Party Applications in Case 002/02, **E319/14/2**, 2 September 2015, para. 4: “the Chamber reminds the Parties that CPAs have much less probative value than PVs and the Chamber has only relied on Case 002 CPAs in the Case 002/01 Trial Judgement for the limited purpose of corroborating other evidence.”; *See also* Decision on Co-Prosecutors’ Rule 92 Submission Regarding the Admission of Witness Statements and Other Documents before the Trial Chamber, **E96/7**, 20 June 2012, para. 29. *See further*, Decision on Objections to Documents Proposed to be Put before the Chamber in Case 002/02, **E305/17**, 30 June 2015, para. 25; Decision on Objections to Documents Proposed to be put before the Chamber in Co-Prosecutors’ Annexes A6-A11 and A14-A20 and by the Other Parties, **E185/1**, para. 13.

<sup>55</sup> *See e.g.* **E1/252.1** dated 26 January 2015, pp. 14-15 (Nuon Chea Defence), pp. 24-25 (Khieu Samphan Defence); **E1/287.1** dated 2 April 2015, pp. 21-23 (Khieu Samphan Defence).

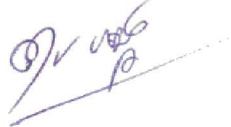
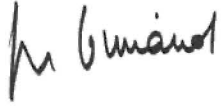
<sup>56</sup> Decision on Civil Party Lead Co-Lawyers’ Rule 87(4) Request Regarding Civil Party D22/2500 with Confidential Annex A, **E344/1**, 31 March 2015, paras 4-5: “4. The Trial Chamber observes that the civil party application of Civil Party D22/2500 was filed on 26 March 2010, thus before the start of the trial. While this application did not include the evidence at issue on the acts and conduct of the Accused, it did indicate that the Civil Party worked in a special unit in Tram Kak District during the Democratic Kampuchea regime. The Chamber considers that the evidence regarding the acts and conduct of the Accused could thereafter have been discovered with the exercise of reasonable diligence, by questioning the Civil Party. The Lead Co-Lawyers were obliged to request admission of the evidence in a timely manner, at a minimum before the start of Case 002/02 given the inclusion of the topic of the Tram Kak cooperatives in that case. They failed to do so until March 2015. The Trial Chamber accordingly finds that the Civil Party Lead Co-Lawyers failed to exercise due diligence and that the Request is not timely.”

#### IV. REQUEST

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

- (1) **CONFIRM** the directions provided in Trial Chamber Memo (E315/1) in relation to the scope of Civil Party testimony both on facts and harm suffered;
- (2) **CONFIRM** that Civil Parties testimony on facts at issue is not limited to the reasons on admissibility of the said Civil Party by the Office of the Co-Investigating Judges or the Pre-Trial Chamber;
- (3) **CONFIRM** that the Civil Party testimony on facts at issue is not confined to the harm suffered by the Civil Party himself/herself as result of the alleged criminal acts; and
- (4) **CONFIRM** that Civil Parties testifying on facts at issue are entitled to do so save on facts outside the scope of Case 002/02 as limited by E301/9/1.1.

Respectfully submitted,

| Date              | Name  | Place      | Signature   |
|-------------------|---|------------|---|
| 14 September 2015 | PICH ANG<br>Lead Co-Lawyer                    | Phnom Penh |  |
|                   | Marie GUIRAUD<br>International Lead Co-Lawyer | Phnom Penh |  |