

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

FILING DETAILS



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**LEAD CO-LAWYERS' SUBMISSION OF THE LIST OF CIVIL PARTIES TO
TESTIFY DURING THE HEARINGS ON HARM SUFFERED (THIRD SEGMENT)
AND REQUEST PURSUANT TO RULE 87(4) (WITH CONFIDENTIAL ANNEXES)**

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Before:

Trial Chamber

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Judge YA Sokhan
Judge Jean-Marc LAVERGNE
Judge YOU Ottara
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I. INTRODUCTION

1. Pursuant to E315/1 and the Trial Chamber's directive of 20 January 2016,¹ the Lead Co-Lawyers for the Civil Parties ("Lead Co-Lawyers") hereby communicate to the Trial Chamber their proposed schedule and selection of Civil Parties for the hearings on the harm suffered pertaining to the trial segment on the Treatment of Specific Groups (hereinafter, referred to as the "Third Segment").

II. PROCEDURAL BACKGROUND

2. Continuing with the established practice, the Trial Chamber notified the parties that following the holding of a Key Document Presentation Hearing at the end of each segment, the Chamber would allocate two days to hear Civil Parties on the harm they suffered during the Democratic Kampuchea period.²

III. DISCUSSION

(a) Format of the Impact Hearings

3. The Lead Co-Lawyers, in collaboration with the Civil Party Lawyers, having conducted a thorough review of civil parties who are primarily relevant to the Third Segment, have arrived at a list of individuals they wish to have heard during the upcoming hearings on harm suffered.
4. The Lead Co-Lawyers propose five Civil Parties to be heard. Each of the proposed Civil Parties has suffered as a direct or indirect victim of the crimes that they will speak about. Moreover, all of the proposed Civil Parties were admitted by the Office of the Co-Investigative Judge or the Pre-Trial Chamber and suffered harm on account of the alleged crimes included within the Third Segment.

¹ Email from Senior Legal Officer to the Parties re List of Civil Parties for hearings on harm suffered, 20 January 2016. *See also* Email from Senior Legal Officer to the Parties re Scheduling - week of 18 January, 14 January 2016.

² Trial Chamber Memorandum, 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, paras 7-9.

5. The Lead Co-Lawyers propose a schedule for the two and a half days of hearings, the details of which are contained in Annex A (“Provisional and Proposed Schedule”).³ The Proposed Schedule is based on a four hour and ten minute hearing estimate per day.⁴ Seeing as the Nuon Chea Defence have indicated that they will not utilize the time allotted to them during the Key Documents Presentation Hearings,⁵ the Lead Co-Lawyers request the Trial Chamber to repurpose the additional time available. The Lead Co-Lawyers propose to have an additional half a day of hearing Civil Parties on the impact of crimes on an exceptional basis.⁶ The Lead Co-Lawyers reason that the expansive nature of the Third Segment and the nature of the criminal allegations would benefit from a comprehensive assessment of harm. It is further submitted that the grant of this request would not prejudice the parties.
6. Lastly, noting the discussion on 8 January 2016 concerning the remaining disclosure due to be received from the Co-Prosecutors, the Lead Co-Lawyers recall that as per the estimates provided by the Co-Prosecutors in court, there remains “another 120 witness statements, investigation reports and a few annexes to statements and four or 500 civil party applications” of which “it appears that about 30 of the additional witness statements have some relation to the Vietnamese segment that relate to Vietnamese or Khmer Krom”.⁷ Therefore, pending a review of such disclosure by the Lead Co-Lawyers, Annex A and Annex B are being filed provisionally.
7. The Lead Co-Lawyers reiterate that the purpose of these hearings is to provide an opportunity for Civil Parties to express their suffering as victims and the impact of the harm suffered during the Democratic Kampuchea period. Inevitably, the harm and the suffering undergone during this period will also relate to facts within the scope of Case 002/02 and necessarily described during such hearings.

³ Annex A, Proposed Schedule for the Hearings on Harm Suffered by the Civil Parties.

⁴ The four hours is proposed for the examination of the civil parties does not take into account the two breaks to take place as normal.

⁵ See email from Senior Legal Consultant to the Trial Chamber titled “Various trial-related matters, including an urgent request”, 2 February 2016 at 03:02 PM, para. 3.

⁶ Trial Chamber Memorandum, 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. 7.

⁷ Transcript dated 8 January 2016, E1/372.1, p. 53. For the full discussion, see *ibid*, pp. 51-54.

8. The Lead Co-Lawyers understand that should these facts be challenged by other parties, appropriate time must be made available for their examination, keeping in mind the interest of the Chamber in ascertainment of the truth, the fair trial rights of the Accused and the balance of rights of all parties. At the same time, for such hearings to remain relevant, it is vital that the Civil Parties are able to conclude their testimony on harm within the time allotted to them and that this is not compromised by potential objections by the parties.
9. In addition, the Lead Co-Lawyers anticipate that the grant of one hour would reconcile the primary purpose of these hearings with the balance of rights of all parties. This will also allow the Chamber to consider granting the parties an opportunity to question the Civil Parties in the interest of justice if new facts or allegations against the Accused are raised.⁸
10. Further, taking note of the fact that the Trial Chamber will provide no additional time for the questioning of Civil Parties by other parties,⁹ the Lead Co-Lawyers have adopted the scheme similar to the impact hearings for the Second Segment concerning the worksites.¹⁰

(b) Request for Admission of Disclosed Documents Pursuant to Internal Rule 87(4)

11. The Lead Co-Lawyers submit a request to admit into evidence one further statement provided by the Civil Party listed in Annex B. The Lead Co-Lawyers submit that the document satisfies the criteria for admission under Internal Rules 87 (3) and 87 (4) and request its admissions for the foregoing reasons.

⁸ See Trial Chamber Memorandum entitled: 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: “[i]n 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.”

⁹ Email by Senior Legal Officer to parties re Key Document Hearings and Hearings on Suffering, 2 June 2015.

¹⁰ See Annex I: Provisional and Proposed Schedule for the Hearings on Harm Suffered by the Civil Parties: Second Segment, E315/1/3.1, 7 August 2015; see also Lead Co-Lawyers’ List of the Civil Parties to Testify During the Hearings on Suffering Relevant to the Second Segment (with Confidential Annex), E315/1/3, 7 August 2015.

12. This document was disclosed to the Lead Co-Lawyers on 18 February 2015;¹¹ therefore, it was not available to the Lead Co-Lawyers before the opening of the trial. As per the methodology adopted by the Lead Co-Lawyers, it was only recently that the list of Civil Parties for the hearings on the harm suffered was prepared. Therefore, until that time, the Lead Co-Lawyers were unable to foresee whether this document would be necessary for admission under Internal Rule 87(4).
13. Annex B contains a general description of the information contained in the document as well as references to the specific sections of the Closing Order to which it relates. This document relates directly to the Civil Party who is proposed in Annex A and closely related to evidence already before the Chamber.
14. The admission of this document would provide an opportunity to the parties and the Chamber to evaluate the facts arising out of the Civil Party's impact testimony together with those provided in the document. Accordingly, this document is conducive to ascertaining the truth and relevant to Case 002/02.¹²


IV. REQUEST

15. In light of the above, Civil Parties respectfully request that the Trial Chamber approve the Provisional and Proposed Schedule and, accordingly:
- a) call the Civil Parties named in Annex A and hear them in accordance with the Provisional and Proposed Schedule;
 - b) request the Witnesses/Experts Support Unit to begin preparations for the testimony of the proposed Civil Parties as per Annex A; and
 - c) admit the document listed in Annex B.

¹¹ International Co-Prosecutors' Disclosure of Documents From Case File 004 Relevant to Case 002 Pursuant to Case 004 – D193/11, **E319/13**, 18 February 2015; *see further*, **E319/13.3** Annex H.

¹² *See for example*, Decision on Civil Party Lead Co-Lawyers' request to admit victim information forms and related documents, **E319/31/2**, 12 November 2015.

Respectfully submitted,

Date	Name	Place	Signature
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