

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

**Case No:** 002/19-09-2007-ECCC/TC

**Party Filing:** Mr KHIEU Samphan

**Filed Before:** The Trial Chamber

**Original:** FRENCH

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**CLASSIFICATION**

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**FURTHER DETAILS CONCERNING PROPOSED WITNESSES AND EXPERTS**

Filed by:

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Before:

**The Trial Chamber**

Judge NIL Nonn

Judge Silvia CARTWRIGHT

Judge THOU Mony

Judge Jean-Marc LAVERGNE

Judge YA Sokhan

**Co-Prosecutors**

CHEA Leang

Andrew CAYLEY

**Civil Party Lawyers**

PICH Ang

Elisabeth SIMONNEAU-FORT

**MAY IT PLEASE THE TRIAL CHAMBER**

1. According to the Trial Chamber's Order dated 13 January 2011 ("the Order"), issued pursuant to Rule 80 of the Internal Rules ("the Rules"), the parties must provide, no later than 23 February 2011: (i) a summary of the facts on which each proposed witness is expected to testify, (ii) a summary of the proposed expertise, (iii) the points of the Indictment to which each proposed witness or expert is expected to testify.<sup>1</sup>
2. On 14 February 2011, Mr KHIEU Samphan received notice of the French version of the Co-Prosecutors' lists of witnesses, experts and Civil Parties,<sup>2</sup> and filed his lists on 21 February 2011.<sup>3</sup>
3. Mr KHIEU Samphan hereby provides some information concerning his evidence. He once again wishes to recall that the burden of proof lies with the Co-Prosecutors **only**.
4. Mr KHIEU Samphan wishes to highlight the violation of his fundamental rights<sup>4</sup> and the fact it is still impossible for him to know at this stage and with certainty on which inculpatory evidence to rely, notably due to the shortcomings of the Prosecution services. His defence therefore reserves the right to provide further details at trial in order to reinforce his position, should the information from the Prosecution not be reliable.
5. Ordering the Defence to provide summaries of testimonies and expertise in such unpredictable conditions is totally unjust and risky for the work of justice.

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<sup>1</sup> Order to File Materials in Preparation for Trial, 13 January 2011, E9, para. 6.

<sup>2</sup> *Liste des experts, témoins et parties civiles déposées par les co-procureurs en application de la Règle 80 du Règlement intérieur, comprenant les annexes confidentielles 1, 2, 3, 3A, 4 et 5*, E9/4, translation of 14 February 2011.

<sup>3</sup> *Liste de témoins et experts*, 21 February 2011, E9/4/6. The Khmer version will be filed at the earliest opportunity, in accordance with the Notification of Trial Chamber's disposition of request for extension of deadlines, 14 February 2011, E9/6/1.

<sup>4</sup> Mr KHIEU Samphan has demonstrated that **the application of Rule 80 violates his fundamental rights, including his right to be presumed innocent; the principle that the burden of proof lies with the Prosecution; his right, in full equality, to have adequate time and facilities for the preparation of his defence; and his right to be tried without undue delay**. See Application for Extension of Time, 8 February 2011, E9/6.

6. The summaries of testimonies (Annex 1) and summaries of expertise (Annex 2) are therefore inevitably **incomplete and provisional**, pending further details at trial.

7. Accordingly, those summaries only contain information about the general nature of the proposed testimonies and are not aimed at providing details about those testimonies.<sup>5</sup> Therefore, the points of the Indictment to which they relate are only indicative.

8. The information in Annexes 1 and 2 in the “*Points of the Indictment*” column relates to points of the **Indictment**<sup>6</sup> and not to the *List of evidentiary issues* supplied by the Chamber.<sup>7</sup>

9. Finally, Mr KHIEU Samphan recalls the Trial Chamber’s **obligation** to name *amici curiae* in the interests of legal certainty and good administration of justice. This is because it is **necessary** to guarantee independence and **rigour** in the search for the truth so as to ensure that justice is not exploited for ulterior motives. The experts proposed by Mr KHIEU Samphan could be called as *amici curiae*, because they are widely known and possess extensive experience in international criminal law, international relations law and humanitarian law.

10. All the foregoing remarks are aimed at ensuring that the proceedings are effective and fair, in the interests of **the truth** for the international community and the Cambodian people.

### FOR THESE REASONS

11. It is requested that the Trial Chamber:

- FIND that the application of Rule 80 violates Mr KHIEU Samphan’s right to be presumed innocent, the principle that the burden of proof lies with the Prosecution, his right to have adequate time and facilities for the preparation of

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<sup>5</sup> It will be noted that Mr KHIEU Samphan has not provided summaries of the testimonies of the witnesses listed in the Co-Prosecutors’ Annex *1bis*. The reason is because it is pointless to do so, since the list was aimed solely at ensuring that, if called before the Chamber, those witnesses may be examined *thoroughly*.

<sup>6</sup> Indictment, 15 September 2010, D427.

<sup>7</sup> Order, para. 6(iii) and Annex 1.

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his defence, in full equality with the services and representations of the Co-Prosecutors, his right to be tried without undue delay;

- ADMIT Mr KHIEU Samphan's information concerning his proposed witnesses and experts as submitted at this time;
- GRANT Mr KHIEU Samphan leave to amend his list of witnesses and experts, including the summaries of the facts to which each witness is expected to testify, the summaries of the proposed expertise and the points of the Indictment to which each witness and expert is expected to testify.
- RULE that *amici curiae* shall be named from the proposed expert list or from among persons who are internationally recognized as experts in the fields of international criminal law, history, law and international relations, philosophy and human rights.

**WITHOUT PREJUDICE,  
AND IT WILL BE JUSTICE**

	SA Sovan	Phnom Penh	
	Jacques VERGÈS	Paris	
	Philippe GRÉCIANO	Paris	
Date	Name	Place	Signature