

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

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**RESPONSE TO IENG SARY AND KHIEU SAMPHAN ON LEGAL ISSUES
INITIAL HEARING**

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Before:

The Trial Chamber

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INTRODUCTION :

1. On 17 January 2011, the Trial Chamber issued an Order directing the parties provide an indication of any legal issues they intend to raise at the initial hearing.¹
2. On 19 April 2011, the Ieng Sary Defence filed a motion raising several legal issues, including preliminary objections and whether “the civil parties must testify under oath if they testify to the facts, rather than simply to their claim for reparations.”²
3. On 19 April, the Khieu Samphan Defence filed a motion raising several points, including “the admissibility and merits of Civil Party applications.”³
4. The Civil Parties hereby respond to both motions.

ARGUMENT:

5. Regarding preliminary objections, the Civil Party Lead Co-Lawyers refer to their motion of 7 March 2011.⁴
6. Concerning Civil Party testimony, the Internal Rules are plain: according to Rule 23(4) of the Internal Rules, as a party to the trial, the Civil Party cannot be questioned as a simple witness.
7. In this regard, reference is made to the Civil Party Lead Co-Lawyers’ motion of 17 March 2011⁵ and the Trial Chamber’s Memorandum of 8 April 2011.⁶
8. As regards the issue of the admissibility and merits of Civil Party applications, and pursuant to Rule 23*bis* (3), determining the admissibility of Civil Party applications is now the exclusive discretion of the Co-Investigating Judges and the Pre-Trial Chamber.

¹ Order to File Material in Preparation for Trial, 13 January 2011, E9.

² IENG Sary’s Indication of Legal Issues He Intends to Raise at the Initial Hearing, 19 April 2011, E9/23. para. 3(D): “Whether the civil parties must testify under oath if they testify to the facts, rather than simply to their claim for reparations”.

³ Legal Issues - Initial Hearing, 19 April 2011, E9/28, para. 1.

⁴ Joint Response by the Civil Parties to Defence motions on preliminary objections (Rule 89), 7 March 2011, E51/5/4.

⁵ Observations by the Civil Parties on Ieng Sary’s Request that Civil Parties Take an Oath Before Testifying. 17 March 2011, E57/1.

⁶ Trial Chamber Response to Motions E67, E57, E56, E58, E23, E59, E20, E33, E71, and E73 following Trial Management Meetings of 5 April 2011, 8 April 2011, E74.

9. As for the merits of Civil Party applications, the Civil Party Lead co-Lawyers will make their observations in due course, since the Defence has not yet discussed the issue.
10. Decisions of the Pre-Trial Chamber on admissibility of Civil Parties appealing against decisions of the Co-Investigating Judges are final (Rule 77 *bis*).
11. Expecting the Trial Chamber to issue a new ruling on admissibility would be tantamount to stripping Rule 77 of its meaning.
12. It was precisely to avoid leaving the issue of admissibility unresolved before the Trial Chamber that this Rule was introduced.
13. In view of the elliptical nature of the Defence motions on the legal issues, the Civil Party Co-Lawyers reserve the right to respond thereto, where necessary, depending the arguments which will be raised subsequently.
14. The Civil Party Lead Co-Lawyers respectfully request the Trial Chamber to take account of their observations regarding the legal issues that the Defence intends to raise at the initial hearing.

Respectfully submitted by,

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