

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

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**CO-PROSECUTORS' RULE 80 EXPERT, WITNESS AND CIVIL PARTY LISTS,
INCLUDING CONFIDENTIAL ANNEXES 1, 2, 3, 3A, 4 AND 5.**

FILED BY:

Co-Prosecutors:
CHEA Leang
Andrew CAYLEY

DISTRIBUTE TO:

Trial Chamber:
Judge NIL Nonn, President
Judge Silvia CARTWRIGHT
Judge YA Sokhan
Judge Jean-Marc LAVERGNE
Judge THOU Mony

Civil Party Lead Co-Lawyers:
PICH Ang
Elisabeth SIMONNEAU FORT

**Charged Persons and
Defence Teams:**

NUON Chea
SON Arun
Michiel PESTMAN
Victor KOPPE

IENG Sary
ANG Udom
Michael G. KARNAVAS

IENG Thirith
PHAT Pouy Seang
Diana ELLIS

KHIEU Samphan
SA Sovan
Jacques VERGÈS
Philippe GRÉCIANO

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I. INTRODUCTION

1. Pursuant to Rule 80 of the Internal Rules¹ and the Trial Chamber's Order to File Material in Preparation for Trial filed on 17 January 2011,² the Co-Prosecutors respectfully submit six confidential annexes containing the list of experts (**Annex 2**), witnesses (**Annexes 3 and 3A**) and civil parties (**Annex 4**) that they request to be summoned to appear at trial. These lists are ordered alphabetically by surname. **Annex 1** is a composite list containing all individuals named in **Annexes 2, 3, 3A and 4**, in the order in which the Co-Prosecutors submit that they should appear at trial. **Annex 5** contains the names of additional individuals the Co-Prosecutors would only request to be called in the event further authentication of certain documents or interviews is required.

II. ANNEXES 1 TO 4

Contents

2. **Annexes 2, 3, 3A and 4** contain the names and other particulars of 16 experts, 247 witnesses and 32 civil parties. These other particulars include, to the extent that this information is available to the Co-Prosecutors: each individual's gender; place and date of birth; current address or contact details; document reference numbers of the most relevant written records of interview of that individual³; the type of oath that it is expected each individual will take or, alternatively, where an oath is not required, their relationship to individuals in the case that precludes them from taking an oath as prescribed in Rule 24(2); the expected language of the individual's testimony; and the estimated length of time required for their testimony.

Protective Measures

3. **Annex 3A** contains the details of a witness in respect of whom the Co-Prosecutors believe protective measures will likely be requested. **Annexes 2, 3 and 4** do not contain information concerning protective measures that may have been requested by individuals on the lists, as although some of this information is understood to have been gathered by

¹ Extraordinary Chambers in the Courts of Cambodia Internal Rules (Rev.6) (as revised on 17 September 2010) (ECCC Internal Rules), Rule 80.

² Order to File Material in Preparation for Trial, Trial Chamber, Case No. 002/19-09-2007-ECCC/TC, 17 January 2011, E9.

³ At this stage, the Co-Prosecutors are unable to provide the information as to all the documents an expert, witness or civil party would be referred to in their testimony.

the Office of the Co-Investigating Judges, it has not been placed on the Case File and consequently the Co-Prosecutors do not have access to it. In accordance with Article 33 new of the ECCC Law and Rule 29 (3), by virtue of the fact that the Co-Prosecutors have not been in contact with experts, witnesses and civil parties, the Co-Prosecutors request that the Trial Chamber direct the Witnesses & Expert Support Unit and the Victims Support Section to assist the Trial Chamber in determining whether protective measures should be sought for the individuals contained in the Co-Prosecutors' lists. It is also requested that these Units obtain specific information from each expert, witness or civil party as to the type of protection they may deem necessary.

4. In accordance with Article 7 of the Practice Direction on the Classification and Management of Case Related Information, to assist in protecting any security concerns an expert, witness or civil party may have, in advance of the inquiries the Trial Chamber may make with the Witnesses & Expert Support and Victims Unit regarding protective measures, the Co-Prosecutors have assigned pseudonyms to each individual on the lists. It is requested that these pseudonyms be used throughout the proceedings until a determination is made by the Trial Chamber regarding the necessity of protective measures. This would protect any individual's potential security concerns in advance. Pseudonyms are identified by a "P" followed by three digits, for example, P-001. The pseudonyms have been assigned sequentially in the order the Co-Prosecutors submit that the experts, witnesses or civil parties should appear at trial.

Oath or Affirmation Preference

5. The Co-Prosecutors have, wherever possible, included the type of oath or affirmation that each expert and witness is expected to take during the trial. Generally, however, this information has been unavailable. While the written records of witnesses interviewed by the Office of the Co-Investigating Judges usually indicate whether the individual took an oath or affirmation in accordance with Rule 31 or 24 (1), the records do not indicate the type of oath taken. In addition, all individuals who have not been interviewed by the Office of the Co-Investigating Judges have not yet been required to take an oath. As such, their preference in this respect is presently unknown.

6. The Co-Prosecutors also note, in relation to Rule 80 (1), that they do not have access to sufficient information to allow them to represent whether witnesses have a relationship to a civil party that would preclude them from taking an oath under Rule 24 (2). The reason for this is that the majority of Case 002 civil parties were not admitted and identified by the Co-Investigating Judges until after the interviews of witnesses had already taken place. Accordingly, at the time witnesses were interviewed during the judicial investigation, there was not a list of admitted civil parties that could be shown to them to determine if any relationship existed. The Co-Prosecutors thus also recommend that the Trial Chamber request the assistance of the Witnesses & Expert Support Unit for the purposes of determining whether the witnesses on the attached lists are related to any admitted civil party.

Time Estimates

7. Time estimates have been made on the basis that the Co-Prosecutors would be able to question the expert, civil party or witness for at least one third of the time estimated for the total testimony.

III. SELECTION CONSIDERATIONS

8. The Co-Prosecutors have proposed the experts, witnesses and civil parties for this case with a view to balancing the search for the truth of the facts alleged in the Indictment, protecting the fair trial rights of the Accused and facilitating the need for judicial economy. The testimony of at least these individuals will be central to the Co-Prosecutors' ability to prove the vast matrix of crimes and modes of individual criminal responsibility alleged in the Indictment beyond reasonable doubt as required pursuant to Rule 87 (1).
9. Bearing in mind that the Indictment alleges numerous crimes based on many large scale complex criminal events occurring in just under a four year period, as well as direct and indirect links between the actions of the Accused and the occurrence of those crimes and criminal events, the Co-Prosecutors submit that the total number of persons included on their expert, witness and civil party lists represents a relatively small proportion of the individuals supporting the Indictment allegations that could otherwise be called to testify.

10. Other individuals have not been placed on the lists on the basis that the Co-Prosecutors will be permitted to introduce into evidence their witness statements and related documents pursuant to Rule 87. In the event that certain witness statements and or related documents are not admitted, the Co-Prosecutors provide notice to the Trial Chamber that they may request further experts, witnesses or civil parties to be summoned to appear at trial if in the opinion of the Co-Prosecutors such exclusion of documentary evidence jeopardizes their ability to meet the standard of proof required on any particular material issue in the case.
11. For example, the Co-Prosecutors have not included all individuals that could assist in the authentication of relevant documents which will be sought to be admitted. Nevertheless, if the Defence challenges the authenticity of any such documents and the Trial Chamber determines that further authentication evidence is required, the Co-Prosecutors provide notice to the Trial Chamber that they will request that additional authenticating witnesses be summoned. **Annex 5** contains the names of a number of such individuals.
12. Similarly, where experts, witnesses or civil parties identified in these annexed lists cannot appear at trial for any reason, or if they appear at trial and are unable to establish the facts contained in their written statements, the Co-Prosecutors also provide notice to the Trial Chamber that they may request that alternative experts, witnesses or civil parties be summoned to appear in order to testify on the same or similar issues. More generally, if as the trial progresses the Co-Prosecutors believe that further witnesses need to be called on any particular issue to satisfy their burden of proof, they provide notice to the Trial Chamber that they will make such request once this belief is formed.
13. There is a small number of individuals that the Co-Prosecutors wish to summon before the Trial Chamber who have not been interviewed by the Office of the Co-Investigating Judges. These include most of the experts listed in **Annex 2**. It is apparent that the Office of the Co-Investigating Judges did not interview individuals who already have extensive expertise on issues relating to the subject matter of the Indictment. Instead, their publications were placed on the Case File. The fact that these experts or witnesses did not testify before the Co-Investigating Judges does not diminish the value of their testimony. Indeed, these individuals are in a position to offer unique insights, often on a wide range of issues pertinent to this case and in a concise manner conducive to judicial economy. Further, where the Co-Prosecutors have requested summons for witnesses (**Annex 3**) or

civil parties (**Annex 4**) whom the Office of the Co-Investigating Judges have not interviewed, they have done so on the belief that the testimony of these individuals is particularly pertinent to the proof of key material facts.

14. With respect to the civil parties identified in **Annex 4**, the Co-Prosecutors seek summonses for these individuals and permission to question them at the trial. Additionally, the Co-Prosecutors would seek to question these individuals as ordinary witnesses should they abandon their Civil Party applications as allowed under Rule 23bis (5), or if the Trial Chamber otherwise determines that it is appropriate that such persons testify as ordinary witnesses.

IV. WITNESS ORDER PROPOSAL FOR TRIAL

15. In **Annex 1**, the Co-Prosecutors have submitted an order in which the experts, witnesses and civil parties should be called to appear at trial and in which the key issues or areas of the Indictment should be presented. The Co-Prosecutors propose grouping and questioning experts, witnesses and civil parties in accordance with the primary alleged issue or criminal event to which they are able to testify.
16. Certainly, the Co-Prosecutors recognise that many experts, witnesses and civil parties will provide evidence in connection with multiple issues and criminal events. In order not to require individuals to appear several times or to artificially compartmentalise their testimony, the Co-Prosecutors submit that parties should be able to question those individuals as to all issues and criminal events to which they are able to testify. Nevertheless, the Co-Prosecutors request that their proposal for the overall structure of the presentation of evidence be maintained so as to give the Trial Chamber and the public the ability to develop the best possible understanding of the case and promote efficiency in its presentation by the parties.

First Phase

17. The Co-Prosecutors have proposed that the trial begin with the key events and alleged crimes that took place on 17 April 1975 and the ensuing period, specifically the Forced Movement of the Population from Phnom Penh and the mass executions of Khmer

Republic government officials and soldiers and other evacuees, including the Tuol Po Chrey and District 12 crime sites (**Annex 1**, Sections 1 to 3).

Second Phase

18. The Co-Prosecutors would then propose to turn to the establishment of the Democratic Kampuchea regime, the role of the Accused, the CPK policies and the joint criminal enterprise that was implemented over the course of the regime, including a historical and policy overview, the organisational structure of the Party Centre, Zones, military and government ministries, the communication structure and political education by which the JCE and CPK policies were implemented, and the purges of the DK and CPK organisations by the senior leaders (**Annex 1**, Sections 4 to 15).

Third Phase


19. The next and final phase of the trial proposed by the Co-Prosecutors in **Annex 1** would address the bulk of the specific crime sites and events included in the Indictment, starting with the existence of an armed conflict (Section 16), security centres and related sites (Sections 17 to 29), the treatment of the Buddhists (Section 30), treatment of the Cham (Section 31), forced marriage (Section 32), the second forced movement of population (Section 33), forced labour sites (Sections 34 to 37), the treatment of the Vietnamese (Section 38), the purge of the East Zone including the Steung Tauch execution site, the forced movement of the population from the East Zone and mass executions of evacuees (Sections 39 to 41), concluding with an overview of the crimes (Section 42).
20. The Co-Prosecutors are aware that pursuant to Rule 80(2) the Civil Parties and the Defence may put forward their own requests for witnesses to appear at the trial. In the interests of clarity, efficiency and justice, the Co-Prosecutors respectfully submit that those witnesses be assessed in accordance with the key issues and criminal events to which they are able to testify and that they appear for questioning in accordance with the primary issue or site to which they can provide evidence, such that the overall structure proposed by the Co-Prosecutors is maintained.

V. REQUEST

21. The Co-Prosecutors therefore request that:

- (1) once the schedule has been decided upon, the witnesses, civil parties and experts identified in **Annexes 2, 3, 3A and 4** be summoned to give evidence before the Trial Chamber pursuant to Rule 84 (2).
- (2) the Trial Chamber order that the Witness & Expert Unit and Victims Support Section provide all information necessary to the Trial Chamber in order for them to make a determination as to whether protection measures are necessary for the experts, witnesses and civil parties throughout these proceedings pursuant to Article 33 new and Rule 29.

Respectfully submitted,

Date	Name	Place	Signature
28 January 2011	CHEA Leang Co-Prosecutor	Phnom Penh	
	Andrew CAYLEY Co-Prosecutor		