

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

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**CIVIL PARTY LEAD CO-LAWYERS' RULE 80 SUMMARIES AND EXPERT
QUALIFICATIONS WITH POINTS OF THE INDICTMENT, INCLUDING
CONFIDENTIAL ANNEXES**

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Trial Chamber

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Judge Silvia CARTWRIGHT

Judge YA Sokhan

Judge Jean-Marc LAVERGNE

Judge THOU Mony

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Accused and Defence:

IENG Sary

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I. PROCEDURAL BACKGROUND, APPLICABLE LAW AND INTRODUCTION

1. On 14 January 2011, the Trial Chamber (“TC”) received the case file from the Pre-Trial Chamber.
2. On 17 January 2011, the Trial Chamber filed the “Order to File Material in Preparation for Trial”¹ (“Order”).
3. Pursuant to paragraphs 1-4 of the Order the Lead Co-Lawyers had submitted the first lists of proposed Witnesses, Civil Parties and Experts on the 14 of February 2011.
4. Pursuant to Rule 80(3) of the Internal Rules, and following the Order of the TC,² the Lead Co-Lawyer Section respectfully submits three confidential annexes containing the lists prepared by the Civil Party Lawyers marked in different colours of each team (Annex 1), Witness and Civil Party Summaries with Points of the Indictment (Annex 2), divided as requested by the Chamber in 2a and to 2b (with or without protective measure sought) and Expert Qualifications and Points of the Indictment (Annex 3) that they request to be summoned to appear at trial. Furthermore, the Civil Parties’ Lead Co-Lawyers submit an order of appearances following the recommendations given by the Prosecutors in their submission³ (Annex 4).

II. CONTENTS ANNEXES 1, 2 and 3

1. Annex 1 is a clarification of the colours used to differentiate the different proposed lists received by the Civil Party Lead Co-Lawyers from each Civil Party team. Each team was randomly assigned a different colour by the Lead Co-Lawyer Section; the colours do not have any other meaning than to distinguish among the legal teams. As requested by Civil Party Lawyers, each proposed Witness, Civil Party or Expert is labelled in the colour corresponding to the legal team that requested the respective Witness, Civil Party or Expert.

¹ Order to File Material in Preparation for Trial, Trial Chamber, Case No. 002/19-09-2007-ECCC/TC, 17 January 2011, E9.

² *Ibid.*, paras. 6-7.

³ Co-Prosecutors’ Rule 80 Expert, Witness and Civil Party Lists, Including Confidential Annexes 1, 2, 3, 3A, 4, and 5, Office of the Co-Prosecutor, Case No. 002/19-09-2007-ECCC/TC, 28 January 2011, E9/4, Annex 1.

2. Annex 2a (Witness and Civil Party Summaries with Points of the Indictment for whom no protective measures are sought), Annex 2b (Witness and Civil Party Summaries with Points of the Indictment for whom protective measures are sought), and Annex 3 (Expert Qualifications and Points of the Indictment) contain the names and other information as requested by the Trial Chamber of 18 Witnesses, 146 Civil Parties, and 15 Experts.
3. Annex 2a and 2b include, to the extent that this information is available to the Lead Co-Lawyers: each individual's surname and given name; a summary of the proposed testimony; and points of the Indictment.
4. Annex 3 includes, to the extent that this information is available to the Lead Co-Lawyers: each individual's surname and given name; the Expert qualifications; summary of proposed expertise; and points of the Indictment.

III. ORDER OF APPEARANCE FOR TRIAL, ANNEX 4

5. The Lead Co-Lawyers agree with the order presented by the Co-Prosecutors in their Annex 1⁴ for the appearance of the proposed Witnesses, Civil Parties and Experts. The Lead Co-Lawyers in their Annex 4 of this submission divide its proposed Witnesses, Civil Parties and Experts in the same manner as the proposed order requested by the Co-Prosecutors in their submission.⁵ Therefore in the interest of justice, clarity and efficiency, the Lead Co-Lawyers assessed the proposed individuals in accordance with the key issues and criminal events to which they are able to testify; and they appear in the list in accordance with the primary issue or site to which they can provide evidence. Nevertheless, the Lead Co-Lawyers provide notice to the Trial Chamber that some Witnesses and Civil Parties may testify on different issues. All the Parties shall be able to question all individuals on all issues and criminal events to which they are able to testify.

⁴ *Ibid.* Annex 1.

⁵ *Ibid.* para. 20

IV. WITNESSES, CIVIL PARTIES AND EXPERTS NOT ALREADY INTERVIEWED BY OCIJ

6. Some of the proposed Witnesses, Experts and Civil Parties have not been interviewed by the Office of the Co-Investigating Judges. Nevertheless the Lead Co-Lawyers consider that these individuals are in a position to offer unique expertise in a wide range of pertinent issues related to the Case. The Trial Chamber is not limited to those Witnesses/Civil Parties/Experts who were interviewed by the CIJs. If the Chamber is convinced that a proposed Witness/Civil Party/Expert can assist them in ascertaining the truth, the TC not only may hear but shall hear that testimony. For further development on this point the Lead Co-Lawyer Section refers to the submission from the Co-Lawyers for the Civil Parties that was submitted on this issue.⁶

V. STATUS OF TESTIFYING CIVIL PARTIES

7. The Office of the Co-Prosecutors suggested questioning Civil Parties as Witnesses stating that they either abandon their Civil Party status or “[t]hat the TC otherwise determines that it is appropriate that such persons testify as ordinary witnesses”.⁷
8. The TC is not in the position to suggest depriving Parties from their status as there is no legal basis for the Chamber to simply ‘determine’ that Civil Parties testify as witnesses. The Civil Party Lead Co-Lawyers recall that the TC must assess Civil Party testimony according to the same credibility criteria as Witness testimony and that the TC will determine whether or not the Civil Party testimony is credible according to the same criteria as it will proceed with Witness testimony.
9. This assumption from the OCP may be based on an unfounded supposition that a witness statement under oath has more weight than a Civil Party statement given without an oath. In a *civil law* system, which we use for this Case, there is no ground for a TC to hold a Party’s testimony as less credible simply because it is the testimony of a Party, given without oath. For further development on the question the Lead Co

⁶ Civil Parties’ Co-Lawyers Witness, Civil Party List- Annex 5 and 6, paras. 17-19.

⁷ *Supra* fn 3, para 14

lawyers refer to the submission made by the Co-Lawyers for the Civil Parties on this issue.⁸

10. The Lead Co-Lawyers for Civil Parties stress that currently none of the Civil Parties intend to withdraw from their status as they could not re-apply and would then lose their rights to participation and reparations.

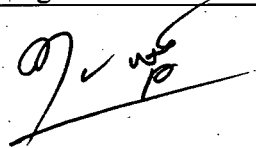
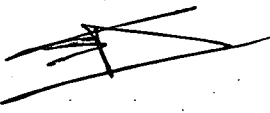
IV. REQUEST

11. The Civil Party Lead Co-Lawyers request that:

(1) Once the schedule has been decided upon, the Witnesses, Civil Parties and Experts identified in Annexes 2a, 2b, 3 shall be summoned to give evidence before the TC pursuant to Rule 84 (2);

(2) The TC order the Witness & Expert Unit to provide all information necessary to the Chamber in order for them to make a determination as to whether protective measures are necessary for the Experts, Witnesses and/or Civil Parties that have requested them throughout these proceedings pursuant to Article 33 (new) of the Law on the Establishment and Internal Rule 29.

Respectfully submitted,

Date	Name	Place	Signature
23 February 2011	PICH ANG Lead Co-Lawyer	Phnom Penh	
	Elisabeth SIMONNEAU- FORT Lead Co-Lawyer	Phnom Penh	

⁸ *Supra* fn 6, paras.20-22.