

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

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**INTERNATIONAL CO-PROSECUTOR'S RULE 80 WITNESS AND EXPERT LIST
SUBMISSION WITH CONFIDENTIAL ANNEX A**

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I. INTRODUCTION

1. Pursuant to ECCC Internal Rule (“Rule”) 80,¹ the International Co-Prosecutor (“ICP”) hereby respectfully submits her list of 126 witnesses and experts that she intends to summon for the trial of Ao An. The list is contained in the confidential annex attached to this submission (**Confidential Annex 1**).

II. PROCEDURAL HISTORY

2. On 19 December 2019, the Pre-Trial Chamber (“PTC”) issued its “Considerations on Appeals Against Closing Orders”, disposing of the appeals against the differing legal conclusions of the two Co-Investigating Judges (“CIJs”) following completion of the investigation into crimes alleged against Ao An.² Three Judges upheld the Dismissal Order and annulled the Indictment,³ while the other two Judges annulled the Dismissal Order and upheld the Indictment.⁴ As the Indictment was not reversed by a supermajority, the Indictment stands and, therefore, pursuant to Rule 77(13)(b), the Trial Chamber (“TC”) was seised of the case on the basis of the Indictment.⁵
3. On 26 December 2019, the ICP requested this Chamber to (i) extend the 15-day deadline to submit her list of witnesses and experts she intends to summon at trial, and (ii) convene a trial management meeting (“Request”).⁶

III. APPLICABLE LAW

4. Rule 1(2) provides that a “reference in these IRs to the Co-Prosecutors includes both of them acting jointly and each of them acting individually”.
5. Rule 80(1) provides that in preparation of the trial:

¹ Extraordinary Chambers in the Courts of Cambodia, Internal Rules (Rev. 9), as revised on 16 January 2015 (“Rules”).

² **D359/24 & D360/33** Considerations on Appeals Against Closing Orders, 19 December 2019 (“Pre-Trial Chamber’s Considerations”). The International Co-Investigating Judge indicted Ao An for genocide, crimes against humanity, and violations of the 1956 Penal Code of Cambodia, while the National Co-Investigating Judge dismissed the case against him. *See* **D360** Closing Order (Indictment), 16 August 2018 (“Indictment”).

³ **D359/24 & D360/33** Pre-Trial Chamber’s Considerations, paras 170-302 (“National Judges’ Opinion”).

⁴ **D359/24 & D360/33** Pre-Trial Chamber’s Considerations, paras 304-694 (“International Judges’ Opinion”), particularly paras 682-684.

⁵ **D359/24 & D360/33** International Judges’ Opinion, Disposition at EN 01634444.

⁶ International Co-Prosecutors Request for Extension to File her Witness and Expert List, 26 December 2019 (this Request has not yet been formally notified as of the time of this filing).

The Co-Prosecutors shall submit to the Greffier of the Chamber a list of the witnesses, including a statement of any relationship referred to in Rule 24(2) and experts they intend to summon 15 (fifteen) days from the date the Indictment becomes final. The Greffier shall place the list on the case file and, subject to any protective measures, forward a copy of the list to the parties.

6. Rule 39(4) provides that “the Chambers may, at the request of the concerned party or on their own motion: a) extend any time limits set by them”.
7. Article 33 new of the ECCC Law⁷ ensures respect for the protection of victims and witnesses, providing:

The Extraordinary Chambers of the trial court shall ensure that trials are fair and expeditious and are conducted in accordance with existing procedures in force, with full respect for the rights of the accused and for the protection of victims and witnesses.

8. In addition, Rule 29(3) provides:

The Co-Investigating Judges and the Chambers may, on their own motion or on request, and after having consulted with the Victims Support Section or the Witnesses/Experts Support Unit, order appropriate measures to protect victims and witnesses whose appearance before them is liable to place their life or health or that of their family members or close relatives in serious danger. The Co-Investigating Judges or the Chambers may issue such an order on their own motion where there are indications in the case file of such risk. Protective measures for victims shall be requested no later than 15 days after the indictment becomes final. Protective measures for witnesses shall be requested no later than the date for the filing of the witness list referred to in Rule 80. On an exceptional basis, later applications may be considered by the Chamber.

9. Moreover, Article 7.1 of the Practice Direction relating to the Classification and Management of Case-Related Information⁸ provides that:

In order to allow effective protection of witnesses in subsequent phases of proceedings, in public hearings and filings submitted prior to the testimony of each witness, he / she will be referred to by number, initial, pseudonym or other means deemed appropriate.

⁷ Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea, 10 August 2001 (“ECCC Law”), with inclusion of amendments as promulgated on 27 October 2004 (NS/RKM/1004/006).

⁸ Practice Direction on the Classification and Management of Case-Related Information (Practice Direction 004/2009), amended on 5 June 2009.

IV. SUBMISSIONS

Timing of the Filing of the List

10. As the PTC's Considerations were notified on 19 December 2019, the Indictment became final on that date. Pursuant to Rules 80(1) and 1(2), the Co-Prosecutors, acting jointly or individually, are required to submit their list of witnesses and experts to the TC Greffier within 15 days from the date the Indictment became final. Consequently, the ICP's list of witnesses and experts was due by 3 January 2020, subject to a decision on her Request. As the TC has not decided the Request as of the time of this filing, the ICP respectfully files her Witness and Expert List in keeping with the Request and for the reasons provided therein.

Witness and Expert Selection

11. The Witness and Expert List has been submitted in alphabetical order in **Confidential Annex 1**. For the sake of completeness, where the ICP would like to call an individual to testify and that person is a civil party or civil party applicant ("Civil Party"), this individual is included on the Witness and Expert List and designated as such. The individuals in **Confidential Annex 1** have not been contacted by the ICP to determine if they have a relationship as referred to in Rule 24(2), so further enquiries will need to be made.
12. In due course and subject to the TC's further direction, the ICP will submit the order in which she requests the witnesses and experts to be called to assist in ensuring an effective and efficient presentation of the Prosecution case. The witnesses, experts and Civil Parties are proposed in an effort to prove the facts alleged in the Indictment whilst facilitating the need for judicial economy.
13. Some witnesses, experts and Civil Parties have not been placed on the list on the basis that the Prosecution will be permitted to introduce into evidence their prior statements and related documents pursuant to Rule 87. In the event, however, that these documents are not admitted, the ICP provides notice to the TC that she may request further individuals to testify in order meet the burden of proof in this case. For example, the ICP has not included all individuals that could assist in the authentication of relevant documents which will be sought to be admitted. If the Defence challenges the authenticity of any such documents and the TC determines that further authentication is required, the Prosecution would request that additional authenticating witnesses be summoned.

14. Similarly, where witnesses, expert or Civil Parties identified in **Confidential Annex 1** cannot appear at trial for any reason, or if they appear at trial and are unable to establish the facts contained in their prior statements, the ICP also provides notice to the TC that she may request alternative witnesses, experts or Civil Parties be summoned to appear in order to testify on the same or similar issues.
15. More generally, as the preparation phase and the trial progress and it is believed that further witnesses need to be called on any particular issue to satisfy the Prosecution's burden of proof, the ICP provides notice to the TC that she will make such requests once this belief is formed.

Protective Measures

16. As the witnesses, experts and Civil Parties in **Confidential Annex 1** have not been contacted by the ICP, she is unable to say which listed individuals may require protective measures at trial. Consequently, it is requested that the identity of these individuals be kept confidential until their current position on protective measures can be ascertained.
17. In accordance with Article 33 new of the ECCC Law and Rule 29(3), and by virtue of the fact that the Co-Prosecutors have not been in contact with any of the listed witnesses, experts or Civil Parties, the ICP requests that the TC direct the Witnesses & Expert Support Unit ("WESU") and the Victims Support Section ("VSS") to assist her in determining whether protective measures should be sought for the individuals contained in the ICP's list. It is also requested that these Units obtain specific information from each witness or Civil Party as to the type of protection they may deem necessary.
18. In accordance with Article 7 of the Practice Direction on the Classification and Management of Case Related Information, the ICP requests that the individuals listed in **Confidential Annex 1** be referred to with the assigned pseudonym. It is requested that these pseudonyms be used throughout the proceedings until a determination is made by the TC regarding the necessity of protective measures. This would provide immediate protection for any individual's potential security concerns. Pseudonyms are identified by "P4/2" followed by three digits, for example, "P4/2-001". The pseudonyms have been assigned sequentially in keeping with the alphabetical order of the list.

V. RELIEF REQUESTED

19. For the foregoing reasons, the ICP respectfully requests that the Trial Chamber:

- (1) place her witness and expert list on the case file;
- (2) order that WESU and VSS provide all information necessary to the TC and the Parties in order to make any necessary decisions or requests regarding the protection of witnesses and Civil Parties throughout these proceedings; and
- (3) assign the pseudonyms as attributed to the witnesses, experts and Civil Parties in **Confidential Annex 1** and instruct the Parties to use these pseudonyms when identifying these individuals publicly until such time that further protection orders are made.

Respectfully submitted,

Date	Name	Place	Signature
13 January 2020	Brenda J. HOLLIS, International Co- Prosecutor	Phnom Penh 	