

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

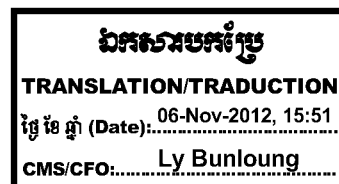
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**Civil Party Lead Co-Lawyers' List of Civil Parties to be Called Concerning Population
Movement Phases 1 and 2 in Trial 002/01, Including Confidential Annex 1**

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To:

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 Judge Silvia CARTWRIGHT
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I – FACTUAL AND PROCEDURAL BACKGROUND

1. On 3 August 2012, the Trial Chamber (the Chamber) issued a Memorandum entitled “Scheduling of Trial Management Meeting to enable planning of the remaining trial phases in Case 002/01 and implementation of further measures designed to promote trial efficiency”¹ in which it invited the parties to “identify at the Trial Management Meeting a limited number of witnesses, Experts and Civil Parties from their earlier lists who they consider are essential to examine during the population movement (phases one and two)”.
2. Accordingly, on 15 August 2012, the Co-Prosecutors filed their list of experts, witnesses and civil parties² to be called for the remainder of the trial 002/01, also including experts, witnesses and civil parties proposed in relation to the new categories of facts they intend to include in the scope of the trial 002/01, should extension of the scope be granted.
3. The Civil Party Lead Co-Lawyers hereby submit a list of the civil parties they propose in relation to population movement phases 1 and 2.

II – RIGHT OF CIVIL PARTIES TO BE HEARD

Cambodian Code of Criminal Procedure and Internal Rules

4. According to the Cambodian Code of Criminal Procedure (“CCP”)³ and the ECCC Internal Rules,⁴ civil parties have the right to participate in all stages of criminal proceedings before the ECCC.⁵

¹ Trial Chamber Memorandum on Scheduling of Trial Management Meeting to enable planning of the remaining trial phases in Case 002/01 and implementation of further measures designed to promote trial efficiency, E218, 3 August 2012.

² Notice of Co-prosecutors position on key issues to be discussed at 17 August 2012 trial management meeting (with confidential annex A), E218/2, 15 August 2012

³ Article 13 of the Cambodian Code of Criminal Procedure: “A civil action can be brought by the victim of an offense”.

5. Article 326 of the Cambodian CCP provides that the presiding judge shall hear the statements of civil parties. Cambodian law recognizes the right of civil parties to be heard by the judges.
6. In addition to their active right to participate in the proceedings, civil parties may also be called by any party. Article 91(1) provides: *“The Chambers shall hear the Civil Parties, witnesses and experts in the order it considers useful”*.

Civil parties are distinct from witnesses

7. There is a fundamental difference between witnesses and civil parties, as stated in Article 312 of the Cambodian CCP, which provides that a civil may never be heard as a witness,⁶ and in the Internal Rules, which very clearly distinguish civil parties from witnesses and experts.⁷ Such a distinction derives from the legal status of civil parties in a criminal case, where they cannot be heard as witnesses.⁸
8. The Civil Party Lead Co-Lawyers and the Civil Party Lawyers wish to re-emphasize that it is essential to bear this distinction in mind in order to safeguard the legal standing of civil parties before the ECCC.

⁴ Internal Rule 23(1) confirms that civil parties have the right “[to] participate in criminal proceedings against those responsible for crimes within the jurisdiction of the ECCC by supporting the prosecution”.

⁵ Directive in advance of Initial Hearing concerning proposed witnesses, Case No. 002/19-09-2007-ECCC/TC, 17 June 2011, E93, pp. 6-7.

⁶ Article 312 of the Cambodian Code of Criminal Procedure: “[a] civil party may never be heard as a witness”.

⁷ See also: Two sets of quite different rules with regard to civil parties and witnesses; for example, Rules 12*ter*; 23, 23*bis*, 23*quarter*, 23*quinquies*, 59, 91, 100, 101 specifically concern civil parties, while Rules 24, 25, 26, 27, 28, 60, 84 specifically concern only those civil parties who are summoned at various stages of the proceedings.

⁸ The distinction is highlighted by the fact that a civil party may address the Chamber without being under oath. See Internal Rule 24(2): See [TRANSLATION] Civil Parties’ Observation on Ieng Sary’s Motion for Civil Parties to Testify Under Oath If They Are Permitted to Testify as to the Knowledge of the Criminal Case, 17 March 2010, E57/1. See Article 312 of the Code of Criminal Procedure, which provides: “a civil may never be heard as a witness”.

9. Pursuant to Article 327 of the Cambodian CCP,⁹ the Prosecutor, lawyers and all parties may object to the hearing of the testimony of witnesses, and witnesses only. The right of civil parties to be heard by the Chamber differs from that of witnesses, in that it cannot be restricted by the Prosecutor, lawyers or other parties.
10. Moreover, their right to be heard is enshrined in the Internal Rules, at Rule 91¹⁰ “Hearing of other Parties and Witnesses,” which applies to civil parties and witnesses. Rule 91(1) highlights the clear distinction between civil parties and witnesses. Rule 91(3) states that the Co-Prosecutors and all the other parties and their lawyers may object to the continued hearing of the testimony of any witnesses if they consider that such testimony is not conducive to ascertaining the truth.
11. As a consequence, just as in Cambodian criminal procedure, only the testimony of a witness may be challenged. By contrast, the testimony of a civil party may not be challenged by the Co-Prosecutors, the other parties or their lawyers.
12. Further, pursuant to Internal Rule 80 *bis* (2), “At [the initial] hearing, the Chamber shall consider the lists of potential witnesses and experts submitted by the parties in accordance with these IRs. Where the Chamber considers that the hearing of a proposed witness or expert

⁹ Article 327 of the Cambodian Code of Criminal Procedure: “Objection to hearing of witness”:

“The Royal Prosecutor, the lawyers and all the parties may object to the hearing of the testimony of witnesses if their statements are not conducive to ascertaining the truth. In case of objections, the presiding judge decides whether to hear the witness testimony.”

¹⁰ Rule 91. Hearing of other Parties and Witnesses

1. The Chamber shall hear the Civil Parties, witnesses and experts in the order it considers useful.

2. The Judges may ask any questions and the Co-Prosecutors and all the other parties and their lawyers shall also be allowed to ask questions with the permission of the President. Except for questions asked by the Judges, the Co-Prosecutors and the lawyers, all questions shall be asked through the President of the Chamber.

3. The Co-Prosecutors and all the other parties and their lawyers may object to the continued hearing of the testimony of any witnesses, if they consider that such testimony is not conducive to ascertaining the truth. In such cases, the President shall decide whether to take the testimony.

4. After being questioned, each witness shall remain at the disposal of the Chamber until the Chamber decides that his or her presence is no longer needed.

would not be conducive to the good administration of justice, it shall reject the request that such person be summoned.” Again, this Rule makes no reference to civil parties in this rule, but only to witnesses and experts. Accordingly, the Chamber has no legal ground to limit the number of civil parties proposed.

13. The Civil Party Lead Co-Lawyers are mindful of the need to avoid unduly prolonging the proceedings. They are also mindful of the fact that owing to their very large number, not all of the civil party statements can be heard. However, it is also important to be mindful that civil parties have a right to be heard by the Chamber. Thus, we understand that it is necessary to limit the number of civil party statements to be put before the Chamber. For these reasons, the list of civil parties submitted to the Chamber earlier was reasonable, and the number of civil parties on the lists we are now filing is also reasonable, proportionate and justified.
14. Summoning a sufficient number of civil parties in relation to the forced transfers of population is conducive to ascertaining the truth. Each civil party sheds particular light thereon in light of his or her own circumstances. Summoning a sufficient number is essential, in that it will make it possible to address as many aspects as possible of the forced transfers, and, moreover, the consistency between a large number of statements will enhance the probative value of each of them. The crime perpetrated by the Khmer Rouge is a mass crime, and for that reason, accounts of the same events by different individuals will highlight the mass character of the crime.
15. All the accounts are not fundamentally different, but they each have their unique features. Moreover, the Civil Party Lead Co-Lawyers submit that hearing many similar accounts will prove that the transfers were based on the same scheme, which was planned and executed systematically all around the country.
16. We have been very careful in selecting the civil parties we have proposed, and have provided a detailed list of issues on which they will be questioned. Finally, we have pointed out their unique features and conduciveness to ascertaining the truth.

In the alternative, should reducing the list of civil parties be ordered

17. Should the Chamber envisage reducing the list of civil parties, the Lead Civil Party Co-Lawyers wish to point out that the Internal Rules do not permit it to undertake such action unilaterally.
18. As we have stated in our earlier submissions,¹¹ should the Chamber consider that the civil party list must be reduced, the Civil Party Lead Co-Lawyers stress that the Civil Party Lawyers wish to do so themselves. The Civil Party Lead Co-Lawyers are mindful of the time constraints for the Chamber and of the practical reasons for reducing the list. Even so, Civil Party Lead Co-Lawyers are better placed to reduce their list optimally so as to ensure that the most essential and most probative civil parties are heard by the Chamber.

III – FOR THESE REASONS

19. The Civil Party Lead Co-Lawyers request the Chamber to:

1) Main request:

- Take due note of the specificity of the status of civil parties and its fundamental difference from that of witnesses; for this reason, employ the appropriate terminology;
- Include the civil parties proposed in Annex 1 in the final list of civil parties to be called;

2) In the alternative:

¹¹ Directive in advance of Initial Hearing concerning proposed witnesses, Case No. 002/19-09-2007-ECCC/TC, 3 June 2011, E93.

- Rule that only the Civil Party Lead Co-Lawyers may reduce the list of civil parties to be called.

Date	Name	Place	Signature
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