

BEFORE THE TRIAL CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

Case Number: 001/18-07-2007-ECCC/TC

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RULE 92 MOTION OF CO-PROSECUTORS TO SUBMIT
ANALYSES OF WITNESS STATEMENTS

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I. DESCRIPTION OF THE ANALYSES

1. Pursuant to Internal Rule 92, the Co-Prosecutors respectfully submit to the Trial Chamber the attached analyses (**Annexes 1 and 2**).
2. **Annex 1** is an analysis of the relevant prior statements of witnesses that the Co-Prosecutors requested that the Trial Chamber summon to give evidence at trial¹ and which the Trial Chamber has indicated it will hear.² It also includes an analysis of the prior statements of witness KW-14 (PES Math) that the Co-Prosecutors requested be heard as a live witness but that the Trial Chamber has postponed a decision on.³ The information on this witness is included because the Trial Chamber indicated that it needed more information before it could decide on whether to accept the witness.⁴
3. The analysis is a summary of the witnesses' evidence on the Case File relating to the main factual and legal elements of the Indictment that the Prosecution is required to prove beyond a reasonable doubt. Each summary addresses, where possible, the witnesses' evidence relating to S-21, S-24 or the jurisdictional context in which the crimes were committed. The main areas addressed are as follows:
 - (a) nature and content of their evidence,
 - (b) background of the witness,
 - (c) existence of an international armed conflict,
 - (d) DK Structure & Policy,
 - (e) role of the Accused,
 - (f) authority structure,
 - (g) establishment, duration and operation of S-21 and S-24,
 - (h) imprisonment, unlawful confinement & lack of a fair trial,
 - (i) enslavement, wilfully causing great suffering & other inhumane acts,

¹ See Co-Prosecutors' Response to the Trial Chamber's Order to File Additional Materials, dated 19 December 2008, Case File No. E5/2, ERN 00268747-00268775 (ENG) at Annexes A and B.

² See Transcript of DUCH Trial Proceedings, Public version, dated 18 February 2009, Case File No. E1/4.1 at page 2 (listing the witnesses that the Trial Chamber has decided to hear).

³ *Id.* at pages 2-3. The Trial Chamber also indicated that it would postpone a decision on the Co-Prosecutors' request to call Craig Etcheson as a live witness. The Co-Prosecutors are also in the process of preparing an analysis of the prior statements of witness Craig Etcheson and it will be submitted to the court as soon as it is ready.

⁴ *Id.* at page 2 ("The Chamber needs more time and information to decide on the acceptance of certain witnesses).

- (j) torture and inhumane treatment, and
 - (k) extermination, murder and wilful killing.
4. The analysis includes summaries of evidence obtained from interviews conducted by the Co-Investigating Judges as well as interviews of those witnesses undertaken by other individuals prior to the commencement of the judicial investigation. The summaries also include a list of the witness's prior statements and any documents that the Co-Prosecutors believe may be relevant to the witness' evidence.⁵
5. **Annex 2** is an analysis of relevant prior statements of witnesses that the Co-Prosecutors have not requested to be summoned at trial but for whom the Co-Prosecutors are requesting the Trial Chamber take their evidence into account in the Judgement. These summaries have been prepared in the same way and on the same principles as those prepared in **Annex 1**.
6. Each analysis is provided in all three languages of the Court, cites only documents that are included in the Case File, and contains full references to the underlying Case File evidence that supports the analysis.

II. ARGUMENT

7. It is the responsibility of the Trial Chamber to lead into the record any evidence it considers necessary to establish the truth of any matters before it, give the opportunity to the Accused to answer such evidence and have that evidence debated by the Parties.⁶ In addition any Party may bring to the attention of the Chamber any evidence contained into the Case File and ask that it be considered by the Chamber for inclusion in the record and in its deliberations.⁷ Finally the Co-Prosecutors have the burden of proving the guilt of the Accused beyond a reasonable doubt.⁸
8. As a trial management tool, Internal Rule 92 allows the parties to "make written submissions" and "put before the Chamber any evidence that they consider conducive to

⁵ The list of prior statements and documents that may be relevant to the witness includes only those that the Co-Prosecutors were actually aware of at the time of the drafting of these analyses.

⁶ Internal Rule 87(2), 85(1), 91, 84(1).

⁷ Internal Rule 92, 87(2).

⁸ Internal Rule 87(1).

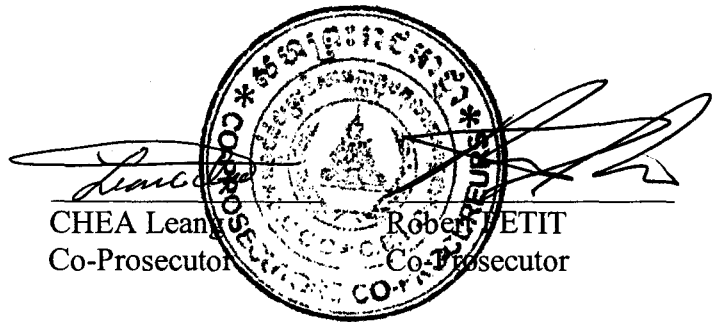
ascertaining the truth” up until the closing statements. In effect, Rule 92 creates a mechanism for the parties to notify the Chamber in writing of particular pieces of evidence that the party would like the Trial Chamber to examine during the trial. At the recent Trial Management Meeting the Trial Chamber noted “that under Rule 92, any party may make submissions up until the closing statements. Notification of evidence a party considers should be examined is to be considered a written submission in the sense of Rule 92.”⁹

9. **Annexes 1 and 2** are accurate summaries of the evidence in the Case File related to each of the witnesses. These summaries are relevant to the case and are supported by direct citations to material from the Case File. The Co-Prosecutors provide the Annexes as a preliminary indication to the Chamber of the evidence that the Co-Prosecutors would like the Chamber to take into account during its deliberations. The Co-Prosecutors request that the Judges consider these Annexes and use them in any way that is conducive to ascertaining the truth of the matters before this Chamber.

III. CONCLUSION

10. For the foregoing reasons, the Co-Prosecutors respectfully submit to the Trial Chamber this Rule 92 Submission.

Respectfully submitted,



CHEA Leang
Co-Prosecutor

Robert JETIT
Co-Prosecutor

Signed in Phnom Penh, Kingdom of Cambodia on this 11th day of March 2009

⁹ See Transcript of the Trial Management Meeting, dated 15 January 2009, Case File No. E1/1.1 at page 53.