

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

FILING DETAIL

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SUMMARIES OF PROPOSED WITNESSES, EXPERTS, AND CIVIL PARTIES

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I. INTRODUCTION

1. Pursuant to Rule 80(2) of the ECCC Internal Rules (the ‘Rules’) and this Chamber’s ‘Order to File Material in Preparation for Trial’ (the ‘Preparation Order’),¹ counsel for the Accused Nuon Chea (the ‘Defence’) hereby submits its summaries of proposed witnesses,² experts,³ and civil parties⁴ (collectively, the ‘Defence Summaries’). In accordance with the Preparation Order, these documents have been timely filed.⁵ Additionally, the Defence makes the following submissions.

II. SUBMISSIONS

A. General Notices and Disclaimers

2. For the reasons expressed previously,⁶ the Defence reserves its right to supplement and/or otherwise modify the Defence Summaries, *at any time*, pursuant to further instructions from the Accused. Additionally, the Defence reiterates that it has filed a preliminary objection regarding the legality of the Rules.⁷ While that objection does not specifically mention Rule 80(3)(a), it does suggest that such provision (and by extension, paragraph six of the Preparation Order) is without legal basis.⁸ In any event, the Defence submits that the material filed to date is consistent with its obligations under Cambodian law and reserves its right to continue to challenge any Rule that unlawfully departs from such established domestic procedure.⁹ Finally, the Defence reminds the Trial Chamber that it intends to file additional requests for investigative action—on matters addressed in the Defence Summaries—prior to the Initial Hearing.¹⁰

¹ Document No E-9, ‘Order to File Material in Preparation for Trial’ (the ‘Preparation Order’), 17 January 2011, ERN 00635754–00635759, paras 6–7.

² Attached hereto as Annex D.

³ Attached hereto as Annex E.

⁴ Attached hereto as Annex F.

⁵ *N.B.* This Chamber has ordered that such summaries be filed ‘no later than 23 February 2011’. Preparation Order, para 6.

⁶ See Document No E-9/4/4, ‘List of Proposed Witnesses, Experts, and Civil Parties’, 15 February 2011, ERN 00644417–00644423 (the ‘Defence Witness List’), para 2.

⁷ See Document No E-36, ‘Preliminary Objection Concerning the Legality of the Internal Rules and Effect of the Trial Chamber’s Order of 17 January 2011’, 11 February 2011, ERN 00642561–00642576 (the ‘Rules Objection’). *N.B.* This document will be re-filed (as part of the Defence’s ‘Consolidated Preliminary Objections’) on 25 February 2011 per this Chamber’s direction.

⁸ See Rules Objection.

⁹ *Ibid.*

¹⁰ See Rule 93(1) (‘Where the Chamber considers that a new investigation is necessary it may, at any time, order additional investigations.’)

B. Translation

3. In view of current (and ongoing) ITU constraints, the Defence is unable to provide Khmer translations of the attached annexes at this juncture. Translation of these documents is pending, and the Khmer versions will be submitted at the earliest practicable opportunity.¹¹

C. Information Concerning Each Proposed Witness

4. To the extent possible and in good faith, the Defence has endeavored to provide the material requested by the Trial Chamber at paragraph six of the Preparation Order. However, as noted previously,¹² the Defence has not been in a position to amass a significant amount of information from those individuals it wishes to hear as witnesses. Accordingly, the information provided to date is based on the Defence's best estimates. In this regard, the Defence considers such information to be consistent with its obligations under Cambodian law.¹³ (The Defence is not, at this stage of the proceedings, in a position to provide any meaningful estimates regarding the length of the proposed witness testimony. Such information will be provided in due course, to the extent that it becomes available.) As previously submitted, many of the names included on the list of witnesses may also qualify as experts, and the Defence may seek to call them as such at the trial.¹⁴

D. Categories and Preferences

5. Under the heading 'Points of the Indictment', the Defence has indicated a number of recurring categories with respect to the proposed witness testimony. Apart from those issues strictly linked to passages of the Indictment (for example: crime bases and security centers, the existence of an armed conflict, Nuon Chea's alleged participation in and/or knowledge of criminal activity, and the CPK command structures, including S-21, and Nuon Chea's alleged role therein) the Defence has indentified a number of other

¹¹ *N.B.* The Senior Legal Officer has been so notified in accordance with this Chamber's direction. See Document No **E-38**, Memorandum from Susan Lamb to All Parties, Case 002 re 'Interim procedure before the Trial Chamber where translation constraints preclude compliance by the Parties with filing deadlines', 8 February 2011, ERN 00643388-00643388.

¹² See Defence Witness List, para 6.

¹³ See Rules Objection.

¹⁴ See Defence Witness List, para 14.

significant (not to say crucial) topics which must be addressed at any fair and legitimate trial; these include, but are not limited to, the following:

- a. the establishment and jurisdiction of the tribunal;
- b. the selection, appointment, independence, impartiality, and integrity of the judiciary;
- c. the selection of candidates for prosecution;
- d. the quality and scope of the judicial investigation (including the selection, verification, and authentication of evidence);
- e. political interference into the judicial process (including witness tampering and allegations of corruption);
- f. the credibility of adverse witnesses (especially Duch);
- g. the role of the Socialist Republic of Vietnam;
- h. the positive goals of the Communist Party of Kampuchea (the ‘CPK’);
- i. *alternative* CPK command structures; and
- j. the conditions prevailing in Cambodia prior to 1975 and the causes thereof (including US involvement through CIA-operations/bombing campaigns and the ensuing refugee crisis; standard of living in the Khmer Republic).

In this regard, the Trial Chamber is directed to international jurisprudence indicating that ‘acts prior to the temporal jurisdiction may be relied upon where evidence is aimed at “clarifying a given context”.’¹⁵

6. While multiple names have been proposed by the Defence under each of the categories listed above, no indication has yet been made as to the preference of any particular individual over another. This is a deliberate omission, and the Defence submits that the issues of witness selection and preference—among many others—should be tabled for extensive discussion at the upcoming trial management meeting. Should the Trial Chamber be inclined to make *any* substantive rulings with respect to the Defence Witness List and/or the Defence Summaries prior to that meeting, the Defence hereby seeks the opportunity to make further written submissions.

¹⁵ See Document No D-365/2/1, ‘Co-Prosecutors’ Appeal Brief in Response to Co-Investigating Judges’ Order Regarding Request to Place on Case File Additional Evidentiary Material which Assists in Proving the Charged Persons’ Knowledge of the Crimes’, 5 April 2010, ERN 00508881–00508908, para 11 (quoting Document No **D-300**, ‘Order on Requests D-153, D-172, D-174, D-178 & D-284’, 12 January 2010, ERN 00428047–00428058, para 9 (citing ICTR-99-52-A, *Prosecutor v Nahimana et al*, Appeals Judgment, 28 November 2007, para 315)); see also Defence Witness List, para 12.

III. CONCLUSION

7. These submissions are not intended to be exhaustive. Accordingly, the Defence hereby reserves all rights available to Nuon Chea under Cambodian and international law.

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