

**Probative Value and Weight of Civil Party Testimony
In Supporting the Prosecution**

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Civil Parties, in the context of the Khmer Rouge Tribunal, have the right to participate in the criminal proceedings against those most responsible for crimes within the jurisdiction of the ECCC by supporting the prosecution.¹ Civil Party participation before the ECCC enables victims to participate as parties within the criminal trial of an Accused in support of the Prosecution, and in order to seek collective and moral reparations for harm attributable to the crimes for which an Accused is convicted.² The right to participate in these proceedings includes the right to present evidence.³

A substantial number of civil parties have been selected by the Trial Chamber to testify, primarily in the forced movement segment of Case 002/01. During this segment of the trial, the Civil Parties provided key evidence important in establishing the crimes of forced movement and the context in which they were committed. The testimony of the Civil Parties provides an important addition to the other evidence presented during the trial.⁴ In keeping with their status as parties to the proceedings, civil parties are not required to take an oath before testifying.⁵ On 24 February 2011, however, the Ieng Sary Defence filed a motion requesting that Civil Parties testify under oath when selected to testify regarding substantive facts. The motion argued that a statement by a Civil Party can only be used to determine his or her claim for reparations and that if a Civil Party is called to give testimony on "issues relating to the criminal case," he or she must testify under oath.⁶ The

¹ Co-Prosecutors' Rule 92 Submission Regarding Civil Party Testimony, 21 February 2013, E267 ("Rule 92 Submission"), ¶14.

² Decision on Request To Recall Civil Party TCCP-187, For Review of Procedure Concerning Civil Parties' Statements on Suffering and Related Motions and Responses (E240, E240/1, E250, E250/1, E267, E267/1 AND E267/2), 2 May 2013, ¶13, E267/3 ("Decision on Request To Recall Civil Party TCCP-187"). See also KAING Guek Eav, Trial Chamber Judgment, 26 July 2010, ¶660, E188.

³ Rule 92 Submission, ¶15.

⁴ *Ibid.* ¶3.

⁵ Reply to Co-Prosecutors' Rule 92 Submission Regarding Civil Party Testimony, 4 March 2013, ¶8, E267/1 ("Rule 92 Submission Response"),

⁶ Rule 92 Submission, ¶7. Also see E57 Ieng Sary's Motion for Civil Parties to Testify under Oath if They Are Permitted to Testify as to Their Knowledge of the Criminal Case, 24 February 2011.

testimony given not under oath, therefore, should carry less weight and probative value than testimony given under oath.⁷

Responding to IENG Sary's motion, the Co-Lead Lawyers for the Civil Parties filed an observation, emphasizing that Civil Parties are parties afforded fully equal footing in the proceedings and, under the rules, may provide evidence under the same conditions as a Charged Person. To require Civil Parties to testify under oath when giving evidence would be a significant modification of the Internal Rules.⁸ In the internal rules of the Extraordinary Chambers in the Courts of Cambodia (ECCC) and the Codes of Criminal Procedure of the Kingdom of Cambodia, Civil Parties are not required to testify under oath.⁹

In its submission regarding Civil Party testimony, the Co-prosecutors argued that the ECCC has followed the Civil Law Framework and differentiates between witnesses, Civil Parties, Accused and relatives of Civil Parties or Accused. Civil Parties, like other parties to the proceedings, are not required to testify under oath.¹⁰ In addition, the Trial Chamber has previously stated that unsworn testimony given by Civil Parties, as well as the Accused, is evidence before the Chamber. Hence, the weight and probative value of Civil Party testimony should be assessed by the Trial Chamber under the same standards as testimony provided by witnesses.¹¹ It would be a violation of Civil Party right to participate and give evidence if the weight or probative value of their testimony was automatically presumed to be lower merely because they do not testify under oath.¹² Instead of the assessments through the testimony under oath, the Trial Chamber should determine the weight and probative value of Civil Party testimony through examination by judges and counsel on a case-by-case basis.¹³

⁷ IENG Sary's Response to Co-Prosecutors' Rule 92 Submission Regarding Civil Party Testimony, E267/2, 4 March 2013. *See also* ("Decision on Request To Recall Civil Party TCCP-187"), footnote 42, (submitting, amongst other things, that testimony not given under oath should have less weight and probative value than testimony given under oath).

⁸ Rule 92 Submission, ¶18.

⁹ Internal Rule 23(4) ("The Civil Party cannot be questioned as a simple witness in the same case and, subject to Rule 62 relating to Rogatory Letters, may only be interviewed under the same conditions as a Charged Person or Accused"); *see* Rule 24(2), which provides that close family members of an Accused, Charged Person, or Civil Party do not testify under oath. *See also* similar articles in the Codes of Criminal Procedure of The Kingdom of Cambodia, Articles 156 (Witness without Swearing), 312 (incompatibility of Status of Civil Party and Witness), 326 (Hearing of Parties), 327 (Objection to Hearing of Witness),

¹⁰ Rule 92 Submission, ¶14.

¹¹ *Ibid*, ¶15, *See also* KAINING Guek Eav, Trial Chamber Judgment, 26 July 2010, ¶¶ 51-52, E188,

¹² *Ibid*, ¶17,

¹³ *Ibid*, ¶22, *See also* Decision on Request To Recall Civil Party TCCP-187, ¶11.

In Case 001, 22 Civil Parties gave testimony before the Trial Chamber and none of those Civil Parties testified under oath. The Trial Chamber assessed the Civil Party statements as evidence before the Chamber and considered them in reaching its judgment.¹⁴ The weight and probative value of the Civil Party testimony was determined by the Trial Chamber at the conclusion of trial based on a common approach that has evaluated, in all circumstances the sufficiency of evidence, and that "upon a reasoned assessment of evidence any doubt as to guilt was accordingly interpreted in the Accused's favour".¹⁵

Likewise, in Case 002/01, the Trial Chamber indicates that the weight to be given to Civil Party testimony will be assessed on a case-by-case basis in light of the credibility of that testimony, and upon a reasoned assessment of this evidence any doubt as to guilt will be interpreted in the Accused's favour.¹⁶

In conclusion, the Civil Parties shall provide testimony in the court without taking an oath and their testimony still has the weight and probative value in supporting the prosecution, but the weight to be given to their testimony will depend on the credibility of their testimony before the Chamber.

¹⁴ *Ibid*, ¶6, See KAING Guek Eav, Trial Chamber Judgment, 26 July 2010, ¶¶ 52-55, E188, See also Decision on Request To Recall Civil Party TCCP-187, ¶21.

¹⁵ Decision on Request To Recall Civil Party TCCP-187, ¶21. See also KAING Guek Eav, Trial Chamber Judgment, 26 July 2010, ¶45, E188.

¹⁶ Decision on Request To Recall Civil Party TCCP-187, ¶22.