

BEFORE THE TRIAL CHAMBER  
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

**FILING DETAILS**

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**CO-PROSECUTORS' RESPONSE TO THE TRIAL CHAMBER'S REQUEST TO  
INDICATE ADDITIONAL DOCUMENTS RELEVANT TO THE POPULATION  
MOVEMENT AND TUOL PO CHREY TRIAL SEGMENTS AND MOTION FOR  
SCHEDULING OF DOCUMENTARY HEARINGS.**

**Filed by:**

**Co-Prosecutors**  
CHEA Leang  
Andrew CAYLEY

**Distributed to:**

**Trial Chamber**  
Judge NIL Nonn, President  
Judge Silvia CARTWRIGHT  
Judge YA Sokhan  
Judge Jean-Marc LAVERGNE  
Judge YOU Ottara

**Civil Party Lead Co-Lawyers**  
PICH Ang  
Elisabeth SIMONNEAU FORT

**Copied to:**

**Accused**  
NUON Chea  
IENG Sary  
KHIEU Samphan

**Lawyers for the Defence**  
SON Arun  
Michiel PESTMAN  
Victor KOPPE  
ANG Udom  
Michael G. KARNAVAS  
KONG Sam Onn  
Arthur VERCKEN  
Jacques VERGES  
Anta GUISSSE

## RESPONSE

1. On 19 October 2012 the Co-Prosecutors were notified of the Trial Chamber's Decision entitled "Forthcoming document hearings and response to Lead Co-Lawyers' memorandum concerning the Trial Chamber's request to identify Civil Party applications for use at trial (E208/4) and the KHIEU Samphan Defence request to revise corroborative evidence lists (E223)" [hereinafter the Decision].<sup>1</sup> Under the heading "*A) Adversarial argument in relation to all remaining documents at trial*", the Trial Chamber first requested the parties to indicate which additional documents, from their original (April 2011) document lists, they sought to tender in relation to the population movement and Tuol Po Chrey trial segments no later than 30 November 2012. Second, the Trial Chamber indicated its intention to hold a hearing in relation to all remaining documents sought by the parties in Case 002/01 but not yet subject to adversarial arguments. Third, in its Memorandum entitled "*Directions to parties following hearing of 21 September 2012*", the Trial Chamber announced that, following the October 2012 hearings on the presentation of documents relevant to DK administrative structures (and communications), "*further hearings regarding documents will also soon be scheduled*".<sup>2</sup>
2. The Co-Prosecutors will address each of these three issues in turn to assist the Trial Chamber in its efforts to schedule efficient and effective hearings on the admissibility of the remaining documents and hearings on the probative value of selected documents that relate to the different issues in this trial.

### Document Admissibility Hearing

3. In order to clarify with the Trial Chamber the outstanding documents that relate to the first phase of the trial that still require adversarial argument as referred to in paragraph 5 of the Decision, the Co-Prosecutors have reviewed the documents put forward by all parties in their July 2011 submissions. From this review it is believed that there are only 48 outstanding documents to be put before the Chamber from all the parties combined. Attached **Annex 1** lists these 48 documents which comprise of 2 documents cited in the Closing Order paragraphs relevant to population movement (phases 1 & 2) and Tuol Po

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<sup>1</sup> E223/2, Trial Chamber Memorandum entitled "Forthcoming document hearings and response to Lead Co-Lawyers' memorandum concerning the Trial Chamber's request to identify Civil Party applications for use at trial (E208/4) and KHIEU Samphan Defence request to revise corroborative evidence lists (E223)", 19 October 2012.

<sup>2</sup> E233, Trial Chamber Memorandum entitled « Directions to parties following hearing of 21 September 2012 », 24 September 2012

Chrey and 46 documents that were either placed on the Case file by the Trial Chamber as a result of its new document decision (E190) or documents put before the Chamber by the parties after July 2011 pursuant to Internal Rule 87(4). Among these 46 documents, 6 have been listed by the Co-Prosecutors, 3 by the Lead Co-Lawyers for the Civil Parties, 4 by the Ieng Sary Defence, 22 by the Khieu Samphan Defence and 11 by the Nuon Chea Defence.

4. To assist the Trial Chamber, document numbers of the original requests by the relevant party and the Trial Chamber's relevant decisions are indicated in the column "Source". The 48 outstanding documents do not comprise of any documents that have already been subject to adversarial argument or categories of documents that will be subject to a separate hearing, such as OCIJ written records of interview, other witness statements, complaints or civil party applications – as indicated by the Trial Chamber.
5. Due to the limited number of outstanding documents, the Co-Prosecutors would recommend that an admissibility hearing be scheduled for the week of 21 January 2013 to discuss these 48 documents together with the additional documents that each party will have identified by the end of November 2012 from their original April 2011 document lists in relation to the movement of population (phases 1 and 2) and Tuol Po Chrey trial segments. It is submitted that only one day would be required for this hearing.
6. The further 94 additional documents that the Co-Prosecutors seek to put before the Chamber in relation to the population movements phases 1, 2 and Tuol Po Chrey are contained in attached **Annex 2A** (88 documents), **Annex 2B** (2 documents) and **Annex 2C** (4 documents) respectively. The three Annexes in table format identify for each document its document number, type, author, date, ERN in each language, description, relevant points of the indictment (Closing Order) and reference number of the Office of the Co-Prosecutors' 19 April 2011 Rule 80 (3) Document List (E9/31).
7. Those 94 documents do not comprise of any OCIJ written record of interviews, other witness statements, complaints or civil party applications to avoid overlapping with previous OCP requests E208, E208/2 and E96/8.

### **Document Presentation Hearings**

8. In the Trial Chamber memorandum E233, the Chamber has decided to hold further documentary presentation hearings beyond the document presentation hearings held on 10, 18 and 19 October 2012 in relation to administrative structures and communications.

9. Consistent with the Trial Chamber's practice of holding presentation hearings relating to the different issues of Case 002/01, the Co-Prosecutors submit that five further hearings would allow the parties to be able to highlight key documents or representative documents that relate to the remaining trial issues where no documentary presentation hearings have been held. Further below, the Co-Prosecutors indicate the date of the hearings and the projected length of the hearings that they believe would provide parties with sufficient preparation and presentation time to effectively present important aspects of their case. It is further submitted that placing the hearings at regular intervals throughout the first quarter of next year would also allow a good balance between witness testimony and documentary hearings for the public to hear the different sources of evidence in this case in a balanced and consistent manner.

#### **A Proposed Admissibility and Presentation Hearing Schedule**

10. Consequently the Co-Prosecutors respectfully propose the following schedule relating to admissibility and presentation hearings in the remainder of this case as follows :

- |                              |                                                                                                                                           |          |
|------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|----------|
| 1) Week of 21 January 2013:  | <u>Admissibility Hearing</u> : [1] Remaining 48 Documents in Annex 1 & [2] Additional Forced Transfer 1 and 2 and Tuol Po Chrey Documents | [1 day]  |
| 2) Week of 4 February 2013:  | <u>Presentation Hearing</u> : Forced Transfer Phase 1                                                                                     | [1 day]  |
| 3) Week of 18 February 2013: | <u>Presentation Hearing</u> : Forced Transfer Phase 2 & Tuol Po Chrey                                                                     | [1 day]  |
| 4) Week of 4 March 2013:     | <u>Presentation Hearing</u> : Military Structure                                                                                          | [1 day]  |
| 5) Week of 18 March 2013:    | <u>Presentation Hearing</u> : JCE Policies                                                                                                | [1 day]  |
| 6) Week of 1 April 2013:     | <u>Presentation Hearing</u> : Roles of Accused                                                                                            | [2 days] |
| 7) Week of 3 June 2013:      | <u>Admissibility Hearing</u> : Written Records of Interview, Witness Statements, Complaints and Civil Party Applications                  | [2 days] |

11. By setting out a schedule well in advance of the hearings in a comprehensive manner, it is respectfully submitted that it will greatly assist the parties in allocating their time now and over the next 6 months between preparations for document hearings and witness testimony


in the most optimal way. This will ensure that the trial is as efficient and effective as possible.

### RELIEF REQUESTED

12. The Co-Prosecutors respectfully request the Trial Chamber to :

- 1) confirm that the 48 documents listed in **Annex 1** are the remaining documents that need to be put before the Chamber;
- 2) schedule an admissibility hearing to discuss the remaining 48 documents in **Annex 1** together with the additional documents that each party will have identified by the end of November 2012 from their original April 2011 document lists in relation to the movement of population (phases 1 and 2) and Tuol Po Chrey trial segments, including the documents listed in **Annexes 2 (A) (B) (C)** attached;
- 3) schedule the seven admissibility and presentation hearings in the order, intervals, and length as recommended in paragraph 10 of this Motion.

Respectfully submitted,

Date	Name	Place	Signature
23 November 2012	YET Chakriya Deputy Co-Prosecutor	Phnom Penh	
	Andrew CAYLEY Co-Prosecutor		