

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

Filing details

File No.: 002/19-09-2007-ECCC/TC

Party Filing: The Civil Party Lead Co-Lawyers

Before: The Trial Chamber

Original language: English

Date of document: 28 October 2011

CLASSIFICATION

Classification of document suggested by the filing party: CONFIDENTIAL

Classification by the Co-Investigating Judges or the Chamber: សាធារណៈ/Public

Classification Status:

Review of interim Classification:

Records Officer Name:

Signature:



**Civil Parties Request for a Trial Management Meeting and Regular Trial Status Meetings
for Case 002 and for Clarification on Trial Scheduling and Preparation**

Filed by:

Civil Party Lead Co-Lawyers

PICH Ang
Elisabeth SIMONNEAU-FORT

Civil Party Co-Lawyers

CHET Vanly
HONG Kim Suon
KIM Mengkhy
LOR Chunthy
MOCH Sovannary
SIN Soworn
KONG Pisey
YUNG Phanith

Before:

The Trial Chamber

Judge NIL Nonn, President
Judge Silvia CARTWRIGHT
Judge YA Sakhan
Judge Jean-Marc LAVERGNE
Judge YOU Ottara

Distribution to:

The Office of the Co-Prosecutors:

CHEA Leang
Andrew CAYLEY
YET Chakriya
William SMITH

002/19-09-2007-ECCC/TC

SAM Sokong
 VEN Pov
 TY Srinna
 Emmanuel ALTIT
 Olivier BAHOUGNE
 Patrick BAUDOIN
 Evelyne BOILEAU-BRANDOMIR
 Philippe CANONNE
 Annie DELAHAIE
 Laure DESFORGES
 Ferdinand DJAMMEN NZEPA
 Nicole DUMAS
 Isabelle DURAND
 Françoise GAUTRY
 Marie GUIRAUD
 Emmanuel JACOMY
 Martine JACQUIN
 Daniel LOSQ
 Christine MARTINEAU
 Mahdev MOHAN
 Barnabé NEKUIE
 Hervé DIAKIESE

 Lyma NGUYEN
 Elisabeth RABESANDRATANA
 Julien RIVET
 Fabienne TRUSSES NAPROUS
 Nushin SARKARATI
 Philippine SUTZ

The Accused:

KHIEU Samphan
 IENG Sary
 IENG Thirith
 NUON Chea

The Co-Lawyers for the Defence

SON Arun
 Michiel PESTMAN
 Victor KOPPE
 ANG Udom
 Michael G. KARNAVAS
 PHAT Pouy Seang
 Diana ELLIS
 SA Sovan
 Jacques VERGÈS

The Civil Parties Co-Lawyers

Pascal AUBOIN
 Silke STUDZINSKY

002/19-09-2007-ECCC/TC

I. Procedural background and context

1. In an email dated 17 October 2011, the Senior Legal Officer of the ECCC's Trial Chamber informed the parties that they were " *encouraged to raise any remaining issues that they consider may impede the efficiency of the early portion of the hearing on the substance informally with the Trial Chamber Senior Legal Officer as soon as possible and in any event no later than Tuesday 1 November 2011*"¹. While the Civil Parties agree that informal discussion are necessary, they consider in the current circumstances a written submission to the Trial Chamber's judges to be more appropriate.
2. On 17 October 2011, the Defense representatives for Ieng Sary sought clarification² on different issues including on the consequences of the Severance Order. On 21 October 2011, the Co-Prosecutor submitted a "Request for a Trial Management Meeting and Regular Trial Status Meeting for Case 002"³ before the commencement of the substantive hearing on 28 November 2011. In addition, the Co-Prosecutors requested that the Chamber organize weekly trial status meetings between the Trial Chamber's Senior Legal Officer and the representatives of the parties.
3. On 21 October 2011, Ieng Sary's Defense representatives filed another letter regarding the Trial Chamber's Scheduling Order E131/1⁴.
4. On 24 October 2011, Ieng Sary representatives submitted a "Support to the Co-Prosecutors' Request for a Trial Management Meeting and Regular Trial Status Meeting for Case 002"⁵.
5. The Civil Parties are still awaiting a decision from the Trial Chamber regarding their Request for Reconsideration of the Terms of the Severance Order⁶. Nevertheless, they

¹ Communication to parties in Case 002 regarding scheduling of opening statements and the hearing of the substance in Case 002, and information in advance of hearing on 19-20 October 2011.

² E132/1.3 Scheduling of the substantive trial, 17 October 2011

³ E132 Co-Prosecutor's Request for a Trial Management Meeting and Regular Trial Status Meeting for Case 002, 21 October 2011

⁴ E132/1.2 Ieng Sary Request for clarification of Trial Chamber Memorandum entitled "Witness Lists for Early Trial Segments, Deadline for Filing of Admissibility Challenges to Documents and Exhibits, and Response to Motion E109/5", 21 October 2011

⁵ E132/1 Ieng Sary's Support to the Co-Prosecutor's Request for a Trial Management Meeting and Regular Trial Status Meeting for Case 002, 24 October 2011

⁶ E127/8 Lead co-Lawyers and Civil Party Lawyers' Request for Reconsideration of the terms of the Severance Order, 17 October 2011

Civil Parties Request for a Trial Management Meeting and Regular Trial Status Meetings for Case 002 and for Clarification on Trial Scheduling and Preparation

002/19-09-2007-ECCC/TC

understand that, for the time being, Trial One of Case 002 is limited to specific factual⁷ and legal⁸ allegations.

6. The Civil Parties adopt and support the above Co-Prosecutors request (E132) and for the most part Ieng Sary's letters (E132/1.2 and E132/1.3).

II - Civil Parties request for a Trial Management Meeting and Regular Trial Status Meetings for Case 002

7. The Civil Parties support and adopt the arguments made by the Co-Prosecutors for a Trial Management Meeting and regular trial status meetings for Case 002.
8. While the Civil Parties welcome the information received by email on 26 October 2011 from the Chamber's Senior Legal Officer according to which the Chamber will "*likely hold an informal meeting with the parties*", they consider that "informal meetings" would not suffice to address key pending legal and procedural issues - which may impact the rights of all parties – and therefore require careful consideration and an official Trial Management Meeting

III - The need for a precise schedule for upcoming trials, including content and order of proceedings

9. In its Decision on the Co-Prosecutors' Request for Reconsideration of the Terms of the Severance Order, the Chamber indicated that "*the Severance Order is relevant only to the order and sequencing of the trials in Case 002, enabling the Chamber to issue a first verdict limited to certain counts and factual allegations at an earlier stage*"⁹. It further considers that "*as no allegations or charges in the Indictment are discontinued in consequence of the Severance Order, there is no need for the first trial to be reasonably representative of the totality of charges in the Indictment*"¹⁰.

⁷ E124 Severance order pursuant to Internal Rule 89ter para 5 : "*a) Factual allegations described in the Indictment as population movement phases 1 and 2*"

⁸ Id para 5: "*b) Crimes against humanity including murder, extermination, persecution (except on religious grounds), forced transfer and enforced disappearances (insofar as they pertain to the movement of population phases 1 and 2)*"

⁹ E124/7 Trial Chamber Decision on Co-Prosecutor' Request for reconsideration of the terms of the Trial Chamber's severance order (E124) and related motions and annexes, para 8.

¹⁰ Id. paragraph 9

002/19-09-2007-ECCC/TC

10. On those issues, the Civil Parties adopt and support the questions raised in Ieng Sary's letter dated 17 October 2011¹¹ in paragraphs 2 a) and b)¹², 3¹³ and 6¹⁴ and request the Chamber to respond to them before the start of the substantive hearing of Trial One.

IV –Issues that need to be clarified before the start of the “early trial segments” of the substantive hearings

11. On 21 October 2011 both Ieng Sary and the Co-Prosecutors responded to the Chamber's procedural rulings on the Severance and preparation of Trial One.

12. The Chamber notes that during the early segments of Trial One in Case 002 it will give consideration to the “*roles and responsibilities of the Accused in relation to all policies relevant to the entire Indictment, but will give detailed factual consideration in the first trial mainly to a feature of the Indictment which affected virtually all victims of Democratic Kampuchea (namely population movement phases one and two)*”¹⁵.

13. In order to prepare the substantive hearing, the Civil Parties need some clarification along the lines of the issues listed by Co-Prosecutors as issues that would necessarily need to be raised during the TMM.¹⁶

¹¹ See supra 2

¹² See supra 2 at paragraph 2 “*The Trial Chamber has informed the parties that it will divide the trial into “discrete cases,” or “smaller trials.” Could you please inform us how many “small trials” or “discrete cases” the Trial Chamber envisages and in which order they will take place?*

a) *Could you please inform us whether each “discrete case” or “small trial” is made up of individual “trial segments” and what each of these segments will be?*

b) *Could you please inform us how the small trials relate to each other?” (including i), ii) and iii)*

¹³ See supra 2 at paragraph 3. “*Could you please provide us, as soon as possible, with a list of witnesses the Trial Chamber intends to call in the order in which they will be called for the first trial segment? Without this list, we are unable to adequately prepare for trial in an efficient manner. Relevant to this issue is also the amount of time the Trial Chamber will provisionally allocate for each witness. It is important to be informed at this stage as to the total amount of time the witness is expected to testify as well as the breakdown in the time the Trial Chamber will allocate to each party*”.

¹⁴ See supra 2 at paragraph 6. “*To effectively prepare for the questioning of witnesses, we suggest the Trial Chamber adopt an approach similar to that employed by other tribunals dealing with cases of this magnitude, such as the ICTY, where the parties are usually provided with approximately 30 days or more advance notice at the beginning of each month of the witnesses and documents anticipated for the following month. In other words, we request the Trial Chamber to provide the parties at the start of each month with a list of the witnesses who will appear the following month in order of appearance and the documents that will be put to each witness. For example, by 28 October 2011, we should be provided with a list of witnesses and documents for the trial segment beginning 28 November 2011*”.

¹⁵ E124/7 Trial Chamber Decision on Co-Prosecutor's Request for reconsideration of the terms of the Trial Chamber's severance order (E124) and related motions and annexes.

¹⁶ E132 Co-Prosecutor's Request for a Trial Management Meeting and Regular Trial Status Meeting for Case 002, 21 October 2011 paragraph 3:

“(1) *The nature and scope of the notice to include additional counts or charges to the first trial;*

(2) *The type, number and order of witnesses to be presented at trial;*

Civil Parties Request for a Trial Management Meeting and Regular Trial Status Meetings for Case 002 and for Clarification on Trial Scheduling and Preparation

002/19-09-2007-ECCC/TC

14. Similarly they adopt and support (with the exception of a) and b) in their introductory paragraph) Ieng Sary's request¹⁷ for clarification on the Trial Chamber's memorandum E131/1.

15. In addition to these issues, and in view of the Trial Chamber's decision in E124/7, the Civil Parties would like to draw the Chamber's attention that some crimes whose elements had been established in relation to the allegations of forced transfer, have not been included in the Severance Order:

a. Paragraph 1420 of the closing order concludes that "*the elements of the crime of religious persecution of the Cham have been established in relation to phase 2 of the movement of population*").

b. Paragraphs 1434 and 1436 of the closing order conclude that "*the constitutive elements of the crime against humanity of other inhumane acts through "attacks against human dignity" are established*" in relation to the "*conditions of the treatment of the population during the phases 1 and 2 of the population movements*"; this crime is also mentioned under the Joint Criminal Enterprise mode of liability in Paragraph 1525 (i) of the Closing Order.

TAKING INTO ACCOUNT THE ABOVE, THE CIVIL PARTIES REQUEST THE CHAMBER TO

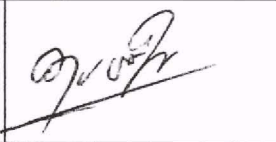
1. Schedule a Trial Management Meeting before 21 November 2011 and,
2. Respond to the questions referred to or listed in the present submission before the commencement of Trial.

(3) *The time allocated to question the Accused and witnesses by the Trial Chamber and the parties;*
 (4) *The presentation of documentary evidence for admission prior to or between Accused or witness testimony;*
 (5) *The allowable scope of examination on policies and the accused's participation in those other policies other than forced transfer;*
 (6) *The question of whether the Accused will testify at the beginning of the trial or exercise their right to remain silent;*
 (7) *The procedures regarding leave to reply to responses in order to ensure a full judicial record is preserved;*
 (8) *The issue of balancing translation priorities between the parties and Chambers; and*
 (9) *Other relevant matters"*

¹⁷ E131/1.2 Ieng Sary Request for clarification of Trial Chamber Memorandum entitled "Witness Lists for Early Trial Segments, Deadline for Filing of Admissibility Challenges to Documents and Exhibits, and Response to Motion E109/5", 21 October 2011

002/19-09-2007-ECCC/TC

Respectfully submitted,

Date	Name	Place	Signature
28 October 2011	PICH Ang National Lead-Co-Lawyer	Phnom Penh	
	Elisabeth SIMONNEAU-FORT International Lead Co-Lawyer	Phnom Penh	