

BEFORE THE TRIAL CHAMBER  
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

**FILING DETAILS**

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**CO-PROSECUTORS' TRIAL MANAGEMENT REQUEST**

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## I. INTRODUCTION

1. Pursuant to Rules 85, 87 and 91(1), and in the interests of efficient trial management, the Co-Prosecutors respectfully makes the following three requests to the Trial Chamber, namely to:
  - (1) set down, before 22 December 2011, a tentative order of call for all remaining witnesses and civil parties in relation to the first segment of the first trial; set down the scope and timing of the second segment and identify potential witnesses and civil parties for that second segment, at least for the period covered in the second trial session 10 January to 16 February 2012;
  - (2) withdraw one expert and four witnesses primarily related to the Accused Ieng Thirith from its *Partial List of Witnesses, Experts and Civil Parties for the First Trial in Case 002*<sup>1</sup>; and
  - (3) allocate one week of hearings for the purpose of oral argument on the admissibility of documents for five days during 6 to 9 February 2012.
2. The Co-Prosecutors fully appreciate the importance of the weekly informal trial management meetings and appreciate the facilitation of the Trial Chamber Senior Legal Officer (“SLO”) in seeking to expedite the proceedings; however, as these instant requests require an order of the Trial Chamber, the informal trial management meetings could not be used for this purpose.

## II. REQUEST FOR A TENTATIVE ORDER OF WITNESSES FOR THE SECOND TRIAL SESSION FROM 10 JANUARY TO 16 FEBRUARY 2012

3. On 28 January 2011, almost eleven months ago, the Co-Prosecutors submitted their proposed expert, witness and civil party lists,<sup>2</sup> together with a proposed order of call.<sup>3</sup> At the informal trial management meeting on 9 December 2011, the SLO indicated that the Chamber would shortly notify the parties of the next group of witnesses and Civil Parties to be heard in Case 002/1. In order to avoid difficulties in adjusting the schedule, the SLO suggested that the next group would not include more than five persons.<sup>4</sup> At the same meeting, the representative of the Co-Prosecutors reiterated that advance notice of as many witnesses and civil parties as possible is required for adequate planning and preparation.

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<sup>1</sup> **E131/1.1** Confidential Annex A: Partial list of witnesses, experts and civil parties for the first trial in Case 002, 25 October 2011.

<sup>2</sup> **E9/4** Co-Prosecutors’ Rule 80 expert, witness and civil party lists, including confidential annexes 1, 2, 3, 4, and 5, 28 January 2011.

<sup>3</sup> **E9/4.1** Annex 1: proposed order of witness appearance at trial, 28 January 2011.

<sup>4</sup> Notes of OCP representative present at informal trial management meeting of 9 December 2011.

4. The Co-Prosecutors remain concerned that there is a “need to provide the Parties with *sufficient notice* of the future scheduling of the trial proceedings, including an indication of when witnesses and experts will be called to testify.”<sup>5</sup> This is particularly the case with witnesses who will testify to both the structure of the CPK or DK and the roles of the Accused.<sup>6</sup> Aside from substantive preparation and the time needed for proper consultation and coordination among the national and international staff of their Office, the Co-Prosecutors anticipate the need to put multiple documents to such witnesses, which entails a number of practical preparatory steps in the interests of efficient use of trial time.
5. The Co-Prosecutors fully recognise the Chamber’s discretion to vary any order of call or scheduling order but submit that a tentative order of call for the remainder of the first trial segment of Case 002/1 is warranted urgently, specifically before the court recess in December and January where no doubt staff of the Co-Prosecutors, Defence Teams, Civil Party Co-Lawyers and Trial Chamber may take leave.

### III. REQUEST TO WITHDRAW ONE EXPERT AND FOUR WITNESSES

6. On 17 November 2011, the Trial Chamber issued its Decision on Ieng Thirith’s fitness to stand trial, by which the Trial Chamber ordered the severance of the charges against the Accused Ieng Thirith from the indictment in Case 002 pursuant to Internal Rule 89ter.<sup>7</sup>
7. As raised with the SLO the Co-Prosecutors have conducted a review of the list of witnesses and experts to identify those who appear to have been primarily proposed by the Co-Prosecutors (**no.1**) or the Accused Ieng Thirith (**no. 2 to 4**) Defence in relation to the Accused Ieng Thirith. In light of the Severance Decision it is submitted that at this stage the following expert and four witnesses be removed from the Trial Chamber’s current list of Witnesses, Experts and Civil Parties for the First Trial in Case 002:
  - (1) TCE-27 (Expert regarding the DK medical system);
  - (2) TCW-18 ;
  - (3) TCW-90 ;
  - (4) TCW-600; and
  - (5) TCW-778.

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<sup>5</sup> **E138** Order scheduling the trial proceedings (topics and order of call of witnesses) for the period of 17 August to 17 September 2009, 13 August 2009 at p. 3 [emphasis added].

<sup>6</sup> **E124/7.1** Annex, 18 October 2011. The structure of the CPK and DK regime and the respective roles of the Accused comprise the preponderating share of the issues identified by the Chamber for the first trial.

<sup>7</sup> **E124** Severance order pursuant to Rule 89ter, 22 September 2011.

**IV. REQUEST TO SCHEDULE AN ORAL HEARING ON DOCUMENT  
ADMISSIBILITY IN THE SECOND TRIAL SESSION  
DURING THE WEEK OF 6 TO 9 FEBRUARY 2012**

8. In its Memorandum of 25 October 2011, the Trial Chamber directed that the parties indicate no later than 5 January 2012 which, if any, of the remaining documents sought to be admitted in connection with the first four trial segments are objected to, and the basis for these challenges. The Chamber also prudently indicated that, while written replies to such objections would not be authorised, it would provide opportunity for adversarial hearings on document admissibility during the trial.<sup>8</sup>
9. In the interests of maximising efficiency during substantive hearings, the Co-Prosecutors urge the Chamber to schedule hearings for oral arguments on objections to documentary evidence as soon as possible during this first phase of the trial. This was previously proposed in the *Co-Prosecutors' request to establish an efficient system for admitting documentary evidence at trial*,<sup>9</sup> which the Chamber indicated will be taken into account in the context of ongoing trial management.<sup>10</sup>
10. An oral hearing on admissibility at this early stage of the trial would expedite proceedings by allowing the parties to present documentary evidence more efficiently during the substantive hearings, and will greatly aid in focusing the breadth of witness examination by limiting the evidence to be adduced through oral testimony.
11. It is contemplated that five court days would provide sufficient time and opportunity for the Chamber to hear each party and consider all substantive objections in relation to documents sought to be admitted in connection with the first four trial segments. The Co-Prosecutors would propose that this hearing take place during the first week of February 2012, after the 5 January 2012 deadline for receipt of the parties' objections.

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<sup>8</sup> **E131/1** Witness lists for early trial segments, deadline for filing of admissibility challenges to documents and exhibits, and response to motion E109/5, 25 October 2011.


<sup>9</sup> **E136** Co-Prosecutors' request to establish an efficient system for admitting documentary evidence at trial, 3 November 2011 (notified 14 November 2011) (an advance courtesy copy was sent to the Trial Chamber and the parties on 9 November 2011).

<sup>10</sup> **E145** Notice of Trial Chamber's disposition of remaining pre-trial motions (E20, E132, E134, E135, E124/8, E124/9, E124/10, E136 and E139) and further guidance to the Civil Party Lead Co-Lawyers, 29 November 2011.

### V. RELIEF SOUGHT

12. For these reasons, the Co-Prosecutors respectfully request that the Chamber:
- (1) set down, before 22 December 2011, a tentative order of call for all remaining witnesses and civil parties in relation to the first segment of the first trial; set down the scope and timing of the second segment and identify potential witnesses and civil parties for that second segment, at least for the period covered in the second trial session, 10 January to 16 February 2012;
  - (2) withdraw one expert and four witnesses primarily related to the Accused Ieng Thirith from its *Partial List of Witnesses, Experts and Civil Parties for the First Trial in Case 002*; and
  - (3) allocate one week of hearings for the purpose of oral argument on the admissibility of documents for five days during 6 to 9 February 2012.

Respectfully submitted,

Date	Name	Place	Signature
14 December 2011	CHEA Leang Co-Prosecutor	Phnom Penh	
	Andrew CAYLEY Co-Prosecutor		