

BEFORE THE TRIAL CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

FILING DETAILS

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**CO-PROSECUTORS' LEAVE TO REPLY AND REPLY TO IENG SARY'S RESPONSE
REGARDING ADDITIONAL CRIME SITES WITHIN THE SCOPE OF TRIAL IN CASE
002/1**

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

LEAVE TO REPLY

1. The Co-Prosecutors seek leave to reply to “Ieng Sary’s response to the Co-Prosecutors’ request to include additional crime sites within the scope of trial in Case 002/1” (the “Response”).¹ For efficiency sake’s, the substantive reply is set out below. A reply is necessary given the serious misrepresentations made by the Defence which if left to stand may mislead the Chamber. Consequently, it is submitted, that it is in the interests of justice to allow the filing of this brief reply.

REPLY

2. On 27 January 2012, the Co-Prosecutors submitted a request to the Trial Chamber (the “Chamber”) to consider expanding the scope of trial proceedings in Case 002/1 to include three additional crime sites: District 12, Tuol Po Chrey and S-21 (the “Request”).² On 3 February 2012, the Defence for Ieng Sary (the “Defence”) filed a cursory response requesting the Trial Chamber to summarily dismiss the Request as part of a “pattern of wholly unfounded submissions”³ amounting to an “abuse of process”.⁴ The Defence requests that the Chambers subject the Co-Prosecutors to unspecified “stimulative measures”⁵ to ensure that the Co-Prosecutors “cease and desist”⁶ from the practice of filing submissions that the Defence characterises as requests for reconsideration of the Chamber’s Severance Order⁷ (the “Response”). No other Defence teams submitted responses to the Chamber.
3. This Response is wholly without merit. The Response rests on the assumption that the Request seeks reconsideration of the Severance Order. This is false. The Request falls squarely within the terms of the Severance Order and subsequent guidance provided by and on behalf of the Chamber:

4. *The Chamber takes note of the Co-Prosecutors’ indication in its Request of possible additional topics for inclusion in the first trial and*

¹ E163/1 Ieng Sary’s response to the Co-Prosecutors’ request to include additional crime sites within the scope of trial in Case 002/1, 3 February 2012.

² E163 Co-Prosecutors’ request to include additional crime sites within the scope of trial, 27 January 2012.

³ E163/1 at p. 1.

⁴ E163/1 *Ibid.*

⁵ E163/1 *Ibid.*

⁶ E163/1 *Ibid.*

⁷ E124 Severance order pursuant to Rule 89ter, 22 September 2011 (“Severance Order”).

*will be guided by its views as to the priority allegations for consideration during later phases of the trial...*⁸

5. As the Co-Prosecutors submitted at the outset of Case 002/1:

*The Co-Prosecutors fully support the need for severance in Case 002 and defer to the authority of the Trial Chamber to issue severance orders in the interests of justice and to otherwise manage the allocation of time and resources at trial.*⁹

6. The Defence submission that the Chamber should impose “stimulative measures” on the Co-Prosecutors for alleged “abuse of process” rests on an argument excerpted *verbatim*, but not quoted or attributed, from the Co-Prosecutors’ own submissions to the Supreme Court Chamber in response to a pattern of manifestly inadmissible appeals filed by this Defence team:

*This pattern of wholly unfounded submissions abuses the process of the ECCC, and burdens the scant resources and time of the Chamber as well as the parties.*¹⁰

7. In this context, the Co-Prosecutors submit that the true intention, illogic and discourtesy of the Response – a mere *tu quoque* – become readily apparent. In this regard, the Co-Prosecutors note that the rules of conduct and ethics binding on counsel admitted to the Bar Association of the Kingdom of Cambodia strictly prohibit “disruptive conduct”¹¹ in trial proceedings and mandate a “spirit of brotherhood, proprietary, and courtesy”¹² in interactions between lawyers. The *Rules of Professional Conduct* of the Alaska Supreme Court are rather more explicit:

*A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a non-frivolous basis in law and fact for doing so...*¹³

*The lawyer's duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect.*¹⁴

⁸ **E124/7** Decision on Co-Prosecutors’ request for reconsideration of the terms of the Trial Chamber’s Severance Order (E124/2) and related motions and annexes, 18 October 2011 at para. 12; see also **E124** *Ibid.* at para. 6. The position of the Chamber was reaffirmed at the informal trial management meeting of 2 December 2011 at which representatives of the Defence were present. These sources are included in the original Request at paras. 1-3.

⁹ **E124/1** Co-Prosecutors’ notice of request for reconsideration of the terms of “Severance Order pursuant to Internal Rule 89ter”, 23 September 2011 at para. 4.

¹⁰ At p. 1 the Response, the Defence quotes directly but without attribution from **E130/4/2** Co-Prosecutors’ response to Ieng Sary’s appeal against the Trial Chamber’s decision requiring the Accused to be physically present to hear charges and opening statements, 12 January 2012 at para. 11 and **E154/1/12** Co-Prosecutors’ response to Ieng Sary’s appeal against the Trial Chamber’s decision refusing his request for the Trial Chamber to direct its Senior Legal Officer to maintain open and transparent communications with all parties, 1 February 2012 at para. 11.

¹¹ Code of ethics for lawyers licensed with the Bar Association of the Kingdom of Cambodia, Art. 24.

¹² *Ibid.* Art. 25.

¹³ Alaska Rules of Professional Conduct (2011-2012), SCO 1680, Rule 3.1



¹⁴ *Ibid.* Rule 1.3, Comment 1

8. The Co-Prosecutors respectfully submit that the use of intentionally unattributed references to the submissions of other parties, and the filing of unreasoned and frivolous submissions, fail to meet the ethical standards to which the Co-Counsel for Ieng Sary are held.

V. RELIEF SOUGHT

9. For these reasons, the Co-Prosecutors reaffirm their request that the Chamber uphold the Request as submitted and determine that an extension of the scope of trial in Case 002/1 would be in the interests of justice, and to order that the following crime sites and factual allegations from the Closing Order be brought within the scope of Case 002/1:
- (a) Executions of 17 April 1975 evacuees at sites in Kampong Tralach Leu District (District 12), Kampong Chhnang Province (Sector 31 of the Western Zone) (paras. 691, 693-697 of the Closing Order);
 - (b) Executions of former Lon Nol soldiers and officials in 1975 at Tuol Po Chrey, Kandieng District, Pursat Province (Sector 7 of the Northwest Zone) (paras. 698-711 of the Closing Order); and
 - (c) Security centre S-21 and related execution site at Choeng Ek, Kandal Province (paras. 415-475 of the Closing Order), *including* the purges of cadres from the new North, Central (old North) and East Zones sent to S-21 (paras. 192-204 of the Closing Order) but *excluding* the worksite at Prey Sar, Dangkao District, Kandal Province.
10. The Co-Prosecutors also request the Chamber to warn the Defence for Ieng Sary concerning their duties of propriety and courtesy to the other parties and the improper practice of making frivolous submissions.

Respectfully submitted,

| Date | Name | Place | Signature |
|-----------------|--------------------------------|------------|---------------------------------------------------------------------------------------|
| 8 February 2012 | CHEA Leang Co-Prosecutor | Phnom Penh |  |
| | Andrew CAYLEY Co-Prosecutor | |  |