

BEFORE THE TRIAL CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

FILING DETAILS

Case No: 002/19-09-2007-ECCC/TC **Party Filing:** Co-Prosecutors

Filed to: Trial Chamber **Original Language:** English

Date of document: 16 February 2012



CLASSIFICATION

Classification of the document suggested by the filing party: PUBLIC

Classification by Trial Chamber: សាធារណៈ/Public

Classification Status:

Review of Interim Classification:

Records Officer Name:

Signature:

CO-PROSECUTORS' REQUEST FOR FURTHER DOCUMENT 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
Anta GUISSÉ
Arthur VERCKEN
Jacques VERGES

I. INTRODUCTION

1. Following on from the document hearings that took place on 16 to 19 January 2012 and 13 to 16 February 2012, the Co-Prosecutors respectfully request the Trial Chamber to schedule at its earliest opportunity further document hearings to take place during the next trial session. In particular, the Co-Prosecutors request:
 - a. a hearing, pursuant to Internal Rule 87 (2) and (3), on the admissibility of the documents listed in **Annexes 6 – 20** of the Co-Prosecutors' First Phase Document List¹ and documents proposed by the other parties. The Co-Prosecutors propose that this hearing take place during the first two weeks of the next trial session. In the alternative, should any Accused decide to testify on the administrative and communication structures in the morning sessions, the Co-Prosecutors propose that the hearing take place during the afternoon sessions of the first weeks of trial and continue until completed; and
 - b. a hearing for the presentation of documents relating to communication and administrative structures to take place prior to the Accused being invited to testify on another trial topic.
2. These hearings would follow the approach the Trial Chamber has adopted in relation to the use of documentary evidence at trial. Under this approach, the parties have been provided with an opportunity for adversarial argument in relation to documents proposed to be admitted into evidence. The parties have also been provided with an opportunity to present documents which they consider to be of central importance and relevance to the trial topic on which the Accused has already been heard.
3. In the interests of allowing all parties sufficient time to prepare, the Co-Prosecutors request notification of the scheduling of these hearings at the earliest opportunity. In particular, the Co-Prosecutors request that a decision on the hearing requested in paragraph 1(a) above be made by Thursday, 23 February 2012. In order to allow

¹ **E109/4** Co-Prosecutors' Response to the Trial Chamber's Request for Documents Relating to the First Phase of Trial, 22 July 2011.

this matter to be decided upon expeditiously, the Co-Prosecutors suggest that the Chamber invite brief responses from the other parties on this issue.

II. HEARING ON ADMISSIBILITY OF DOCUMENTS

4. The hearings of 16 to 19 January 2012 provided an opportunity for parties to present objections and responses to documents cited in the paragraphs of the Closing Order relating to the first trial topic (historical background) and to the documents in **Annexes 1 to 5** of the Co-Prosecutors' First Phase Document List. In its scheduling order for this hearing, the Trial Chamber indicated that additional oral arguments would be scheduled in relation to other documents on the Co-Prosecutors First Phase Document List in February 2012.² This argument was provisionally scheduled to take place on 16 February 2012, in relation to Annexes 8 and 17.³ However, for time considerations, it has had to be postponed.
5. It is submitted that it would be in the interests of good trial management to complete the hearings on the admissibility of all outstanding documents proposed by the parties at the earliest opportunity. As noted in previous filings, the early resolution of the admissibility of documents will expedite proceedings by allowing parties to present documents to witnesses efficiently during the substantive hearings without interruptions for legal arguments.⁴ It will also allow the parties to make further submissions to the Trial Chamber as to the number of witnesses required to be called for the remainder of the trial. Until decisions are issued on the admissibility all of the documents in **Annexes 1 to 20** of the Co-Prosecutors' First Phase Document List and the documents proposed by other parties, it is extremely difficult for parties to provide an accurate assessment to the Trial Chamber as to whether more or less witnesses are required to meet their obligations in this trial.
6. Accordingly, the Co-Prosecutors request that, prior to the hearing of further testimonial evidence, the first two weeks of the next trial session namely 12 to 22 March 2012 be dedicated to hearings on **Annexes 6 – 20** of the Co-Prosecutors'

² **E159** Scheduling of oral hearing on documents (16-19 January 2012), 11 January 2012 at para.9.

³ **E170** Scheduling of oral hearing on documents (13-15 February 2012), 09 February 2012 at para. 8.

⁴ **E136** Co-Prosecutors' request to establish an efficient system for admitting documentary evidence at trial, 3 November 2011 and **E153** Co-Prosecutors' Trial Management Request, 14 December 2011.

Document List in addition to the documents proposed by other parties. In the alternative, should any of the Accused decide to testify in the morning sessions on the topic of administrative and communication structures, it is proposed that these hearings occur in the afternoon sessions of the first weeks of the next trial session and continue until completed.

7. It is submitted the timing of these hearings and early decisions on the admissibility of documents is likely to significantly reduce the length of this trial.

III. HEARING ON PUBLIC PRESENTATION OF DOCUMENTS

8. During the document hearing on 13 to 16 February 2012, the parties were provided with the opportunity to present a limited number of documents considered to be particularly relevant to the historical background of the DK period. In its scheduling orders for the hearings, the Trial Chamber clarified that the goal of the hearings was to:

*ensure a greater measure of public accessibility to the documentary aspect of the trial, and to provide an opportunity (to those parties who seek it) to highlight for the Chamber key documents considered to be particularly important to the historical background segment of Case 002/01 from their perspective.*⁵

9. The Co-Prosecutors consider that the document hearing was effective in meeting this goal and would encourage the scheduling of such hearings immediately prior to the Accused being offered to testify on a further trial topic. The Co-Prosecutors note that the Senior Legal Officer has already indicated that the Trial Chamber is minded to pursue this approach.⁶ Accordingly, the Co-Prosecutors request that as it

⁵ **E170** Scheduling of oral hearing on documents (13-15 February 2012), 09 February 2012 at para. 2: “As previously indicated, the Chamber intends to grant to the parties an opportunity to present before it a limited number of documents considered to be particularly relevant to the historical background segment of Case 002/01. The purpose of this hearing is to Whenever a document is presented by any party as part of this hearing, the Accused will also be permitted to comment on this document, if they so choose.” (para.2)

⁶ **E167.1** Email from Senior Legal Officer, Message to the parties in advance of tomorrow morning’s informal TMM, 2 February 2012 stating “it would be beneficial for the Chamber (at the conclusion of each trial segment) to receive a clear indication from the parties of a limited number

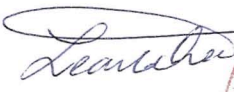

prepares the scheduling for the next trial topic (administrative and communication structures), the Trial Chamber make provision for a further hearing during which the parties can present their key documents in relation to that topic.

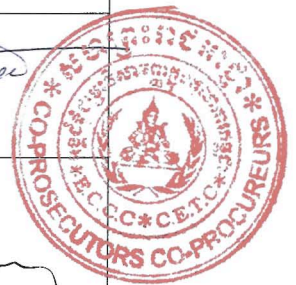
IV. RELIEF REQUESTED

10. For the above reasons, the Co-Prosecutors request the Trial Chamber to schedule as soon as possible (and in relation to paragraph (a) below, on or before Thursday, 23 February 2012):

- a. a hearing on the admissibility of the documents listed in **Annexes 6 – 20** of the Co-Prosecutors' First Phase Document List and documents proposed by the other parties, such hearing to take place during the first two weeks of the next trial session, 12 to 22 March 2012, or in the alternative should the Accused decide to testify on the administrative and communication structures, during the afternoon sessions of the first weeks of trial until the parties have been heard on all documents; and
- b. a hearing for the presentation of key documents relating to administrative and communication structures to take place prior to the Accused being invited to testify on another trial topic.

Respectfully submitted,

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



of documents (inculpatory and exculpatory) considered by each party to be of particular relevance from that party' perspective in relation to the trial segment about to conclude".