

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: 17 January 2013

CLASSIFICATION

Classification of the document suggested by the filing party: PUBLIC



Classification by the Supreme Court Chamber: សាធារណៈ/Public

Classification Status:

Review of Interim Classification:

Records Officer Name:

Signature:

**CO-PROSECUTORS' RULE 92 SUBMISSION ON THE CRIME AGAINST HUMANITY
OF OTHER INHUMANE ACTS IN RESPECT OF FORCED TRANSFER**

TABLE OF AUTHORITIES

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ECCC DOCUMENTS

Core Documents

1. Extraordinary Chambers of the Courts of Cambodia, Internal Rules (Rev. 8), as revised on 3 August 2011, Rule 92.

Office of the Co-Investigating Judges

2. D427 Case 002 Closing Order, 15 September 2010 at para. 1464.

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3. D427/2/15 Decision on Appeals by Nuon Chea and Ieng Thirith Against the Closing Order, 15 February 2011 at paras. 156, 157, 159-165.
4. E188 Case 001 Trial Judgment, 26 July 2010 at paras. 367-371.

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5. F28 Case 001 Appeal Judgment, 3 February 2012 at paras. 95-97, 146, 280, 335.

INTERNATIONAL LAW

Instruments

6. London Charter of the International Military Tribunal, 8 August 1945, Article 6(b) & 6(c). (*Not included- on Case File see D97/9/5.2*)
7. Control Council Law No. 10 on the Punishment of Persons Guilty of War Crimes, Crimes Against Peace and Against Humanity, 20 December 1945 in 3 Official Gazette Control Council for Germany 50-55 (1946), Article II (1)(b) & (1)(c). (**Authority 1**)
8. Charter of the International Military Tribunal for the Far East ("Tokyo Charter"), 19 January 1946, art. 5(c). (**Authority 2**)
9. Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 75 U.N.T.S. 287, 21 October 1950, arts. 49 & 147. (*Exceeds 10 pages- excerpt attached*) (**Authority 3**)
10. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts ("Protocol I"), 8 June 1977, art. 85(4)(a). (*Exceeds 10 pages- excerpt attached*) (**Authority 4**)
11. Draft Code of Crimes against the Peace and Security of Mankind, art. 20, in *Yearbook of the International Law Commission: 1996*, vol. II (1996). (**Authority 5**)
12. Draft Code of Offenses Against the Peace and Security of Mankind, art. 2(11), art.11 in *Yearbook of the International Law Commission: 1954*, vol. I (1954). (**Authority 6**)

13. Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 29 July 1899, arts. 46 & 50. (*Exceeds 10 pages- excerpt attached*) (**Authority 7**)
14. Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907 at arts. 46 & 50. (*Exceeds 10 pages- excerpt attached*) (**Authority 8**)
15. *Report of Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties* 14 American Journal of International Law 95 (1920) at p. 114. (*Exceeds 10 pages- excerpt attached*) (**Authority 9**)
16. Treaty of Sèvres (10 August 1920) art. 142 in 2 *The Treaties of Peace 1919-1923* 787 (1924) at pp. 828-829. (*Exceeds 10 pages- excerpt attached*) (**Authority 10**)
17. Draft International Convention on the Condition and Protection of Civilians of enemy nationality who are on territory belonging to or occupied by a belligerent (1934), art. 19(b). (**Authority 11**)
18. Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal in *Yearbook of the International Law Commission: 1950, Vol. II* (1950) at p. 374. (**Authority 12**)
19. Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms (“The European Convention on Human Rights”), securing certain rights and freedoms other than those already included in the Convention in the first Protocol thereto, ETS 46, 2 May 1968, arts. 2, 3, 4. (**Authority 13**)
20. Convention relating to the Status of Refugees, 28 July 1951, 189 U.N.T.S. 150, art. 32. (*Exceeds 10 pages- excerpt attached*) (**Authority 14**)
21. International Covenant on Civil and Political Rights, 16 December 1966, 999 U.N.T.S. 171, arts. 12, 13. (*Exceeds 10 pages- excerpt attached*) (**Authority 15**)
22. American Convention on Human Rights, 21 November 1969, 1144 U.N.T.S. 143, art. 22(5), 22(9). (*Exceeds 10 pages- excerpt attached*) (**Authority 16**)
23. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1125 U.N.T.S. 609, 7 December 1978, art. 17. (**Authority 17**)
24. Draft Code of Crimes against the Peace and Security of Mankind, article 22(2)(a), in *Yearbook of the International Law Commission: 1991, Vol. I* (1991). (*Exceeds 10 pages- excerpt attached*) (**Authority 18**)
25. UN Commission on Human Rights, *Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1997/39. Addendum: Guiding Principles on Internal Displacement*, 11 February 1998, Principle 5. (*Exceeds 10 pages- excerpt attached*) (**Authority 19**)

26. UN Sub-Commission on the Promotion and Protection of Human Rights, *Human rights and population transfer, Annex II: Draft declaration on population transfer and the implantation of settlers*, 27 June 1997, arts. 3, 4. (**Authority 20**)
27. Rome Statute of the International Criminal Court, U.N. Doc. A/CONF.183/9 (17 July 1998), arts. 7(1)(d), 7(1)(k), 7(2)(d), 8.2(a)(vii), 8.2(e)(viii). (*Not included- available on the ICC website*)
28. Statute of the International Criminal Tribunal for the former Yugoslavia, U.N. Doc S/RES/827 (25 May 1993), arts. 2(g), 5(d). (*Not included- available on the ICTY website*)
29. Statute of the International Criminal Tribunal for Rwanda, U.N. Doc. S/RES/955 (8 November 1994), art. 3(d).(*Not included- available on the ICTR website*)
30. Comprehensive Agreement on Respect for Human Rights and IHL in the Philippines, 16 March 1998, Part IV, art. 3(7). (**Authority 21**)
31. UNTAET Regulation No. 2000/15 on the Establishment of Panels with Exclusive Jurisdiction Over Serious Criminal Offences, 6 June 2000, Sections 6(1)(a)(vii), 6(1)(e)(viii). (*Exceeds 10 pages- excerpt attached*) (**Authority 22**)
32. UN Commission on Human Rights, Minimum humanitarian standards, 3 March 1995, art. 7. (**Authority 23**)
33. UN General Assembly Resolution 217A(III), *Universal Declaration of Human Rights*, adopted 10 December 1948, art. 3, 5, 12, 13(1). (**Authority 24**)
34. International Convention on the Elimination of All Forms of Racial Discrimination, 660 U.N.T.S. 195, 4 January 1969, art. 5. (*Exceeds 10 pages-excerpt attached*) (**Authority 25**)

Jurisprudence

International Military Tribunal

35. *United States et al. v. Hermann Wilhelm Göring et al.*, Indictment (International Military Tribunal), 18 October 1945 at Count 3(b) in 1 *Trial of The Major War Criminals Before the International Military Tribunal* (1947) at pp. 51-52. (*Exceeds 10 pages-excerpt attached*) (**Authority 26**)
36. *United States et al. v. Hermann Wilhelm Göring et al.*, Judgment (International Military Tribunal), 30 September - 1 October 1946 in *Trial of The Major War Criminals Before the International Military Tribunal Vol. I* (1947) at pp. 227, 243, 253-254. (*Exceeds 10 pages-excerpt attached*) (**Authority 27**)

Nuremberg Military Tribunals

37. *Government Commissioner v. Hermann Roechling et al.*, Judgment (General Tribunal of the Military Government of the French Zone of Occupation in Germany), 30 June 1948 in 14 *Trials of War Criminals Before the Nuremberg Military Tribunals under Control*

Council Law No. 10 (1950) at p. 1096. (Exceeds 10 pages-excerpt attached) (**Authority 28**)

38. *U.S. v. Carl Krauch et al.* (“*The I.G. Farben Trial*”), Judgment (United States Military Tribunal VI), 29 July 1948 in 8 *Trials of War Criminals Before the Nuremberg Military Tribunals under Control Council Law No. 10* (1952) at pp. 1167-68. (Exceeds 10 pages-excerpt attached) (**Authority 29**)
39. *U.S. v. Erhard Milch*, Judgment (United States Military Tribunal II), 16 April 1947 in 2 *Trials of War Criminals Before the Nuremberg Military Tribunals under Control Council Law No. 10* (1950) at pp.849, 874. (Exceeds 10 pages-excerpt attached) (**Authority 30**)
40. *U.S. v. Alfried Felix Alwyn Krupp von Bohlen und Halbach et. al.* (“*Krupp Case*”) Judgment, (United States Military Tribunal III), 31 July 1948 summarized in The United Nations War Crimes Commission, *Law Reports of Trials of War Criminals: Vol. X* (1949) at pp. 74, 84-87. (Exceeds 10 pages-excerpt attached) (**Authority 31**)
41. *U.S. v. Wilhelm List et al.* (“*Hostages Case*”), Judgment (United States Military Tribunal V) Judgment, 19 February 1948 in 11 *Trials of War Criminals Before the Nuremberg Military Tribunals under Control Council Law No. 10* (1950) at pp. 1254, 1295-1297, 1305. (Exceeds 10 pages-excerpt attached) (**Authority 32**)
42. *U.S. v. Wilhelm von Leeb et al.* (“*High Command Trial*”), Judgment (United States Military Tribunal V), 27 October 1948 in 11 *Trials of War Criminals Before the Nuremberg Military Tribunals under Control Council Law No. 10* (1950) at pp. 575-577. (Exceeds 10 pages-excerpt attached) (**Authority 33**)
43. *U.S. v. Friedrich Flick et al.*, Judgment (United States Military Tribunal IV), 22 December 1947 in 6 *Trials of War Criminals Before the Nuremberg Military Tribunals under Control Council Law No. 10* (1952) at pp. 1193, 1201. (Exceeds 10 pages-excerpt attached) (**Authority 34**)
44. *In re von Lewinski (called von Manstein)*, Judgment (British Military Court at Hamburg, Germany), 19 December 1949, summarized in H. Lauterpacht (ed.), *Annual Digest and Reports of Public International Law Cases, Year 1949* (1955) at p. 509. (**Authority 35**)

International Criminal Tribunal for the former Yugoslavia

45. *Prosecutor v. Vidoje Blagojević & Dragan Jokić*, Case No. IT-02-60-T, Judgment (ICTY Trial Chamber I, Section A), 17 January 2005 at paras. 595-598, 601, 629. (Not included- available on ICTY website)
46. *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-A, Judgment (ICTY Appeals Chamber), 17 March 2009 at paras. 308, 319, 331. (Not included- available on ICTY website)
47. *Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36-T, Judgment (ICTY Trial Chamber II), 1 September 2004 at paras. 540-545, 549, 555- 556, 601. (Not included- available on ICTY website)

48. *Prosecutor v. Vujadin Popović et al.*, IT-05-88-T, Judgment (ICTY Trial Chamber II) 10 June 2010 at paras. 887-962. (Not included- available on ICTY website)
49. *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-A, Judgment (ICTY Appeals Chamber), 22 March 2006 at paras. 30, 284, 289, 302, 306, 313-321. (Not included- available on ICTY website)
50. *Prosecutor v. Zoran Kupreškić et al.*, Case No. IT-95-16-T, Judgment (ICTY Trial Chamber) 14 January 2000 at para. 566. (Not included- available on ICTY website)
51. *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-T, Judgment (ICTY Trial Chamber II), 31 July 2003 at paras. 677, 678, 679, 680, 681, 682, 685, 686-87, 721-722. (Not included- available on ICTY website)
52. *Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-T, Judgment (ICTY Trial Chamber II), 15 March 2002 at paras. 473, 474, 475, 476, 478. (Not included- available on ICTY website)
53. *Prosecutor v. Blagoje Simić et al.*, Case No. IT-95-9-T, Judgment (ICTY Trial Chamber II), 17 October 2003 at paras. 121-128, 130, 132, 134, 974. (Not included- available on ICTY website)
54. *Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-A, Judgment (ICTY Appeals Chamber), 17 September 2003 at para. 218. (Not included- available on ICTY website)
55. *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, Decision on Motion for Judgment of Acquittal (ICTY Trial Chamber), 16 June 2004 at paras. 64, 68, 78, 79. (Not included- available on ICTY website)
56. *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-T, Judgment (ICTY Trial Chamber I), 27 September 2006 at paras. 723, 725, 726. (Not included- available on ICTY website)
57. *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-T, Judgment (ICTY Trial Chamber), 2 August 2001 at paras. 521-527, 529, 530-532. (Not included- available on ICTY website)
58. *Prosecutor v. Dragan Nikolić*, Case No. IT-94-2-R61, Review of Indictment pursuant to Rule 61 of the Rules of Procedure and Evidence (ICTY Trial Chamber), 20 October 1995 at para. 23. (Not included- available on ICTY website)
59. *Prosecutor v. Mladen Naletilić et al.*, Case No. IT-98-34-T, Judgment (ICTY Trial Chamber), 31 March 2003 at paras. 518-521, 526, 536-537. (Not included- available on ICTY website)
60. *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-T, Decision on Rule 98 BIS Motion for Judgment of Acquittal (ICTY Trial Chamber II), 31 October 2002 at para. 130. (Not included- available on ICTY website)

Special Panels for Serious Crimes in Timor-Leste

61. *Prosecutor v. João Sarmento*, Case No. 18A/2001, Judgment (Special Panel for Serious Crimes in the District of Dili), 12 August 2003 at paras. 95, 99, 102, 103, 105. (Exceeds 10 pages-excerpt attached) (**Authority 36**)

UN Resolutions

62. UN General Assembly Resolution 95 (I), *Affirmation of the Principles of International Law Recognized by the Charter of the Nuremberg Tribunal*, adopted 11 December 1946. (**Authority 37**)

COMMENTARIES

63. Oscar Hueler & Henri Coursier, *International Committee of the Red Cross Commentary on the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (1958) p. 279-281. (*Exceeds 10 pages-excerpt attached*) (**Authority 38**)
64. Jean-Marie Haeckerts, *Deportation and Transfer of Civilians in Time of War*, 26 Vand. J. Transnat'l L. 469 (1993) at pp. 471-473, 475, 482. (*Exceeds 10 pages-excerpt attached*) (**Authority 39**)
65. Alfred De Zayas, *The Illegality of Population Transfers and the Application of Emerging International Norms in the Palestinian Context*, 6 Palestinian Yearbook of International Law 17 (1990-91) at pp. 21-22. (*Exceeds 10 pages-excerpt attached*) (**Authority 40**)
66. M. Cherif Bassiouni, *Crimes Against Humanity in International Criminal Law* (2011) at pp. 386, 387, 388, 392, 393, 381, 395 393, 394. (*Exceeds 10 pages-excerpt attached*) (**Authority 41**)
67. Alfred de Zayas, "Forced Population Transfer" in *Max Planck Encyclopedia of Public International Law* (2012) at paras. 12, 13, 20. (**Authority 42**)
68. Alfred de Zayas, *International Law and Mass Population Transfers*, 16 Harvard International Law Journal 207 (1975) at pp. 213, 221, 222, 225-26. (*Exceeds 10 pages-excerpt attached*) (**Authority 43**)
69. International Committee for the Red Cross, *Customary International Humanitarian Law Volume I: Rules* (2009) at pp. xxxvii-xxxviii. (*Exceeds 10 pages-excerpt attached*) (**Authority 44**)
70. Kriangsak Kittichaisaree, *International Criminal Law* (2001) at p. 109. (*Exceeds 10 pages-excerpt attached*) (**Authority 45**)
71. Christopher Hall, "Article 7: Crimes against humanity" in Otto Triffterer (ed) *Commentary on the Rome Statute of the International Criminal Court* (1999) at p. 136. (*Exceeds 10 pages-excerpt attached*) (**Authority 46**)
72. Antonio Cassese (ed.), *The Oxford Companion to International Criminal Justice* (2009) at pp. 296, 295. (*Exceeds 10 pages-excerpt attached*) (**Authority 47**)
73. Clair de Than and Edward Shorts, *International Criminal Law and Human Rights* (2003) at pp. 100, 101. (*Exceeds 10 pages-excerpt attached*) (**Authority 48**)
74. Emily Haslam, "Population, Expulsion and Transfer," in *Max Planck Encyclopedia of Public International Law* (2012) at para. 20. (**Authority 49**)

75. Nobuo Hayashi, *Requirements of Military Necessity in International Humanitarian Law and International Criminal Law*, 28 Boston University International Law Journal 39 (2010) at pp. 62-64, 68, 69, 72-73, 87, 92, 94, 96, 97 (**Authority 50**)
76. International Committee for the Red Cross, Jean-Marie Henckaerts and Louise Doswald-Beck (eds.) *Customary International Humanitarian Law Volume II: Practice* (2005) at pp. 2911, 2913, 2916. (*Exceeds 10 pages-excerpt attached*) (**Authority 51**)

FOREIGN DOMESTIC LAW

Jurisprudence

77. *Trial of Takashi Sakai* (Chinese War Crimes Military Tribunal of the Ministry of National Defence, Nanking) 19 August 1946 summarized in The United Nations War Crimes Commission, *Law Reports of the Trials of War Criminals*, Vol. XIV (1949) at p. 2. (**Authority 52**)
78. *In re Greiser*, Judgment (Supreme National Tribunal of Poland), 7 July 1946, summarized in *Annual Digest and Reports of Public International Law Cases*, Vol. 13 (1946) at p. 387. (**Authority 53**)
79. *Trial of Gauleiter Artur Greiser*, (Supreme National Tribunal of Poland), summarized in, The United Nations War Crimes Commission, *Law Reports of the Trials of War Criminals*, Vol. XIII (1949) at p. 86, 112, 113. (*Exceeds 10 pages-excerpt attached*) (**Authority 54**)
80. *In re Zimmermann*, Judgment (Special Court of Cassation, Holland), 21 November 1949, summarized in *Annual Digest and Reports of Public International Law Cases*, Vol. 16 (1949) at p. 552. (**Authority 55**)
81. *Attorney General v. Adolf Eichmann*, Case No. 40/61, Judgment (District Court of Jerusalem), 11 December 1961 at para. 244. (*Exceeds 10 pages-excerpt attached*) (**Authority 56**)

Military Manuals

82. Francis Lieber, *Instructions for the Government of Armies of the United States in the Field* ("Lieber Code"), 24 April 1863, art. 23. (*Exceeds 10 pages-excerpt attached*) (**Authority 57**)
83. United States Department of the Army, *The Law of Land Warfare* (1956) at paras. 284, 382. (*Exceeds 10 pages-excerpt attached*) (**Authority 58**)