

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

**FILING DETAILS**

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**Co-Prosecutors' Notification of the Time Required to Question the Accused**

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## RESPONSE

1. In response to the Trial Chamber's Memorandum dated 31 May 2013,<sup>1</sup> the Co-Prosecutors request that the Trial Chamber grant the Co-Prosecutors six full days (or twelve half days) to question Khieu Samphan and three full days (or six half days) to further question Nuon Chea. This is the best estimate of the time required by the Co-Prosecutors to properly and thoroughly examine the two accused. However, due to the importance of the Accused's testimony and the unpredictability of the manner in which such testimony will unfold, the Co-Prosecutors further request the Trial Chamber to allow some flexibility in considering additional time for the parties, if deemed necessary, to ascertain the truth of the allegations which are at the heart of this trial.
2. The length of time required to adequately question the Accused is dictated by two main factors: the number, scope and complexity of issues to be proved by the Co-Prosecutors in this trial; and second the fact that neither Accused has admitted or conceded any of the principal allegations prior to or during this trial. In fact both Accused have denied the occurrence of the crimes at issue and any legal responsibility for them. They have also denied a number of allegations in the Closing Order pertaining to their roles and positions within the Communist Party of Kampuchea (CPK) and the Democratic Kampuchea government (DK).
3. The three criminal events addressed in this first phase case together took place over an extensive geographic area and include numerous criminal episodes. The first forced movement of the population from Phnom Penh to multiple locations beginning on 17 April 1975 was accompanied by the crimes of murder, extermination, persecution and other inhumane acts.<sup>2</sup> The second forced movement to the North and Northwest zones continued from September 1975 through 1976 and was also accompanied with the commission of the same crimes as well as enforced disappearances.<sup>3</sup> The Tuol Po Chrey executions were committed in large numbers in the period following 17 April 1975.<sup>4</sup> The charged crimes result from various policies of the CPK for which the Accused bear responsibility, including policies relating to forced movement, cooperatives and the treatment of enemies. Examination of the Accused on each of these subjects will thus be necessary.

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<sup>1</sup> Announcement of remaining hearings prior to the close of evidentiary proceedings in Case 002/01 and scheduling of final Trial Management Meeting for 13 June 2013, Trial Chamber, 31 May 2013 at para. 6.

<sup>2</sup> **D427** Closing Order, 15 September 2010 at paras. 224-260.

<sup>3</sup> **D427** Closing Order, 15 September 2010 at paras. 262-281.

<sup>4</sup> **D427** Closing Order, 15 September 2010 at paras. 698-714.

4. The Accused's participation in and their linkage to these criminal events is factually complex and disputed by them. Their role in the CPK and DK before, during and after crimes were committed requires close examination to determine the existence of, and their participation in, the alleged joint criminal enterprise through which the crimes were committed, as well as their participation by other means. As it is not alleged that the Accused physically committed the criminal acts with which they have been charged, an examination of the organizational structures through which the Accused exercised control over such events is required. These structures include the political, administrative and military bodies of the CPK and DK and their relationship with each Accused. In particular, they include the operation of the Central Committee, the Standing Committee and Office 870, among other relevant structures. Close examination of the roles of the Accused within these structures, and the communication lines between and through these structures where the criminal policies were communicated, is therefore necessary.
5. As stated above, adequate time is particularly required to question the Accused since they have adamantly disputed the existence of a joint criminal enterprise, their participation in that enterprise, their positions and alleged authority, their participation directly or indirectly in the crimes charged, and their knowledge of the crimes committed. As the factual and legal positions of the Prosecution and the Defence in this case are in almost full disagreement, extensive questioning will be required in order to ascertain the truth.
6. Time given to question Accused in similar cases at other international criminal tribunals has been extensive, particularly where Accused occupied positions of senior political or military leadership and where it was alleged that they participated in numerous massive crimes over an extended period. For example, in the *Prosecutor v. Charles Ghankay Taylor*, before the Special Court for Sierra Leone, the Accused Taylor was questioned for several months. The defence's examination-in-chief lasted 13 weeks,<sup>5</sup> and cross-examination by the prosecution lasted approximately 11 weeks.<sup>6</sup> Taylor, the former President of Liberia, was charged with a total of 11 counts of war crimes and crimes against humanity which included (sexual) violence, terrorizing the civilian population, abductions and forced labor.

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<sup>5</sup> *Prosecutor v. Charles Ghankay Taylor*, Case No. SCSL-2003-01-T, Transcript (SCSL Trial Chamber II), 15 July 2009 (EN); *Prosecutor v. Charles Ghankay Taylor*, Case No. SCSL-2003-01-T, Transcript (SCSL Trial Chamber II), 10 November 2009 (EN).

<sup>6</sup> *Prosecutor v. Charles Ghankay Taylor*, Case No. SCSL-2003-01-T, Transcript (SCSL Trial Chamber II), 10 November 2009 at T31553, T31566 (EN); *Prosecutor v. Charles Ghankay Taylor*, Case No. SCSL-2003-01-T, Transcript (SCSL Trial Chamber II), 5 February 2010 at T34859-60 (EN).

7. In *Krajišnik*, an ICTY Trial Chamber granted 21 days for the examination-in-chief<sup>7</sup> of the Accused and 15 days for cross-examination.<sup>8</sup> Momčilo Krajišnik was a member of the Bosnian Serb (later “Republika Srpska”) political leadership during the armed conflict which took place in Bosnia and Herzegovina between 1992 and 1995. He was on the Main Board of the Serbian Democratic Party of Bosnia and Herzegovina (SDS) and President of the Bosnian Serb Assembly. He was charged with, among other crimes, persecution on political, racial or religious grounds, deportation, forced transfer, and crimes against humanity. These crimes included the forced displacement of many thousands of Muslim and Croat civilians.<sup>9</sup>
8. In *Blaškić*, an ICTY Trial Chamber allowed over 14 days for examination-in-chief<sup>10</sup> and over 13 days of cross-examination.<sup>11</sup> Tihomir Blaškić was the Commander of the Croatian Defence Council, the official military formation of the Croatian community in Bosnia and Herzegovina. In that capacity, he was in charge of the Lašva Valley area which covered four municipalities in central Bosnia and Herzegovina. Blaškić was charged with crimes including wilful killing and persecutions on political, racial or religious grounds.<sup>12</sup>
9. These three Accused, Charles Taylor, Momčilo Krajišnik and Tihomir Blaškić all denied involvement in the crimes charged, as have the Accused in this case. The respective Trial Chambers recognised that where high level officials are charged with very serious international crimes, committed on the ground by lower level perpetrators, the parties were obliged to question the Accused at length.
10. Where an Accused has denied the charges and the principal material facts supporting them, the need for all parties to question him / her at reasonable length is paramount. This is to ensure that the Defence have an opportunity to elucidate their defence, the Prosecution has a reasonable opportunity to put the case it must prove and the Civil Parties are able to put the

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<sup>7</sup> *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-T, Transcript (ICTY Trial Chamber I) 25 April 2006 at T22980 (commencement of examination-in-chief); *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-T, Transcript (ICTY Trial Chamber I) 25 May 2006 at T24799 (end of examination-in-chief).

<sup>8</sup> *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-T, Transcript (ICTY Trial Chamber I) 29 May 2006 at T24859 (commencement of cross-examination); *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-T, Transcript (ICTY Trial Chamber I) 16 June 2006 at T25944 (end of cross-examination).

<sup>9</sup> *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-T, Judgment (ICTY Trial Chamber I), 27 September 2006 at paras. 729, 731-732, 825.

<sup>10</sup> *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-T, Transcript (ICTY Trial Chamber I), 27 May 1999 at T22735 ln 7-24 (EN).

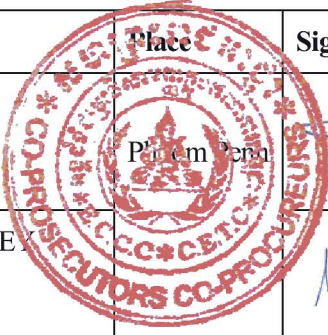

<sup>11</sup> *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-T, Transcript (ICTY Trial Chamber I), 27 May 1999 at T22735 ln 7-24 (EN).

<sup>12</sup> *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-T, Judgment (ICTY Trial Chamber I), 3 March 2000 at para. 7.

position of the victims. Since the Accused are central to the allegations in this case, and are in a unique position to answer those allegations, the time required to question them should be viewed in a different light than all other witnesses, experts and civil parties that have testified at trial.

11. Additionally the thorough questioning of the Accused carries great importance to both the victims and Cambodian public generally. The Accused being able to explain their conduct under methodical questioning by the parties demonstrates to the victims and public generally that justice is being done, and that otherwise often technical legal proceedings are tangible and meaningful to the people who suffered from the crimes with which the Accused are charged. For all of the reasons outlined in this request, it is respectfully submitted that the time requested to question the Accused by the Co-Prosecutors be granted.

Respectfully submitted,

Date	Name	Place	Signature
6 June 2013	CHEA Leang Co-Prosecutor		
	Andrew CAYLE Co-Prosecutor		