

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

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**CIVIL PARTIES' RESPONSE TO THE CO-PROSECUTORS' SUBMISSION
REGARDING THE USE OF EVIDENCE AND PROCEDURE FOR THE RECALL OF
WITNESSES FROM CASE 002/01 IN CASE 002/02**

Filed by:

Lead Co-Lawyers for Civil Parties

PICH Ang
Elisabeth SIMONNEAU-FORT

Co-Lawyers for Civil Parties

CHET Vanly
HONG Kim Suon
KIM Mengkhy
LOR Chunthy
MOCH Sovannary
SIN Soworn
KONG Phallack

Before:

Trial Chamber

Judge NIL Nonn, President
Judge Silvia CARTWRIGHT
Judge YA Sakhan
Judge Jean-Marc LAVERGNE
Judge YOU Ottara

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Fabienne TRUSSES NAPROUS
Nushin SARKARATI
Jeanne SULZER
Philippine SUTZ

William SMITH

The Accused

KHIEU Samphan
NUON Chea

Co-Lawyers for the Defence

SON Arun
Victor KOPPE

KONG Sam Onn
Anta GUISSÉ
Arthur VERCKEN
Jacques VERGES

Co-Lawyers for the Civil Parties

Beini YE

I. INTRODUCTION AND PROCEDURAL HISTORY

1. On 15 January 2014, the Co-Prosecutors filed a motion requesting that the Trial Chamber rule that “all evidence accepted in Case 002/01 and assigned an E3 number be considered as duly placed before the Trial Chamber for the purpose of all future trial proceedings” and that “witnesses, civil parties and experts heard in Case 002/01 may be recalled in the trial [of] Case 002/02 only if the requesting parties satisfy the court that further questioning is in the interests of justice.”¹ In support of their request, the Prosecution noted the importance of an early resolution in the interest of ensuring efficient proceedings.²
2. On 27 January 2014, the defense for Khieu Samphan filed its response to the Co-Prosecutors’ submission requesting that the Trial Chamber reject the Prosecution’s request in its entirety on the grounds that it violates fundamental procedural rules and ignores the consequences of the Severance Order in Case 002 on the production of Case 002/01 evidence in Case 002/02.³
3. The Civil Parties hereby support the Co-Prosecutors’ submission on the use of Case 002/01 evidence in Case 002/02 and further urge the Trial Chamber to render a ruling on the requests contained therein as soon as possible.

III. ARGUMENTS

4. Complementing the arguments put forward by the Prosecution, the Civil Parties emphasize that the interests of justice require a pragmatic and reasonable approach to evidence which respects fair trial rights considerations, and also takes into account the age and conditions of both the Accused and the civil parties. With respect to the civil parties, who have waited over 35 years for these allegations to be adjudicated, substantially delayed justice risks that there may be no justice at all for those who are elderly or infirm.
5. An early and clear decision from the Trial Chamber on the treatment of Case 002/01 evidence in Case 002/02 will assist all parties in preparing for the commencement of Case 002/02 proceedings. Such a decision is also essential to providing lawyers for civil parties

¹ E302, Co-Prosecutor’s Submission Regarding the Use of Evidence and Procedure for Recall of Witnesses from Case 002/01 in Case 002/02, 15 January 2014, para. 1.

² *Ibid.*

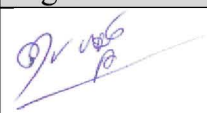

³ E302/1, Réponse de la défense de M. Khieu Samphân à la « Demande des co-Procureurs relative à la continuité entre le premier et le deuxième procès dans le dossier 002, s’agissant de l’utilisation des éléments de preuve et de la procédure pour faire citer à comparaître les personnes ayant déjà déposé », 27 January 2014.

with clarity on an issue that will have a strong effect on the efficiency and timing of Case 002/02 proceedings. A clear directive on this issue from the Trial Chamber will allow lawyers for civil parties to better inform civil parties about what they can expect in Case 002/02 proceedings.

WHEREFORE, Civil Parties request that the Trial Chamber:

- a. **Make** an expedited ruling on the issue of the use of Case 002/01 evidence in Case 002/02;
- b. **Order** that all Case 002/01 evidence is duly put before it in Case 002/02 and all future trial proceedings; and
- c. **Determine** that the recall of Case 002/01 witnesses, civil parties and experts requires that the requesting party satisfy the court that further questioning is in the interests of justice.

Respectfully submitted,

| Date | Name | Place | Signature |
|-----------------------|--|-------------|---|
| 3 February 2014 | PICH Ang Lead-Co-Lawyer | Phnom Penh |  |
| | Elisabeth SIMONNEAU-FORT Lead Co-Lawyer | Montpellier |  |