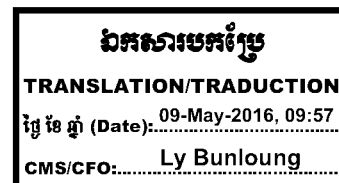


BEFORE THE TRIAL CHAMBER**EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA****FILING DETAILS****Case No:** 002/19-09-2007-ECCC/TC**Filing Party:** Mr KHIEU Samphan**Filed to:** The Trial Chamber**Original Language:** French**Date of Document:** 9 June 2014**CLASSIFICATION****Classification Suggested by the Filing Party:** Public**Classification by the Trial Chamber:** Public**Classification Status:****Review of Interim Classification:****Records Officer's Name:****Signature:**

Indication of Legal Issues which Mr KHIEU Samphan Defence's Intends to Raise at the Initial Hearing in the Trial in Case 002/02

Filed by:**Lawyers for Mr KHIEU Samphan**

KONG Sam Onn
Anta GUISSÉ
Arthur VERCKEN

Assisted by:

SENG Socheata
Marie CAPOTORTO
Soumeya MEDJEBEUR
Pierre TOUCHE
OUCH Sreyath
SENG Lyna
ROUBEIX Cécile

Before:**The Trial Chamber**

NIL Nonn
Silvia CARTWRIGHT
YOU Ottara
Jean-Marc LAVERGNE
YA Sokhan

The Co-Prosecutors

CHEA Leang
Nicholas KOUMJIAN

All Civil Party Lawyers**Mr NUON Chea's Defence**

MAY IT PLEASE THE TRIAL CHAMBER

1. On 4 April 2014, the Trial Chamber (“the Chamber”) severed the proceedings in Case 002 anew and determined the scope of a second trial (002/02).¹
2. On 8 April 2014, in preparation for the trial in Case 002/02, the Chamber ordered the parties to provide by Monday 9 June 2014, “an indication of any legal issues they intend to raise at the Initial Hearing.”²
3. Mr KHIEU Samphan’s Defence (“the Defence”) hereby submits to the Chamber the list of issues it intends to raise in accordance with Rules 80 *bis* and 89 of the Internal Rules. The list includes the specific legal difficulties raised by Severance Decision E301/9/1 and by the fact that the trial in Case 002/02 is due to begin before final judgement is handed down in Case 002/01.³
4. A number of these issues were raised in an earlier exchange of written submissions. However, in a criminal trial, where proceedings must be oral and public, Mr KHIEU Samphan’s Defence wishes to argue the issues it considers essential to a fair trial.
5. Accordingly, the Defence intends to expound *viva voce* on its arguments on preliminary objections concerning the statute of limitations for grave breaches of the Geneva Conventions, and on the Chamber’s lack of jurisdiction to try deportation as a crime against humanity.⁴
6. On witness matters, the Defence intends to raise the following issues:
 - Objection to the examination of witnesses and civil parties whose evidence is not relevant to the trial in Case 002/02, pending clarification from the Chamber;⁵
 - Objection to the examination of experts considered to be biased;⁶

¹ Decision on Additional Severance of Case 002 and Scope of Case 002/02, 4 April 2014, **E301/9/1** (“Severance Decision **E301/9/1**”).

² Order to File Updated Material in Preparation for Trial in Case 002/02, 8 April 2014, **E305**, para. 15.

³ The Chamber dismissed Mr KHIEU Samphan’s request that the exhaustion of appeals and final judgement in Case 002/01 precede commencement of the trial in Case 002/02: Decision on KHIEU Samphan Request to Postpone Commencement of Case 002/02 Until a Final Judgement is Handed Down in Case 002/01, 21 March 2014, **E301/5/5/1**.

⁴ *Conclusions de la Défense de M. KHIEU Samphân sur les exceptions préliminaires sur lesquelles la Chambre n’a pas encore statué*, 20 May 2014, **E306/2**.

⁵ *Opposition de la Défense de M. KHIEU Samphân à la comparution de certaines personnes proposées aux fins d’audition au cours du procès 002/02 et demande de clarification sur la portée exacte des débats suite à la nouvelle décision de disjonction E301/9/1*, 30 May 2014, **E305/9**.

- Discussion of the specific status of witnesses who have worked with the Office of Co-Prosecutors or the Office of Co-Investigating Judges.

7. In light of the uncertainties surrounding the scope of the trial in Case 002/02 and the outcome of the remaining charges, the Defence also intends to raise the following issues:

- Request for a decision from the Chamber on the outcome of the remaining charges not included in the trial in Case 002/02;⁷
- Request for clarification of the exact scope of the trial in Case 002/02 and an annex setting out the matters which, in view of the Chamber, have been disposed of and canvassed, in order to anticipate and/or limit objections during the proceedings.⁸

8. Lastly, insofar as the upcoming judgement in the trial in Case 002/01 will not be final pending an appeal decision, it is crucial that the parties be able to continue discussing the conclusions of law in the Chamber's judgement during the hearings on the evidence in 002/02. Indeed, if there are grounds to appeal holdings of said judgement and they have a bearing on the trial in Case 002/02, the parties must be able to lodge objections if such holdings are considered as established by the time of that second trial. Accordingly, it will also be necessary to discuss the following issues:

- Clarification of the notion of "[TRANSLATION] general foundation" referred to by the Chamber in decisions E124/7, E131, E302/5 and E301/9/1;⁹
- Discussion of the form of the objections to the findings of the forthcoming judgement in the trial in Case 002/01, absent a final judgement on appeal.

⁶ *Idem.*

⁷ Mr KHIEU Samphân's Submissions Regarding the Scope of Case 002/02, 31 January 2014, **E301/5/2**, paras. 25-26; Mr. KHIEU Samphân's Immediate Appeal Against the Decision on Additional Severance of Case 002 and Scope of Case 002/02, 5 May 2014, **E301/9/1/1/1**, paras. 10 and 21.

⁸ *Opposition de la Défense de M. KHIEU Samphân à la comparution de certaines personnes proposées aux fins d'audition au cours du procès 002/02 et demande de clarification sur la portée exacte des débats suite à la nouvelle décision de disjonction E301/9/1*, 30 May 2014, **E305/9**, paras. 28-34.

⁹ 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, **E124/7**, para. 10; Scheduling Order for Opening Statements and Hearing on the Substance in Case 002, 18 October 2011, **E131**, third paragraph; Clarification regarding the use of evidence and the procedure for recall of witnesses, civil parties and experts from Case 002/01 in Case 002/02, 7 February 2014, **E302/5**, paras. 5 and 7; Severance Decision **E301/9/1**, para. 42.

9. The Defence may seek amendment of the current list, should any new developments arise prior to the initial hearing.

10. **FOR THESE REASONS**, the Defence for Mr KHIEU Samphan requests the Chamber to:

- **Take note** of the various legal issues it intends to raise;
- **Authorise** it to raise the issues at the initial hearing in the trial in Case 002/02.

	Mr KONG Sam Omn	Phnom Penh	[signed]
	Ms Anta GUISSÉ	Paris	[signed]
	Mr Arthur VERCKEN	Paris	[signed]