

BEFORE THE TRIAL CHAMBER**EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA****FILING DETAILS****Case No:** 002/19-09-2007-ECCC/TC**Party Filing:** The Defence for IENG Sary**Filed to:** The Trial Chamber**Original language:** ENGLISH**Date of document:** 31 August 2011**CLASSIFICATION****Classification of the document
suggested by the filing party:** PUBLIC**Classification by OCIJ
or Chamber:** សាធារណៈ/Public**Classification Status:****Review of Interim Classification:****Records Officer Name:****Signature:**

IENG SARY'S MOTION TO THE TRIAL CHAMBER TO CONDUCT SITE VISITS

Filed by:**The Co-Lawyers:**

ANG Udom

Michael G. KARNAVAS

Distribution to:**The Trial Chamber Judges:**

Judge NIL Nonn

Judge THOU Mony

Judge YA Sokhan

Judge Silvia CARTWRIGHT

Judge Jean-Marc LAVERGNE

Reserve Judge YOU Ottara

Reserve Judge Claudia FENZ

Co-Prosecutors:

CHEA Leang

Andrew CAYLEY

All Defence Teams**All Civil Parties**

Mr. IENG Sary, through his Co-Lawyers (“the Defence”), hereby moves the Trial Chamber to conduct site visits together with representatives from each party to each of the relevant sites described in the Closing Order. This Motion is made necessary because these site visits are reasonable and necessary to enable the Trial Chamber to observe the geography, topography and physical relationships between locations referred to in the Closing Order. Such visits will allow the Trial Chamber to enhance its understanding of the events set out in the Closing Order, through gaining a first-hand impression of the locations referred to therein.

I. ARGUMENT

1. Site visits are critical for the Trial Chamber’s understanding of the events which occurred from 1975-79 and should take place as soon as possible and before the substantive proceedings commence. Conducting site visits together with representatives from each party to each of the relevant sites described in the Closing Order will allow the Trial Chamber to observe the geography, topography and physical relationships between locations referred to in the Closing Order. This will be extremely important for the Trial Chamber’s understanding of the events described in the Closing Order. For example, viewing locations Mr. IENG Sary is alleged to have visited will allow the Trial Chamber to have a better understanding as to whether a visit to the site concerned would necessarily have put Mr. IENG Sary on notice that atrocities were taking place there.
2. Site visits will be of considerable assistance to the Trial Chamber during the initial trial phase, more particularly when considering the roles of the Accused both before and during 1975-79 and alleged policies of Democratic Kampuchea. Representatives from each party should be invited to accompany the Trial Chamber, as this will facilitate the examination of witnesses and evidence at trial and allow the parties to assist the Trial Chamber in ascertaining the material truth. The time involved to conduct site visits should not adversely affect the overall length of the proceedings, as the understanding gained during the site visits will assist the Trial Chamber and the parties in focusing the questioning of witnesses and material put before the Chamber at trial.
3. It is virtually inconceivable to conceptualize the sites referred to in the Closing Order and their relationships to each other from maps or photographs alone. For example, the locations where events occurred in the former Yugoslavia are much better documented through maps, video and photographs than the events set out in the Closing Order. Even

though there is a wealth of documentary information concerning the events that occurred in the former Yugoslavia, at the International Criminal Tribunal for the former Yugoslavia (“ICTY”), Trial Chambers virtually in every case perform site visits “in order to gain a better understanding of the facts at issue,”¹ finding such visits to be in the interests of justice.² Representatives of the parties generally attend these site visits along with the Trial Chamber.³

4. The Trial Chamber has the authority to conduct a site visit if it would be in the interests of justice to do so, even if the Rules do not explicitly provide for site visits. Site visits are not expressly provided for in the Rules of Procedure and Evidence at the ICTY or International Criminal Tribunal for Rwanda (“ICTR”), but Trial Chambers at these tribunals regularly conduct site visits. They rely upon two ICTY/ICTR Rules of Procedure and Evidence: Rule 4, which provides that “[a] Chamber may exercise its functions at a place other than the seat of the Tribunal, if so authorized by the President in the interest of justice” and Rule 54, which provides that “[a]t the request of either party or *proprio motu*, a Judge or a Trial Chamber may issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial.”⁴ At the ICTR, in May 2010, a Practice

¹ *Prosecutor v. Perišić*, IT-04-81-T, Order on Site Visit with Annex Containing Rules of Procedure and Conduct During Site Visit, 21 May 2009, p. 1. *See also* Nidzara Ahmetasevic, *Karadžić: ICTY and the Line of Fire*, RADIO NETHERLANDS WORLDWIDE, 21 May 2011, quoting ICTY spokesperson Nerma Jelacic: “The site visit is standard procedure in the ICTY. ‘In general site visits are conducted by a Trial Chamber in order to get a proper impression – which cannot be gained from photographs and videos – of a geographic area in which the crimes are alleged to have been committed...’”

² *See, e.g., Prosecutor v. Karadžić*, IT-95-5/18-T, Decision on Site Visit, 28 January 2011; *Prosecutor v. Perišić*, IT-04-81-T, Order on Site Visit with Annex Containing Rules of Procedure and Conduct During Site Visit, 21 May 2009; *Prosecutor v. Martić*, IT-95-11-T, Order on Site Visit, 16 May 2006. The International Court of Justice’s Rules of Court also provide for the Court to conduct investigations through site visits. Article 66 states: “The Court may at any time decide, either *proprio motu* or at the request of a party, to exercise its functions with regard to the obtaining of evidence at a place or locality to which the case relates, subject to such conditions as the Court may decide upon after ascertaining the views of the parties. The necessary arrangements shall be made in accordance with Article 44 of the Statute.”

³ *See, e.g., Prosecutor v. Perišić*, IT-04-81-T, Order on Site Visit with Annex Containing Rules of Procedure and Conduct During Site Visit, 21 May 2009, Annex A; *Trial Chamber in Milan Martić Case to Visit Location of Alleged Crimes in Croatia and Bosnia and Herzegovina*, ICTY Press Release, 25 September 2006, available at <http://www.icty.org/sid/8698>. “The visiting delegation consists of judges from Trial Chamber I, as well as support staff from the Tribunal along with representatives of both the Prosecution and Defence.”

⁴ *See, e.g., Prosecutor v. Karadžić*, IT-95-5/18-T, Decision on Site Visit, 28 January 2011; *Prosecutor v. Perišić*, IT-04-81-T, Order on Site Visit with Annex Containing Rules of Procedure and Conduct During Site Visit, 21 May 2009; *Prosecutor v. Martić*, IT-95-11-T, Order on Site Visit, 16 May 2006; *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Decision on Site Visit Rule 4 of the Rules of Procedure and Evidence and Practice Direction on Site Visits, 10 May 2011; *Prosecutor v. Karemera & Ngirumpatse*, ICTR-98-44-T, Decision on Site Visit to Rwanda Rules 4 and 54 of the Rules of Procedure and Evidence, 23 November 2010;

Direction was issued on site visits. It states that Trial Chambers “shall, no later than 30 days before the closure of the evidence phase, invite all parties to make written submissions within 14 days following that announcement as to whether a visit to Rwanda should be conducted.”⁵

5. The ECCC does not have equivalent Rules or a Practice Direction, but it need not. Nothing prevents the Trial Chamber from exercising its functions anywhere in Cambodia. This can be seen from Rule 93, which expressly authorizes the Trial Chamber Judges to go anywhere within the territorial jurisdiction of the ECCC. Further, nothing prevents the Trial Chamber from issuing such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the preparation or conduct of the trial – this is the necessary function of a Trial Chamber.

II. RELIEF REQUESTED

WHEREFORE, for all the reasons stated herein, the Defence respectfully requests the Trial Chamber to CONDUCT site visits together with representatives from each party to each of the relevant sites described in the Closing Order.

Respectfully submitted,



 ANG Udom





 Michael G. KARNAVAS

Co-Lawyers for Mr. IENG Sary

Signed in Phnom Penh, Kingdom of Cambodia on this 31st day of **August, 2011**

Prosecutor v. Gatete, ICTR-2000-61-T, Decision on Site Visit to Rwanda *Rules 4 and 54 of the Rules of Procedure and Evidence*, 17 June 2010.

⁵ ICTR Practice Direction on Site Visits, 3 May 2010.