

**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:** 10 February 2012**CLASSIFICATION****Classification of the document  
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**IENG SARY'S MOTION TO STRIKE CO-PROSECUTORS' LEAVE TO REPLY  
AND REPLY TO IENG SARY'S RESPONSE REGARDING ADDITIONAL CRIME  
SITES WITHIN THE SCOPE OF TRIAL IN CASE 002/01**

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**Co-Prosecutors:**  
CHEA Leang  
Andrew CAYLEY

**All Defence Teams****All Civil Parties**

Mr. IENG Sary, through his Co-Lawyers (“the Defence”), hereby moves to strike the Co-Prosecutors’ Leave to Reply and Reply to IENG Sary’s Response Regarding Additional Crime Sites within the Scope of Trial in Case 002/01.<sup>1</sup> This motion is made necessary because the Co-Prosecutors have violated the Trial Chamber’s express direction that “replies may not be filed by any party without first having obtained leave of the Chamber.”<sup>2</sup> Had the Co-Prosecutors complied with the directive, there would be no need to file this submission given the pettiness of the Co-Prosecutors’ assertions.

1. The Trial Chamber has directed the parties that “[l]eave may be sought via an email enquiry to the Trial Chamber Senior Legal Officer, providing a brief outline of the issues considered necessary to be addressed in reply.”<sup>3</sup> The Co-Prosecutors are aware of this procedure, having utilized it in the past. The Co-Prosecutors have been specifically warned by the Trial Chamber Senior Legal Officer to communicate requests for leave to reply to the Trial Chamber Senior Legal Officer directly and not to communicate requests for leave to reply to the Judges.<sup>4</sup> The Defence assumes that the Co-Prosecutors did not seek leave to reply from the Trial Chamber Senior Legal Officer since the Defence received no notice of this and since the Co-Prosecutors have sought leave to reply in their filing.
2. Even had the Co-Prosecutors followed the correct procedure, no reply is warranted in this instance despite the Co-Prosecutors’ assertion that a reply is necessary due to “serious misrepresentations” by the Defence, i.e., that the Co-Prosecutors’ Request seeks reconsideration of the Severance Order. Setting aside the title of its submission, the Co-Prosecutors do indeed seek to go well beyond paragraph 4 of the Severance Order, which they now claim is the compass by which they were guided in making yet again another submission to enlarge the scope and go beyond the parameters set by the Trial Chamber for Case 002/01.

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<sup>1</sup> Co-Prosecutors’ Leave to Reply and Reply to IENG Sary’s Response Regarding Additional Crime Sites within the Scope of Trial in Case 002/01, 8 February 2012, E163/2 (“Leave to Reply & Reply”).

<sup>2</sup> Trial Chamber’s Disposition of Motions E91/2, E95/7, E99/1/1, E100/4/1, E101/3, E114/2, E119 and Response to General Direction on Replies (E112), 5 October 2011, E126, p. 1.

<sup>3</sup>*Id.*

<sup>4</sup> “You are also requested to remove the judges’ names from future correspondence of this sort, which is in clear breach of earlier directions given to the parties.” Email from Trial Chamber Senior Legal Officer to the OCP, 18 October 2011.

3. As for directing the Trial Chamber to the code of conduct for defence counsel, the Defence italicized the Co-Prosecutors' language obviously to highlight that it is not legal authority to which attribution should be given. Moreover, it was intentionally highlighted so that the Co-Prosecutors – who repeatedly call for sanctions as an attempt to restrain the Defence from litigating legitimate issues<sup>5</sup> – could readily recognize their own language.
4. Contrary to the Co-Prosecutors' assertion that the Response<sup>6</sup> is “a mere *tu quoque*,”<sup>7</sup> it merits re-emphasizing that the Co-Prosecutors repeatedly seek the expansion of the first trial after the Trial Chamber has made it unequivocally clear that it has no intention to reexamine or reconsider the Severance Order. The repeated lobbying by the Co-Prosecutors is not only inelegant, but it is an abuse of process; a naked disregard of the Trial Chamber's cautionary instructions to the parties that once a decision is made by the Trial Chamber, the parties need to move on – or seek recourse before a higher court.<sup>8</sup> It is supremely ironic that the Co-Prosecutors take offense at having their own language – as brazenly and gratuitously as it has been used in the past – used against them.

**WHEREFORE**, for all the reasons stated herein, the Defence respectfully requests the Trial Chamber to STRIKE the Co-Prosecutors' Leave to Reply and Reply to IENG Sary's Response Regarding Additional Crime Sites within the Scope of Trial in Case 002/01. The Trial Chamber should also caution the Co-Prosecutors to abide by the Trial Chamber's decisions and practices related to Case 002 – however inconvenient or undesirable they may appear to the Co-Prosecutors.

Respectfully submitted,


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<sup>5</sup> See, e.g., Leave to Reply & Reply, para. 10; Co-Prosecutors' Response to IENG Sary's Appeal against the Trial Chamber's Decision Refusing his Request for the Trial Chamber to Direct its Senior Legal Officer to Maintain Open and Transparent Communication with all the Parties, 1 February 2012, E154/1/1/2; Co-Prosecutors' Response to IENG Sary's Appeal against the Trial Chamber's Decision Requiring the Accused to be Physically Present to Hear Charges and Opening Statements, 12 January 2012, E130/4/2.

<sup>6</sup> IENG Sary's Response to the Co-Prosecutors' Request to Include Additional Crime Sites within the Scope of Trial in Case 002/01, 3 February 2012, E163/1.

<sup>7</sup> Leave to Reply & Reply, para. 7.

<sup>8</sup> See, e.g., Draft Transcript, 8 February 2012, p. 4, lines 17-21. “The Chamber has already addressed this before and that when the Chamber has ruled on it and you are not satisfied with such ruling, you can file an appeal against such decision before the eyes of the law and you are not allowed to make any further statements to the subject matter that has already been ruled.”



ANG Udom



Michael G. KARNAVAS

Co-Lawyers for Mr. IENG Sary

Signed in Phnom Penh, Kingdom of Cambodia on this **10<sup>th</sup>** day of **February, 2012**