

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:** 16 August 2012**CLASSIFICATION****Classification of the document
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**IENG SARY'S MOTION TO STRIKE NOTICE OF CO-PROSECUTORS' POSITION
ON KEY ISSUES TO BE DISCUSSED AT 17 AUGUST 2012 TRIAL MANAGEMENT
MEETING AND ITS ANNEX
OR, IN THE ALTERNATIVE, REQUEST TO RESPOND**

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The Trial Chamber Judges:
Judge NIL Nonn
Judge YOU Ottara
Judge YA Sokhan
Judge Silvia CARTWRIGHT
Judge Jean-Marc LAVERGNE
Reserve Judge THOU Mony
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”), moves to strike the Notice of Co-Prosecutors’ Position on Key Issues to be Discussed at 17 August 2012 Trial Management Meeting (with Confidential Annex A) (“Notice”),¹ or, in the alternative, requests leave to respond to this Notice within ten days of notification that this Motion to Strike has been denied. This submission is made necessary because the OCP has blatantly disregarded the Trial Chamber’s direction to raise any issues for discussion at the trial management meeting “to the Senior Legal Officer” and “no later than Friday 10 August 2012.”² The Trial Chamber set this deadline one week in advance of the Trial Management meeting presumably to ensure that the Chamber and all parties would have sufficient notice of the issues each party may seek to address. On Friday 10 August 2012, Deputy International Co-Prosecutor William Smith emailed the Trial Chamber Senior Legal Officer, copying all parties, to state that “[t]he Co-Prosecutors advise they have no further issues they intend to raise other than those arising out of the issues raised by the Chamber in **E218**.”³ However, yesterday afternoon, leaving only one full day before the trial management meeting, the OCP filed the 15-page Notice. This Notice introduces important new issues for the trial management meeting, including the proposal of additional witnesses⁴ and a proposal for the scheduling of the rest of the trial in Case 002/01, including the witnesses to be heard, their order, the dates and length of time to hear document presentations and document objections.⁵ The OCP has not sought leave to file this Notice and has failed to provide any justification for the tardiness of its submission or for its formal filing, rather than its submission to the Trial Chamber Senior Legal Officer as directed. The OCP acts as if it should be held to a different standard than the other parties. It is attempting to advocate for its position *after* learning the positions of each of the other parties. If, instead, the OCP filed this Notice merely to provide the public with information concerning its positions, it should have requested that the trial management meeting be held in public, as *all* of the other parties have done.⁶

¹ Notice of Co-Prosecutors’ Position on Key Issues to be Discussed at 17 August 2012 Trial Management Meeting (with Confidential Annex A), 15 August 2012, E218/2.

² Trial Chamber Memorandum entitled “Scheduling of Trial Management Meeting to Enable Planning of the Remaining Trial Phases in Case 002/01 and Implementation of Further Measures Designed to Promote Trial Efficiency”, 3 August 2012, E218, p. 1 (emphasis added).

³ Email from Deputy International Co-Prosecutor William Smith to Trial Chamber Senior Legal Officer Susan Lamb entitled “Trial Management Meeting,” 10 August 2012.

⁴ Notice, para. 10.

⁵ *Id.*, Confidential Annex A, E218/2.2.

⁶ *See* Email from IENG Sary Defence to Trial Chamber Senior Legal Officer entitled “Trial Management Meeting,” 10 August 2012; Email from KHIEU Samphan Defence to Trial Chamber Senior Legal Officer entitled “Trial Management Meeting,” 13 August 2012; Email from NUON Chea Defence to Trial Chamber

WHEREFORE, for all the reasons stated herein, the Defence respectfully requests the Trial Chamber to STRIKE the Notice of Co-Prosecutors' Position on Key Issues to be Discussed at 17 August 2012 Trial Management Meeting (with Confidential Annex A), or, in the alternative, to GRANT leave to respond to this Notice within ten days of notification that the Motion to Strike has been denied.

Respectfully submitted,

ANG Udom



Michael G. KARNAVAS

Co-Lawyers for Mr. IENG Sary

Signed in Phnom Penh, Kingdom of Cambodia on this 16th day of **August, 2012**

Senior Legal Officer entitled "Trial Management Meeting," 13 August 2012; Email from Civil Party Lead Co-Lawyers to Trial Chamber Senior Legal Officer entitled "TMM," 14 August 2012.