

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

FILING DETAILS

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**DEFENCE REQUEST TO THE TRIAL CHAMBER TO RULE ON ISSUES CRUCIAL TO ALL
DEFENDANTS AT THE TRIAL MANAGEMENT MEETING**

Defence for Ieng Thirith:

PHAT Pouv Seang
Diana ELLIS, QC

Trial Chamber Judges:

NIL Nonn, President
Silvia CARTWRIGHT
THOU Mony
Jean-Marc LAVERGNE
Ya SOKHAN

Civil Party Co-Lead Lawyers:

PICH Ang
Elisabeth SIMONNEAU FORT

Co-Prosecutors:

CHEA Leang
Andrew CAYLEY

I INTRODUCTION AND PETITION

1. On 19 January 2011, the defence for Ieng Sary filed its 'Ieng Sary's Motion to Conduct the Trial Through Half-Day Session' (**Request**).¹ The Co-Prosecutors filed their 'Co-Prosecutors' Observations on Ieng Sary's Motion to Conduct the Trial Through Half-Day Sessions' (**Observations**) on 1 February 2011.²
2. On 24 January 2011, the defence for Ieng Sary filed its 'Ieng Sary's Motion Requesting Guidelines for Civil Party Participation'.³
3. On 28 January 2011, the defence for Ieng Sary filed its 'Ieng Sary's Motion for the Trial Chamber to Conduct the Trial in Case 002 by following a Proposed Revised Procedure & Request for an Expedited Stay on the Order to file Materials in Preparation for Trial'.⁴ The Co-Prosecutors filed their 'Co-Prosecutors' Response to Ieng Sary's Motion for the Trial Chamber to Conduct the Trial in Case 002 by following a Proposed Revised Procedure & Request for an Expedited Stay on the Order to file Materials in Preparation for Trial'⁵ on 4 February 2011.
4. On 3 February 2011, the defence for Madame Ieng Thirith (**Accused**) was informed that the Trial Management Meeting will be held on 5-6 April 2011 and that 'an agenda for this meeting will follow in due course'.⁶

¹ Ieng Sary's Motion to Conduct the Trial Through Half-Day Sessions, 19 January 2011, Document No. E20.

² Co-Prosecutors' Observations on Ieng Sary's Motion to Conduct the Trial Through Half-Day Sessions, 1 February 2011, Document No. E20/1.

³ Ieng Sary's Motion Requesting Guidelines for Civil Party Participation, 24 January 2011, Document No. E23.

⁴ Ieng Sary's Motion for the Trial Chamber to Conduct the Trial in Case 002 by following a Proposed Revised Procedure & Request for an Expedited Stay on the Order to file Materials in Preparation for Trial, 28 January 2011, Document No. E9/3.

⁵ Co-Prosecutors' Response to Ieng Sary's Motion for the Trial Chamber to Conduct the Trial in Case 002 by following a Proposed Revised Procedure & Request for an Expedited Stay on the Order to file Materials in Preparation for Trial, 4 February 2011, Document No. E9/3/1.

⁶ TC, Interoffice Memorandum – Trial Chamber, 'Communication of dates of the Trial Management Meeting (Tuesday 5 April 2011 and Wednesday 6 April 2011)', 3 February 2011, Document No. E9/5.

5. On 7 February 2011, the defence was notified of the 'Ieng Sary's Motion Against the Use of Torture Tainted Evidence at Trial'.⁷
6. The defence hereby requests the Trial Chamber to decide on the issues of conducting the trial through half-day session, guidelines for Civil Party participation, revision of the conduct of the trial in Case 002, use of torture tainted evidence, as well as any other issues raised in the future by other parties which are crucial to the defendants, at the Trial Management Meeting.

II LEGAL PROVISIONS

7. Internal Rule 79(7) provides that:

In order to facilitate the fair and expeditious conduct of the proceedings, the Chamber may confer with the parties or their representatives, as applicable, by holding a trial management meeting. Such meeting shall be held in camera, unless the Trial Chamber decides otherwise. The purpose of this meeting will *inter alia* be to allow exchanges between the parties to facilitate the setting of the date of the initial or of the substantive hearings and to review the status of the case by allowing the Accused to raise issues in relation thereto, including his or her mental and physical condition.

III SUBMISSIONS

8. The defence submits that the issues of conducting trials through half-day sessions, guidelines for Civil Party participation, revision of the conduct of the trial procedure and the use of torture tainted evidence at trial are not only crucial to the defence for Ieng Sary, but to the defence for the all Accused persons as well. Those issues directly deal with the procedure and the management of the trial in Case 002 that is due to start later this year. Because of their fundamental nature, the defence contends that all relevant parties to the proceedings, including the defence for the Accused, should be given the opportunity to comment on them.

⁷ Ieng Sary's Motion Against the Use of Torture Tainted Evidence at Trial, 4 February 2011, Document No. E33.

9. The forthcoming Trial Chamber's decisions on the 'Ieng Sary's Motion to Conduct the Trial Through Half-Day Session', the 'Ieng Sary's Motion Requesting Guidelines for Civil Party Participation', the 'Ieng Sary's Motion for the Trial Chamber to Conduct the Trial in Case 002 by following a Proposed Revised Procedure' and the Ieng Sary's Motion Against the Use of Torture Tainted Evidence at Trial' will impact on the trial of all Accused persons. If the Trial Chamber were to decide on issues affecting all accused persons, the defence submits it should be allowed to make submissions on those issues, although it is anticipated that the matters may not be capable of resolution without further enquiry.
10. The Co-Prosecutors, in their Observations on the Ieng Sary's Motion to conduct half-day hearing sessions, dealt with the crucial issue of remote participation of the Accused persons by means of audio-video equipment as a substitute for their right to be present at trial.⁸ If the Trial Chamber decides on this Ieng Sary's motion based on the Ieng Sary and the Co-Prosecutors' submissions alone, without giving the opportunity to the defence to make submissions on the particular issue, its decision will greatly impact on the Accused.
11. The Trial Chamber has recently decided to conduct a Trial Management Meeting, with the purpose of facilitating the fair and expeditious conduct of the proceedings, as stated in Internal Rule 79(7).
12. As a matter of fairness, the defence contends that the four issues raised by the defence for Mr Ieng Sary should be discussed during the Trial Management Meeting and all relevant parties to the proceedings should be given the opportunity to express their views on those issues. Those issues pertain to crucial procedural issues that each Accused person should have the right to be heard on. The defence submits that the Trial Management Meeting is the most convenient

⁸ Co-Prosecutors' Observations on Ieng Sary's Motion to Conduct the Trial Through Half-Day Sessions, 1 February 2011, Document No. E20/1, paras 6-17.

forum in which to raise those issues. Preventing the defence to express its views on those issues will make the proceedings unfair.


13. As a matter of efficiency, the defence submits that it will not be expeditious if the Trial Chamber rules on those issues without having heard the views of the other Accused persons. The Accused, and other co-accused, will seek to raise those issues before the start of the trial of Case 002 as the four defendants are due to be tried all together. As a result, the defence contends that the Trial Management Hearing that is due to take place on 5-6 April 2011 is the most convenient time for all parties to the proceedings to raise the issues.
14. The defence for Mr Ieng Sary itself submitted in the above mentioned motions that those issues should be discussed during the Trial Management Meeting 'in order for all parties to express their views before the Trial Chamber'.⁹
15. The defence therefore submits that the proceedings will neither be fair nor expeditious if the Trial Chamber decides on those particular issues without allowing other parties to the proceedings to express their views on them. The Trial Chamber informed the parties that an agenda for the Trial Management Meeting will follow in due course. The defence submits that the issues of conducting the trial in half-day sessions, guidelines of Civil Party participation, revision on the conduct of the trial in Case 002 and the use of torture tainted evidence at trial should be added on the agenda.
16. Similarly, if any other fundamental issues relating to the trial proceedings in Case 002 are to be filed by a party to the proceedings, the defence requests the Trial Chamber to add such issue to the agenda for the Trial Management Meeting in order to hear all parties to the proceedings on the matter raised.

⁹ Ieng Sary's Motion Requesting Guidelines for Civil Party Participation, 24 January 2011, Document No. E23, p. 1; See also Ieng Sary's Motion to Conduct the Trial Through Half-Day Sessions, 19 January 2011, Document No. E20, p. 1; Ieng Sary's Motion for the Trial Chamber to Conduct the Trial in Case 002 by following a Proposed Revised Procedure & Request for an Expedited Stay on the Order to file Materials in Preparation for Trial, 28 January 2011, Document No. E9/3, para. 33.

IV CONCLUSION

17. The defence respectfully requests the Trial Chamber:

- To add the topics of conducting half-days trial hearings, guidelines for Civil Party participation, revision of the conduct of the trial in Case 002 and the use of torture tainted evidence at trial to the agenda for the Trial Management Meeting that is due to take place on 5-6 April 2011; and
- Not to rule on those issues before having heard all relevant parties to the proceedings.
- If any other issues crucial to all defendants are raised by a party to the proceedings, to add such issue to the agenda for the Trial Management Meeting and not to decide on them before having heard all parties to the proceedings.

Party	Date	Name Lawyers	Place	Signature
Co-Lawyers for Ieng Thirith	10 February 2011	PHAT Pou Seang Diana ELLIS, QC	Phnom Penh	 AVOCAT ATTORNEY AT LAW KINGDOM OF CAMBODIA