

E89/2

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

FILING DETAILS

Case No: 002/19-09-2007-ECCC/TC **Party Filing:** Co-Prosecutors
Filed to: Trial Chamber **Original Language:** English
Date of document: 6 June 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:

CO-PROSECUTORS' JOINT RESPONSE TO IENG SARY'S "MOTION TO ADD NEW TRIAL TOPICS TO TRIAL SCHEDULE" AND NUON CHEA'S "MOTION IN SUPPORT OF IENG SARY'S MOTION TO ADD NEW TRIAL TOPICS TO THE TRIAL SCHEDULE" AND REQUEST TO ADD ADDITIONAL TOPICS"

Filed by:

Co-Prosecutors
CHEA Leang
Andrew CAYLEY

Distributed to:

Trial Chamber
Judge NIL Nonn. President
Judge Silvia CARTWRIGHT
Judge YA Sokhan
Judge Jean-Marc LAVERGNE
Judge THOU Mony

Copied to:

Accused
NUON Chea
IENG Sary
IENG Thirith
KHIEU Samphan

Civil Party Lead Co-Lawyers
PICH Ang
Elisabeth SIMONNEAU FORT

Lawyers for the Defence
SON Arun
Michiel PESTMAN
Victor KOPPE
ANG Udom
Michael G. KARNAVAS
PHAT Pouv Seang
Diana ELLIS
SA Sovan
Jaques VERGES

ឯកសារដើម

ORIGINAL DOCUMENT/DOCUMENT ORIGINAL

ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/Date de reception):

..... 06 / 06 / 2011

ម៉ោង (Time/Heure):

15 : 45

អ្នកទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé

du dossier:

SANN BADA

I. INTRODUCTION

1. On 23 May 2011 Ieng Sary through his Defence filed his “Motion to Add New Trial Topics to Trial Schedule” (the ‘Ieng Sary Request’).¹ On 25 May 2011 Nuon Chea through his Defence filed his “Motion in Support of Ieng Sary’s Motion to Add New Trial Topics to the Trial Schedule’ and Request to Add Additional Topics (the ‘Nuon Chea Request’).”² Combined, the Defence would like to add a further 10 topics to those indicated by the Trial Chamber on 5 April 2011³ - 8 identified by the Ieng Sary Defence and joined by the Nuon Chea Defence who also added a further 2 topics.
2. The Co-Prosecutors are aware that the Trial Schedule outlined by the Trial Chamber only represented “an early indication of the sequencing of the beginning of the trial”⁴ and not the sequencing of the trial as a whole. To assist the Trial Chamber in the scheduling of the rest of the trial the Co-Prosecutors re-submit its previously recommended Trial Schedule in an amended form to conform with the Trial Chamber’s current indications (See Annex A).⁵

II. BACKGROUND AND DISCUSSION

3. On 3 June 2011, the Trial Chamber rejected ‘at this stage’ these two Requests from the Defence to add certain pre-1975 and post-1979 topics “in addition to the list of those issues that the Trial Chamber has already indicated will be heard at trial.” They further stated “ [B]ackground contextual issues and events outside the temporal jurisdiction of the ECCC will be considered by the Chamber only when demonstrably relevant to matters within the ECCC’s jurisdiction and the scope of the trial as determined by the Trial Chamber.”
4. It is submitted that the Trial Chamber has adopted the correct approach when dealing with contextual issues. As outlined in Rule 98(6) the primary focus of the Trial Chamber must be the determination of the truth of the “acts set out in the Indictment” and whether

¹ Document No. E89, “Ieng Sary’s Motion to Add New Trial Topics to Trial Schedule”, 23 May 2011, ERN 00698988-00698993 (‘Ieng Sary’s Request’).

² Document No. E89/1, “Motion in Support of Ieng Sary’s Motion to Add New Trial Topics to the Trial Schedule”, 25 May 2011, ERN 00699769-00699773 (‘Nuon Chea’s Request’).

³ Document No. E1/2.1, “Transcript of Hearing, Trial Management Meeting, Closed Session”, 5 April 2011, ERN 00664215-00664345 (“Trial Management Meeting”)

⁴ Trial Management Meeting at p. 51-52.

⁵ It is requested that the Trial Chamber accept the filing of this document in one language, pursuant to Article 7.2 of the Practice Direction on Filing of Documents before the ECCC on the basis that the Co-Prosecutors current case workload has not allowed enough time to be able to translate the document within the deadline specified. A translation will be provided as soon as possible.

or not the Accused is guilty of those acts. The Trial Chamber is not required to make a finding on each and every fact in the Indictment however it is clear that their findings can only be limited to those facts as required by Rule 98(2). By allowing the Parties, at a later stage, to request these or other topics to be addressed when they can satisfy a demonstrable relevant link to the matters within the ECCC's jurisdiction and the Trial Chamber's scope of the trial - ensures the fairness of the process.

5. In any event, it is clear that many of the topics raised by Ieng Sary and joined by Nuon Chea have the opportunity of being addressed to experts and witnesses when they testify to the crimes and the role of the Accused as described in the Indictment. It is submitted creating separate segments of the case at this stage purely for the purpose of this contextual evidence would therefore be redundant and otherwise inefficient. The Trial Chamber has already stated that as a “[a]s a general rule, [the Trial Chamber] will endeavour to hear witnesses once only on all topics to which a particular witness can testify, rather than recalling the same witnesses multiple times.”⁶ Consequently, there must be a greater emphasis on allowing for witnesses and experts to speak on all topics that they are able to give relevant and probative testimony on one occasion - rather than to overly compartmentalize the proceedings and have witnesses or experts return at multiple times.
6. The Defence topics relating to the recognition of Democratic Kampuchea as a legitimate government and the nature of the Peoples Republic of Kampuchea do not relate to material facts on which the judgment is critically dependant and consequently no separate part of the case in which experts and witnesses be called on this issue is necessary. Such topics should be raised where it can be shown that the evidence would be “demonstrably relevant.” At this stage it is submitted this has not been demonstrated by either Defence team. With regard to the fair trial concerns raised, the Co-Prosecutors have previously submitted that if the Defence wish to challenge the results of the investigation or other issues, the correct remedy is to propose evidence which may disprove the allegations against him.

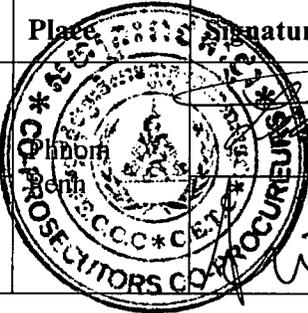
⁶ Trial Management Meeting at 00664269.

E89/2

III. RELIEF REQUESTED

7. In light of the Trial Chamber's recent decision on the two Defence Motions, the Co-Prosecutors simply request that the Trial Chamber provide as much advanced notice of the scheduling of the trial to the parties and that they further consider the recommended structure previously proposed by the Co-Prosecutors attached in **Annex A** in its amended form.

Respectfully submitted

Date	Name	Place	Signature
6 June 2011	CHEA Leang Co-Prosecutor		
	Andrew CAYLEY Co-Prosecutor		