



**ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ**

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា
Extraordinary Chambers in the Courts of Cambodia
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

អង្គជំនុំជម្រះសាលាដំបូង
Trial Chamber
Chambre de première instance

សំណុំរឿងលេខ: ០០២/១៩ កញ្ញា ២០០៧/អវតក/អជសដ
Case File/Dossier No. 002/19-09-2007-ECCC/TC

ឯកសារដើម
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/date de reception): 22 / 09 / 2011
ម៉ោង (Time/Heure) : 16:15
មន្ត្រីទទួលបន្ទុកសំណុំរឿង / Case File Officer/L'agent chargé du dossier: Ratanak

Before: Judge NIL Nonn, President
Judge Silvia CARTWRIGHT
Judge YA Sokhan
Judge Jean-Marc LAVERGNE
Judge YOU Ottara

Date: 22 September 2011
Original language(s): Khmer/English/French
Classification: PUBLIC

SEVERANCE ORDER PURSUANT TO INTERNAL RULE 89TER

Co-Prosecutors
CHEA Leang
Andrew CAYLEY

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
Jacques VERGÈS

1. INTRODUCTION

1. During the Trial Management Meeting and Initial Hearing, on 5 April 2011 and 27 June 2011 respectively, the Trial Chamber provided notice to the parties of the likely sequencing of the trial in Case 002, indicating that the Chamber intended to commence the hearing of the substance in Case 002 in the following order:

- a) The structure of Democratic Kampuchea;
- b) Roles of each Accused during the period prior to the establishment of Democratic Kampuchea, including when these roles were assigned;
- c) Role of each Accused in the Democratic Kampuchean government, their assigned responsibilities, the extent of their authority and the lines of communication throughout the temporal period with which the ECCC is concerned; and
- d) Policies of Democratic Kampuchea on the issues raised in the Indictment.¹

2. No decisions had at that stage been taken regarding the separation of proceedings in Case 002 pursuant to Internal Rule 89*ter*. By this Order, the Trial Chamber advises the parties and the public that it has decided pursuant to this Rule to separate the proceedings in Case 002 into a number of discrete cases that incorporate particular factual allegations and legal issues. To facilitate effective pre-trial preparation in the first case to be tried, the Chamber will shortly issue further details to the parties and the public concerning the portions of the Indictment relevant to the first trial.

2. DELIBERATIONS

3. On 23 February 2011, the ECCC Plenary adopted Internal Rule 89*ter*, which provides:

Rule 89*ter*. Severance
(Adopted on 23 February 2011)

When the interest of justice so requires, the Trial Chamber may at any stage order the separation of proceedings in relation to one or several accused and concerning part or the entirety of the charges contained in an Indictment. The cases as separated shall be tried and adjudicated in such order as the Trial Chamber deems appropriate.

4. According to this Rule, the Chamber may separate trial proceedings in Case 002 in relation to all or part of the charges contained in the Indictment where it considers the interests of justice to so require. Rule 89*ter* also permits the separation of proceedings in relation to one or several accused. Although the Chamber is presently seised of motions challenging the fitness to stand trial of two Accused, decisions on these motions are still

¹ T. 5 April 2011 (Trial Management Meeting), p. 52; *see also* T. 27 June 2011 (Initial Hearing), p. 8.

pending.² This Order is therefore limited to a determination of the subject-matter of the first trial and does not concern the Chamber's personal jurisdiction in relation to any of the Accused in Case 002.

5. The Trial Chamber has determined separation of proceedings to be in the interests of justice. In addition to the areas listed in paragraph 1, the first trial in Case 002 shall comprise:

- a) Factual allegations described in the Indictment as population movement phases 1 and 2; and
- b) Crimes against humanity including murder, extermination, persecution (except on religious grounds), forced transfer and enforced disappearances (insofar as they pertain to the movement of population phases 1 and 2).

6. The Trial Chamber may at any time decide to include in the first trial additional portions of the Closing Order in Case 002, subject to the right of the Defence to be provided with opportunity to prepare an effective defence and all parties to be provided with timely notice. At the conclusion of the first trial, a verdict in relation to these allegations, and appropriate sentence in the event of conviction, will be issued.

7. No co-operatives, worksites, security centres, execution sites or facts relevant to the third phase of population movements will be examined during the first trial. Further, all allegations of, *inter alia*, genocide, persecution on religious grounds as a crime against humanity and Grave Breaches of the Geneva Conventions of 1949 have also been deferred to later phases of the proceedings in Case 002.

8. Under the applicable legal framework, Civil Parties no longer participate individually on the basis of their particular harm suffered, but instead comprise a consolidated group whose collective interests are represented by the Civil Party Lead Co-Lawyers during the trial stage and beyond.³ Limiting the scope of facts to be tried during the first trial accordingly has no impact on the nature of Civil Party participation at trial, and their formulation of reparations claims made on their behalf by the Lead Co-Lawyers should take account of Internal Rule 23*quinquies* (1)(a).⁴ The number of witnesses, Experts and Civil Parties to be called by the Chamber will be limited to those whose proposed testimony is required for the first trial. Separation of proceedings will enable the Chamber to issue a verdict following a shortened

² See e.g. NUON Chea's Urgent application of appointment of fitness expert, E30, 2 February 2011; Request for Appointment of a Neuropsychiatrist to Assess Madame IENG Thirith's Fitness to Stand Trial, E52, 22 February 2011.

³ Internal Rule 23(3).

⁴ Internal Rule 23 *quinquies* (1)(a) provides that "... Collective and moral reparations for the purpose of these Rules are measures that ... acknowledge the harm suffered by Civil Parties as a result of the commission of the crimes for which an Accused is convicted."

trial, safeguarding the fundamental interest of victims in achieving meaningful and timely justice, and the right of all Accused in Case 002 to an expeditious trial.

9. The Chamber is seised of a number of motions from the parties whose determination is consequentially affected by this Order. The IENG Sary Defence, on 31 August 2011, requested the leave of the Chamber to conduct site visits in order to “observe the geography, topography and physical relationships between locations referred to in the Closing Order.”⁵ As no co-operatives, worksites, security centres or execution sites are included within the scope of the first trial, decision on this motion is accordingly premature.⁶ In view of the subject-matter of the first trial, decision on the Co-Prosecutors’ “Request for the Trial Chamber to recharacterize the facts establishing the conduct of rape as the crime against humanity of rape rather than the crime against humanity of other inhumane acts” (E99) is also premature at this stage and has been deferred to later stages of the trial. Decision on the corresponding parts of the IENG Sary Motion to Strike Portions of the Closing Order due to Defects (E58) is for the same reasons also deferred to a later date.⁷

FOR THE FOREGOING REASONS, THE TRIAL CHAMBER:

ORDERS in relation to the Closing Order in Case 002 the separation of proceedings concerning the charges and factual allegations described in paragraph 5 of this Order;

INDICATES that it will soon provide to the parties and public further details of the paragraphs and portions of the Closing Order relevant to the first trial in Case 002;

DEFERS its decision on Motions E58, E99 and E113 and the other pending matters referred to in paragraph 9 of this Order to later phases of the proceedings; and

INDICATES that further information regarding subsequent cases to be tried in the course of Case 002 will be provided to the parties and the public in due course. *gt je*

Phnom Penh, 22 September 2011

President of the Trial Chamber



gt je
Nil Nonn

⁵ IENG Sary’s Motion to the Trial Chamber to Conduct Site Visits, E113, 31 August 2011, preamble.

⁶ Motion E113 makes no specific reference to crime sites relevant to the first trial.

⁷ See e.g. IENG Sary’s Motion to Strike portions of the Closing Order due to Defects, E58, 24 February 2011, paras. 7-11 (pertaining to the crimes of genocide and the crime against humanity of deportation). Resolution of the following portions of various preliminary objections filed by the parties is similarly deferred to a later date: IENG Thirith’s Preliminary Objection concerning the Jurisdiction of the Trial Chamber, E44, 14 February 2011, paras 25-30 (pertaining to forced marriage and rape within forced marriage); Summary of IENG Sary’s Rule 89 Preliminary Objections [...], E51/4, 25 February 2011, para. 27(e) (incorporating by reference earlier submissions on the characterisation and definition of torture as a crime against humanity and imprisonment as a crime against humanity).