

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: 27 March 2013

CLASSIFICATION

Classification of the document suggested by the filing party: PUBLIC (with Confidential Annex A)

Classification by Trial Chamber: សាធារណៈ/Public

Classification Status:

Review of Interim Classification:

Records Officer Name:

Signature:



**CO-PROSECUTORS' PROPOSED TRIAL SCHEDULE
(WITH CONFIDENTIAL ANNEX A)**

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 YOU Ottara

Civil Party Lead Co-Lawyers
PICH Ang
Elisabeth SIMONNEAU FORT

Copied to:

Accused
NUON Chea
KHIEU Samphan

Lawyers for the Defence
SON Arun
Victor KOPPE
KONG Sam Onn
Jacques VERGÈS
Arthur VERCKEN
Anta GUISSÉ

REQUEST

1. The Co-Prosecutors submit in **Annex A** their proposed schedule for the completion of trial proceedings in this case.¹ This proposed schedule revises the previous plan put forward by the Co-Prosecutors at the August 2012 Trial Management Meeting,² in view of the Co-Prosecutors' submission regarding the scope of trial made during the hearings held on the week of 18 February 2013, the death of Ieng Sary and other developments in the proceedings since last year. As the schedule is based on the Co-Prosecutors' proposed severance, it includes the S-21 crime site that the Co-Prosecutors have submitted should be added to the scope of Case 002/01.
2. The trial schedule proposed by the Co-Prosecutors would complete evidentiary hearings (including S-21 witnesses) by the end of July 2013, after which the Trial Chamber would recess and then resume proceedings in September 2013 to hear closing arguments from the parties. The schedule assumes that the hearing of witnesses resumes by 8 April 2013. It proposes a specific number of court days each month, taking into account holidays and recesses that have been announced by the Court. The number of expected court days for each month appears in italics following the heading for that month in **Annex A**.³
3. The proposed trial schedule starts with the completion of 12 witnesses, civil parties and experts previously selected by Trial Chamber to testify on 1st Phase issues (including the CPK military structure and the role of the Accused), the Forced Movement crimes and the Tuol Po Chrey execution site. The suggested total time allocation for each witness, civil party or expert appears in bold immediately prior to the name of such person. In view of the delays experienced since the start of this year, the Co-Prosecutors have proposed that the

¹ **Annex A** OCP Proposed Trial Schedule.

² **E218/2.1** OCP Proposed Trial Schedule, 15 August 2012.

³ The proposed trial days for each month are: April 8-12, 22-26 & 29-30 (12 days); May 2-3, 6-9, 20-23, 27 & 29-31 (14 days); June 4-7, 10-13, 17, 19-21 & 24-27 (16 days); July 1-4, 8-11, 15-18, 22-25 & 29-31 (19 days). A small number of Friday sittings are proposed, primarily to make up for lost days resulting from scheduled holidays on or around those weeks.

total time allocated to certain witnesses be reduced,⁴ and that the Chamber defer its plan to hear testimony from TCE-80.⁵

4. Following the completion of the 12 witnesses, civil parties and experts selected by the Trial Chamber, it is proposed that eight days be allocated to the hearing of additional witnesses proposed by the Co-Prosecutors, which witnesses are necessary to meet their burden of proof on issues such as the role of the Accused, the existence of a JCE (in relation to the forced movements of the population, the targeting of people associated with the Lon Nol regime and the re-education or smashing of enemies) and the commission of the charged crimes. After the eight days allocated to the Co-Prosecutors, it is proposed that twelve days be allocated to the hearing of fact and character witnesses proposed by the Defence, followed by four days allocated to the hearing of civil parties on victim impact.
5. The Co-Prosecutors have identified in **Annex A** the witnesses and civil parties they propose to be heard during their eight-day block of time. All of these witnesses were proposed by the Co-Prosecutors in their initial Rule 80 witness list filed in January 2011,⁶ with the exception of one new witness who was the subject of a recent request for investigation.⁷ Many of these witnesses are proposed to be heard in a half-day period, in which the Co-Prosecutors would primarily rely on their existing witness statement and conduct only a limited examination on the essential information provided by the witness, leaving sufficient time for cross-examination by the defence.
6. Most of the witnesses proposed by the Co-Prosecutors have been selected because they provide significant information regarding the acts or conduct of the Accused. Pursuant to the Trial Chamber's 20 June 2012 decision, such parts of their witness statements would not

⁴ Specifically, it is proposed that the time for hearing TCW-110 be reduced from 2 days to 1 day, that TCW-536 be reduced from 2.5 to 2 days, and that experts TCE-33 and TCE-65 be reduced from 4 to 3 days.

⁵ The Co-Prosecutors instead propose that TCE-80 only be heard in the event that the Chamber is unable to schedule either TCE-33 or TCE-65 for testimony (in person or by video-link). The reason for giving priority to TCE-33 and TCE-65 is that these two experts have also been requested and singled out as important, respectively, by the Nuon Chea and Khieu Samphan defence teams.

⁶ **E9/4.1** Annex 1 to Co-Prosecutors' Rule 80 Expert, Witness and Civil Party Lists, 28 January 2011.

⁷ **E266** Co-Prosecutors' Rule 93 Request to Open an Investigation into the Whereabouts of Potential Witness, 19 February 2013.

be admissible unless these witnesses are called and made available for cross-examination.⁸
A short summary of the reason for calling each of the proposed witnesses is set forth below:

- (a) TCCP-186 provides a detailed account of political education provided by Khieu Samphan and Nuon Chea to CPK cadres on subject matters such as the 17 April victory, arrests and smashing of internal enemies (including Lon Nol soldiers, police and civil servants).⁹
- (b) TCW-505 was the Secretary of Tram Kak District during the first part of the DK period. He attended the annual political education sessions led by Nuon Chea for all district secretaries throughout the country where they were instructed by Nuon Chea to “control the people.” The witness also confirms the separation and disappearance of Lon Nol soldiers from the 17 April evacuees sent to Tram Kak District.¹⁰
- (c) TCW-164 describes political indoctrination sessions at Borei Keila where Khieu Samphan discussed the arrest of Pâng from Office 870 because “he was a traitor collaborating with the Yuon,” and Nuon Chea described the treason of Koy Thuon and his North Zone group.¹¹
- (d) TCW-781 is a Ministry of Commerce worker who describes arrests and disappearances of workers called for “study sessions,” inspections of ministry warehouses by Khieu Samphan, Van Rith and Nuon Chea, and a meeting held in early January 1979 where the three announced the end of “calls for study sessions” because of the need to be “unified to fight the enemy.”¹²
- (e) The new witness proposed by the Co-Prosecutors (who is the subject of a pending investigative request and whose identity is thus kept confidential) describes the pre-1975 deliberations of CPK leaders regarding forced movements, and indicates that Khieu Samphan was in favor of the evacuation of Phnom Penh.¹³
- (f) TCW-720 conducted numerous interviews of Nuon Chea that were used for a documentary film, and published a book based on a manuscript written and provided to

⁸ **E96/7** Decision on Co-Prosecutors’ Rule 92 Submission Regarding the Admission of Witness Statements and Other Documents Before the Trial Chamber, 20 June 2012, para. 21-22.

⁹ **D230/1.1.874c** DC-Cam Interview, 5-6 May 2009, pp. 39-40, 55-66.

¹⁰ **E3/401** OCIJ Written Record of Interview, p. 6; **D232/16** OCIJ Written Record of Interview, pp. 7-8.

¹¹ **E3/474** (D94/8) OCIJ Written Record of Interview, pp. 4-5.

¹² **E3/437** (D279/3) OCIJ Written Record of Interview.

¹³ **D313/1.2.405** Interview by Ben Kiernan, 26 August 1981, p. 1.

him by Nuon Chea.¹⁴ That book contains detailed statements regarding Nuon Chea's role in the DK regime and its security apparatus, and the collective process by which CPK leaders decided policies and other matters. It is the most extensive account of the DK regime from any senior leader.

- (g) TCW-725 provides important testimony regarding the JCE by which ministry heads and CPK leaders collectively participated in arrests and purges of DK organisations. The witness personally met with and made requests to Khieu Samphan for medical supplies, confirming his responsibility for commerce matters, and describes a visit by Nuon Chea to the Ministry of Social Affairs.¹⁵
- (h) TCW-354 is a former K-1 cadre who states that Pol Pot, Nuon Chea and Khieu Samphan were always together at K-1 and that Khieu Samphan was above Pâng,¹⁶ which testimony illustrates Khieu Samphan's role at Political Office 870.
- (i) TCW-648 and TCW-696 are Ministry of Commerce cadres who describe the structure of the ministry, purges of its cadres and Khieu Samphan's inspections of ministry warehouses at Tuol Tumpoung. TCW-648 also attended a meeting led by Khieu Samphan in early January 1979 at which he directed cadres on preparations to defend against the Vietnamese.¹⁷ (The Trial Chamber has so far only heard the evidence of one witness from the Ministry of Commerce – Sakim Lmut. Because this ministry operated under the authority and supervision of Khieu Samphan, further witnesses should be heard, consistent with the Chamber's approach to the Ministry of Foreign Affairs.)
- (j) TCW-79 was a Division 502 cadre assigned to supervise the Kampong Chhnang airport construction site, who states that Khieu Samphan visited the site and met with the site leaders.¹⁸ His testimony thus demonstrates Khieu Samphan's role as a senior leader who had knowledge of and involvement in a military site used for the tempering of soldiers.
- (k) TCW-386 and TCW-651 were district soldiers who describe how, following meetings and orders issued by CPK officials, Lon Nol soldiers, civil servants and capitalists were identified amongst the 17 April evacuees and taken for execution. Both witnesses were

¹⁴ **E1/22.1** Transcript of Trial Proceedings, 14 December 2011, pp. 44-45, 50-51; **E152.2**.

¹⁵ **D199/18** Written Record of Interview, 5 June 2009, p. 3; **E3/378** Written Record of Interview, pp. 2-4.

¹⁶ **D224.17** SOAS Interview, 27 July 2005.

¹⁷ **E3/472** OCIJ Written Record of Interview, pp. 3-4; **IS 19.177** DC-Cam Interview, 13 February 2003, pp. 37-38; **IS 19.192** DC-Cam Interview, 2 February 2003, p. 38.

¹⁸ **D166/116** OCIJ Written Record of Interview, p. 6.

present at the locations where such executions occurred.¹⁹ Their district was a key CPK base at which Pol Pot, Nuon Chea and Khieu Samphan were located in the months leading up to 17 April 1975, and which was subsequently recognized by the CPK Central Committee as one of three “model districts” in the country.²⁰

7. With respect to the 12 day period proposed for the hearing of Defence fact and character witnesses, the Co-Prosecutors believe it is necessary before the conclusion of the trial that the Accused be provided a reasonable opportunity to call both factual and character witnesses that they determine to be necessary for their defence. The Trial Chamber has previously allocated 3 days total to each Defence team for the hearing of character witnesses. The Co-Prosecutors propose that this be increased to 6 days for each Defence team, and that the Defence be allowed to propose either fact or character witnesses. Witnesses proposed by the Accused (and Co-Prosecutors) would of course be subject to approval by the Trial Chamber, pursuant to Internal Rule 87.
8. The 12-day time block for the Defence in **Annex A** includes two fact witnesses proposed by the Defence who have already been accepted by the Trial Chamber (TCW-570 and TCW-126). Two other witnesses requested by the Nuon Chea Defence were previously approved by the Chamber as reserve forced movement witnesses (TCW-258 and TCW-643), and the Co-Prosecutors agree that the Defence request to call either TCW-230 or TCW-539 is reasonable. The Co-Prosecutors do not believe the Defence has any legitimate reason to call its proposed witnesses on the pre-1975 US bombing (such as TCW-342, TCW-62 and TCW-628), as numerous witnesses have already testified to this fact, the occurrence of such bombing is not disputed by any party and the subject can be further addressed (if necessary) through expected upcoming expert witnesses. The Khieu Samphan Defence has proposed a number of fact and character witnesses, and the Co-Prosecutors have previously stated that they do not object to those witnesses.
9. The evidentiary phase of trial proceedings proposed in **Annex A** would conclude with the hearing of S-21 witnesses (subject to the Trial Chamber’s inclusion of this crime site in the

¹⁹ **D125/68** OCIJ Written Record of Interview, pp. 5-7; **D125/91** OCIJ Written Record of Interview, p. 5.

²⁰ **E3/135** Revolutionary Flag, Issue 6, June 1977, at ERN 00446848-52

scope of trial following any severance) and the completion of remaining essential document hearings. The proposed schedule for S-21 includes the five witnesses previously proposed by the Co-Prosecutors (all of whom are also requested by the Nuon Chea Defence) and a discretionary period of four days for any further witnesses proposed by the Defence or Civil Parties and deemed necessary by the Trial Chamber.

10. In relation to the existence of an armed conflict, the Co-Prosecutors do not believe it is necessary to call TCE-10, or any other witnesses beyond those already planned. Following the Trial Chamber's comments made at the 25 March 2013 hearing, the Co-Prosecutors have reviewed the record from the Case 001 trial, and note that TCE-10 was the only witness called by the Chamber on the existence of an armed conflict, and that his testimony was completed in less than a day and a half.²¹ Moreover, the Trial Chamber has ruled that "the existence of an international armed conflict" is one of the subjects on which witness statements may be admitted and considered without the attendance of the witness at trial.²² Even if TCE-10 is not called, the Chamber will hear more witnesses on armed conflict in this trial than it did in the Case 001 trial, including TCW-398 (who will describe Son Sen's reporting to the leaders in Phnom Penh on the military conflict with Vietnam), TCW-110 and TCW-253 (Southwest military commanders reassigned to the front with Vietnam) and a number of witnesses who have already testified (e.g., Sao Sarun and the Accused Nuon Chea himself, who made repeated references to the conflict with Vietnam). The Co-Prosecutors finally note that, unlike Case 001, where Duch did not receive the contemporaneous documents discussing the armed conflict, in this case the Accused's knowledge of the armed conflict is directly proven by reports they received, minutes of meetings they attended and speeches or statements they made. Issues regarding the armed conflict can thus be expeditiously addressed at trial without any change or extension to the current proposed trial schedule.

11. In relation to document hearings, the Co-Prosecutors Proposed Trial Schedule includes one day for document presentations regarding the role of Nuon Chea, and a total of 4 days at the end of the proceedings for hearings relating to the admissibility of written witness



²¹ **D288/4.24.1** Transcript of Trial Proceedings (Case 001), 25 May 2009; **D288/4.25.1** Transcript of Trial Proceedings (Case 001), 26 May 2009.

²² **E96/7** Decision on Co-Prosecutors' Rule 92 Submission Regarding the Admission of Witness Statements and Other Documents Before the Trial Chamber, 20 June 2012, para. 24(b).

statements, additional S-21 documents not already admitted by the Trial Chamber's prior rulings and for the resolution of any objections to documents alleged by the Defence to have not been translated. (Proposed document hearings are in purple font in **Annex A** for ease of reference.) The Co-Prosecutors have not included in **Annex A** document presentations relating to JCE policies, but believe such presentations should proceed in the event court days become available as a result of illness of the Accused or unavailable witnesses, and will be prepared to proceed with such document presentations on short notice.

12. The proposed schedule allows for a recess beginning at the start of August 2013. The Co-Prosecutors submit that closing briefs should be filed by the parties six weeks following the conclusion of the evidentiary proceedings (i.e., mid-September 2013), initially in one language if translations cannot be completed by such time, and that closing arguments should be scheduled for the end of September 2013.

Respectfully Submitted,

| Date | Name | Place | Signature |
|---------------|--------------------------------|------------|---|
| 27 March 2013 | CHEA Leang Co-Prosecutor | Phnom Penh |  |
| | Andrew CAYLEY Co-Prosecutor | |  |