

BEFORE THE TRIAL CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

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**CO-PROSECUTORS' MOTION FOR THE PRIORITISATION OF TESTIMONIES OF
ELDERLY WITNESSES**

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I. INTRODUCTION

1. The Co-Prosecutors respectfully request the Trial Chamber to prioritise the scheduling of testimony of those witnesses and civil parties listed in the current Partial List of Witnesses, Experts and Civil Parties¹ ('Current Witness List') who are over 70 years of age. A list of witnesses and civil parties who are the subject of the present request is attached ('Annex A').
2. Further, the Co-Prosecutors hereby notify the Trial Chamber and the other parties of their intention to seek leave to examine the elderly witnesses and civil parties listed in Annex A on all issues on which they are able to testify within the scope of the Case 002 Closing Order.

II. PRIORITISATION OF ELDERLY WITNESSES

3. The Co-Prosecutors are grateful to the Chamber for its efforts to maintain an efficient system of scheduling of witness testimonies, and to provide advance notice to the parties of the order in which witnesses and civil parties are being called. The Co-Prosecutors appreciate that significant logistical challenges are involved in the process of communicating with witnesses who live in remote parts of Cambodia, and arranging their appearances before the Court.
4. To further facilitate the Chamber's effective management of the trial, the Co-Prosecutors submit that elderly witnesses and civil parties should be given priority in the order of call, wherever possible. While this may, in some cases, lead to witnesses and civil parties being heard "out of order" (in terms of the specific areas for which they are primarily being called to testify), the Co-Prosecutors submit that the need to secure the testimonies of these individuals as soon as possible outweighs any limited inconvenience which the parties may encounter in their preparation.
5. It is a practical reality in Cambodia that, with any witness or civil party who is over 70 years of age, the risk of unavailability to testify increases significantly with the passage of time. The average life expectancy of Cambodians is 61 years of age.² The Co-Prosecutors therefore respectfully submit that the advanced age of witnesses and civil parties, and of course any significant health concerns identified by the Witness and Expert Support Unit, should be considered a critical factor in the process of determining the order of call. It is pertinent to note that several persons listed in **Annex A** are in fact close to or over 80 years of age. The Co-Prosecutors do note that two of the elderly witnesses and civil parties listed in **Annex A**, TCW-321 and TCW-583, are scheduled to give testimony in the next trial session.

¹ **E131/1.1** – Confidential Annex A: Partial List of Witnesses, Experts and Civil Parties for First Trial in Case 002, 25 October 2011.

² World Health Organisation, Country Statistics, 2012, at: <http://www.who.int/countries/khm/en/>

6. The Trial Chamber has recently provided additional advance information regarding the scheduling of the testimonies of expert witnesses.³ The Co-Prosecutors note that two of the expert witnesses who will not be testifying in the immediate future (David Chandler and Henri Locard) are aged over 70 years. The Chamber may also wish to take into account this fact in scheduling their testimonies.

III. SCOPE OF TESTIMONY TO BE GIVEN BY ELDERLY WITNESSES

7. The Chamber has indicated that, in the course of this trial, an oral application should be made by any party which seeks to question a witness or civil party on all matters relevant to Case 002, including matters that may form the subject of future trials.⁴ In order to facilitate effective trial management, the Co-Prosecutors give this advance notice of their intended requests to examine the elderly witnesses and civil parties listed in Annex A on the full scope of Case 002. The notice is based on a good faith assessment of the age and available statements of witnesses on the Current Witness List, and is without prejudice to the Co-Prosecutors' right to make future requests with respect to other witnesses or civil parties who may be unavailable to testify in subsequent trials.
8. The issue of the scope of testimony of elderly witnesses and civil parties must be considered in the context of the current stage and level of complexity of the case. As ruled by the Chamber, the evidence adduced in this trial may be relied upon in, and is thus foundational in relation to, subsequent trials in Case 002.⁵ The present phase of trial 002/1 deals with highly complex factual and contextual issues, including the establishment of the five criminal policies alleged in the Closing Order.⁶ Given the breadth and complexity of these issues, it would appear unlikely that the first phase can be concluded before the end of 2012. Of course, the second phase will itself involve hearing a number of witnesses in relation to the crime base events identified in the Severance Order, and any other portions of the Closing Order which the Chamber may include in this first trial.⁷
9. Considering these factors, it would be reasonable to estimate that the commencement of the next trial is well over a year, and possibly closer to two years, away. Therefore, despite the

³ E172/17 - Further Information Regarding Scheduling of Proposed Experts, 17 April 2012.

⁴ E145 – Notice of Trial Chamber's disposition of remaining pre-trial motions (E20, E132, E134, E135, E124/8, E124/9, E124110, E136 and E139) and further guidance to the Civil Party Lead Co-Lawyers, 29 November 2011, p 3.

⁵ E124/7 - Decision on Co-Prosecutors' Request for Reconsideration of the Terms of the Trial Chamber's Severance Order (E124/2) and Related Motions and Annexes, 18 October 2011, para 10.

⁶ E124 –Severance Order Pursuant to Rule 89ter, 22 September 2011, para 1.

⁷ Ibid, paras 5 and 6.

Chamber's best efforts to manage an extremely complex case in a very efficient manner, the advanced age of witnesses referred to in **Annex A** gives rise to a real risk that some or all of them will not be available to testify in subsequent trials. Some of the witnesses named in the Chamber's current list have already been found to be unavailable.⁸

10. Although more detailed oral applications will be made in due course for each of the witnesses and civil parties, the following paragraphs set out the general considerations which are relevant to these individuals.
11. In many cases, testimonies of the individuals listed in **Annex A** on the full scope of Case 002 are unlikely to significantly extend the time required for their examination:
 - a) Witnesses whose testimony is primarily focused on the structures and functioning of the Communist Party of Kampuchea (CPK) and the Democratic Kampuchea (DK) regime and roles of the Accused, will need to be examined on the entire period covered by the Closing Order, to provide a foundation for subsequent trials as directed by the Chamber. Of the elderly witnesses identified in **Annex A**, TCW-724, TCW-583, TCW-694, TCW-234 and TCW-482, fall into this category. These witnesses are not expected to give extensive eye witness testimony on specific crime sites included in the Closing Order. To the extent that their evidence would go to the policy implementation issues which are not subject of the first trial, it would not unduly extend their testimony.
 - b) The testimony of witness TCW-536, in so far as he is able to provide eye witness evidence in relation to the crime base, will primarily relate to facts which are in fact the subject of this trial (the forced evacuations of Phnom Penh and other urban centres). The evidence which he is able to give on the basis of his research, like the evidence of the above witnesses, is relevant to contextual issues, the functioning of the regime and its policies, and thus also largely falls within the scope of the present trial. Any further information which he is able to provide on issues that relate to the implementation of policies to be dealt with in future trials will likely require little additional time.
 - c) The testimony of witness TCW-321 also largely falls within the scope of the first trial, insofar as it relates to the historical background, regional authority structure and the functioning of CPK and DK bodies (in particular those dealing with commerce and industry). The witness's testimony on the implementation of the policies towards

⁸ Thus far, they include TCW-297 and TCW-601.

- Buddhists, while falling outside the scope of this trial, is highly probative and would be unlikely to take up a significant amount of time.
- d) Finally, the testimony of civil party TCCP-94 largely relates to the issues which are within the scope of the first trial, including the functioning of CPK and DK authorities, roles of the Accused, the existence of the policies described in the Closing Order, and the second forced movement. Any exploration of issues which are not within the scope of the first trial is unlikely to take significant additional time.
12. Some of the witnesses listed in **Annex A** (in particular TCW-425 and TCW-604) can provide evidence on, *inter alia*, the functioning of the CPK central and regional bodies, the Revolutionary Army of Kampuchea, as well as on the creation and implementation of the policies described in the Closing Order. These witnesses can also be expected to give evidence in relation to a number of crime sites or criminal events included in the Closing Order, and to comment on important contemporaneous documents. These testimonies would come from the perspective of individuals who had access to a considerable amount of information during the period relevant to the Closing Order, and who, as such, fall into a limited category of people who have survived to the present day. Given their age, it would be essential to adduce all of the relevant evidence which they can give within the scope of the Closing Order in this trial.
13. Witness TCW-797, a former Commune Secretary, is in a position to give detailed evidence on the authority structures and communications at various levels of an independent sector of Democratic Kampuchea. This evidence, when given by a former cadre, is best understood and most probative if it complemented by the witness's descriptions of the implementation of the CPK policies and the crimes of which the witness has direct knowledge. The Co-Prosecutors note that witness TCW-601, who was included by the Chamber on the Current Witness List, and was to provide oral evidence similar to that of TCW-797, has already been found to be medically unfit to testify.⁹
14. The Co-Prosecutors remain conscious of the need to ensure that these proceedings are conducted expeditiously. In this respect, they undertake to conduct their examination of these witnesses and civil parties with the most efficient use of time.
15. The Co-Prosecutors submit that the ability of the parties to examine these elderly witnesses and civil parties on the full scope of Case 002 during their appearance in trial 002/01 will not only enhance the overall efficiency of the proceedings, but will also ensure that crucial information

⁹ **E172** - Next group of witnesses, Civil Parties and Experts to be heard in Case 002/01, 17 February 2011, p.4.


is captured while witnesses are still available and able to assist the Court. An additionally important consideration that militates in favour of allowing these witnesses to testify on the full scope of Case 002 is that such an approach would enable the Accused to examine or cross examine the witnesses on their entire evidence.

16. The Co-Prosecutors stress that the above information is provided by way of a notice of their more detailed oral applications, which will be made proximate to the testimony of the relevant individuals, or at any other time deemed appropriate by the Chamber. The reasoning provided above is, therefore, not intended to be comprehensive.

IV. RELIEF REQUESTED

17. For the reasons given above, the Co-Prosecutors:
- a) Request the Trial Chamber to prioritise the scheduling of testimonies of witnesses and civil parties listed in **Annex A**, as well as any other witnesses and civil parties who are suffering from health conditions which may impede their appearance before the Court in the future; and
 - b) Give notice of their intention to make oral applications to examine the elderly witnesses and civil parties listed in **Annex A** on the full scope of Case 002.

Respectfully submitted,

Date	Name	Place	Signature
24 April 2012	CHEA Leang Co-Prosecutor	Phnom Penh	
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