

Trial Chamber Speeding Up Because of Time Constraint

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On 3 August 2012, the Trial Chamber of the Extraordinary Chamber in the Court of Cambodia (ECCC), popularly known as the Khmer Rouge Tribunal, issued a memorandum informing the parties about the implementation of additional measures designed to promote trial efficiency in the remaining trial phases in Case 002/01. The Trial Chamber projected in its memorandum that the hearing of evidence in Case 002/01, based upon current progress, would be unlikely to conclude until 2014. However, the Chamber wishes to conclude the hearing of evidence in Case 002/01 in 2013 and begin Case 002/02 soon thereafter.

Although the Chamber has not clearly indicated its intention to expedite proceedings in the trial, it seems likely due to the serious health problems and age of each accused which threatens the Court's ability to issue a verdict in Case 002/01 expeditiously. The four accused, obviously, in Case 002 are between 80 and 86 years old. Most of them are facing serious health problems. Ieng Sary was admitted to the hospital on May 16, 2012 suffering from bronchitis compounding an existing heart condition and plethora of other health problems. Noun Chea has already had one heart attack. In addition, there will be a hearing about Ieng Thirith's fitness to stand trial. The hearing will determine whether her condition has improved or deteriorated.

To expedite proceedings, the Chamber expects to take several measures such as the reduction of oral testimony of the experts, witnesses, and Civil Parties. The Chamber explained, "*The testimony of a number of Experts will not be heard during the first trial as following the Severance Order, their evidence does not appear to be of key relevance to Case 002/01*". The Chamber also found that the testimony of an additional number is likely to be essentially repetitious of the testimony offered by others or to have no direct and immediate relevance to the facts included in the first trial. On the other hand, all parties are further reminded that of the totality of 1054 witnesses, experts, and Civil Parties sought in Case 002, only a small percentage of the most relevant of these individuals can reasonably be heard within the confines of a fair and expeditious trial.

In addition to the above measures, to facilitate witness testimony the Chamber has recently commenced the practice of asking all witnesses to indicate before they give evidence whether or not they have reviewed their prior statements before the Co-Investigating Judges

(OCIJ), and whether or not they confirm that they are true. Then, the Chamber may either briefly summarize the contents of these statements in court or place them on the ECCC website to ensuring that significant in-court time is not wasted by needless repetition by witnesses of sworn statements already made before the OCIJ.

The Chamber's measures are also intended to expedite the questioning of witnesses, experts, and Civil Parties and encourage them to utilize one lawyer (whether national or international) to lead the in-court examination of each individual or to take other measures to avoid repetition. The Chamber explained that some parties utilize two lawyers (one national and one international) and on occasion three lawyers to question individual witnesses, experts or Civil Parties in court. In addition, the Lead Co-Lawyers and Co-Prosecutors are asked to collaborate in order to avoid repetitive in-court questioning.

In order to reduce the length of time the accused must continually sit, the Chamber is planning to contemplate sitting instead on Mondays, Tuesdays, Thursdays, and Fridays each week. Wednesdays will be used for deliberations. However, the defense teams are invited to indicate whether or not this would benefit their clients. The hearings recently have been conducted Mondays through Thursdays.

While the Chamber is trying to expedite proceedings in Case 002/01, the Office of Co-Prosecutors (OCP) has file a request regarding the extension of the scope of the first trial in Case 002/01 in particular requesting the inclusion of three additional crime sties and factual allegations from the Closing Order. The Chamber stated that:

Despite the Chamber's concerns as to the pace of trial, the Co-Prosecutors have repeatedly urged extension of the scope of charges to be addressed in Case 002/01. Although the principal focus of the Chamber's efforts to date has been to ensure greater streamlining and trial efficiency, the Chamber has nonetheless also devoted significant time and resources to assessing the impact of acceding to the Co-Prosecutor's request to expand the scope of Case 002/01 in the manner proposed by E163.

The Chamber expressed its concern about the request indicating that approval would mean extending the proceedings in Case 002/01 because many witnesses potentially relevant to this proposed extension have yet to be heard before the Chamber. The Co-Prosecutors were asked by the Chamber to indicate whether the envisaged benefits offered by this proposed extension outweighs the risks created by a prolongation of trial proceedings, particularly in view of the interest of victims of Khmer Rouge era crimes in reaching an early verdict.

If the Chamber agrees with the Prosecutors' request to extent the scope of the first trial in Case 002/01, the expected schedule to issue a verdict would be delayed. Deciding whether or not to expand the scope of the first trial is a difficult challenge for the Chamber. Should the scope of the first trial be expanded? Or should the rights of the aging accused be respected by speeding up the proceedings in the first trial?

The decision on the Co-Prosecutors' proposed extension of scope of trial in Case 002/01 would be handed out after Trial Management Meeting on 17 August 2012 which is prepared by the Trial Chamber.