

BEFORE THE TRIAL CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

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CO-PROSECUTORS' NOTIFICATION OF DOCUMENTS TO BE PUT BEFORE THE CHAMBER IN CONNECTION WITH THOSE WITNESSES AND EXPERTS WHO MAY BE CALLED DURING THE FIRST THREE WEEKS OF TRIAL WITH CONFIDENTIAL ANNEX A

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I. INTRODUCTION AND BACKGROUND

1. On 18 October 2011, the Trial Chamber issued a memorandum to all parties in Case 002 regarding witnesses to be called during the first trial segments and the admission of documents (“Trial Chamber Memorandum”)¹. Annex B to the Trial Chamber Memorandum identified twelve individuals to be called during the first trial session between 28 November and 16 December 2011. This included the four accused persons, three civil parties and five witnesses.² The Memorandum ordered “the parties to indicate, no later than 1 November 2011, which documents and exhibits from its earlier lists they would seek to admit before the Chamber in connection with those witnesses and experts who may be called during the first three weeks of trial.”³ It directed the parties to file any objections to the opposing parties new document lists within 10 days of notification.
2. The Co-Prosecutors recall that on 19 April 2011,⁴ in accordance with the Chamber’s *Order to File Material in Preparation for Trial* issued on 17 January 2011⁵ they filed their document list which identified documents they intended to put before the Trial Chamber at trial. A second version of this document list was filed on 22 July 2011⁶ in accordance with further direction of the Chamber⁷ (“First Phase Document List”). The First Phase Document List identified documents relevant to the four topics identified by the Chamber to be covered in the first phase of the trial, namely:
 - (a) the structure of Democratic Kampuchea (“DK”);
 - (b) the roles of each accused during the period prior to the establishment of DK including when these roles were assigned;
 - (c) the role of each accused in the DK 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) the policies of DK on the issues raised in the indictment.⁸

II. DOCUMENTS IN CONNECTION WITH FIRST 5 WITNESSES AND 3 CIVIL PARTIES

3. In response to Trial Chamber Memorandum, the Co-Prosecutors notify that they will seek to admit the documents identified in **Annex A**⁹ in connection with the 5 witnesses and 3 civil

¹ Memorandum from the Trial Chamber to all parties in Case 002 regarding witness lists for early trial segments, deadline for filing of admissibility challenges to documents and exhibits, and responses to Motion E109/5 (informally sent to the parties on 18 October 2011) (“Trial Chamber Memorandum”).

² Confidential Annex B to Trial Chamber Memorandum.

³ Trial Chamber Memorandum, p.1.

⁴ E9/31 Co-Prosecutors’ Rule 80(3) Trial Document List, 19 April 2011.

⁵ E9 Trial Chamber’s Order to File Material in Preparation for Trial, 17 January 2011.

⁶ E109/4 Co-Prosecutors’ response to the Trial Chamber’s request for documents relating to the first phase of the trial, 22 July 2011.

⁷ E1/4.1 Transcript of Initial Hearing, 27 June 2011, p. 25.

⁸ E1/4.1 Transcript of Initial Hearing, 27 June 2011, p. 5.

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parties called to testify in the first three weeks of trial. This list represents the Co-Prosecutors best efforts to identify documents from their First Phase Document List which they seek to admit as evidence in connection with these individuals. However, as the witnesses and civil parties have not been questioned by the Co-Prosecutors - to determine the extent of their knowledge of documents in the case file - they cannot predict at this stage with any more specificity which further documents that they may seek to admit until their testimony is heard. Consequently, the Trial Chamber and the parties are further notified that in connection with these individuals, the Co-Prosecutors may seek to admit other documents previously identified in their First Phase Document List.

III. DOCUMENTS IN CONNECTION WITH THE ACCUSED

4. Currently, it is not known whether Nuon Chea, Khieu Samphan and Ieng Thirith will testify in this trial. The Ieng Sary Defence informed the Trial Chamber subsequent to the issuance of the Memorandum, that Ieng Sary intended to exercise his right to remain silent and would not testify during the first trial.¹⁰ On 27 October 2011, the Trial Chamber responded to the Co-Prosecutors requests, dated 17 June 2011 and 20 September 2011, for the Accused to be ordered to provide notice of whether they would testify at trial.¹¹ In its response, the Trial Chamber held that the Co-Prosecutors and other parties are on notice that the Accused have the right to respond to questions at trial and accordingly all parties should be prepared for examinations.
5. On the basis that one or more Accused testifies in the first three weeks of trial, although not requested by the Trial Chamber, the Co-Prosecutors notify the Trial Chamber and the parties that they may seek to admit any of the documents included in their First Phase Document List in connection with these Accused. As stated in the Chamber's *Scheduling Order*¹² and *Decision on the Co-Prosecutors' request for reconsideration of the terms of the Trial Chamber's severance order (E124/2) and related motions and annexes*¹³ during the first trial, the Accused must confront all allegations contained in the Indictment in Case 002. Particularly as these documents clarify that the Trial Chamber envisages that the first trial "will provide a foundation for all the charges, including those which will be examined in later trials."

⁹ All the **Annex A** documents are on the First Phase Document List (E109/4.9) except for the following 9 documents bearing **Annex A** numbers 85 (D22/43, D22/43.2), 86 (D22/42, D22/42.3), 87 (D22/3605), 171, 735 (D159/5.18), 911 (D108/26.271), 924, 928 and 971 (D232/59.1). Three of these documents are not yet on the Case File: no. 171 (DK Biography of LONG Norin); no. 924 (Statement of SENG Soeun to DC-Cam) and no. 928 (Statement of ROCHOEM Ton alias PHY Phuon to DC-Cam).

¹⁰ Letter from Ieng Sary Defence Team to Susan Lamb, Trial Chamber Senior Legal Officer, 21 October 2011.

¹¹ **E101/5** Trial Chamber Response to Co-Prosecutors' requests concerning testimony of the Accused (E101 and E101/1), 27 October 2011.

¹² **E131** Scheduling Order for Opening Statements and Hearing on the Substance in Case 002, 18 October 2011

¹³ **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.

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6. Moreover, assuming an Accused testifies during the first three weeks of trial, it is not known whether they will later exercise their rights to remain silent during further sessions (or trials). Consequently, the Co-Prosecutors would be required to put before the Chamber any of the documents provided in their First Phase Document List to ensure that the Trial Chamber's objective for the first trial is met.

**IV. DOCUMENTS TO BE SUBMITTED DIRECTLY
TO TRIAL CHAMBER**

7. In addition to documents to be submitted in connection with witnesses, experts, civil parties and Accused, the Co-Prosecutors also notify the Trial Chamber that they will seek to put other relevant documents to the Trial Chamber pursuant to Rule 87(2). This complementary method of putting documents before the Chamber will ensure that the proceedings are expeditious and that testimonial evidence is not unnecessarily lengthened through the piecemeal introduction of volumes of individual documents through oral testimony. This method will also assist in ensuring unnecessary witnesses are not called to prove matters that are proved in the body of admitted primary source documents. The request to submit documents directly to the Trial Chamber is the subject of a motion to be filed with the Trial Chamber shortly.

Respectfully submitted

Date	Name	Place	Signature
1 November 2011	William SMITH Deputy Co-Prosecutor	Phnom Penh	 