

**BEFORE THE TRIAL CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

FILING DETAILS

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**CO-PROSECUTORS' RESPONSE TO TRIAL CHAMBER ORDER REGARDING
"UNCONTESTED FACTS"**

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I. INTRODUCTION

1. Pursuant to the Trial Chamber's Trial Preparation Order issued on 17 January 2011¹ the Co-Prosecutors advise the Chamber that they have been unable to agree upon a joint list of uncontested facts with the Defence teams. The Order required the Co-Prosecutors and each of the Defence teams to file a "joint" list of uncontested facts pursuant to ECCC Internal Rule 80 (3) (e) by no later than 25 March 2011.²
2. To assist in reaching agreement, on 10 March 2011 the Co-Prosecutors sent an invitation via email, in the form of a memorandum, in which a method was outlined in which agreement on uncontested facts could be recorded (see **Annex 1**). Parts 1 and 4 of the Closing Order were attached to the email in an OCR format to allow for electronic highlighting of facts or parts of fact uncontested (see **Annex 2**).³ Each Defence team was invited to return the electronic version of Parts 1 and 4 of the Closing Order with any uncontested facts highlighted to the Co-Prosecutors by 21 March 2011 so a combined joint response could be filed. The responses the Defence teams provided are as follows :
 - (1) Ieng Thirith's Defence responded by e-mail on 14 March 2011 stating it is not possible to obtain instructions from their client at this time.
 - (2) Khieu Samphan's Defence responded by their court filing on 23 March 2011 stating :⁴

"Mr Khieu Samphan is presumed innocent.⁵ The burden of proof concerning the accused's guilt falls to the Co-Prosecutors.⁶ If Mr Khieu Samphan is not willing to support any facts described in the closing order, he however intends to actively participate to the work of justice by exposing his version of the facts during the course of the trial, in a concern of a legal and historical Truth for the international community and the Cambodian people."
 - (3) Ieng Sary's Defence team responded by letter on 24 March 2011 stating that they have attached a pdf version of the Closing Order with green highlighted parts Ieng Sary does not contest with attached comments to clarify why portions of sentences have not been agreed to, where alteration is required or there are discrepancies in translation. **Annex 3** contains the attached letter and those portions of the factual part of the Closing Order that have been highlighted by the Ieng Sary Defence.

¹ Document No. E9, "Order to File Material in Preparation for Trial," 17 January 2011, ERN 00635754-5759.

² Preparation Order, para. 9.

³ Document No. D427, "Closing Order," 15 September 2010, ERN 00604508-5246, p.13-323 and 390-396.

⁴ Document No. E9/17, "Faits non Litigieux" 23 March 2011, ERN 00655808-5809.



⁵ Article 31 of the Constitution of the Kingdom of Cambodia; Article 13 1) of the Agreement; Article 35 of the Law on ECCC; IR 21 1) d).

⁶ IR 87 1).

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- (4) Nuon Chea's Defence responded by their court filing today stating the Defence informed the OCP that, at this stage of the proceedings, the Defence is unable to reach an agreement with the OCP as to any of the 'facts' specifically alleged in the Closing Order.⁷
3. The Co-Prosecutors confirm that they will continue to co-operate with and seek co-operation from the Defence teams on a regular basis to achieve agreement on any fact or evidentiary issue where possible. If such agreement is reached it will notify the Trial Chamber promptly.⁸

Respectfully submitted,

Date	Name	Place	Signature
25 March 2011	YET Chakriya Deputy Co-Prosecutor	Phnom Penh	
	Andrew CAYLEY Co-Prosecutor		

⁷ Document No. E9/19, "Initial Submissions Regarding Uncontested Facts" 25 March 2011, ERN 00656168-6170. The Nuon Chea Defence further state that, amongst other matters, that they are "currently in the process of receiving further instructions from Nuon Chea regarding certain facts he may not seek to contest at trial." at para. 5.

⁸ Preparation Order, para. 10.