

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

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**CO-PROSECUTORS' ADDITIONAL REQUEST FOR A DIRECTION REGARDING
THE INTENTIONS OF THE ACCUSED WITH RESPECT TO TESTIFYING**

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I. INTRODUCTION

1. The Co-Prosecutors respectfully reiterate their request filed 17 June 2011 that a direction be given to the Accused to inform the Chamber and the other parties whether they will give oral evidence at trial. The Co-Prosecutors request that this direction be issued as a matter of urgency, given the advanced stage of trial preparations and the short period of time remaining prior to the commencement of the substantive proceedings.

II. PROCEEDINGS TO DATE

2. This issue was originally raised by the Office of the Co-Prosecutors at the Trial Management Meeting on 8 April 2011. The International Deputy Co-Prosecutor requested that the Accused be directed to notify the Chamber and the other parties whether they intended to testify. He indicated that this was necessary to help both the parties and the Chamber prepare for the trial given the significant impact that the decisions by the Accused would have on the initial phase of the case.¹
3. On 17 June 2011 the Co-Prosecutors submitted a written request asking the Chamber to direct the Accused to state whether they intended to give oral evidence at trial. The Co-Prosecutors noted that it is a feature of the civil law procedure applicable before the ECCC that accused are invited to testify at the start of the trial. The Co-Prosecutors also elaborated on the importance of informing both the parties and the Chamber of the Accused's intentions in this respect.²

III. REQUEST

4. As the commencement of substantive hearings approaches, it is imperative that the Chamber direct the Accused to state whether they intend to testify on their own behalf. In the Scheduling Order dated 11 August 2011, the Chamber noted that there is no issue with respect to the fitness of Khieu Samphan and Ieng Sary to stand trial.³ The Co-Prosecutors recently submitted that no further inquiry is required in relation to Nuon Chea's fitness to stand trial.⁴ With expert reports on Ieng Thirith due at the end of September 2011,⁵ the consideration of her fitness to stand trial is at an advanced stage, and the Chamber will likely soon be in a position to make further rulings. Trial

¹ E1/2.1 Trial Management Meeting Transcript, 8 April 2011 at pages 54-55.

² E101 Co-Prosecutors' Request for a Direction Regarding the Intentions of the Accused with Respect to Testifying, 17 June 2011 at paras. 2 and 3.

³ E110 Scheduling Order for Preliminary Hearing on Fitness to Stand Trial, 11 August 2011



⁴ E115/1 Co-Prosecutors' Response to the Defence Request for Appointment of Additional Experts, 12 September 2011 at para. 27.

⁵ E111 Order Assigning Experts, 23 August 2011.

preparations are equally well advanced. The Chamber has received the parties' proposed document and witness lists.⁶ At the initial hearings held in June 2011 the Chamber issued its tentative list of witnesses for the first phase of the trial, and on 5 July the parties filed their additional proposals with respect to that list.⁷

5. The time for the Accused to state their intentions with respect to their giving evidence is now. Any delays in this respect will hamper trial preparations by the Chamber and the parties, including each of the defence teams given the scope and nature of the factual allegations in the Closing Order. The Co-Prosecutors therefore respectfully request that the Chamber issue an order as soon as possible:
 - a) reminding each Accused that they can testify at the start of trial, and
 - b) directing them to state, within seven days of the Chamber's order, whether they will testify or exercise their right to remain silent.

Respectfully submitted,

Date	Name	Place	Signature
20 September 2011	CHEA Leang Co-Prosecutor	Phnom Penh	
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⁶ **E109/4** Co-Prosecutors' Response to the Trial Chamber's Request for Documents Relating to the First Phase of Trial, 22 July 2011; **E109/3** Observations Regarding Documents Considered Relevant to the Early Segments of the Trial, 22 July 2011; **E109** Indication of Documents Relevant to the Early Trial Segments for the Defence of Madame Ieng Thirith, 22 July 2011; **E109/2** Civil Party Lead Co-Lawyers Revised List of Documents and Exhibit Relevant the First Four Trial Segment, 22 July 2011; **E109/1** List of Documents for Premier Phase of Trial, 22 July 2011; **109/6** Ieng Sary's Document and Exhibit List for the First Four Trial Topics, 22 July 2011; **E9/4** Co-Prosecutors 'Rule 80 Expert, Witness and Civil Party List Including Confidential Annexes 1, 2, 3, 3A, 4 & 5, 28 January 2011; **E9/4/4** List of Proposed Witnesses, Experts and Civil Parties, 15 February 2011; **E9/4/2** Ieng Sary's List of Proposed Experts and Notification Concerning his Witness and Civil Party Lists, 14 February 2011; **E9/4/5** Ieng Thirith List of Witnesses and Expert, 15 February 2011; **E9/4/6** Proposed List of Witnesses and Experts, 21 February 2011; **E9/4/3** Civil Party Lead Co-Lawyers' Rule 80 Witness, Expert and Civil Party Lists, Including Confidential Annexes 1, 2a, 2b, 3a, 3b, and 4.

⁷ **E93/7** Co-Prosecutors' Request to Hear a Further 2 Experts and 12 Witnesses in the First Phase of the Trial and Notice of Intention to Put 7 Video-Clips Relating to Nuon Chea Before the Trial Chamber Pursuant to Rule 87(4), 5 July 2011; **E93/9** Request for Additional Witnesses and Continuation of Initial Hearing, 5 July 2011; **E93/8** Request to Add Witnesses to the Tentative List for the First Phases of Trial, 5 July 2011; **E93/6** Civil Party Lead Co-Lawyers Observations on the Trial Chamber Tentative List of Witnesses, Civil Parties, and Experts, 5 July 2011.