

BEFORE THE TRIAL CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

FILING DETAILS

Case No: 002/19-09-2007-ECCC/TC Party Filing: Co-Prosecutors
Filed to: Trial Chamber Original Language: English
Date of document: 17 June 2011

CLASSIFICATION

Classification of the document
suggested by the filing party:

PUBLIC

Classification by OCIJ
or Chamber:

សាធារណៈ/Public

Classification Status:

Review of Interim Classification:

Records Officer Name:

Signature:



**CO-PROSECUTORS' 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 request that a direction be given to the Accused to inform the Chamber and the other parties whether they will give oral evidence at trial. This request is necessary given the current planning of the schedule by the Trial Chamber, the short time remaining prior to the commencement of the substantive proceedings, and the impact which decisions by the Accused will have on the preparations for the trial.

II. LEGAL PROVISIONS AND PROCEEDINGS TO DATE

2. The civil law procedure applicable before the ECCC envisages an accused testifying at the start of the trial. This is reflected in the structure of the relevant provisions of the Internal Rules. Subrule 90(1) states that the President shall inform the Accused of their right to remain silent, following which the Accused, if they choose to testify, will be questioned by the Judges, the Co-Prosecutors and all the other parties and their lawyers. This is followed by the questioning of Civil Parties, witnesses and experts in the order determined by the President.¹ A similar structure is provided for in the Cambodian Code of Criminal Procedure,² and this order of proceedings was adopted by the Trial Chamber in Case 001.³
3. The Accused clearly have a fundamental right to remain silent at trial.⁴ However, to the extent that their testimony, if any, is to take place at the start of the trial, it is crucial that the Chamber and the other parties be informed of their intentions now. At the Trial Management Meeting held on 8 April 2011, the International Deputy Co-Prosecutor stated:

“Perhaps one point we would like to raise at this stage, and I think it has a significant affect on the flow of the proceedings, and how the parties prepare, and that is whether or not Your Honours can seek from the defence, at this stage, or at some point, determined by you, well before the trial commences, whether each of the accused are going to exercise their right to testify in the courtroom. As Your Honours are well aware, and we're all aware, that under these rules, under the Cambodian rules, under the system which they've been inspired from, the French system, the accused must testify first...And on that basis, we would ask that Your Honours ask from the accused, ask from the defence whether they will testify, and if they will testify, a prediction of how long they would like their clients to testify for in relation to the indictments...That would certainly help, I think, the defence, the prosecution, the civil parties and the Chamber prepare for the case, because how the case would begin would be significantly different if the accused have

¹ Subrule 91(1) and Rule 91 bis.

² Articles 325 and 326.

³ See Case 001: Direction on the Scheduling of the Trial, 20 March 2009, E26; and Trial Transcript, E1/8.1, page 2.

⁴ Subrule 21(1)(d).

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decided not to testify as opposed to if they have. And the appropriate preparations, of course, would be quite different.”⁵

4. The Co-Prosecutors note that the Accused Khieu Samphan has expressed his intention to give evidence at the trial. In a recent filing, his counsel indicated:

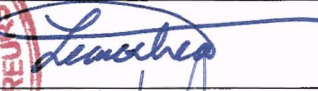

“Whilst Mr KHIEU Samphan does not intend to take a position on any of the facts as described in the Closing Order, he will nonetheless actively contribute to the work of justice by presenting his version of the facts at trial, in the interests of historical and legal **Truth** for the international community and the people of Cambodia.”⁶ (original emphasis)

5. The time for the Accused to state their position is now. The Chamber’s directions indicate that the substantive hearing may start in August 2011,⁷ and the Chamber has begun its consideration of the order of witnesses to be called during the first phase of the trial.⁸ This part of the proceedings will deal with, *inter alia*, the roles and responsibilities of each of the Accused during the period covered by the Indictment.⁹ Given the nature and scope of the case, the preparation of all parties will be significantly affected by the decision of each of the Accused as to whether or not they will testify.

III. REQUEST

6. The Co-Prosecutors respectfully request that each Accused be directed to state, within seven days, and at the latest at the Initial Hearing, whether they will testify at trial and for what length of time they would request to testify to present their version of the truth on the allegations alleged in the Indictment.

Respectfully submitted,

Date	Name	Place	Signature
17 June 2011	CHEA Leang Co-Prosecutor	Phnom Penh	
	William SMITH Deputy Co-Prosecutor		

⁵ Trial Management Meeting Transcript, 8 April 2011, E1/2.1, at pages 54-55.

⁶ Uncontested Facts, 23 March 2011, E9/17, at page 2; see also Trial Management Meeting Transcript, 8 April 2011, E1/2.1, at page 20.

⁷ Trial Chamber Memorandum, 11 May 2011, E86; Agenda for Initial Hearing, 14 June 2011, E86/1.

⁸ Trial Chamber Memorandum, 3 June 2011, E93; Agenda for Initial Hearing, 14 June 2011, E86/1.

⁹ Trial Chamber Memorandum, 3 June 2011, E93.