

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:** 14 November 2011

**CLASSIFICATION**

**Classification of the document suggested by the filing party:** PUBLIC



**Classification by Trial Chamber:** សាធារណៈ/Public

**Classification Status:**

**Review of Interim Classification:**

**Records Officer Name:**

**Signature:**

---

**CO-PROSECUTORS' OBJECTIONS TO PARTIES' PROPOSED DOCUMENT  
LISTS FOR FIRST THREE WEEKS OF TRIAL**

---

**Filed by:**

**Co-Prosecutors**  
CHEA Leang  
Andrew CAYLEY

**Distributed to:**

**Trial Chamber**  
Judge NIL Nonn, President  
Judge Silvia CARTWRIGHT  
Judge YA Sokhan  
Judge Jean-Marc LAVERGNE  
Judge YOU Ottara

**Copied to:**

**Accused**  
NUON Chea  
IENG Sary  
IENG Thirith  
KHIEU Samphan

**Civil Party Lead Co-Lawyers**  
PICH Ang  
Elisabeth SIMONNEAU FORT

**Lawyers for the Defence**  
SON Arun  
Michiel PESTMAN  
Victor KOPPE  
ANG Udom  
Michael G.KARNAVAS  
PHAT Pouv Seang  
Diana ELLIS  
SA Sovan  
Jacques VERGES

## I. INTRODUCTION

1. The Trial Chamber has directed the parties to submit written objections, if any, to the documents and exhibits proposed by other parties to be admitted during the first three weeks of trial.<sup>1</sup> In response to this direction, the Co-Prosecutors notify the Trial Chamber that they:
  - (1) do not object to the admission of any of the proposed documents included on the document lists submitted by the defence team for Ieng Sary or Khieu Samphan, subject to the one new document included on the Ieng Sary list being made available to other parties in advance;
  - (2) reserve their position with respect to five of the proposed “new” documents included on the document list submitted by the defence team for Ieng Thirith until such time as all of these documents are made available;
  - (3) otherwise do not object to the admission of any of the proposed documents included on the document list submitted by the defence team for Ieng Thirith (including 2 other documents categorised as new but which are in fact already on the case file); and
  - (4) do not object to the admission of any of the proposed documents included on the document lists submitted by the Civil Party Lead Co-Lawyers, subject to one proposed new document and all civil party applications being made available to other parties in advance.

For convenience, a list of the “new” documents proposed by the parties, many of which are in fact now on the Case file, is attached to this filing as **Annex A**.

2. The Co-Prosecutors request that, in the absence of reasoned objections being raised by any other party, the Trial Chamber admit forthwith the documents to which the Co-Prosecutors have no objection and which are currently available to all parties into evidence pursuant to Rule 87(2).

## II. PROCEDURAL HISTORY

3. On 27 June 2011, during the initial hearing for Case 002, the Trial Chamber directed the parties to identify by 22 July 2011 the documents and exhibits they considered to be relevant to the first phase of the trial (First Phase Document Lists).<sup>2</sup> At that time, it was envisaged that the first phase of the trial would cover four topics, namely: the structure of Democratic Kampuchea (“DK”); the roles of each accused during the period prior to the establishment of DK; the role of each accused in the DK Government; and the policies of DK on the issues raised in the indictment.

---

<sup>1</sup> **E131/1** Trial Chamber Memorandum entitled *Witness lists for early trial segments; deadline for filing of admissibility challenges to documents and exhibits and response to motion E109/5*; 25 October 2011 (an advance courtesy copy of the memorandum was communicated to the parties by email on 18 October 2011) (“Memorandum”).

<sup>2</sup> **E1/4.1** Public Transcript of Initial Hearing; 27 June 2011 at p. 25.

4. On 22 July 2011, the Co-Prosecutors, the defence for Ieng Thirith, the defence for Khieu Samphan and the Civil Party Lead Co-Lawyers filed their First Phase Document Lists. The Co-Prosecutors' First Phase Document List included 4768 documents.<sup>3</sup> Ieng Thirith's First Phase Document List included 195 documents.<sup>4</sup> Khieu Samphan's First Phase Document List included 122 documents.<sup>5</sup> The Civil Parties' First Phase Document List included over 7,000 documents.<sup>6</sup> On 8 August 2011, the defence for Ieng Sary filed its First Phase Document List, which included 8 documents.<sup>7</sup> The defence for Nuon Chea declined to accede to the Trial Chamber's direction to provide a list.<sup>8</sup>
5. On 18 October 2011, following the severance of Case 002<sup>9</sup> into a series of smaller cases and the scheduling of the hearing of the first trial,<sup>10</sup> the Trial Chamber issued a memorandum directing the parties to indicate, by no later than 1 November 2011, which documents and exhibits from their First Phase Document Lists they would seek to admit in connection with the witnesses and civil parties who may be called during the first session of the first trial ("First Trial Session Document Lists").<sup>11</sup> The memorandum further directed the parties to submit any objections to opposing parties' proposed documents and exhibits within 10 days of their notification. In relation to each document or exhibit or category of document or exhibit challenged, parties were directed to specify particular objections having regard to the criteria set out in Internal Rule 87(3).<sup>12</sup>
6. On 28 November 2011, the Co Lawyers for the Civil Parties notified the Trial Chamber and the other parties that they would seek to admit all documents included on the Civil Parties' First Phase Document List.<sup>13</sup> On 1 November 2011, the Co-Prosecutors,<sup>14</sup> the defence for Ieng Sary<sup>15</sup> and the defence for Ieng Thirith<sup>16</sup> filed their First Trial Session Document Lists.

<sup>3</sup> **E109/4** Co-Prosecutors' response to the Trial Chamber's request for documents relating to the first phase of trial; 22 July 2011 and its attachments **E109/4.1-4.20** ("Co-Prosecutors First Phase Document List").

<sup>4</sup> **E109** Indication of documents Relevant to the Early Trial Segments from the defence of Madame Ieng Thirith; 22 July 2011 and its attachment **E109.1** ("Ieng Thirith's First Phase Document List").

<sup>5</sup> **E109/1** Listes de documents pour les premières phases du procès; 22 July 2011 and its attachment **E109/1.1** ("Khieu Samphan's First Phase Document List").

<sup>6</sup> **E109/2** Civil Party Lead Co-Lawyers revised list of documents and exhibit relevant to the first four trial segments; 22 July 2011 and its attachments **E109/2.1-2.3** ("Civil Parties' First Phase Document List")

<sup>7</sup> **E109/6** Ieng Sary's document and exhibit list for the first four trial topics; 8 August 2011 and its attachment **E109/6.2** ("Ieng Sary's First Phase Document List").

<sup>8</sup> **E109/3** Observations regarding documents considered relevant to the early segments of the trial; 22 July 2011.

<sup>9</sup> **E124** Severance Order; 22 September 2011.

<sup>10</sup> **E131** Scheduling Order for opening statements and hearing on the substance in Case 002; 18 October 2011.

<sup>11</sup> **E131/1** Memorandum; *supra* note 1 at p.1-2.

<sup>12</sup> *Ibid.*

<sup>13</sup> **E131/1/2** Civil Parties list of documents relevant to the initial trial session (28 November - 16 December 2011); 28 October 2011.

<sup>14</sup> **E131/1/4** 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; 1 November 2011 and its attachment **E131/1/4.1** ("Co-Prosecutors' First Trial Session Document List").

<sup>15</sup> **E131/1/3** Ieng Sary's document list for the first trial segment; 1 November 2011 and its attachment **E131/1/3.2** ("Ieng Sary's First Trial Session Document List").

<sup>16</sup> **E131/1/5** List of documents to be admitted before the trial chamber in connection with the witnesses and civil parties who may be called during the first three weeks of trial; 1 November 2011 and its attachment **E131/1/5.1** ("Ieng Thirith's First Trial Session Document List").

On 2 November 2011, the defence for Khieu Samphan filed its First Trial Session Document List.<sup>17</sup> As of the date of filing, the defence for Nuon Chea has not filed a First Trial Session Document List.

7. Related to the issue of admission of documents, on 3 November 2011, the Co-Prosecutors filed their *Request to establish an efficient system for admitting documentary evidence at trial* (“*Request regarding documentary evidence*”).<sup>18</sup> In this filing, the Co-Prosecutors requested the Trial Chamber to admit forthwith any documents included on parties’ document lists that are not objected to by opposing parties into evidence; confirm that documents can be introduced directly and do not need to be tendered through witnesses; and allocate regular sessions during the trial for oral arguments to take place on any objections to documents.

### III. NOTIFICATION

#### A. Ieng Sary’s First Trial Session Document list

8. Ieng Sary’s First Trial Session Document List includes 31 documents, of which 30 are on the Case file and one is “new” (not yet on the case file). None of the 31 documents now proposed by Ieng Sary were on Ieng Sary’s First Phase Document List. Nor does Ieng Sary’s First Trial Session Document List (or any prior lists filed by Ieng Sary) comply with the relevant direction of the Trial Chamber in terms of describing the nature, contents and relevance of the proposed documents. Despite this, the Co-Prosecutors do not object to the admission of the documents included on Ieng Sary’s First Trial Session Document List for the reasons set out below.
9. Firstly, it is noted that the 31 documents on Ieng Sary’s First Trial Session Document List comprise either: prior signed statements of the witnesses and civil parties who may be called to testify; attachments to those prior statements; or reports created by the Victims Unit and the OCIJ in relation to those witnesses/civil parties. Given the nature, contents and provenance of these documents the Co-Prosecutors submit that these documents are *prima facie* relevant and reliable and therefore should be admitted.
10. Secondly, it is noted that of the 31 documents on Ieng Sary’s First Trial Session Document List, 23 documents are also included on either the Co-Prosecutors’ First Phase Document List or the Co-Prosecutors’ First Trial Session Document List.<sup>19</sup> In addition, six of the documents proposed by Ieng Sary are annexes to documents that are included on the Co-

<sup>17</sup> E131/1/6 Indications relatives aux témoins et documents des premières phases du premier procès; 2 November 2011 and its attachment E131/1/6.1 (“Khieu Samphan’s First Trial Session Document List”).

<sup>18</sup> E136 Co-Prosecutors’ request to establish an efficient system for admitting documentary evidence at trial, 3 November 2011 (notified 14 November 2011) (an advance courtesy copy was sent to the Trial Chamber and the parties on 9 November 2011).

<sup>19</sup> D22/42; D22/42.3; D208/2; D247/1; D22/43; D22/43.2; D208/3; D232/59; D22/3605; D232/59.1; D91/10; D107/3; D91/3; D279/6; D279/7; D279/7.4; D234/4; D234/8; D234/15; D234/16; D166/166; D166/187 and Interview of Rochoem Ton (alias Phy Phuon) dated 19 December 2010.

Prosecutors' First Trial Session Document List.<sup>20</sup> Although these annexes were not individually listed on the Co-Prosecutors First Trial Session Document List, they can be considered to be part of the parent document and therefore included on those lists. The Co-Prosecutors support Ieng Sary's proposed admission of these 29 documents which are also included on the Co-Prosecutors' lists.

11. The outstanding two documents on Ieng Sary's First Trial Session Document List are reports by the Victims Unit in relation to civil party applications included within the 29 documents mentioned above.<sup>21</sup> As noted above, given the nature, contents and provenance of these documents the Co-Prosecutors submit that they are *prima facie* relevant and reliable and therefore should be admitted.
12. With regard to the one new document proposed by Ieng Sary, being a DC-Cam interview of Rochoem Ton (alias Phy Phuon) dated 19 December 2010, the Co-Prosecutors are in possession of a copy of this document and have also included it on their First Trial Session Document List.<sup>22</sup> The Co-Prosecutors support the admission of this document, subject of course to its being made available to all other parties in advance.

#### **B. Ieng Thirith's First Trial Session Document list**

13. Ieng Thirith's First Trial Session Document List includes 87 documents,<sup>23</sup> of which 80 are on the case file and seven are categorised as new. All 87 documents, with the exception of one,<sup>24</sup> were included on Ieng Thirith's First Phase Document List.
14. Of the 80 documents on the case file proposed by Ieng Thirith, 47 are also included on either the Co-Prosecutors' First Phase Document List or the Co-Prosecutors' First Trial Session Document List.<sup>25</sup> The Co-Prosecutors support the admission of these 47 documents and submit that they are *prima facie* relevant and reliable.
15. Having reviewed the outstanding 33 documents, and bearing in mind the criteria set out in Internal Rule 87(3), the Co-Prosecutors see no basis for objecting to their admission. In particular, the Co-Prosecutors note that most of these 33 documents are either of a type that

<sup>20</sup> D22/42.1 and D22/42.2 are attachments to Civil Party Application of KLAN Vet (D22/42); D22/43.1; D22/43.3; D22/43.4 are attachments to Civil Party Application of ROMAM Yun (D22/43); and D279/7.3 is an attachment to the Written Record of Interview of SAKIM Lmut alias Mey; dated 19 December 2010 (D279/7).

<sup>21</sup> D22/42/1 in relation to Civil Party Application of KLAN Vet (D22/42); D22/43/1 in relation to Civil Party Application of ROMAM Yun (D22/43).

<sup>22</sup> See Co-Prosecutors' First Trial Session Document List; *supra* note 14; document 928 (incorrectly dated 29 October 2010).

<sup>23</sup> Ieng Thirith's First Trial Session Document List includes 88 entries; however; two of these entries refer to the same document (D199/26.2.165).

<sup>24</sup> IS 2.6 (identified on Ieng Thirith's First Trial Session Document List as D3/Annex C/2.6).

<sup>25</sup> D369/20; D248/6.1.12; D199/26.2.148; D366/7.1.514; D199/26.2.164; IS 4.7 (D222/1.3); D280/12; D231/5; D161/1.34; D366/7.1.514; D366/7.1.157 (D269/9/1.16); D369/21; D199/26.2.144; D366/7.1.350; D262.16; D222/1.17; D262.26; D199/26.2.155; D313/1.2.2; D199/26.2.23; D199/26.2.28; D366/7.1.519; D199/26.2.31; D199/26.2.153; D199/26.2.247; D366/7.1.531; D248/5.1.10; D91/20; IS 4.41 (IS 4.41/Corr-1; D222/1.15); D251/1; D366/7.1.348; D366/7.1.342; D366/7.1.535; D280/10; D280/11; D262.30; D248/6.1.11; D366/7.1.502; IS 13.2 (D232/8.3, D200/9.7, D279/6.1); D366/7.1.525; D366/7.1.346; D308/3.1.2; D308/3.1.1; D262.34; D3/Annex C/18.11 (IS 18.11); D3/Annex C/19.136 (IS 19.136); D3/Annex C/13.24 (IS 13.24).

the Co-Prosecutors also seek to introduce into evidence (including DK Commerce Records, FBIS publications, international media reports) or were attached to the Co-Prosecutors' Introductory Submission. These documents are clearly relevant to facts in issue and have key indicia of reliability rendering them suitable for admission. The Co-Prosecutors do have some reservations as to the relevance and evidentiary value of 10 documents on Ieng Thirith's First Trial Session Document List relating to the operations of World Vision in Cambodia in the pre-DK period.<sup>26</sup> However, noting that these documents were added to the case file by the OCIJ during the course of the judicial investigation and thereby deemed to be of at least some marginal relevance, the Co-Prosecutors do not object to their admission.

16. With regard to the seven new documents proposed by Ieng Thirith, it is noted that two of these documents are already available on the case file.<sup>27</sup> The Co-Prosecutors do not object to the admission of these documents. In addition, extracts of another new document proposed by Ieng Thirith are already on the case file.<sup>28</sup> Having reviewed the available extracts, the Co-Prosecutors do not foresee having any objection to the admission of the additional pages proposed by Ieng Thirith however they reserve their final position until such time as all pages are made available. With regard to the outstanding four new documents, they do not appear to be available on the case file or the Shared Materials Drive nor do the Co-Prosecutors otherwise have copies of these documents. Accordingly the Co-Prosecutors reserve their position on these documents until such time as they are made available to them and to the other parties. The new documents proposed by Ieng Thirith are included on the list attached to this filing as **Annex A**.

### C. Khieu Samphan's First Trial Session Document list

17. Khieu Samphan's First Trial Session Document List includes 77 documents,<sup>29</sup> 76 of which are on the case file or the Shared Materials Drive. 25 of the 77 documents were included on Khieu Samphan's First Phase Document List. The defence team for Khieu Samphan argues that the additional documents now included are for cross-examination purposes.<sup>30</sup>
18. Of the 77 documents proposed by Khieu Samphan, 66 are also included on either the Co-Prosecutors' First Phase Document List or the Co-Prosecutors' First Trial Session Document List.<sup>31</sup> In addition, four of the documents proposed by Khieu Samphan are annexes to

<sup>26</sup> D306/1.3; D306/1.8; D306/1.9; D306/1.10; D306/1.11; D306/1.12; D306/1.13; D306/1.14; D306/1.18; D306/1.20

<sup>27</sup> W. Goodfellow; *Starvation in Cambodia* is on the case file as D313/1.2.263 and D172.11; T. Owen and B. Kiernan; *Bombs over Cambodia* is on the case file as D153.12.

<sup>28</sup> Pages 13; 22; 27; 30; 45; 46; 66; 71 of the book *Cambodia: Starvation and Revolution* by Hildebrand and Porter are on the case file as D178.6 and D174.6. Ieng Thirith's First Trial Session Document List proposes pages 7-124 of this book.

<sup>29</sup> Khieu Samphan's First Trial Session Document List includes 80 entries; however, one document was included in three separate entries (D166/166) and another was included in two separate entries (IS 19.71).

<sup>30</sup> See **E131/1/6** Indications relatives aux témoins et documents des premières phases du premier procès; 2 November 2011 at paras. 18-20.

<sup>31</sup> D224.119; IS 21.74; D175/3.77; D234/8 (D234/8/Corr-1); D143; D279/6.12; D107/3; D366/7.1.157 (D269/9/1.16); D234/24; D369/36; IS 19.71 (D366/7.1.587); D89; D369/6; D210/5 (D248/2.2); D161/1.30(D279/6.5); D91/10; D232/59; D161/1.31(D279/6.2); D91/3; D91/30; D199/20; D222/1.17;

documents that are included on the Co-Prosecutors' First Trial Session Document List.<sup>32</sup> As noted earlier, although these annexes were not individually listed on the Co-Prosecutors lists', they can be considered to be part of the parent document and therefore included on those lists. The Co-Prosecutors support Khieu Samphan's proposed admission of these 70 documents and submit that they are *prima facie* relevant and reliable.

19. Having reviewed the outstanding seven documents, and bearing in mind the criteria set out in Internal Rule 87(3), the Co-Prosecutors see no basis for objecting to their admission. In particular, the Co-Prosecutors note that two of the documents are different versions of documents proposed by the Co-Prosecutors;<sup>33</sup> and one is an audio recording of a witness interview of which the written record is proposed by the Co-Prosecutors.<sup>34</sup> The remaining four documents are of a type that the Co-Prosecutors also seek to introduce into evidence (DK notes,<sup>35</sup> international communications,<sup>36</sup> and international media reports<sup>37</sup>) and which the Co-Prosecutors submit are relevant and bear strong indicia of reliability.

#### D. Civil Parties' First Phase Document List

20. As noted above, the Civil Party Co-Lead Lawyers propose to admit all documents from the Civil Parties' First Phase Document List during the first session. The Civil Parties First Phase Document List<sup>38</sup> includes approximately 5,700 documents comprising: 25 specific documents from the case file (set out in Annex 7(a)(i)); all documents from the case file referenced in the sections of the Closing Order relevant to the four first phase trial topics (set out in Annex 7(a)(ii)) (approximately 1,800 documents),<sup>39</sup> all civil party applications (set out in Annex 7(a)(iii) (3866 documents); and 19 documents categorised as new (set out in Annex 7(b) and (c)).

---

D279/6.3; D161/1.7 (D279/6.4); D208/3; D56-Doc. 149 (D279/7.10); D161/1.9 (D279/6.13); D166/166; D247/1; D161/1.4 (D200/3.3, D279/7.5); IS 13.11 (D279/7.2); D161/1.25 (D279/6.10); D262.27; D199/26.2.172; D234/16; IS 21.142 (D279/7.7); IS 20.3; D199/26.2.38; D234/25; IS 4.41 (IS 4.41/Corr-1, D222/1.15); D201/8; D167; D161/1.21 (D279/6.9); D208/2; D201/10; D22/43 (D22/43.2); IS 21.147 (D279/7.9); D161/1.20 (D279/6.8); D22/42 (D22/42.3); D234/4; D200/3; D279/7.4; IS 13.2 (D232/8.3, D200/9.7, D279/6.1); D234/15; D91/21; IS 3.1 (D279/7.8); D161/1.13 (D279/6.7); D279/7 (D279/7/Corr-1, D279/7/Corr-2); D161/1.14 (D279/6.6); D366/7.1.584; D175/3.17; D168; IS 13.14 (D279/7.1); D279/6 (D279/6/Corr-1, D279/6/Corr-2); D248/3.3 (D189.1); D125/160.

<sup>32</sup> D279/6.11 is an attachment to the Written Record of Interview of SAKIM Lmut; dated 18 December 2009 (D279/6) and documents D279/7.3; D279/7.6; D279/7.11 are attachments to the Written Record of Interview of SAKIM Lmut; dated 19 December 2009 (D279/7).

<sup>33</sup> D248/6.1.2; D108/5.1.

<sup>34</sup> D369/36R.

<sup>35</sup> Notebook of Yen (ERN 00008906-20). It is noted that this document was erroneously assigned document reference number IS 5.5. Document IS 5.5 should in fact be the S-21 Confession of CHAN Chakrey (00030985-32842). The Co-Prosecutors will take steps to rectify this error and have the Notebook of Yen assigned a new document reference number.

<sup>36</sup> D199/26.2.36.

<sup>37</sup> D366/7.1.283; SMD Swedish Collection Document D29273.

<sup>38</sup> E109/2 Civil Parties' First Phase Document List; *supra* note 6.

<sup>39</sup> E109/2.1 Revised Annex 7(a)(ii). There were over 7,000 entries on this list. However, over 5,200 of these entries were duplicates in that they referred to the same documents.

21. Of the approximately 1825 documents included on Annexes 7(a)(i) and (ii), approximately 1,500 are also included on either the Co-Prosecutors R80 Document List, the Co-Prosecutors' First Phase Document List, or the Co-Prosecutors' First Trial Session Document List. The Co-Prosecutors support the admission of these documents and submit that they are *prima facie* relevant and reliable.
22. Of the approximately 325 documents included on Annexes 7(a)(i) and (ii) that are not on any of the Co-Prosecutors' lists, over 100 are civil party applications or related records (addressed below) and the outstanding records are of a type that the Co-Prosecutors also seek to introduce into evidence (DK communications, records of OCIJ interviews, international communications, academic and research publications). Bearing in mind the criteria set out in Internal Rule 87(3) and the fact that these documents were referenced by the OCIJ as support for the findings in the Closing Order, the Co-Prosecutors see no basis for objecting to the admission of these documents.
23. With regard to the 3866 civil party applications, it is noted that a large number of these documents are currently classified as strictly confidential as a decision on protective measures for these persons has not yet been made. As set out in their recent joint response to Ieng Sary and Ieng Thirith's motions regarding access to strictly confidential documents, the Co-Prosecutors' request that the Trial Chamber make decisions on protective measures requested by civil parties and reclassify the application documents accordingly so that they may be made available to the parties in full or redacted form.<sup>40</sup> Subject to access being granted to the other parties, the Co-Prosecutors' support the admission of the civil party applications.
24. With regard to the 18 documents categorised as new in Annex 7(b), it is noted that all of those documents are actually available on the case file.<sup>41</sup> The Co-Prosecutors have reviewed these documents and, bearing in mind the criteria set out in 87(3), see no basis for objecting to their admission.
25. The new document listed on Annex 7(c), being the documentary film *Enemies of the People*<sup>42</sup>, has been viewed by the Co-Prosecutors and they support its admission into evidence subject to it being added to the case file or otherwise made available to all parties. Indeed the Co-Prosecutors have notified their intention to put excerpts from this documentary (obtained from the website [www.youtube.com](http://www.youtube.com)) before the Trial Chamber

---

<sup>40</sup> E118/2 Co-Prosecutors' Joint Response to Ieng Sary's Request and Ieng Thirith's Motion Regarding Access to Strictly Confidential Documents; 3 October 2011 at paras 28-31.

<sup>41</sup> Documents 1-14 on Annex 7(b), being witness statements, are available on the case file as E9/32.2.1-14; document 15 on Annex 7(b), being a documentary film by Aronowitsh and Lindberg is on the case file as E109/2.3R. All but one of these statements are currently available in Khmer only. No.11 (E9/32.2.11) is currently available in English only. Document 16 on Annex 7(b), being a documentary by Saidnattar, is available on the case file as E109/2.3R. Document 17 on Annex 7(b) being a book by Raoul Marc Jennar, is on the case file (in French only) as E109/2.3.1. Document 18 on Annex 7(b) is a witness statement (undated) of CHOU Koemleng. Based on the summary description contained in the Civil Party list, this would appear to correspond to a statement dated 28 February 2011 which is available on the case file as E9/32.2.28. It is currently available in English only.

<sup>42</sup> Listed as number 1 on Annex 7(c).



pursuant to Rule 87(4).<sup>43</sup> The Co-Prosecutors have been attempting to obtain a full copy of the documentary for some time and as soon as they do so, they will disclose it and request its admission into evidence pursuant to Rule 87(4).

26. The new documents proposed by the Civil Parties are included on the list attached to this filing as **Annex A**.
27. As a final observation on the documents proposed by the civil parties, it is noted that the civil parties describe the relevance of five of the documents on Annex 7(a)(i)<sup>44</sup> and 12 of the documents on Annex 7(b)<sup>45</sup> as being (solely or partially) to “contradict” the conclusion of paragraph 1429 of the Closing Order, which relates to the crime of rape. Whilst the Co-Prosecutors do not propose the introduction of the documents for this purpose, noting that the accused persons are not accused of using the crime of rape (outside the context of forced marriage) to implement the common criminal plan, the Co-Prosecutors believe that these documents have a contextual relevance to facts in issue and as such it is appropriate to admit them.

#### **E. General observations as to written statements**

28. It is noted that all parties have included prior written statements of witnesses or civil parties on their documents lists. A large number of these statements do not relate to the acts and conduct of the accused persons or their immediate subordinates, but rather to crime base events, the impact of crimes on victims and other relevant matters such as policies, communication structures and the existence of a common criminal plan. The Co-Prosecutors reiterate their previous submission that the Trial Chamber has the discretion to admit prior written statements which do not go to proof of the acts and conduct of an accused person as charged in the Indictment, without summoning the witness to testify at trial.<sup>46</sup> Where the statements relate to the acts and conduct of an accused person or a pivotal issue in the case, the accused have a right to confront the witness. However, should the accused chose not to exercise this right, the Trial Chamber may admit the statement without requiring the witness to appear for cross-examination.

#### **IV. CONCLUSION AND REQUEST**

29. For the reasons expressed above, the Co-Prosecutors notify the Trial Chamber that they:
  - (1) do not object to the admission of any of the proposed documents included on the document lists submitted by the defence team for Ieng Sary or Khieu Samphan, subject

---

<sup>43</sup> **E93/7** Co-Prosecutors’ request to hear a further 2 experts and 13 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. The 7 video clips are now available on the case file as E93/7.3R.

<sup>44</sup> Documents D190 (Annex A); D190 (Annex B); D190 (Annex C); D125/91; D125/123 included on Annex 7(a)(i).

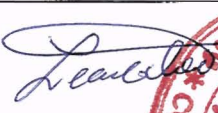
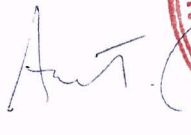
<sup>45</sup> Documents numbered 1-11 and 13 on Annex 7(b).


<sup>46</sup> **E96** Co-Prosecutors’ Rule 92 submission regarding the admission of written witness statements before the Trial Chamber, 15 June 2011 and **E96/6** Co-Prosecutors reply to the responses regarding the admission of written witness statements before the Trial Chamber, 10 August 2011.

002/19-09-2007-ECCC/TC

- to the one new document included on the Ieng Sary list being made available to other parties in advance;
- (2) reserve their position with respect to five of the proposed “new” documents included on the document list submitted by the defence team for Ieng Thirith until such time as all of these documents are made available;
- (3) otherwise do not object to the admission of any of the proposed documents included on the document list submitted by the defence team for Ieng Thirith (including two other documents categorised as new but which are in fact already on the case file); and
- (4) do not object to the admission of any of the proposed documents included on the document lists submitted by the Civil Party Lead Co-Lawyers, subject to one proposed new document and all civil party applications being made available to other parties in advance.
30. Further, the Co-Prosecutors request that, absent objections being received from any other parties, the documents to which the Co-Prosecutors have no objection be admitted forthwith into evidence and subject only to their being identified in court. This approach was proposed by the Co-Prosecutors in their recent *Request regarding documentary evidence*.<sup>47</sup> As noted in the request, the identification of the documents in court, for instance by reference to document number and/or brief description, fulfils the requirement in Rule 87(2) that evidence be “put before the Chamber” and the prior opportunity for parties to object to these document fulfils the requirement in Rule 87(2) that evidence be “subject to examination.”<sup>48</sup>

Respectfully submitted,

Date	Name	Place	Signature
14 November 2011	CHEA Leang Co-Prosecutor	Phnom Penh	
	Andrew CAYLEY Co-Prosecutor		



<sup>47</sup> *Supra* note 18.

<sup>48</sup> *Ibid* at paras. 7-8.