

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

FILING DETAIL

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**NOTICE OF JOINDER IN IENG SARY'S INITIAL SUBMISSIONS
REGARDING DOCUMENTS TO BE RELIED UPON AT TRIAL &
ADDITIONAL SUBMISSIONS REGARDING NEW DOCUMENTS**

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NOTICE & SUBMISSIONS

1. On 1 April 2011, counsel for the Accused Ieng Sary (the 'Ieng Sary Defence') filed its initial submissions regarding documents to be relied upon at trial (the 'Ieng Sary Submissions')¹ in response to certain portions of this Chamber's 'Order to File Material in Preparation for Trial'.² Counsel for the Accused Nuon Chea (the 'Nuon Chea Defence') hereby adopts the Ieng Sary Submissions in their entirety and joins the Ieng Sary Defence in seeking the specific relief requested therein.
2. In brief, for the reasons contained in the Ieng Sary Submissions, the Nuon Chea Defence: (a) relies upon the list of all documents on the Case File submitted by the Ieng Sary Defence (the 'List'); (b) is not required nor able, at this time, to identify specific documents from the List that it intends to rely upon at trial; and (c) is not required nor able, at this time, to provide a 'Documentary Evidence Chart' with respect to material already on the Case File.³
3. Additionally, with regard to any new documents intended to be put before the Chamber,⁴ the following points merit emphasis:
 - a. As indicated by counsel at the recent Trial Management Meeting (further to previously-made written submissions⁵), it remains unclear 'whether [the Nuon Chea Defence is] still forbidden from carrying out any investigation on behalf of the [Accused] prior to the start of the [trial] hearing'.⁶ Direction by the Trial Chamber in this regard has yet to be provided.
 - b. An indication 'regarding the organization and sequencing of the trial'⁷ has only recently been announced by the Chamber. Given the initial and inchoate nature of such sequencing, the Nuon Chea Defence intends to propose additional topics in

¹ Document No **E-9/22**, 'Ieng Sary's Initial List of Documents Already on the Case File & Notice Concerning His Forthcoming Initial List of New Documents to Put Before the Chamber at Trial', 1 April 2011, ERN 00659454-00659469.

² Document No **E-9**, 'Order to File Material in Preparation for Trial', 17 January 2011, ERN 00635754-00635759 (the 'Preparation Order'), paras 12-14.

³ See Ieng Sary Submissions, paras 12-29.

⁴ See Preparation Order, para 12(ii).

⁵ See, e.g., Document No **E-9/4/4**, 'List of Proposed Witnesses, Experts, and Civil Parties', 15 February 2011, ERN 00644417-00644423 (the 'Nuon Chea Witness List'), para 6.

⁶ Draft Transcript, Trial Management Meeting, 5 April 2011 (the 'TMM Transcript'), 116:10-12.

⁷ TMM Transcript, 51:22-23.

keeping with the various categories indicated in its witness summaries (the ‘Summaries’).⁸

- c. While the various parties have proposed a total of 1054 witnesses, the Chamber has announced that, following a ‘review [of] the lists pursuant to Rules 80*bis* and 87’, it ‘is likely that there will be a significant reduction in numbers to be heard during trial’.⁹ Such envisaged reduction will undoubtedly impact the Nuon Chea Defence’s approach to document presentation at the substantive hearing.
 - d. As noted previously by the Nuon Chea Defence, and in the Ieng Sary Submissions, the *state and size* of both the Case File and the Shared Materials Drive (the ‘SMD’) make it difficult and time-consuming to identify relevant documents and present them to the Accused for his information and instructions.¹⁰
 - e. Finally, as noted in the Ieng Sary Submissions, the Cambodian Code of Criminal Procedure (the ‘CCP’) provides no advance-notice requirement with respect to the right to present new material at trial: ‘*Until the end of the trial hearing, the accused [...] may [...] submit all documents and evidence that [he] think[s] will be conducive to ascertain[ing] the truth.*’¹¹ The Nuon Chea Defence has consistently objected to departures from existing Cambodian procedure not justified by specific reference to Article 12(1) of the ECCC Agreement.¹²
4. In light of these factors—and with a view to ‘assist[ing] the Chamber in its duty to adequately weigh all material [...] allege[d] to be exculpatory’¹³—the Nuon Chea Defence will strive to notify the Chamber and the parties of any new documents it intends to rely upon at trial in due course and well in advance of the date of such material’s contemplated proffer. This position is without prejudice to Nuon Chea’s right under Cambodian law to rely upon any material he considers *conducive to ascertaining the truth*, so long as such material is submitted prior to the conclusion of

⁸ Document No E-9/10.1, ‘Annex D: Witness Summaries with Points of the Indictment’, 23 February 2011, ERN 00646679–00646736; *see also* Nuon Chea Witness List, para 12.

⁹ TMM Transcript, 53:3–5.

¹⁰ *See* Nuon Chea Witness List, para 2; Ieng Sary Submissions, paras 30–37.

¹¹ CCP, Article 334 (emphasis added).

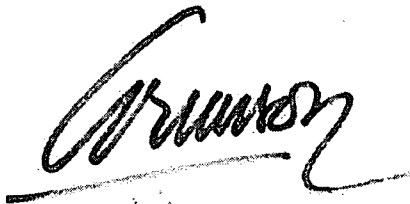
¹² *See* Document No E-51/3, ‘Consolidated Preliminary Objections’, 25 February 2011, ERN 00648279–00648310.

¹³ Email to the parties from Susan Lamb, Trial-Chamber Senior Legal Officer, re: ‘Responses to questions posed during the Trial Management Meeting’, 8 April 2011.

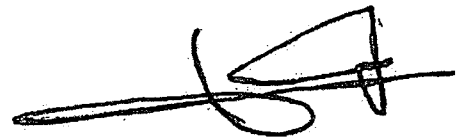
the trial proceedings. As well as potentially exculpatory material, this would include any document which may impeach the credibility of any adverse witness. In this regard, the Nuon Chea Defence hereby reserves all rights available to the Accused under Cambodian and international law.

5. As an initial good-faith indication, the Nuon Chea Defence will likely seek to put before the Chamber all of those documents referenced in the various Requests for Investigative Action filed before the Office of the Co-Investigating Judges,¹⁴ as well as certain material contained in the SMD, which goes to the contextual issues identified in the Summaries.

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¹⁴ See Consolidated Preliminary Objections, para 18.