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 du dossier: Ratanak

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា
 Extraordinary Chambers in the Courts of Cambodia
 Chambres Extraordinaires au sein des Tribunaux Cambodgiens

Kingdom of Cambodia
 Nation Religion King
 Royaume du Cambodge
 Nation Religion Roi

MEMORANDUM – TRIAL CHAMBER

សាធារណៈ / Public

TO: All parties, Case 002

Date: 25 October 2011

FROM: Judge NIL Nonn, President, Trial Chamber

Signature

CC: All Trial Chamber Judges; Trial Chamber Senior Legal Officer



SUBJECT: Witness lists for early trial segments, deadline for filing of admissibility challenges to documents and exhibits, and response to Motion E109/5

Witness order for the early segments of trial

As indicated previously to the parties, the hearing of the evidence in Case 002 will commence on Monday 28 November 2011. To assist in preparation for the early phases of the trial, the Chamber attaches to this memorandum a list of witnesses, experts and Civil Parties who may be called during the first trial segments in Case 002 (confidential Annex A), as well as indications as to the order of witnesses and experts to be called during the first trial session (28 November 2011-16 December 2011) (confidential Annex B). These lists are drawn from those experts, witnesses and civil parties contained on the lists provided to the parties at the Initial Hearing. The Chamber's decision on all challenges filed by the parties in relation to some of these witnesses and experts will follow shortly. Witnesses, experts and Civil Parties relevant to the factual portions of the first trial (concerning population movement phases one and two) will be communicated to the parties at a later date.

Deadlines for admissibility challenges to documents and exhibits

Following the deadline set by the Chamber at the Initial Hearing on 27 June 2011, lists of documents and exhibits considered relevant by the parties to the initial four trial segments have already been filed. The Chamber indicated at the Initial Hearing that it would shortly set deadlines for the filing of admissibility challenges, if any, to these documents.

In preparation for the first trial segment, the Chamber orders the parties to indicate, no later than 1 November 2011, which documents and exhibits from its earlier list they will seek to admit before the Chamber in connection with those witnesses and experts who may be called during the first three weeks of trial (confidential Annex B). Objections, if any, to these documents and exhibits by the opposing parties shall be filed within 10 days of notification of those documents and exhibits the parties intend to introduce during the first trial segment.

As these filings will be used solely by the Chamber to update existing documents lists and databases, and to ensure efficiency, these notifications and any objections to these documents or exhibits may, exceptionally, be filed in one official language only. Written replies to responses will not be authorized, but the Chamber will provide opportunity for adversarial argument at trial, where this is warranted.

The Chamber further requires the parties to indicate no later than 5 January 2012 which, if any, of the remaining documents sought to be admitted by the opposing parties in connection with the first four trial segments are objected to, and the basis for these challenges. Responses to these objections shall be filed thereafter in accordance with the deadlines established by the ECCC legal framework, and the Chamber will indicate in due course if replies are required.

Whilst the Chamber sets no page limit for the parties' objections, it requests the parties to briefly specify in relation to each document or exhibit, or category of document or exhibit challenged, the particular objection raised. In so doing, they shall make reference to the criteria contained in Internal Rule 87(3) which indicates that the Chamber "may reject a request for evidence where it finds that it is: a. irrelevant or repetitious; b. impossible to obtain within a reasonable time; c. unsuitable to prove the facts it purports to prove; d. not allowed under the law; or e. intended to prolong proceedings or is frivolous". The Chamber will not at this stage entertain submissions regarding the probative value or weight to be accorded to any document or exhibit (*see further* Decision on the Vietnamese Film Footage filed by the Co-Prosecutors and on Witnesses CP3/3/2 and CP3/3/3, E5/10/5, 29 July 2009).

Deadlines in relation to documents and exhibits relevant to population movement (phases one and two) will be communicated at a later date.

Translation of documents

The Chamber further provides the following guidelines to the parties concerning translation. Following a review by the Chamber of the documents proposed by the parties, it appears that:

- The Co-Prosecutors have proposed a total of 6448 documents, 591 of which are new. Of these, they submit that 4768 documents are relevant to the initial four trial segments. The Co-Prosecutors have also indicated that they have submitted all these documents for translation and that they have set a priority schedule for the completion of these translations with the Interpretation and Translation Unit (ITU) (E109/4);
- The IENG Thirith Defence proposed a total of 204 documents, 44 of which are new. 102 documents from among this total have also been proposed by the Co-Prosecutors. With regard to the initial four trial segments, IENG Thirith proposes 195 documents including all above-mentioned new documents (E109);
- The IENG Sary Defence proposed a total of 1037 new documents, of which 503 appear to be audio-video recordings from the Bophana Centre. In addition, the IENG Sary Defence indicates that it intends to rely on all the documents already in the Case File and in the Shared Material Drive. With regard to the initial four trial segments, the IENG Sary Defence proposes 8 documents, 6 of which are new (E109/6);

- The KHIEU Samphan Defence proposed a total of 126 documents, 36 of which are new. 62 of these documents have also been proposed by the Co-Prosecutors. With regard to the initial four trial segments, the KHIEU Samphan Defence proposed 88 documents including 34 new documents (E109/1);
- The Civil Party Lead Co-Lawyers proposed all of the documents from the Case File referenced in the footnotes of the Closing Order, as well as 24 additional documents also from the Case File (E109/2);
- The NUON Chea Defence declined to provide a list of documents, reiterating its earlier submissions that it 1) reserves the right to rely upon any document; 2) it is neither required nor able to identify the specific documents it intends to rely upon; and 3) will disclose any document it intend to put before the Chamber in due course (E109/3) (*see also* E9/26). This practice is addressed below (*see* Chamber's response to Motion E109/5).

When documents are introduced at trial, these should ordinarily be available in all three ECCC official languages. The party seeking to introduce a document bears the responsibility of ensuring the timely availability of this document in all ECCC official languages. The Chamber therefore urges all parties to identify those documents they seek to introduce during the early trial phases and to ensure that these priorities are communicated to the ITU in good time. Failure to ensure the timely translation of documents will limit the moving parties' ability to utilize these documents at trial. Given that the ITU may not always be able to translate large volumes of material within a short period of time, parties should therefore assess their translation needs, coordinate with ITU and file requests on an on-going basis in accordance with the order in which they intend to present their documents at trial.

In relation to new documents (namely, documents which are not included in the Case File and do not possess an ERN number), the parties should also coordinate with the Records and Archives Unit (RAU) so that such documents can be assigned ERNs in advance of any request for translation. This will significantly enhance the efficiency of the translation and subsequent filing of new documents.

Several documents sought by the parties contain large number of pages (*e.g.* books, confessions, studies, collections of academic articles). Before submitting requests for translation of such documents, the parties shall consult with ITU and RAU to ensure that full or partial translations of these documents do not already exist. ITU retains a list of books and videos for which translations in various official ECCC languages already exist in the public domain, and this list should be consulted prior to requesting translations of this material. The current version of this list, which is updated periodically by ITU, will be provided to the parties (in English only). Where parties become aware of additional translations of these works, they shall inform ITU and RAU so that this list may be updated.

Where translations of this material are required, the parties shall indicate the relevant portions of these documents for which translation is required. Where the same document is sought by multiple parties, each party should specify which specific portions of this document shall be translated.

To ensure efficiency, parties requesting transcription of audio-visual material should further indicate to RAU and the Audio Visual Unit, through CMS, which portions of the recordings (relevant starting and ending time) they intend to use. Where necessary, the relevant portions of the recording will be transcribed and then translated.

Co-Prosecutors Motion E109/5

The Chamber also notes the Co-Prosecutors' Motion E109/5, the NUON Chea Defence response to it (E109/5/1) and the Co-Prosecutors' Reply (E109/5/2). In view of earlier failures by the NUON Chea Defence to file timely document and exhibit lists, the Co-Prosecutors request the Chamber to preclude the NUON Chea Defence from introducing at trial documents which were not identified pursuant to previous orders.

The Chamber emphasizes that documents not filed in accordance with previous deadlines must satisfy, in accordance with Internal Rule 87(3), the extremely high threshold of showing that they could not have been disclosed within the applicable deadlines with the exercise of due diligence, and that their late admission is vital in the interests of justice. It follows that most belated requests to admit documents are unlikely to be successful.

This constitutes the Chamber's official response to this Motion.