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

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

MEMORANDUM – TRIAL CHAMBER

Date: 11 January 2012

TO: All parties, Case 002

FROM: Judge NIL Nonn, President, Trial Chamber

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



SUBJECT: Scheduling of oral hearing on documents (16-19 January 2012)

1. On 27 June 2011, the Chamber ordered the parties to indicate, by 22 July 2011, which documents from their earlier lists filed pursuant to the Chamber’s directive E9 they intended to put before the Chamber during the first trial segments.¹ With the exception of the NUON Chea Defence, all parties filed revised lists of documents.² The Chamber notes, in accordance with its previous directions, that these revised lists shall refer only to documents from the parties’ earlier lists which are considered by them to be relevant to the initial trial segments. Documents on this revised list which are additional to those included on the parties’ earlier lists must instead satisfy the criteria for the belated admission of documents pursuant to Internal Rule 87(4) (in relation to new documents) and the Trial Chamber’s previous jurisprudence (in relation to documents already on the case file).³

2. The Chamber further required the parties to indicate by 5 January 2012 which of the documents sought to be put before the Chamber by the opposing parties in connection with the first four trial segments are objected to, and the basis for these challenges (E131/1). The Chamber requested the parties “to briefly specify in relation to each document or exhibit, or

¹ Transcript of Initial Hearing – 27 June 2011, E1/4.1, 27 June 2011, p. 25.
² KHIEU Samphan’s listes de documents pour les premières phases du procès, E109/1, 22 July 2011; Civil Party Lead Co-Lawyers’ revised list of documents and exhibit relevant to the first four trial segments, E109/2, 22 July 2011; Co-Prosecutors’ response to the Trial Chamber’s request for documents relating to the first phase of trial, E109/4, 22 July 2011; IENG Sary’s document and exhibit list for the first four trial topics, E109/6, 8 August 2011. On 25 October 2011, the Chamber further ordered the parties to indicate, by 1 November 2011, which documents from their earlier lists they intended to put before the Chamber during the first three weeks of trial. With the exception of the NUON Chea Defence, all parties filed revised lists of documents. These later submissions have also been taken into account by the Chamber.
³ See Decision on Admissibility of Material on the Case File as Evidence, E43/4, 26 May 2009, para. 7 (indicating that material on the case file must satisfy minimum standards of relevance and reliability to be considered as evidence, but that once produced before the Chamber, the probative value of this evidence, and hence the weight to be accorded to it, will then be assessed).

category of document or exhibit challenged, the particular objections raised.” Three Defence teams filed objections within this deadline (E131/1/10, E131/1/11 and E131/1/12). Written replies to these filings were not authorized but the Trial Chamber indicated that it would “provide an opportunity for adversarial argument at trial, where this is warranted” (E131/1).

3. As indicated to the parties during the informal trial management meeting of 6 January 2012, the Trial Chamber shall devote Monday 16 January 2012 to Thursday 19 January 2012 to the in-court consideration of the following documentary issues:

Oral responses to objections in accordance with directive E131/1

4. Pursuant to E131/1, the Chamber will provide the parties opportunity to respond orally to the above objections received within the 5 January 2012 deadline in lieu of written filings. Further details regarding the time allocations for oral arguments and responses in relation to various categories of documents are provided below. Following these responses, a right of reply will be permitted to each of the Defence teams.

Oral argument on timely objections to documents already granted an E3 classification

5. On 5 December 2011, in order to permit the hearing of early witnesses to proceed, all documents referred to in the footnotes of the paragraphs relevant to historical background (*see* E141) were provided an E3 classification and thus considered by the Chamber to have been placed before it. Objections were later filed on 16 December 2011 (E156) and 5 January 2012 (E131/1/10, E131/1/11 and E131/1/12). The objections set forth in E156 and other related filings which have identified objections with sufficient particularity have since been reviewed by the Chamber. It notes that most of these challenges concern whether or not entire categories of documents should be put before the Chamber pursuant to Internal Rule 87(3).

6. As noted by the President in an oral ruling of 10 January 2012, pursuant to Rule 87(1) the Trial Chamber has a broad discretion to put documents before the Trial Chamber. The Chamber further notes the Co-Prosecutors’ submission E158, which provides indications of reliability of many documents considered by them to be relevant to the early trial segments. Questions of authenticity shall therefore be limited to those documents or category of documents which in the Defence submission manifestly lack reliability or relevance pursuant to Internal Rule 87(3). While the Trial Chamber considers the parties’ filings to have been helpful in identifying the contested issues at trial, it will not make final determinations on the majority of individual documents. The Trial Chamber stresses that any objections raised by the Defence will nevertheless be considered as a matter of weight by the Trial Chamber at the end of the trial when considering the entire body of evidence.

7. Within this general framework, the Chamber shall on Monday 16 January 2012 permit each party 30 minutes to set forth the general evidentiary issues raised by the documents relevant to this hearing. The Defence will then be allocated 90 minutes to present objections to those documents already provided with an E3 classification by the Trial Chamber (with 30 minutes granted to each Defence team, unless a contrary agreement is reached by all teams). The Co-Prosecutors shall then have one hour, and the Lead Co-Lawyers 15 minutes, in response. A brief right of reply of 15 minutes for all Defence teams will then be granted.

Notice to the parties of categories of documents to be put before the Chamber and opportunity for oral objections and responses

8. The parties are further advised that the Chamber intends to place the following entire categories of contemporaneous DK documents before it pursuant to Internal Rule 87(3). The A-numbers below correspond to the Annexes to the Co-Prosecutors' document list of 19 April 2011 (E9/31), insofar as the Co-Prosecutors have indicated them to be relevant to the first trial segments in its Annexes to their subsequent list of 22 July 2011 (E109/4).

- A1 – Accused statements: all documents in E9/31.1 indicated as relevant in E109/4.1 (233 documents);
- A2 – CPK publications and directives: all documents in E9/31.2 listed as relevant in E109/4.2 (86 documents);
- A3 – CPK meeting minutes: all documents in E9/31.3 listed as relevant in E109/4.3 (58 documents);
- A4 – DK Communications – all documents in E9/31.4 listed as relevant in E109/4.4 (394 documents);
- A5 – DK media & public statements: all documents in E9/31.5 listed as relevant in E109/4.5 (343 documents);
- A6 – DK biographies – all documents E9/31.6 listed as relevant in E109/4.6 (41 documents);
- A7 – DK commerce records: all documents in E9/31.7 listed as relevant in E109/4.7 (169 documents);
- A8 – Tram Kak district records: all documents in E9/31.8 listed as relevant in E109/4.8 (57 documents);
- A9 – S-21 prisoner records: all documents in E9/31.9 listed as relevant in E109/4.9 (297 documents);
- A10 – S-21 confessions: all documents in E9/31.10 listed as relevant in E109/4.10 (345 documents).

All documents in the above categories that have not been objected to within the applicable deadlines shall be deemed to be put before the Chamber. With regard to those documents or categories of documents to which a party has objected, the Chamber has allocated Tuesday 17 to Thursday 19 January 2012 to the oral discussion of objections to the above categories of documents/documents contained in annexes A1, A2, A3, A4 and A5.

Objections not previously filed before the Chamber in accordance with previous directions shall not be permitted. However, the Defence may utilize this hearing to identify with greater particularity those documents or categories of documents in A1-A5 to which they have objected, and the basis of these objections.

Time allocations for the hearing of all relevant objections and responses are as follows:

Tuesday 17 January 2012

Documents in A1: 2 hours have been allocated to all Defence teams to present all objections to this category of documents (with the specific time allocation to be granted to each team to be agreed by all Defence teams). The Co-Prosecutors shall then be granted one hour, and the Lead Co-Lawyers 30 minutes in response.

Documents in A2: 1 hour has been allocated to all Defence teams to present all objections to this category of documents (with the specific time allocation to be granted to each team to be agreed by all Defence teams). The Co-Prosecutors shall then be granted 45 minutes, and the Lead Co-Lawyers 15 minutes in response.

Wednesday 18 January 2012

Documents in A3: 1 hour has been allocated to all Defence teams to present all objections to this category of documents (with the specific time allocation to be granted to each team to be agreed by all Defence teams). The Co-Prosecutors shall then be granted 45 minutes, and the Lead Co-Lawyers 15 minutes in response.

Documents in A4: 2 hours have been allocated to all Defence teams to present all objections to this category of documents (with the specific time allocation to be granted to each team to be agreed by all Defence teams). The Co-Prosecutors shall then be granted one hour, and the Lead Co-Lawyers 30 minutes in response.

Thursday 19 January 2012

Documents in A5: 2 hours have been allocated to all Defence teams to present all objections to this category of documents (with the specific time allocation to be granted to each team to be agreed by all Defence teams). The Co-Prosecutors shall then be granted one hour, and the Lead Co-Lawyers 30 minutes in response.

The Defence teams shall at the conclusion of this hearing be granted a one hour right of reply (with the specific time allocation to be granted to each team to be agreed by all Defence teams) in relation to all objections relevant to A1-A5.

Where these hearings raise genuine issues of provenance, reliability or chain of custody in relation to any of the above categories of documents, the Trial Chamber will summon and hear a limited number of witnesses to address them.⁴ Where necessary and subject to witness availability, this may occur during the hearings between 16-19 January 2012, or shortly thereafter.

Future document-related hearings

9. Additional oral argument will be scheduled in February 2012 regarding, amongst other documents, the above categories of documents not considered during the 16-19 January 2012 hearings, as well as other parties' documents proposed for admission before the Chamber in relation to the early trial segments. Further information regarding these hearings will be provided in due course.

⁴ See Co-Prosecutors' Rule 80 Expert, Witness and Civil Party Lists, including Confidential Annexes 1, 2, 3, 3A, 4 and 5, E9/4, 28 January 2011, para. 11 (recognizing the potential need to call witnesses to authenticate documents and setting forth a non-exhaustive list of such individuals in Annex 5); see also Annex 3: Witness List, E9/4.3 (naming ██████████ as potential witness) and Annex 5, E9/4.5 (naming ██████████ as a potential witness). The Trial Chamber may therefore summon ██████████ and/or ██████████ as stand-by witnesses for the limited issue of document authentication should the need arise to call them.