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ព្រះរាជាណាចក្រកម្ពុជា

ជាតិ សាសនា ព្រះមហាក្សត្រ

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

TRIAL CHAMBER

TO: All Parties, Case 002

Date: 13 February 2013

FROM: NIL Nonn, President, Trial Chamber;

**CC: All Judges of the Trial Chamber; Trial Chamber Senior Legal Officer,
Head, Interpretation and Translation Unit (ITU)**



**SUBJECT: Response to Motions E246 and E185/1/1 and other sundry requests
concerning documents and deadlines**

1. The KHIEU Samphan Defence request an oral hearing to debate which written records of interview, witness statements, complaints and Civil Party applications of individuals not called to give oral evidence before the Chamber should be put before the Chamber (E246). The Chamber notes that the admission of statements tendered in lieu of oral evidence was first sought by the Co-Prosecutors on 15 June 2011 (E96), following which all parties had an opportunity to make submissions on the governing legal principles and their application to the written statements proposed to be put before the Chamber by the parties (*see e.g.* E96/1, E96/2, E96/3, E96/4, E131/6, E114, E114/1). The Chamber issued its decision setting forth the legal principles applicable to written statements (E96/7) and has since affirmed that these principles apply to the written statements proposed by the Co-Prosecutors, as well as to complaints and Civil Party applications (E223/2). The Chamber has further granted the parties an additional opportunity to file objections to these statements until 26 April 2013. Consequently the Chamber considers that ample opportunity has been afforded to the parties to formulate objections to any of these statements, or to otherwise make observations on them. The Chamber accordingly requires all parties to file any further objections and observations to these statements within one, consolidated motion on or before this date. The Trial Chamber also grants the Co-Prosecutors' request by emails to the Trial Chamber Senior Legal Officer of 16 and 22 November 2012 seeking to respond to any objections filed by the Defence teams within one consolidated motion. The Chamber requires the Co-Prosecutors to file this consolidated response within one month of the filing of objections by all Defence teams or by 24 May 2013, whichever date is sooner.

2. The KHIEU Samphan Defence further requests clarification of the status of documents accorded an E3 number (E246). It notes the Trial Chamber's acknowledgement that "no evidence may be adduced against an accused unless it has been subject to adversarial challenge" (E223/2, paragraph 12) and suggests the Trial

Chamber's proposed allocation of E3 numbers to witness statements in advance of the opportunity to lodge objections to them is premature (E246, paragraph 8). The applicable legal framework for putting written statements before the Chamber, and therefore according them an E3 number, is set forth in Decision E96/7. This decision further clarified that the criteria contained in Section 4.2 and 4.3 of that decision would be considered by the Chamber when assessing the probative value and thus weight to be accorded to evidence put before the Chamber in consequence of it. Decision E96/7 also noted that parties would be given an opportunity to put any relevant objections to written statements proposed to be put before the Chamber, whether at a forthcoming hearing or otherwise (E96/7 paragraph 36).¹ In view of the above briefing schedule for the lodging of written objections to any written records of interview, witness statements, complaints and Civil Party applications of individuals not called to give oral evidence to which the parties may object, the Chamber rejects the KHIEU Samphan Defence's complaint that they are denied an opportunity for adversarial debate on this evidence. It does not at this stage consider an oral hearing on these issues to be warranted.

3. Due to the unavailability of some statements in all three ECCC official languages, the Chamber had at earlier stages of the trial permitted the parties to utilize material available in one or two ECCC official languages only. The Chamber accorded the Co-Prosecutors and Civil Party Lead Co-Lawyers a deadline of 4 March 2013 to obtain the translation into all three official languages of any written statements and Civil Party applications they wish to put before the Chamber (E223/2; *see also* E185/1). The Co-Prosecutors request clarification on whether this deadline is limited to written statements or whether it instead applies to all documents sought to be put before the Chamber (E185/1/1). The Chamber clarifies that the purpose of this deadline is to ensure the timely availability of *all* materials proposed for admission in all three official ECCC languages. The Chamber consequently orders the parties, in consultation with ITU, to ensure all categories of evidence tendered by them are so available by 4 March 2013 and that all material proffered can be made available before the Chamber in all three official ECCC languages prior to the conclusion of the hearing of evidence in Case 002/01. The Chamber further reminds the parties that unless material submitted into evidence can be so provided in a timely manner, it cannot be considered as having been put before the Chamber pursuant to Internal Rule 87.

4. Finally, the Chamber notes the letter of 6 February 2013 to the Trial Chamber Senior Legal Officer from the IENG Sary Defence requesting an opportunity to present further objections to new documents tendered by the Co-Prosecutors in an Annex A21 and other parties' new documents. The Chamber grants the request and orders that any such objections be made in writing by 22 February 2013.

5. This constitutes the Chamber's official response to all above motions and requests.

¹ *See also* E96/7, paragraphs 35(d) and disposition; Trial Chamber memoranda entitled "Further oral hearing on documents (commencing 12 March 2012), E172/1, 24 February 2012, n. 1 ("Document categories A12 and A13 [written statements] will be dealt with in a written decision pending before the Chamber *and are consequently not scheduled for oral argument*") and "Updated memorandum for next document hearing (12-19 March 2012), E172/5, 2 March 2012, n. 1 ("Document categories A12 and A13 will be dealt with in a written decision pending before the Chamber *and are consequently not at this stage scheduled for oral argument*") (emphasis added).