



ឯកសារដើម
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL

ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/date de reception):
..... 21 / 06 / 2013

ម៉ោង (Time/Heure) : 10 : 40

មន្ត្រីទទួលបន្ទុកសំណុំរឿង /Case File Officer/L'agent charge
du dossier: **SANN PRON**

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

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ
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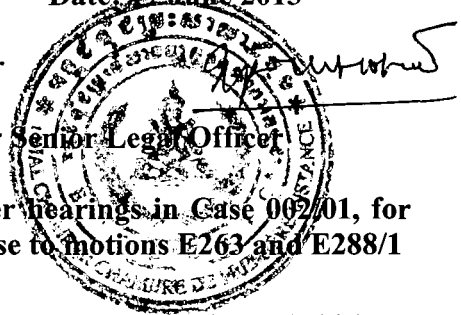
TO: All Parties, Case 002

FROM: NIL Nonn, President of the Trial Chamber

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

SUBJECT: Schedule for the final document and other hearings in Case 002/01, for the questioning of the Accused and response to motions E263 and E288/1

Date: 17 June 2013



1. The Chamber has recently indicated that a final document hearing will be held in Case 002/01 to permit the presentation of key documents by the parties in relation to joint criminal enterprise and the role of the Accused (E288). This document hearing will commence at the conclusion of the testimony of witness TCW-801, whose testimony is currently scheduled to commence on Wednesday 19 June 2013. This testimony is expected to require one day. While this hearing may therefore commence as early as 20 June 2013, it is also possible that it may not begin until the week commencing 24 June 2013.

2. The Co-Prosecutors have requested that they be allocated three days in order to present key documents at this hearing. The Civil Party Lead Co-Lawyers had requested the same amount of time, but reduced the time allocation sought to one and a half days at the Trial Management Meeting ("TMM") on 13 June 2013. The NUON Chea Defence have indicated that they do not as such wish to present key documents at this hearing, but have requested a maximum of one day in order to respond to the document presentations of the other parties.

3. In motion E263, the KHIEU Samphan Defence submits that the key document hearings violate the Accused's right to a fair and adversarial trial, insofar as they are not intended to allow adversarial argument in relation to the documents presented, and due to alleged inconsistencies regarding the conduct of these hearings before the Trial Chamber (paragraphs 4-12). They submit that the KHIEU Samphan Defence must be accorded a real opportunity to discuss all accusations against the Accused and that further hearings on the admissibility of documents ought to be scheduled. The KHIEU Samphan Defence also submit that key documents presented so far should further be examined for probative

value so as to permit full adversarial debate and that opportunity be provided, at the end of proceedings, for a thorough assessment of the entire body of evidence against the Accused (paragraphs 46, 52 and 55).

4. The Chamber has previously explained that the key document hearings, which were held at the conclusion of each trial segment, are required because there is no necessity within the ECCC legal framework for documents to be tendered only through relevant witnesses or experts. These hearings were therefore designed to permit the parties to indicate, for the benefit of the Chamber, those documents alleged by them to be of particular relevance to each trial segment. The Chamber has previously emphasised that the purpose of these hearings is to ensure that both inculpatory and exculpatory evidence is appropriately highlighted before the Chamber. These hearings serve also to permit a greater measure of public accessibility to the documentary aspects of the trial, in view of the vast size of the Case 002 Case File and the unlikelihood that the general public would otherwise be aware of the contents of these documents (E201/2).

5. As separate hearings were held specifically to enable admissibility challenges to all documents tendered at trial, arguments as to admissibility were not permitted during these hearings. However, the Accused or their lawyers were never prevented from discussing the relevance or probative value of the documents presented during them. In the light of the KHIEU Samphan Defence's allegation that they lacked adequate opportunity for adversarial argument in relation to these documents, the Trial Chamber invited the KHIEU Samphan Defence to indicate at the TMM how much time they require for this purpose, and to specify the documents to which they wish to further object or comment. Upon receipt of these indications, the Chamber would issue its schedule for the final document hearings in Case 002/01 (Annex IV (b): List of motions still pending before the Chamber, upon which a decision is still pending (provided to the parties by the Trial Chamber Senior Legal Officer on 10 June 2013), page 25).

6. At the TMM, the KHIEU Samphan Defence declined both the opportunity to seek to present key documents at this forthcoming hearing, to comment on the key documents presented by other parties or to indicate how much additional time they sought in order to adversarially challenge or otherwise comment on documents previously presented before the Chamber. In their oral response to E263 at the TMM, the Co-Prosecutors submit that the key document hearings held over the course of trial were wholly compatible with the Accused's right to a fair and adversarial trial, and served to enhance the transparency of proceedings. The Chamber's overall approach to documents at trial provided ample opportunity to the parties to challenge the admissibility of evidence proposed at trial, to highlight key features of the documentary record from the perspective of that party, or to otherwise make observations on the relevance and probative value of the documents presented by the other parties. Although the KHIEU Samphan Defence frequently alleged at trial that they lacked opportunity for full and adversarial debate regarding documents, they have frequently not availed themselves of many of the opportunities to do so provided by the Chamber. While this is their right, it should not be concluded that insufficient opportunity for adversarial debate regarding documents has been provided over the course of trial in Case 002/01. The Co-Prosecutors nonetheless suggest that a last opportunity be provided to the KHIEU Samphan Defence at the forthcoming key

document hearing to make any further submissions regarding documents they deem warranted, and suggest that two hours be allocated to this purpose (T., 13 June 2013, p. 23). The Chamber agrees with this suggestion and will, at the conclusion of the key document hearing, allocate the KHIEU Samphan Defence a half-day in order either to comment on documents presented by the other parties at that hearing, or to otherwise address any other feature of the documentary record at trial, from the perspective of the Accused KHIEU Samphan. Should they not avail themselves of this opportunity, the Chamber shall be entitled to reject any further KHIEU Samphan Defence request for extension of time or of page limits beyond those granted for closing briefs and closing statements.

7. The Trial Chamber therefore provides the following time allocations for the final document hearings in Case 002/01:

- *JCE policies*: Co-Prosecutors (2 days), Lead Co-Lawyers (1 day) and the NUON Chea Defence (0,5 days);
- *Role of the Accused*: Co-Prosecutors (1 day), Lead Co-Lawyers (0,5 days) and NUON Chea Defence (0,5 days); and
- *KHIEU Samphan Defence (all categories of documents to which they seek to object or comment)*: 0,5 days.

8. Following indications that the Accused intend to answer questions before the Chamber, the Co-Prosecutors request that the Trial Chamber allocate them six full days for the questioning of each Accused (E288/1) and the Lead Co-Lawyers two days for each Accused (T., 13 June 2013, pp. 26-27, 35). The Chamber notes that it is currently unclear for how long the Accused will be able or willing to respond to questions from the Chamber and the parties. The Chamber has not indicated time limits for this questioning, which shall be permitted to continue for as long as the Accused remain willing to respond to questions and insofar as the questioning by the parties remains relevant and pertinent to the facts at issue in Case 002/01. The parties will be informed as soon as possible of the date on which the questioning of the Accused shall commence. This will depend amongst other things on the availability of the remaining witnesses, if any.

9. At the TMM, the KHIEU Samphan Defence renewed its request for a break in proceedings in advance of the questioning of the Accused to allow for preparation (T., 13 June, pp. 36-38). This request, which was opposed by the Co-Prosecutors, is rejected, on grounds that proceedings against the Accused KHIEU Samphan in Case 002 have to date been on-going for more than four years, and the trial for 18 months, ensuring ample time for the Accused and his counsel to be fully aware of the nature of the allegations against him.

10. The Trial Chamber nonetheless grants the Co-Prosecutors' request that the deadlines for the filing of Closing Briefs be extended for all parties until six weeks after the conclusion of evidentiary proceedings in Case 002/01 (T., 13 June 2013, p. 28). The Chamber is, however, unable to entertain further extensions of time, and has also emphasized that the page limits previously communicated to the parties for these briefs will be maintained (E163/5/4). It clarifies that these page limits do not include end-notes,

provided that the end-notes provided by the parties to their closing briefs contain only references to documentary and other evidence before the Chamber. Although the Chamber has, exceptionally, permitted the parties to file their closing briefs in one official ECCC language alone, the parties shall, however, take steps to ensure as timely a translation of their closing briefs and end-notes as possible.

11. The Chamber further stated at the TMM that it considers that all parts of the Cambodian Penal Code have now entered force and while the parties have already filed briefs on the applicable law, they may nonetheless also address this issue in their closing briefs should they wish to do so.

12. The Chamber provides the following particulars regarding the format of closing statements in Case 002/01, which shall take place approximately 30 days after closing briefs are filed:

Co-Prosecutors: 3 days

Civil Party Lead Co-Lawyers: 1 day

NUON Chea Defence: 2 days

KHIEU Samphan Defence: 2 days

At the conclusion of the closing statements of all parties, the Co-Prosecutors and Lead Co-Lawyers shall be permitted 0,75 days and 0,25 days respectively for rebuttal statements. Finally, time shall be provided for the Defence teams and/or the Accused to make a final statement.

13. This constitutes the Chamber's official response to E263 and E288/1.