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មន្ត្រីទទួលបន្ទុកសំណុំរឿង (Case File Officer/L'agent chargé)
..... SANN RADA

E295/4

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

TRIAL CHAMBER

TO: All Parties, Case 002 **Date:** 22 August 2013

FROM: NIL Nonn, President of the Trial Chamber

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

SUBJECT: Adjusted Schedule for Closing Submissions (E295/1, E295/1/2, E295/1/3, E295/2 and E295/3)



1. On 24 July 2013, the Chamber confirmed the deadlines for Closing Briefs and the schedule for Closing Statements in Case 002/01 (E295). The KHIEU Samphan and NUON Chea Defence have since filed motions to reconsider this schedule (E295/2 and E295/3). The KHIEU Samphan Defence also seeks clarification on the time allocated for Closing Statements (E295/1).
2. The Chamber has issued its Third Decision on Objections to Documents Proposed for Admission before the Trial Chamber (E185/2), admitting into evidence about 600 documents. In addition, on 15 August 2013, the Chamber issued its decision on written statements (E299), providing further clarifications on the use of written statements and admitting into evidence about 1,400 documents. Although the parties have had access to the vast majority of these documents on the Case File for much of the investigation and throughout the trial of Case 002, and noting that the Chamber has previously given indications that the majority thereof would be admitted (T., 13 June 2013, p. 26), the Chamber considers that the parties should have additional time to prepare Closing Briefs given these recent decisions. It therefore extends the deadline for Closing Briefs by one week until **19 September 2013**.
3. NUON Chea has filed a request to be provided with a “definitive” list of E3 documents. With the notification of the third document decision (E185/2) and the written statements decision (E299), and the accompanying annexes, the Chamber has accorded an E3 number to all the documents admitted in Case 002/01. Until these numbers are transferred to Zylab, parties should rely upon the E3 classification indicated in the annexes to E185/2 and E299. The Chamber considers the remaining submissions in

E295/3 to be repetitive of previous NUON Chea filings addressed in the Chamber's written statements decision (E299) and reminds the parties that no further motions are to be filed on the subject of the admissibility and probative value of witness statements. *See T.*, 23 July 2013, p. 68.

4. The NUON Chea and KHIEU Samphan Defence teams each request six hours to make a final closing statement pursuant to Internal Rule 94(3). The Chamber notes that at the *ad hoc* tribunals there is a similar provision known as rejoinder. Rejoinder allows the defence to make a brief response to those issues addressed by the prosecution in rebuttal. While Internal Rule 94(3) does not expressly restrict the final statement of an accused to issues raised during rebuttal by the LCLs/OCP, it is clearly meant to be a brief final statement rather than a reiteration of arguments already advanced during the time (in this case two days for each Accused) accorded for closing statements pursuant to IR 94(1)(c) and (d). At other international criminal tribunals, the time allocated for rejoinder is very limited,¹ with the time allotted depending on the extent to which the prosecution utilizes its opportunity for rebuttal. In accordance with this practice, the Chamber reserves its ruling on the precise amount of time to be allocated for the respective IR 94(3) statements until after rebuttal statements. It nonetheless notifies the defence teams that they shall have at a maximum two hours per team to present their IR 94(3) statements.

5. The Chamber has also made inquiries with the Interpretation and Translation Unit (ITU) regarding the timeframe for the translation of Closing Briefs. ITU has indicated that translation of all Closing Briefs into each of the three official languages of the ECCC (and in particular Khmer) cannot be completed before the end of 2013. The Chamber recalls that the parties have been on notice since November 2012 that briefs would be filed in a single ECCC language with translations to follow and that the Trial Chamber would rely on its internal multilingual capacity (E163/5/4). Parties were also ordered to liaise with ITU to ensure a timely translation of these briefs (E163/5/4; E288/1/1, para. 10). The Trial Chamber notes that its duty to ensure the fairness and expeditiousness of proceedings will often entail a delicate balancing of interests, particularly in a trial of this scope and complexity.² It further notes that the translation of trial briefs is not generally

¹ *Prosecutor v Prlić et al.*, ICTY Trial Chamber (IT-04-74-T), T., 1 March 2011, pp. 52902-52903 (granting the Defence teams between 5 and 50 minutes each for rejoinder and/or statements by the Accused, for a total of 2 hours and 35 minutes); *Prosecutor v Popović et al.*, ICTY Trial Chamber (IT-05-88-T), T., 15 September 2009, pp. 34872-34911 (granting the Borovčanin, Pandurević, Nikolić and Gvero Defence teams a total of approximately 1 hour and 30 minutes for rejoinder and/or statements by the four Accused); *Prosecutor v Kalimanzira*, Minutes of Proceedings – Status Conference, ICTR Trial Chamber (ICTR-05-88-T), 13 February 2009, p. 2 (granting the Defence team 30 minutes for rejoinder); *Prosecutor v Nyiramasuhuko et al.*, ICTR Trial Chamber (ICTR-98-42-T), T., 30 April 2009, p. 48 (granting the Defence teams approximately 10 minutes each for rejoinder, for a cumulative total of approximately 1 hour); *Prosecutor v Katanga and Ngudjolo*, ICC Trial Chamber (ICC-01/04-01/07), T., 22 May 2012, p. 60 (granting 30 minutes to each of the Defence teams for rejoinder and a further 30 minutes to each of the Accused to address to the Chamber).

² *Prosecutor v Prlić et al.*, ICTY Appeals Chamber (IT-04-74-AR73.12), Decision on Slobodan Praljak's Appeal of the Trial Chamber's 13 October 2008 Order Limiting the Translation of Defence Evidence, 5 December 2008, paras 27-28; *See also, Prosecutor v Munyagishari*, ICTR Trial Chamber (ICTR-2005-89-I), Decision on the Defence Requests for Translation and Delays, 6 December 2011, para. 13, n. 27 (“[I]t is expected that legal staff within the Defence team, who among them have command of both official languages of the Tribunal, will cooperate in order to avoid unnecessary delays” and “the primary

required at the *ad hoc* tribunals.³ For these reasons, the Chamber decides that Closing Statements will proceed on the basis of the Closing Briefs as filed. Nonetheless, in order to facilitate preparations for Closing Statements and consistent with procedures developed at the international level, the Chamber has confirmed with ITU that it will be in a position to provide each Accused with the assistance of two interpreters between the filing deadline of the Closing Briefs and the beginning of Closing Statements. Upon request, one English-French interpreter and one English-Khmer interpreter will be made available to the KHIEU Samphan Defence, and one French-English interpreter and one English-Khmer interpreter will be made available to the NUON Chea Defence during this time frame. Defence Teams shall liaise with ITU to this end. The Chamber considers this procedure appropriately balances the fairness and expeditiousness of the proceedings.

6. Accordingly, Closing Statements are scheduled for **16 - 31 October 2013 (16, 17, 18, 21, 22, 24, 25, 28, 30, 31 October)**. The order of presentation for Closing Statements shall follow Internal Rule 94(1) with the following time allocations:

LCLs	1 day
OCP	3 days
NUON Chea	2 days
KHIEU Samphan	2 days
Rebuttal (LCLs/OCP)	1 day
Final Statements (NC/KS)	4 hours

The Chamber directs the parties to begin their submissions immediately following the close of the previous party's submissions, and notes that submissions will not necessarily continue to 31 October.

7. This is the Chamber's official response to E295/1, E295/1/2, E295/1/3, E295/2 and E295/3.

consideration is whether any member of the team can grasp the "essential elements" so that they may be "effectively conveyed [...] without waiting for an official translation"); Decision on Request by the Defence for KHIEU Samphan for Trilingual Notification of the Supreme Court Chamber's Decisions, E163/5/1/15, 30 April 2013.

³ *Prosecutor v Munyagishari*, ICTR Trial Chamber (ICTR-2005-89-I), Decision on the Defence Requests for Translation and Delays, 6 December 2011, paras. 8-9; *Prosecutor v Nizeyimana*, ICTR Trial Chamber (ICTR-00-55C-T), Scheduling Order, 19 August 2011, para. 9; *Prosecutor v Delalic et al.*, ICTY Trial Chamber (IT-96-21-T), Decision on Defence Application for Forwarding the Documents in the Language of the Accused (TC), 25 September 1996, para. 14.