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ជាតិ សាសនា ព្រះមហាក្សត្រ

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

Kingdom of Cambodia
Nation Religion King
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សាធារណៈ / Public

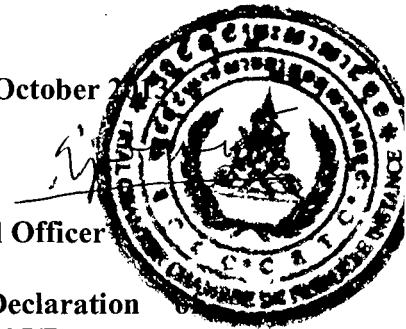
TRIAL CHAMBER

TO: All Parties, Case 002 **Date:** 14 October 2013

FROM: NIL Nonn, President of the Trial Chamber

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

SUBJECT: Decision on KHIEU Samphan Request for Declaration
Inadmissibility of the Co-Prosecutors' Closing Brief (E295/7)



1. The Chamber is seized of a request from the KHIEU Samphan Defence to reject the Co-Prosecutors' Closing Brief on the basis of alleged non-compliance with the Court's Practice Direction on Filing Documents, and to order the filing of a new brief. The KHIEU Samphan Defence further requests that Closing Statements be delayed until all the parties' Closing Briefs are translated into the Court's three official languages and that the Chamber refer the Co-Prosecutors to their professional bar associations. The Co-Prosecutors responded to the motion (E295/7/1) and the KHIEU Samphan Defence, of its own initiative, replied.

2. As a preliminary matter, the Chamber does not accept the filing of replies unless it so requests. Furthermore, the Chamber recalls its directive according to which replies on responses to matters of judicial administration (such as extensions of time and page limits) will not be authorised (*see* Trial Chamber directive regarding responses, replies to responses and filing in one language only under exceptional circumstances (Articles 7.2, 8.3 and 8.4 of the amended ECCC Practice Direction on Filing of Documents), E64, 10 March 2011). Consequently, the Chamber considers the reply of the KHIEU Samphan Defence inadmissible.

3. As to the request of the KHIEU Samphan Defence, the Chamber has reviewed the alleged violations in the Co-Prosecutors' Closing Brief identified by the KHIEU Samphan Defence concerning margins, font size, line spacing and footnotes and rejects these complaints as groundless. The Co-Prosecutors' Closing Brief complies with Article 3.7 and 3.8 of the Practice Direction on Filing Documents as to the use of margins, font size and line spacing for written filings. Insofar as the Co-Prosecutors' acknowledge that

indented block quotes are written in font size 11, the Chamber accepts this is standard writing style and does not consider that this contravenes the norms outlined in the Practice Direction. While the length of the content of source information quoted within Closing Brief footnotes occasionally exceeds the two lines permitted by the Chamber's directions to the parties by email on 7 August 2013, the footnotes respect the Chamber's directions as to the content, *i.e.*, they contain source content and not legal submissions or arguments.

4. The Chamber has also reviewed the content of the two chronologies annexed to the Co-Prosecutors' Closing Brief concerning KHIEU Samphan and NUON Chea (E295/6/1.3, E295/6/1.3.1, E295/6/1.4 and E295/6/1.4.1). The annexes respectively set out detailed information as to the roles of each Accused in a chronological fashion, both with and without cites to the evidentiary materials. While the matter of the respective roles of each Accused is patently the crux of Case 002/01, the individual events outlined in the annexes are already reflected in various parts of the Co-Prosecutors' Closing Brief. Although organised differently – chronologically - and detailing more source material, the Annexes do no more than present the same events and sources put forward in the Closing Brief. For this reason, the Chamber rejects the submission of the KHIEU Samphan Defence that the Annexes are an extension of the Co-Prosecutors' legal arguments as contained in their Closing Brief.

5. The KHIEU Samphan Defence further request that the Chamber refer the Co-Prosecutors to their professional bar associations in view of the allegedly flagrant violations discussed above. Considering the Chamber's foregoing findings, the KHIEU Samphan Defence has failed to demonstrate any basis for such request.

6. Regarding the request to postpone Closing Statements pending translations of the other parties' Closing Briefs, the Chamber has previously addressed this issue (*see* E295/4) and considers the request repetitious. The Chamber notes that the KHIEU Samphan Defence has availed itself of the translation assistance offered by the Interpretation and Translation Unit (ITU) with reference to E295/4. The ITU is currently working to provide the KHIEU Samphan Defence with French translations of selected footnote excerpts by Friday 11 October 2013 while the KHIEU Samphan Defence is scheduled to present its closing arguments towards the end of the week of 21 October 2013. The Supreme Court Chamber, noting the Defence's indicated fluencies in the English language, has held that the "general desirability of simultaneous trilingual filings ... may only be accommodated where circumstances permit" and "do not risk affecting the rights of any other parties" (E163/5/1/15, paras 8-9). Accordingly, the Chamber maintains that Closing Statements will proceed as currently scheduled and on the basis of the Closing Briefs as filed (*see* E295/4, para. 5).

7. The Chamber has, *proprio motu*, also reviewed two annexes filed with the NUON Chea Closing Brief consisting of two newspaper articles written in 1976 (E295/6/3.1.1 and E295/6/3.1.3). The NUON Chea Defence relies upon the articles to evidence the legitimacy of the CPK's definition of 'enemy'. The two annexes are neither on the case-file nor admitted as evidence before the Chamber. To the extent that their inclusion may amount to a request to place these documents on the case-file pursuant to Internal Rule

87(4), such request is neither reasoned nor apparent. In any event, the Chamber is not satisfied as to their relevance and notes there is no opportunity for adversarial debate over these documents. Consequently, the Chamber declines to have regard to these two annexes (E295/6/3.1.1 and E295/6/3.1.3).

8. This constitutes the Chamber's official response to E295/7 and E295/7/1.