



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

អង្គជំនុំជម្រះសាលាដំបូង

Trial Chamber
Chambre de première instance

សំណុំរឿងលេខ: ០០២/១៩កញ្ញា២០០៧/អវតក/អជសដ

Case File/Dossier No. 002/19-09-2007/ECCC/TC

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Before: Judge NIL Nonn, President
Judge Silvia CARTWRIGHT
Judge YA Sokhan
Judge Jean-Marc LAVERGNE
Judge YOU Ottara

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DECISION ON JOINT REQUEST REGARDING THE REFILEING OF ADMITTED EVIDENCE IN CASE 002/02, AND FILING IN ONE LANGUAGE

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1. INTRODUCTION

1. The Trial Chamber is seized of a joint request from all parties to alter its Order to File Updated Material in Preparation for Trial in Case 002/02 of 8 April 2014. The Order requires the parties to update their previous witness, Civil Party, expert and document lists in preparation for the commencement of the evidentiary hearings in Case 002/02.¹

2. SUBMISSIONS

2. The parties request that they be exempted from the requirements to (1) include in their document lists, due 30 May 2014, documents already admitted as evidence in Case 002/01 by virtue of the Trial Chamber's Memorandum of 7 February 2014;² and (2) submit in two languages their document lists as well as their witness, Civil Party and expert lists, due 9 May 2014.³

3. Due to the number of the documents already admitted during Case 002/02, the parties submit that adding E3 references to all document entries of previously submitted lists would be an extremely time-consuming task for both them and the court's translation services. Further, they submit that it would impact their preparation time for trial, in particular for determining which documents not already admitted in Case 002/01 should be included in their lists. In addition, they note that documents admitted during Case 002/01 may already be relied on by the parties in Case 002/02.⁴

4. The parties also submit that it will not be possible to have their lists translated into more than one language by the required date because of the volume of the entries and the limited resources available, particularly given the translation needs for the judgment in Case 002/01.⁵

¹ Order to File Updated Material in Preparation for Trial in Case 002/02, E305, 8 April 2014 ("Order to File Updated Material"). A courtesy copy of this decision has been circulated to the parties on 7 May 2014.

² Trial Chamber Memorandum Entitled "Clarifications Regarding the Use of Evidence and the Procedure for Recall of Witnesses, Civil Parties and Experts from Case 002/01 in Case 002/02, E302/5, 7 February 2014.

³ Parties' Joint Request Regarding the Refiling of Admitted Evidence in Case 002/02 and Filing in One Language, E305/1, 2 May 2014 ("Joint Request"), paras 2 and 7.

⁴ Joint Request, paras 3 and 5.

⁵ Joint Request, para. 4.

3. FINDINGS

5. The filing of material in preparation for trial proceedings is foreseen by the Internal Rules.⁶ While the scope of Case 002/02 was only recently finalized, the parties have been informed on several previous occasions of the Chamber's intention to request the filing of material in preparation for this phase of the case, most notably in its Workplan.⁷ The Chamber would expect that the parties have been preparing accordingly on an ongoing basis. Indeed, the Co-Prosecutors have previously indicated their readiness to proceed with Case 002/02 as early as February 2014,⁸ a status seemingly at odds with this request.

6. The parties' joint submissions stress the extra burden placed upon them by the requirement to include in their lists documents already admitted as evidence. The Chamber observes that the primary purpose of the Order to File Updated Material is, as suggested by its title, to update *previously filed* material.⁹ The lists of potential witnesses, Civil Parties and experts, as well as the initial lists of documents, relevant for the entirety of Case 002, were filed already as early as the first half of 2011, following a lengthy investigative phase during which all parties already had access to the case-file.¹⁰ In addition, inventories of documents put before the Chamber during Case 002/01 were distributed to all parties on an on-going basis throughout the trial and are available through Zylab, the ECCC's electronic document

⁶ Internal Rule 80 (Preparation of the Trial). This Rule requires that the Co-Prosecutors submit to the Chamber a list of proposed witnesses and experts they intent to summon at trial within 15 days from the Indictment becoming final. The Defence and the Civil Parties can submit additional lists within 15 days from the filing of the Co-Prosecutors' list. In accordance with this Rule, it is the practice of the Chamber to request the filing of additional material to accompany the lists, including lists of documents. The filing schedule set in the Order to File Updated Material provides for deadlines similar to those in Rule 80.

⁷ Trial Chamber memorandum entitled "Trial Chamber Workplan for Case 002/02 and Schedule for Upcoming Filings", E301/5, 24 December 2013, para. 1; Case 002/02 – Trial Chamber Workplan (detailed), E301/5.1, 24 December 2013; T., 12 December 2013 (Trial Management Meeting), p. 86; T., 11 February 2014 (Adversarial Hearing), p. 75. *See also* Decision on Additional Severance of Case 002/02 and Scope of Case 002/02, E301/9/1, 4 April 2014, para. 46.

⁸ Co-Prosecutors' Submissions Regarding the Scope of Case 002/02 and Trial Schedule, E301/2, 5 December 2013; Co-Prosecutors' Proposed Case 002/02 Trial Plan, E301/2/1, 11 December 2013. At that juncture, the Co-Prosecutor also submitted an initial list of potential witnesses.

⁹ Order to File Updated Material, para. 1. *See also* Order to File Material in Preparation for Trial, E9, 17 January 2011. Several lists initially filed by the parties are already available in multiple languages in Zylab.

¹⁰ *See also* Decision on Defence Requests Concerning Irregularities Alleged to Have Occurred During the Judicial Investigation (E221, E223, E224, E224/2, E234, E234/2, E241 and E241/1), E251, 7 December 2012, para. 18; Decision on KHIEU Samphan Request to Postpone Commencement of Case 002/02 until a Final Judgement is Handed Down in Case 002/01, E301/5/5/1, 21 March 2014, para. 13.

and records management system.¹¹ It would thus appear that much of the extra work referred to in the Joint Request should already have been done during Case 002/01.

7. The Chamber further observes that the parties have various resources at their disposal for the management of the lists in question, including specialized evidence management databases and full-time case managers to monitor the material presented and admitted during the proceedings. They also have access to technical assistance provided by the Court Management Section and the Information and Communication Technology Section.¹² The Chamber recalls that it is the duty of all parties to the proceeding to use all resources available to them to ensure that they are adequately prepared and that, where necessary, they raise any relevant issue in a timely manner.¹³ Where feasible, each party shall also make use of its internal language capabilities to minimize the workload of the Interpretation and Translation Unit (“ITU”).¹⁴

8. Nonetheless, the Chamber is cognizant of the complexity of managing the case-file in Case 002, which contains several thousand documents and involves a large number of individuals who could be called to appear at trial. Further, the Chamber notes that given the limited resources currently available to ITU, the judgement drafting process in Case 002/01 is placing certain constraints on its ability to provide support to the parties in the preparation of Case 002/02.

9. In light of these considerations, the Chamber considers it appropriate to grant, in part and on an exceptional basis, the joint requests set out above. Where ITU provides an indication that it will not be possible to complete the relevant translations within the required time limits, the parties may submit their document lists as well as their witness, Civil Party

¹¹ The inventories are exportable for use in other computer programs. *See also* Trial Chamber Memorandum Entitled “Decision on NUON Chea’s Request for a List of All Documents Admitted in Case 002/01 (E295/5)”, E295/5/1, 30 August 2013. More particularly, further to a request from some of the parties, the Court Management Section created a new partition in Zylab to facilitate direct access to all documents admitted during Case 002/01.

¹² Trial Chamber Memorandum Entitled “Decision on NUON Chea’s Request for a List of All Documents Admitted in Case 002/01 (E295/5), E295/5/1, 30 August 2013.

¹³ The Joint Request was submitted more than two weeks after the filing of the Order to File Updated Material. The parties initially informed the Trial Chamber of their Request via email to the Senior Legal Officer on 25 April 2014.

¹⁴ *See also* Trial Chamber Memorandum Entitled “Response to Email Request for Extension of Time”, E295/6; Decision on the Request by the Defence for KHIEU Samphan for Trilingual Notification of the Supreme Court Chamber’s Decisions, E163/5/1/15, 30 April 2013.

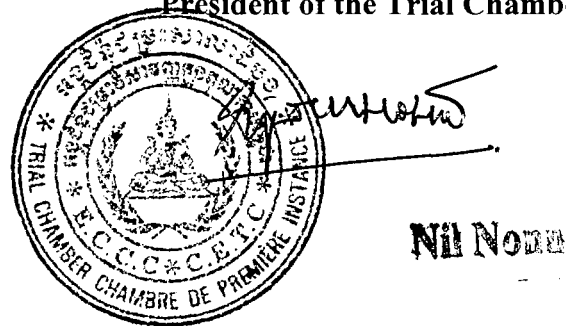
and experts lists in one language. Translations shall be filed as soon as possible thereafter.¹⁵ Further, the Chamber will extend the time limits for the filing of the document lists, which shall include references to documents already admitted as evidence in Case 002/01, as well as the filing of the exhibit lists, to Friday, 13 June 2014 at the latest.

FOR THE FOREGOING REASONS, THE TRIAL CHAMBER

GRANTS in part the Joint Request and allows the parties (1) to submit their document lists by no later than Friday, 13 June 2014; and (2) to submit their document lists as well as their witness, Civil Party and expert lists in one language, with translations to follow as soon as possible.

Phnom Penh, 21 May 2014

President of the Trial Chamber



¹⁵ The Chamber has already consented that the parties submit documents in one language, with translations to follow as soon as possible. *See e.g.* Trial Chamber Memorandum Entitled “Further Notification of Modalities for Closing Briefs”, E163/5/4.