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E457/6

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

ភាពសាធារណៈ / Public

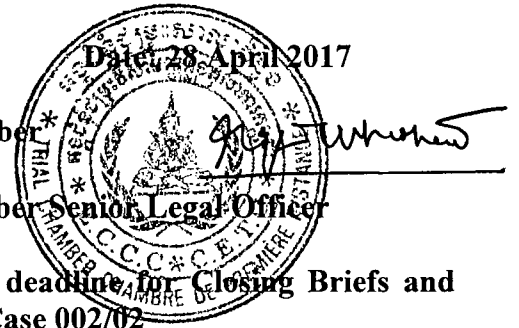
TRIAL CHAMBER

TO: All Parties, Case 002

FROM: NIL Nonn, President of the Trial Chamber

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

SUBJECT: Co-Prosecutors' Request for extended deadline for Closing Briefs and delayed start of Closing Statements in Case 002/02



1. The Chamber is seised of a Request by the Co-Prosecutors filed on 7 April 2017 to extend the deadline for Closing Briefs in Case 002/02 by fifteen days, from 24 April until 9 May 2017, and to delay the beginning of Closing Statements from 5 June until 12 June 2017 (“OCP Request”) (E457, para. 7). The OCP Request further proposes that the time allocated to the parties for Closing Statements be reduced proportionately in order to ensure that there is no delay to the conclusion of the hearings in Case 002/02. In their responses to the OCP Request, the KHIEU Samphan Defence and Lead Co-Lawyers support the extension of the Closing Brief deadline although they differ with regard to the precise timing of Closing Statements and the time to be allocated to each party. The NUON Chea Defence opposes the OCP Request.

2. By e-mail of 13 April 2017, the Chamber granted the OCP Request in part, extending the Closing Brief deadline to 2 May 2017 and informing the parties that all other issues raised in their submissions along with the reasons for its decision would follow as soon as possible (E457/5.1.2). Subsequent to this email communication, on 19 April 2017 the Lead Co-Lawyers filed a further motion (“2nd LCL Request”) requesting that the Closing Brief deadline be extended again to 9 June 2017, with Closing Statements to follow. The NUON Chea Defence opposes the 2nd LCL Request (E457/5). None of the other parties responded, but indicated that they maintain the arguments previously raised in their initial filings.

OCP Request and Submissions in Response

3. The OCP Request seeks an extension of time for Closing Briefs in view of the on-going correction of numerous transcripts by the Transcription Unit (TU), which has created difficulties for the parties in relying upon the court record in their briefs (E457, para. 2). It is submitted that the extension of time would provide the parties a meaningful chance to review the final versions of transcripts for all hearing days that were identified as priorities by the KHIEU Samphan Defence and Trial Chamber and

would further permit the parties to base their briefs on “a significantly greater proportion” of final, reviewed, corrected transcripts (E457, para. 5).

4. Responding on 10 April 2017, the KHIEU Samphan Defence supports the request for an extension of time until 9 May 2017, for the delay of the Closing Statements and for a reduction of the time allocated to the parties for Closing Statements. However, it submits that the Defence requires sufficient time after receiving the Co-Prosecutors’ and Lead Co-Lawyers’ briefs to prepare its arguments and therefore proposes that Closing Statements begin instead on 14 June 2017, preserving five weeks between the deadline for the Closing Briefs and the beginning of Closing Statements (E457/1, paras 12-14).

5. In their response of 10 April 2017, the Lead Co-Lawyers support the request for extension of time for the filing of Closing Briefs until 9 May 2017 and for a delay of the Closing Statements (E457/2). With respect to the latter they submit that they require one full hearing day, including three court sessions on substance and one session on reparations during Closing Statements. They also consider it necessary to maintain one full day of rebuttal to be shared between the Co-Prosecutors and the Lead Co-Lawyers. Finally, they request the Trial Chamber to order TU to provide tentative dates for the completion of all hearing transcripts that contain the testimony of any Civil Party (E457/2, para. 3).

6. Responding to the Co-Prosecutors’ submissions on 11 April 2017, the NUON Chea Defence opposes the OCP Request, submitting that the proposed changes to the schedule are ineffective and illogical (E457/3, para. 6). It submits that even if the extension of time is granted for Closing Briefs, a substantial number of transcripts will not be finalised by the new filing deadline (E457/3, paras 6-8). It is further submitted that over 100 English transcripts are yet to be reviewed and it will not be possible to incorporate changes to its Closing Brief, as necessitated by the correction of transcripts, within the fifteen-day extension of time (E457/3, para. 9). The Defence also opposes the reduction of time allocated to the parties for Closing Statements because the complexity of the case requires that the Defence be given two full days to present its case. As the briefs will be filed in one language only, it is submitted that a proper presentation of each party’s case, as well as responses to the other parties, must be put forward during the Closing Statements (E457/3, para. 15). The Defence contends that NUON Chea’s right to present his case in public as well as the fairness of the proceedings would be violated if NUON Chea’s time allocation was reduced. It is emphasised that fairness cannot be compromised for expediency (E457/3, paras 16-17).

7. The NUON Chea Defence also requests that the parties be granted leave to file corrigenda to their Closing Briefs, which would include changes to pinpoint references and any necessary changes to the substance, after all transcripts have been finalised. In this regard it requests the Chamber to instruct the Office of Administration to guarantee the necessary additional budget for the Defence to prepare its corrigendum (E457/3, paras 10-12). Finally, the Defence requests that the Chamber request further clarifications from TU as to the status of transcripts (E457/3, paras 19-20, 21(d)).

2nd LCL Request and Submissions in Response

8. On 19 April 2017, the Lead Co-Lawyers filed the 2nd LCL Request. On the basis that the transcripts of all Civil Party testimony would be reviewed and finalised by 31

May 2017, the Lead Co-Lawyers request that the Closing Brief deadline be extended until 9 June 2017 so that they may incorporate any changes to the transcripts in their Closing Brief, obviating a need to file corrigenda (E457/4, paras 8-10). They further request that Closing Statements be delayed until after the filing of the Closing Briefs, without proposing a specific date (E457/4, para. 11).

9. Responding to the 2nd LCL Request on 20 April 2017, the NUON Chea Defence opposes a further extension of the Closing Brief deadline and reiterates its prior requests (E457/5, paras 9-16). It concedes that the more efficient solution would have been to delay the Closing Briefs until all transcripts had been finalised, not just Civil Party testimony (E457/5, paras 11-12). However, since the Chamber rejected that proposal, the NUON Chea Defence requests that the Chamber maintain the 2 May 2017 deadline for Closing Briefs and permit the filing of corrigenda by the end of September 2017 (E457/5, paras 13-16).

Discussion

10. The Chamber recalls that on 16 December 2016 it found that the size and scope of Case 002/02 justified an increase in both page limits and time for preparation of Closing Briefs as compared with Case 002/01. It accordingly granted the Co-Prosecutors 800 pages and the respective other parties 550 pages, imposing a deadline of 24 April 2017. The Lead Co-Lawyers were given a further deadline of 22 May 2017 for the Final Claim for Reparation (E449/1, paras 8-10). Closing Statements were scheduled to begin on 5 June 2017 for a total of ten hearing days, with one day allocated to the Lead Co-Lawyers, three days to the Co-Prosecutors, two days to each of the Accused, one day for Rebuttal and four hours for the Accused's final statements (E449/1, para. 11).

11. The Chamber has since recognised the difficulties associated with the ongoing correction of numerous hearing transcripts in the midst of the parties' preparation of their Closing Briefs (E449/3/6, para. 4). The transcript review process is currently projected to be completed by 30 June 2017 for the English transcripts and 31 July 2017 for the Khmer and French transcripts. According to the most recent update provided by the Transcription Unit (E449/3/6/2), as of 21 April 2017 there were a total of 240 transcripts (68 in English, 90 in Khmer and 82 in French) remaining to be finalised after the review process. The Chamber is mindful that the purpose of the transcript review process is to provide a reliable record of the evidence heard in court during the Case 002/02 proceedings and that, in this regard, only finalized transcripts can be the basis for a full and adversarial debate of evidence. However, it must also ensure that proceedings in Case 002/02 can be concluded expeditiously and in the timeliest manner. In this regard the Chamber finds that the judgement drafting process can significantly advance only if it has an opportunity to access the arguments raised by the parties in their Closing Briefs. It further finds that while the review process may affect the substance of the transcripts, its impact will likely be limited and it does not prevent parties from filing meaningful briefs before all transcripts are finalized.

12. In balancing these considerations, the Chamber examines the NUON Chea Defence request that the parties be granted leave to file "corrigenda" to their Closing Briefs, to include changes to pinpoint references and any substance, after all transcripts have been finalised. The Chamber notes that while the term "corrigenda" commonly refers to the correction of clerical errors, the NUON Chea Defence

actually requests permission to file an amendment to the Closing Briefs based on and restricted to substantive changes stemming from revised transcripts unavailable to the Defence at the time of the filing of the Closing Brief. Under the circumstances, the Chamber considers that this request for “Amended Closing Briefs” constitutes a satisfactory method for ensuring a full adversarial debate of evidence heard at trial and the timely issuance of the judgement.

13. The Chamber is seised with a request by the Co-Prosecutors for a limited two-week delay for the Closing Briefs deadline and a subsequent request from the Lead Co-Lawyers for a more significant delay of nearly six weeks. The OCP Request focuses on those transcripts identified as priorities by the KHIEU Samphan Defence and Trial Chamber, of which there were 98 remaining at the time of the OCP Request (E449/3/6/1, para. 3(c)) and only seven (all in Khmer) remaining as of 21 April 2017 (E449/3/6/2). The Transcription Unit has previously estimated that the revision of these priority transcripts will be completed by 28 April 2017 (E449/3/5, para. 2(b)). The 2nd LCL Request focuses on Civil Party transcripts and would permit them to avoid the need to later file substantive corrections to their Closing Brief.

14. The Chamber notes the common feature of these requests to be that they extend the deadline for the closing briefs – thus depriving the Chamber of valuable time to start the drafting process – without finally solving the issue of the incomplete revision process. In both cases amended briefs would still have to be allowed.

15. Given the number of transcripts at issue and as indicated to the parties by email on 13 April 2017, the Chamber considers that a deadline for all Closing Briefs of 2 May 2017 would be appropriate. The resulting delay to the schedule would be minimal and the right of the parties to a full adversarial debate of the evidence is preserved.

16. Pursuant to the discussion above, the parties are permitted to file Amended Closing Briefs, the deadline for which shall be fixed following Closing Statements at which time the Chamber will have updated information regarding the projected completion of the transcript review process. Amended Closing Briefs shall limit changes to substantive issues and correction of page references arising from transcripts finalized as part of the transcript review process and filed after the submission of the original Closing Briefs. Amended Closing Briefs shall incorporate all changes to the original Closing Briefs, identified by way of highlighting, such that they function as a comprehensive and final submission. The Chamber will not accept separate documents which simply list corrections to the original Closing Briefs. Should it be necessary, the Chamber will consider requests to file limited responses to Amended Closing Briefs.

17. Accordingly, the Chamber grants in part the OCP Request and sets a deadline of **2 May 2017** for Closing Briefs. In line with this decision, the deadline for the Table of Authorities is extended to 9 May 2017. Should the Lead Co-Lawyers choose to file the Final Claim for Reparation separately, the deadline is extended to **30 May 2017**.

18. As to Closing Statements, the Chamber has taken into consideration the submissions of the parties and amended the schedule accordingly below. The Chamber considers that this schedule respects the rights of the parties to prepare and present their respective cases while allowing for the completion of the hearings in Case 002/02 within two days of the date previously envisaged (*See* E449/1, para. 11). The Chamber notes in particular the request by the NUON Chea Defence to retain at

least two days for its closing statements. In this regard, the three days allocated to the Defence teams may be shared based on their agreement. In the event that this does not provide the NUON Chea Defence the two days requested, additional time may be allocated if it does not lead to repetition of arguments or intend to extend proceedings without justification.

19. Closing Statements will therefore be held from **13-22 June 2017** as follows:

Lead Co-Lawyers	13 June 2017 (1 day)
Co-Prosecutors	14-15 June 2017 (2 days)
NUON Chea/ KHIEU Samphan	16, 19-20 June 2017 (3 days)
Rebuttal (LCLs/OCP)	21 June (1 day)
Final Statements (NC/KS)	22 June (4 hours)
Reserve day	23 June

20. In view of the decision above regarding Amended Closing Briefs and the related NUON Chea request for resources, the Chamber will provide the request and this decision to the Office of Administration for appropriate consideration.

21. Finally, the Chamber notes that both the Lead Co-Lawyers and the NUON Chea Defence made requests for clarification regarding the status of particular transcripts. The Chamber notes that the Lead Co-Lawyers appear to have obtained the required information directly from the TU (E457/4) and accordingly considers the request moot. The Chamber further notes that in the 21 April 2017 update on the transcript review process (E449/3/6/2), the TU provided clarifications in response to the NUON Chea Defence. To the extent that there are any remaining questions from any of the parties, the Chamber directs them to consult directly with TU.

22. This constitutes the Trial Chamber's official response to E457, E457/1, E457/2, E457/3, E457/4, and E457/5.