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du dossier: Sann Rade

E402/1

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

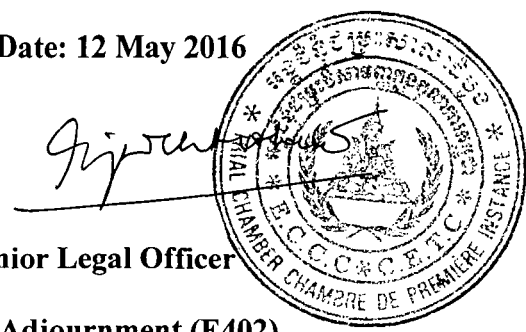
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TRIAL CHAMBER

TO: All Parties, Case 002

Date: 12 May 2016

FROM: NIL Nonn, President of the Trial Chamber



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

SUBJECT: Decision on NUON Chea Defence Request for Adjournment (E402)

1. The Chamber is seised of a request by the NUON Chea Defence for an adjournment of four weeks to prepare for the three remaining witnesses on the S-21 topic, namely 2-TCW-906, 2-TCW-816 and 2-TCW-916. Alternatively, it requests that only the Co-Prosecutors and Lead Co-Lawyers question these witnesses prior to an adjournment (E402) or that a trial management meeting be held. The NUON Chea Defence submits that the addition of several new documents to the Case File, most importantly, the new S-21 OCIJ prisoner list (E393.2), requires that additional time be granted to the defence to ensure the rights of NUON Chea are protected. In particular, it submits that it requires time to review the new documents supporting the list, to undertake contextual research and to request the admission of these documents (E402, para. 13).

2. The Co-Prosecutors oppose the four-week adjournment sought by the Defence. They submit that the underlying S-21 prisoner records have been available at DC-Cam for a long time and on the Case File almost since the beginning of the case. Accordingly, the Defence has had adequate time since the 2010 Closing Order was issued to examine these documents. In addition, the Co-Prosecutors submit that there have been several breaks or adjournments already this year and that the Chamber should consider the public interest in moving the proceedings to a close. They submit that the Chamber may hear 2-TCW-906 as he is not a witness that is connected to the S-21 prisoner lists. In lieu of a four-week adjournment, the Co-Prosecutors propose that the testimonies of 2-TCW-816 and 2-TCW-916, who are complex witnesses to which many S-21 documents are relevant, be delayed and that several witnesses on the topic of internal purges be moved forward. The OCP submits that it would not be ideal to allow the Co-Prosecutors to question first while delaying the questioning by the Defence (T. 2 May 2016, pp. 52-59 (DRAFT)).

3. The Lead Co-Lawyers emphasise the right of the Civil Parties to expeditious proceedings, but recognise that this cannot be to the detriment of the rights of the defence. They oppose having the Co-Prosecutors and Lead Co-Lawyers question the witnesses first, followed by the Defence after an adjournment. They otherwise rely on the Chamber to properly balance the rights of the parties. As to the Co-Prosecutors' proposal to bring forward witnesses on the topic of internal purges, the Lead Co-Lawyers would be ready to proceed in the manner suggested (T. 2 May 2016, pp. 59-61 (DRAFT)).

4. The KHIEU Samphan Defence supports the NUON Chea Defence request. It notes that the Co-Prosecutors have several counsel to share the burden of preparations whereas the Defence do not. The Defence opposes the Co-Prosecutors' request to bring forward witnesses on the topic of internal purges as the same burdens and complications of preparation would remain. While they are assisting in hearings, they cannot prepare for future witnesses. They therefore support the NUON Chea Defence request for a four-week adjournment (T. 2 May 2016, pp. 62-66 (DRAFT)).

5. In reply, the NUON Chea Defence submits that the right to an expeditious trial is primarily the right of the Accused and not to be balanced against the rights of the Civil Parties. It submits that four weeks is a reasonable amount of time when compared with the total length of proceedings. It further submits that the new OCIJ prisoner list is a fundamental new element to the trial and that the sheer volume of materials to be reviewed for 2-TCW-906, 2-TCW-816 and 2-TCW-916 justifies the requested adjournment (T. 2 May 2016, pp. 66-71 (DRAFT)).

6. As a preliminary matter, the Chamber notes that it has already admitted the new OCIJ S-21 prisoner list as well as 145 of the documents supporting this list (E393.3). A list of these documents will be provided to the parties. In an email sent by its Senior Legal Officer, the Chamber asked the Parties whether they have any objections to admitting into evidence the remaining documents which form the basis for the OCIJ's revised S-21 Prisoner List (E393.2). The Chamber observes that no objection was made. Considering that these documents are *prima facie* relevant, authentic and reliable and need to be assessed together with the new list, the Chamber decides that it is in the interests of justice to admit all supporting documents which have not yet been admitted pursuant to Internal Rules 87(3) and (4).

7. The Chamber considers that the testimony of 2-TCW-906 does not implicate S-21 prisoner lists to the same degree as 2-TCW-816 and 2-TCW-916. It therefore considers that the new S-21 lists do not require the delay of the testimony of 2-TCW-906. The Defence request is denied in this respect and the witness will be heard as scheduled.

8. The Chamber next recalls that in July 2014 the parties were alerted that the OCIJ had discovered "a large number of S-21 files such as entry logs, confessions and prisoner biographies" which would be placed on the Shared Materials Drive (SMD) (E308/4). The Chamber has determined that a vast majority of the documents supporting the new OCIJ list have been on the SMD since July 2014, while a significant number of other documents have already been admitted.

9. The Chamber accepts that the need to review those documents not yet admitted became more apparent in light of new disclosures, including the S-21 list (E393.2), the

documents underlying the OCIJ prisoners list (E393.3), and the new S-21 photographs notified in E394. The Chamber notes the change in the order of witnesses last week and the need to review two new statements, but does not consider that these should have any significant effect on scheduling. The Chamber also notes that it has invited submissions from the Defence on the Defence requests for new witnesses (E395/1). Overall, it considers that some additional time is warranted for Defence preparation, to be balanced with the need to ensure that proceedings before the ECCC are brought to a conclusion within a reasonable time. Noting that the judicial recess period of May 13-20 is already available for such preparations, the Chamber considers that an adjournment of one further week will permit the Defence to adequately prepare its case thus upholding the fair trial rights of the accused without jeopardizing the expeditiousness of the trial.

10. Accordingly, the Chamber:

- a) Admits all documents underlying the new OCIJ S-21 prisoners list (E393.2) that were not previously admitted;
- b) Considers that the new OCIJ S-21 prisoners list and list of documents (E393.3) do not require the delay of the testimony of 2-TCW-906 and therefore denies the defence request in this respect;
- c) Decides to hear the full testimony of 2-TCW-906 this week as scheduled;
- d) Further decides to adjourn the hearings for one week (9-12 May), granting in part the defence request for an adjournment, before proceeding to the previously scheduled 13-20 May judicial recess. Upon reconvening on 23 May, the Chamber will hear the remaining S-21 witnesses, 2-TCW-816 and 2-TCW-916, before proceeding to witnesses and Civil Parties on the topic of internal purges.

11. This is the Chamber's formal response to E402.