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ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

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

Kingdom of Cambodia
Nation Religion King
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TRIAL CHAMBER

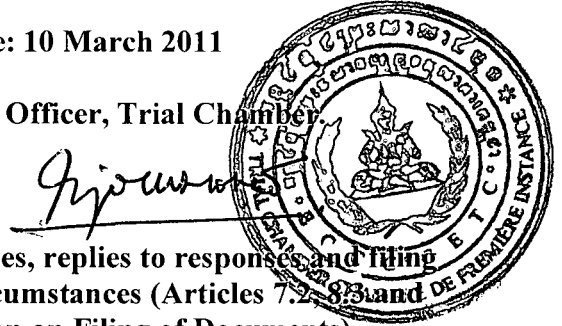
TO: All parties, Case 002

Date: 10 March 2011

CC: Judges of the Trial Chamber; Senior Legal Officer, Trial Chamber

FROM: Nil Nonn, President, Trial Chamber

SUBJECT: 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)



Following the posting and notification on 9 March 2011 of a revised Practice Direction on Filing of Documents before the ECCC, the Trial Chamber advises the parties of the following procedures which shall apply with immediate effect before the Trial Chamber:

Time-limits for responses

Pursuant to newly-amended Article 8.3 of the Practice Direction on Filing, “[a]ny response to an application or pleading shall be filed ... within 10 calendar days of notification of the document to which the participant is responding.” This amendment removes the previous distinction between responses to applications and responses to pleadings, and the different time limits applicable to each. This distinction was often unclear in practice, and the 5-day deadline for responses to applications was frequently difficult to comply with in view of translation constraints.

Replies to responses (admissibility, deadlines and page limits)

The Trial Chamber wishes to provide further directions to the parties regarding the application of Article 8.4, concerning replies to a response. This provision notes that “[a] reply to a response shall only be permitted where there is to be no oral argument on the request” and that “such reply shall be filed within 5 calendar days of notification of the response to which the participant is replying.”

It follows that replies to responses are contemplated only in relation to matters subject to adversarial argument, and as an alternative to oral argument following a determination that the latter is not envisaged. In practice, parties routinely file lengthy replies to responses, frequently

without ascertaining whether oral argument is envisaged in relation to the subject in question, or whether a reply will otherwise be entertained by the Chamber. The Trial Chamber accordingly wishes to clarify that:

- The Chamber considers it to be in its discretion to determine when replies to responses are required. Should replies be sought by the Chamber, the parties will be notified of this by the Trial Chamber Senior Legal Officer. The deadline for the filing of a reply will commence from the day following this notification. Where no such notification is given, it follows that replies are not sought and will therefore not be accepted by the Chamber;
- In all cases, replies on responses to matters of judicial administration (such as extensions of time and page limits) are not considered by the Chamber to be matters for adversarial argument. Accordingly, replies will not be authorized on responses to such motions.

Article 5.1 of the Practice Direction further provides that documents filed before the Trial Chamber shall not exceed 15 pages in English or French or 30 pages in Khmer, unless a contrary provision appears in the Internal Rules or Practice Direction or is otherwise ordered. Pursuant to this provision, the Chamber determines that replies before the Trial Chamber should not exceed 5 pages in length in English or French, or 10 pages in Khmer, unless leave to exceed this page limit has been granted by the Trial Chamber.

Filing in one language alone where 'exceptional circumstances' are shown

Finally, Article 7.2 of the Practice Direction, as amended, indicates that "[i]n exceptional circumstances, the Co-Investigation Judges or a Chamber of the ECCC may authorize a party to file a document in French or in English in the first instance, provided however that a Khmer translation must be filed before the Chamber at the first opportunity." The Trial Chamber considers exceptional circumstances to be shown where the filing party provides evidence of due diligence in having sought translation in a timely manner, and the Interpretation and Translation Pool's inability to provide a Khmer translation in time. Where such evidence is provided upon filing, the Chamber will accept the submission as validly filed without any further authorization.

The parties are reminded that despite these revised procedures, filing simultaneously in both Khmer and either English or French should remain the norm before the Trial Chamber. fit