

BEFORE THE TRIAL CHAMBER

EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

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IENG SARY'S REQUEST FOR AN EXPEDITED DECISION ON CERTAIN ISSUES RAISED AT THE TRIAL MANAGEMENT MEETING

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All Defence Teams

All Civil Parties

Mr. IENG Sary, through his Co-Lawyers (“the Defence”), hereby requests the Trial Chamber to issue an expedited decision concerning certain issues raised at the 5 April 2011 Trial Management meeting. In particular, the Defence requests a decision from the Trial Chamber as to the envisaged length of opening statements from each party and as to whether the parties may meet with proposed witnesses, including expert witnesses.

I. BACKGROUND

1. At the 5 April 2011 Trial Management meeting, the NUON Chea Defence raised the issue of the length of Rule 98*bis* opening statements:

Mr. President, I have also one last minor issue, and that involves the explanation of Rule 89*bis*, the second paragraph. I know we are not at the beginning of the substantive hearing yet, but maybe also in respect of preparation we would like to have some guidance on the word ‘brief’ as provided for in paragraph 2 of Rule 89*bis*. This provision reads, ‘Before any accused is called for questioning, the Co-Prosecutors may make a brief opening statement of the charges against the accused, the accused or his or her lawyers may respond briefly.’ We were wondering if the Trial Chamber had already spent thoughts on the particular word ‘brief’, and it’s time that we are starting to prepare our opening statements, and the sooner that we hear what the word ‘brief’ means, the better it is for us.¹

2. The NUON Chea Defence also raised the issue of whether the parties may contact proposed witnesses:

I also would like some guidance on the question of witnesses. As you know, at the beginning of the investigation we received a decision, a letter from the investigating Judges, the OCIJ, instructing us not to contact any witnesses, and not to carry out any investigation on behalf of the defence. Our question is whether that is still the case. Whether we are still not allowed to speak, for example, to witnesses we have put on our list, and whether we are still forbidden from carrying out any investigation on behalf of the defence prior to the start of the hearings, and before witnesses have been heard in Court. We would like some clear indications on what we are allowed and what we’re not allowed to do.²

3. The issue of contacting proposed witnesses is one which has come up in the past, but whether and to what extent witnesses or proposed witnesses may be contacted has not been settled at the trial stage. At the pre-trial stage of proceedings, the Defence teams were prohibited from contacting potential witnesses.³ At the trial stage, the NUON Chea

¹ Transcript, E1/2.1, 5 April 2011, p. 116-17.

² *Id.*, p. 115-16.

³ *See, e.g.*, Office of the Co-Investigating Judges Response to your letter dated 20 December 2007 concerning the conduct of our judicial investigation, A110/I, 10 January 2008, p. 2; Order issuing warnings under Rule 38, 25 February 2010, D367, para. 9.

Defence requested the Trial Chamber to direct the parties that no contact with witnesses is permitted.⁴ To date the Trial Chamber has issued no directions on this matter.

II. ARGUMENT

4. A decision on the length of opening statements and whether the parties may contact proposed witnesses, including experts, would greatly assist the parties with their trial preparation. In Case 001, the OCP was afforded two hours to make an opening statement.⁵ The *Duch* Defence appears to have been afforded an equal amount of time.⁶ The Defence requests that it individually be afforded an equal amount of time to that allotted to the OCP. The Defence proposes that 10 hours may be an appropriate length of time. The Defence is prepared to make further submissions in support of this request, should the Trial Chamber find that this would be of assistance.
5. Concerning contact with proposed witnesses, it would assist the parties to be informed as soon as possible whether this is allowed, so that the parties may make the most of the time remaining to prepare for trial. Most importantly, it is crucial that all parties have the same understanding of their rights and obligations in this regard. The Defence suggests that it *should* be allowed to contact witnesses, as this will: **1.** help to ensure the equality of arms, since the OCP was allowed to meet with potential witnesses during its preliminary investigation before forwarding the Case File to the OCIJ; and **2.** allow the Defence to focus its questioning of witnesses at trial, which would help to ensure the speed and efficiency of the proceedings. The Defence is prepared to make further submissions in support of this request, should the Trial Chamber find that this would be of assistance.

III. RELIEF REQUESTED

WHEREFORE, for all the reasons stated herein, the Defence respectfully requests the Trial Chamber to issue an expedited Decision as to:

⁴ List of Proposed Witnesses, Experts and Civil Parties, 15 February 2011, E9/4/4, para. 13. "The OCP has asserted that 'the Co-Prosecutors have not been in contact with experts, witnesses, and civil parties'. In light of the general prohibition against witness proofing in civil-law proceedings and Cambodian law/regulations on the issue, the Defence hereby requests the Chamber to remind the OCP and counsel for the other parties of their continuing obligation to refrain from substantive contact with witnesses, experts, and civil parties at any time prior to their testimony."



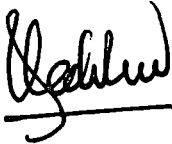
⁵ *Case of Kaing Guek Eav*, 001/18-07-1007-ECCC-TC, Transcript, 31 March 2009, E1/6.1, p. 1. "[T]he Chamber would like to inform the Co-Prosecutors that the Co-Prosecutors could now make a brief opening statement of the charges against the accused, in line with Rule 89bis (2). If the Co-Prosecutors wish to do so, the Trial Chamber would limit two hours for that. You now take the floor."

⁶ The Trial Chamber allowed Duch to speak, followed by his Defence team. It does not appear that the Chamber specified an exact length of time for this opening statement, but it appears to have been approximately equal to the amount of time allotted to the OCP.



- a. the length of time allotted for opening statements; and
- b. whether the parties may meet with proposed witnesses, including experts.

Respectfully submitted,



ANG Udom

Michael G. KARNAVAS

Co-Lawyers for Mr. IENG Sary

Signed in Phnom Penh, Kingdom of Cambodia on this 11th day of May, 2011