BEFORE THE TRIAL CHAMBER

EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

FILING DETAILS

Case No: 002/19-09-2007-ECCC/TC

Party Filing: Mr KHIEU Samphân

Filed to: The Trial Chamber

Original Language: French

Date of document: 11 February 2013

CLASSIFICTION

Classification of the document by the filing party: Public

Classification by the Trial Chamber: សាធារណៈ/Public

Classification Status:

Review of Interim Classification:

Records Officer's Name:

Signature:

Mr KHIEU Samphân's Motion Reasserting His Right to a Fair and Adversarial Criminal Trial

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To:

The Trial Chamber
Judge NIL Nonn
Judge Silvia CARTWRIGHT
Judge YOU Ottara
Judge Jean-Marc LAVERGNE
Judge YA Sokhan

Co-Prosecutors
CHEA Leang
Andrew CAYLEY

All Civil Party Lawyers

All Defence Teams

MAY IT PLEASE THE TRIAL CHAMBER

1. Considering – and rightly so – that documents are crucial to Case 002, the Trial Chamber scheduled different types of document hearings, in addition to the ones for witness, civil party and expert testimony.

2. While *inter partes* hearings on the admissibility of documents were already underway, the Trial Chamber elected to organise *"key documents"* hearings for the purpose of ensuring a greater measure of public accessibility. Two such hearings were held in February and October 2012, while a third was held in January 2013.

3. Whereas the first two hearings were organised and conducted in the same manner, i.e. with no adversarial argument, the Chamber changed the conduct of the third hearing and allowed a semblance of adversarial argument, allegedly owing to a misunderstanding by the parties.

4. Mr KHIEU Samphân's Defence hereby states that the form of both the first and second hearings violates the accused persons' fundamental right to a fair and adversarial trial. Moreover, introducing changes in the midst of the trial is a further indication that the Trial Chamber does not intend to allow for adversarial argument *in fine* in regard to documents.

I. BACKGROUND

A. Up until February 2013: hearings without debate

5. The Parties were notified of the said hearings and/or the justification therefor via emails and memoranda from the Trial Chamber Senior Legal Officer. It was asserted in those emails and memoranda that the hearings in question were aimed at ensuring a greater measure of public accessibility by allowing the parties to focus more on documents or parts thereof which they consider relevant. Oddly enough, only the

accused persons were to be given the *"opportunity"* to comment on the documents presented by the parties to the proceedings. The lawyers were allowed no rebuttal,[1] as the hearings did not concern the admissibility or probative value of the documents presented.

6. The first two hearings were conducted as had been announced earlier. It was the accused persons that the Chamber wanted to hear, not their lawyers. This was why Mr NUON Chea's request to go to the holding cell was denied during the first hearing, on the ground that it was *"important [for the Accused] to be present [in order] to challenge such documents"*.[2] Owing to the last-minute submission of documents by the various parties and the fact that Mr NUON Chea was being bombarded with documents on the go, the Chamber decided to give the Accused the opportunity to make comments at a later stage in the interest of time management.[3]

7. As had been announced earlier, the parties presenting documents were not allowed to *"make any statement"*, *"make any submissions"*, *"present any particular conclusions regarding the documents"*, *"*[TRANSLATION] *analyse [or] evaluate the documents in order to draw any conclusions therefrom"*, in other words, they were not allowed to

[1] Email from Ms Susan Lamb to the parties, 2 February 2012, 10.48 am, entitled *"Message to the parties in advance of tomorrow morning's informal TMM*, **E167.1** ; Email from Ms Susan Lamb to the parties, 5 February 2012, 12.57 pm, entitled *Re: response to your 2 February 2012 email concerning the documents hearing*, see Annex, notably: ***As indicated at the informal meeting, the purpose of these hearings is distinct from the ongoing process of determining which documents are considered as put before the Chamber, or the weight to be given to them*** (emphasis added); Scheduling Order of oral hearing on documents (13 to 16 February 2012), Memorandum, 8 February 2012, **E170**, paras. 2-4 (paras. 2 and 4 very clearly distinguish between the "*Accused*" and the "*parties*"); Email from Ms Susan Lamb's to the parties, 17 September 2012 4.18 pm, entitled *Re: Notice Concerning the Upcoming Witnesses and Mr. IENG Sary's Waiver of his Right to be Present and notice from the Chamber of forthcoming document hearing* », see Annex; Email from Ms Susan Lamb's to the parties, 18 September 2012 at 2.18 pm, entitled *"Updated information to the parties and announcement of resumption of hearing on Thursday 20 September 2012*, see Annex; Directions to parties following hearing of 21 September 2012, Memorandum, 24 September 2012, **E233**, par. 3.

[2] Transcript of Trial Proceedings ("T.") 9 February 2012, **E1/41.1**, p. 51 L. 24-25, p. 52, L. 1.

[3] T., 9 February 2012, **E1/41.1**, p. 69 and 70 (FRE); T., 13 February 2012, **E1/42.1**, p. 4 and 66 (FRE); T., 16 February 2012, **E1/45.1**, p. 4. (FRE).

"plead". The Chamber re-emphasized that this was a limited exercise which was aimed only at presenting documents *"of particular relevance"*.[4]

8. Moreover, none of the parties was allowed to respond or to make any comments. As had been announced earlier, during the first set of hearings, only the accused persons were invited to *"react"*[5] to the documents, but not their lawyers.

9. Surprisingly, at the very end of the second hearing, the President indicated that, like the accused persons, the defence teams were also *"allowed to make comments and to raise objections"* after the other parties had presented their documents, and that the other parties were allowed to comment on the documents presented by the Defence.[6] In that context, that was a means to prevent Mr NUON Chea's lawyer from interrupting by promising him an opportunity to address the court at a later stage. That analysis is borne out by the fact that neither the Co-Prosecutors nor the Civil Parties were allowed any rebuttal after the President made his promise and the after Mr Nuon Chea's Defence had presented its documents.[7]

10. That being as it may, the third hearing was announced in similar fashion and along the same lines as the earlier ones.[8] So there was no inkling of the complete turnaround which was announced in the midst of that trial.

B. <u>Change introduced by the Chamber in January 2013</u>

11. During the third hearing, on 22 January 2013, the parties were given an opportunity for rebuttal or to comment on documents presented by other parties.[9] Recalling that

[4] T., 13 February 2012, **E1/42.1**, p.70, 83 and 93 (FRE); T., 14 February 2012, **E1/43.1**, p. 21, 95, 99 (FRE); T., 15 February 2012, **E1/44.1**, p. 21.
[5] T., 10 October 2012, **E1/133.1**, p. 2 and 7 (FRE).
[6] T., 19 October 2012, **E1/135.1**, p. 24-25(FRE).
[7] T., 19 October 2012, **E1/135.1**.
[8] Email from Ms Susan LAMB to the parties, 15 January 2013, 12.38 pm, entitled *"Advance notice of documents hearings commencing Monday 21 January 2013 should the Chamber be otherwise unable to sit"*, see Annex; Revised Schedule for Forthcoming Document Hearings (commencing on Monday 21 January 2013), Memorandum, 17 January 2013, **E223/3**, para. 4.
[9] T., 22 January 2013, **E1/162.1**, p. 40 L. 19-23(FRE).

the purpose of these hearings was "*the presentation of documents considered to be of particular relevance*", Judge CARTWRIGHT declared that:

> "*While no discussion on the admissibility of documents presented during this stage is to be allowed unless the issue of admissibility has not previously been discussed or ruled upon, it's clear that the Chamber has never prevented the accused or their lawyers from discussing the relevance or the probative value of the documents*".[10]

12. Whereas this was in stark contrast to what the Chamber had consistently stated in its memoranda and during the proceedings – and also much to the surprise of Mr KHIEU Samphân's Defence – Judge LAVERGNE asserted that the disagreement was due to a misunderstanding by the parties, including Mr KHIEU Samphân's Defence.[11]

1. <u>Change due to an alleged misunderstanding</u>

13. However, the parties had a correct understanding of the Chamber's position.

14. For instance, during the second hearing, the Civil Parties objected to the parties being allowed to discuss the probative value of documents "*at this stage of the proceedings*", and were "[TRANSLATION] *quite shocked*" by that.[12] They also objected to the Defence being allowed to make comments:

> *"May I point out that Mr Khieu Samphan may, as an accused, comment on these documents. But if I read the instructions of the Chamber correctly, counsel for Khieu Samphan is not allowed to make comments at this point."*[13]

15. When the *"key documents"* hearings were announced, Mr Khieu Samphân's Defence indicated that it understood the Chamber's position and stated the reasons it was opposed to such hearings. Nothing in the facts or from the Judges has led the Defence to believe otherwise.

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[10] T., 22 January 2013, **E1/162.1**, p.70 L.23-25 (KHM) p. 71 L. 1-3 (ENG), p.75 L.15-20 (FRE).
[11] T., 22 January 2013, **E1/162.1**, p. 82 L. 9-12 and p. 83, L. 1-7 (FRE).
[12] T., 18 October 2012, **E1/134.1**, p. 85 L.16-18 (FRE).
[13] T., 19 October 2012, **E1/135.1**, p. 19 L. 23-25 and p. 20 L. 1-4.

16. So immediately following the announcement of the *"key documents"* hearing via email from the Senior Legal Officer, Mr KHIEU Samphân's Defence responded by motion. Whereas Mr KHIEU Samphân had already indicated that he wished to wait for the Prosecution to present the entirety of its evidence before possibly answering any questions from the parties and the chamber, his Defence asserted in its motion that *"key documents"* hearings are a pretext for compelling the Accused to answer questions in the immediate. The Defence also stated in its motion that adversarial argument was required whenever a document was presented at trial and also called for general debate on documents at the end of the trial.[14]

17. Thereafter, during that hearing, Counsel KONG Sam Onn moved that any documents that the Chamber has not declared admissible should not be presented, because the parties would not have the opportunity to challenge or discuss them during the hearing.[15] Even so, the Chamber allowed those documents to be presented; the Defence pointed out in a motion that the documents had been identified as *"subjected to examination"* (E3 status) at the hearing.[16] In a memorandum in response to the above motion, the Chamber acknowledged that the documents in question had not been subjected to examination at that juncture, adding that this had either already been done or would be done at a later stage.[17]

18. Prior to the second hearing and in response to an email from the same Senior Legal Officer, Mr KHIEU Samphân's Defence reasserted its position, namely that it would not participate in hearings where no adversarial argument was allowed, and since they were only aimed at ensuring a greater measure of public accessibility, it made no difference whether were held in a press briefing room or in a courtroom. The Defence

[14] Motion in Response to the Numerous Difficulties Raised by Ms Lamb's E-Mail Dated 2 February 2012, 3 February 2012, **E167**, paras. 10, 13, 14 and 22.
[15] T., 13 February 2012, **E1/42.1**, pp. 6 and 9.
[16] Request by the Defence of Mr KHIEU Samphân for Clarification on the Status of Certain Documents Identified as "E3" Documents, 5 March 2012, **E178**, paras. 3, 4 and 5.
[17] Requests by the KHIEU Samphân Defence to Clarify the Status of Certain E3 Documents (E178) and its Motion E167, Memorandum, 11 April 2012, **E178/1**, para. 4.

underscored that such being the case, the Accused should not have to answer questions concerning documents "presented" in that context.[18]

19. During that hearing, the Defence again clearly asserted its position. Counsel Anta GUISSÉ recalled that the Defence would not participate in the hearings *"because we cannot plead when evidence is being tendered"*.[19] For his part, Mr Arthur VERCKEN stated as follows:[20]

> *"*[TRANSLATION] *The problem, as far as Mr KHIEU Samphân's defence is concerned, is that we have not attended the hearings for the past two days. (...) . We were made to understand that the debates during those two hearings were not going to concern the admissibility of documents to be presented by the parties, or, for that matter, the probative value of such documents. That is what we were told. And that is indeed what happened at the last hearing".*[21]
>
> *"*[TRANSLATION] *As far as we are concerned, what we are witnessing is not a trial. Rather we are witnessing a show of documents whereby the rights of the accused persons are not respected. So we do not intend to participate in that".*[22]
>
> "[TRANSLATION] *And I dare say that this is not a real debate, insofar as we are not discussing before you, whether documents should be granted E3 reference numbers, nor the probative value of documents you will rely on during your deliberations. Based on this, the discussion is closed.*"[23]

20. Again in the midst of the trial, the Chamber changed the form of the *"key documents"* hearings during the third hearing which was held in January 2013. Mr Samphân's Defence hereby states that it will not be misled by this eleventh-hour change and that, in any event, the *"key documents*" hearings are a mere publicity stunt.

2. <u>The change is a make-believe opportunity for debate</u>

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[18] Email from Mr KHIEU Samphân's Defence to Ms Susan Lamb, 24 September 2012, 9.52pm, entitled: *"Re: Re: Clarification regarding the presentation of documents hearing"*, see Annex. There has been no reply to this email.
[19] T., 10 October 2012, **E1/133.1**, p. 9 (FRE).
[20] T., 19 October 2012, **E1/135.1**, p. 62-64 and 69-70 (FRE).
[21] T., 19 October 2012, **E1/135.1**, p. 62 L. 20-21 and p. 63 L. 3-8 (FRE).
[22] T., 19 October 2012, **E1/135.1**, p. 64 L. 15-18 (FRE).
[23] T., 19 October 2012, **E1/135.1**, p. 70 L. 12-16 (FRE).

21. Only recently, on 22 January 2013, the parties were accorded the right to reply and make comments, which is not clearly defined; however, it clearly emerges that this type of hearing is not the adversarial and fair trial to which Mr KHIEU Samphân is entitled. It only has the appearance of being so.

22. This misleading guise also appears in a subsequent Chamber memorandum dated 29 January 2013, which states:

> *"The Chamber emphasizes the importance of the key documents hearing, the* potential for inculpatory evidence *to be discussed, and the consequent desirability of having the Accused present during the presentation of documents related to the Accused*".[24]

23. At present, the Chamber fails to distinguish between the importance of these hearings and the subjective importance[25] that the parties attach to documents they wish to present. In particular, the Chamber seems to suggest that evidence adduced by the Prosecution during the *"key documents"* hearings is open to debate and discussion.

24. Again, it is uncertain what kind of debate that could be. It is difficult to conceive of a debate in a process consisting simply in selecting and identifying documents that each party considers important or particularly relevant with no discussion allowed.

25. At a hearing in 2012, the President indicated that the parties were to *"select [certain] relevant documents"* with a view to enabling the Chamber *"to locate the relevant documents"*.[26] In other words, the parties were instructed to "[TRANSLATION] *only*

[24] KHIEU Samphân request to waive his presence during the presentation of key documents, Memorandum, 29 January 2013, **E223/5**, para. 2 (emphasis added).
[25] Subjectivity noted by Judge Cartwright: *"the parties [are thus given] the opportunity to emphasize documents that they consider to be important to their respective cases"*. T., 22 January 2013, **E1/162.1** p. 74, L. 19-21(emphasis added).
[26] T., 10 October 2012, **E1/133.1**, p. 4 L. 20-21.

discuss the particular relevance of the documents" [27] because *"*[TRANSLATION] *evaluation of those documents [was] to be done at the end of Case 002/01*".[28]

26. He made himself was abundantly clear, saying: *"[we] are not going to discuss the probative value and weight of those documents. The parties were not supposed to assess the probative value or weight of the evidence, because this is not at the closing stage of the proceedings".*[29]

27. It was on that basis that the President called counsel to order reminding them to *"*[TRANSLATION] *refrain from making pleadings or opening statement containing accusations against the accused persons."* Sounding a reassuring note, he added, *"[a]t a later date, Counsel will be given ample time to do so at the appropriate time".*[30]

28. This clearly shows that the Chamber was mistaken in asserting on 22 January 2013 that the accused persons and their lawyers were not prevented from discussing the probative value of documents. The Chamber also wrongly asserted on 29 January 2013 that this was *"a possibility of discussing prosecution evidence".*

29. It is also worth noting that the Chamber is also leading the Office of the Co-Prosecutors astray. For instance, on 30 January 2013, while presenting *"key documents"*, Mr William Smith declared: *"Of course, I must explain the relevance and probative value of the documents we are presenting."*[31]

30. Yet, one year earlier, on 16 January 2012, while calling for the lowest and broadest threshold for admissibility of documents, he clearly distinguished between assessment of the admissibility of evidence and assessment of its weight, saying: "*the actual*

[27] T., 14 February 2012, **E1/43.1**, p. 99 L. 8-9 (FRE).
[28] T., 13 February 2012, **E1/42.1**, p. 83 L. 23-24 (FRE).
[29] T., 19 October 2012, **E1/135.1**, p. 73 L. 13-16.
[30] T., 15 February 2012, **E1/44.1**, p. 12 L. 5-9 (FRE).
[31] T., 30 January 2013, Draft Transcript, p. 63 L. 13-15.

probative value or weight to be afforded to the evidence is assessed by the Trial Chamber once all the evidence has been heard." [32]

31. Indeed, the Chamber accepted the Co-Prosecutor's argument and proceeded to set an extremely low admissibility threshold for admitting evidence. As a result, thousands of documents were admitted into evidence, and more are being admitted as we speak.

32. So the instant trial is slowly going adrift with no captain on board. The discourse keeps changing depending on the agenda.

33. In this charade, the lawyers only have their careers on the line, while for Mr KHIEU Samphân, it is his wellbeing and rights which are being trampled because of the ever-changing rules in a trial that is proving to be increasingly unfair.

34. It would appear that the decision to set an extremely low admissibility threshold for documents is also the reason why the Chamber decided to hold *"key documents"* hearings.

35. Clearly, *"key documents"* hearings satisfy the practical need of dealing with the thousands of documents that the Chamber decided to admit en masse.

36. Now, even assuming that is a correct premise, the parties' clustering of documents by subject-matter may help determine which documents are to be examined, but it is certainly not a reason to dispense with assessing the probative value of such documents. Such assessment can only be undertaken at the end of the trial once the evidence has been heard in its entirety.

37. It is also certain that *"key documents"* hearings do not provide a greater measure of public accessibility to documents. Owing to the Court's remote location, the people who follow the current trial are bussed in each day for that purpose, but different

[32] T., 16 January 2012, **E1/27.1**, p. 18-19.

people are brought in each time. As it turns out, the only people attending the proceedings on regular basis (if that) are reporters.

38. So the exercise consisting in identifying documents, displaying them on screen and reading them out based on subject matter is simply a way to break them down into bite-size segments for the benefit of reporters. This does not belong in a trial.

39. With the exception of those instances where documents are put to a witness, examination of any documents presented unilaterally by the parties – regardless of whether they are to be examined as a matter of priority – should not be undertaken before the end of the trial. It is only after the entirety of the evidence has been adduced that the parties will be in a position to vet those documents and check them against both the testimonies and other documents presented before any conclusions can be drawn that may be useful for the Chamber in its deliberations.

40. Today, the Chamber and the Office of the Co-Prosecutors seem to forget that those hearings cannot and must not be regarded as an alternative to closing statements. The right to reply or comment recently granted to the parties at the third documents hearing is simply a way to enable the Co-Prosecutors to make closing arguments ahead of time without being interrupted by the Defence or without the President reminding them that counsel "[TRANSLATION] *will have ample time to do so in due course*".[33]

41. The reason that the Office of the Co-Prosecutors is being misguided by the semblance of [adversarial] debate must be simply that, like Mr KHIEU Samphân's Defence, they are under the impression that at the end of the trial, the Chamber will not allow for a real adversarial argument, be it orally or in writing. The intention to gag the parties, as manifested by the 100-page limit imposed on the closing briefs is contrary to the applicable law and it violates the rights of the Defense, as well as the right of the accused to a fair trial.

[33] T., 15 February 2012, **E1/44.1**, p. 12 L. 5-9 (FRE).

II. APPLICABLE LAW

42. Based on international norms, the ECCC Rules recognise, *inter alia*, the Accused's right to a fair and adversarial trial.

43. According to the Internal Rule 21 ("Fundamental Principles"), sub-paragraph 1:

> *a) ECCC proceedings shall be fair and adversarial and preserve a balance between the rights of the parties. (...)*
>
> *(...)*
>
> *d) Every person suspected or prosecuted shall be presumed innocent as long as his/her guilt has not been established. Any such person has the right to be informed of any charges brought against him/her, to be defended by a lawyer of his/her choice, and at every stage of the proceedings shall be informed of his/her right to remain silent.* [34]

44. Internal Rule 87 ("Rules of Evidence") provides:

> *"1. Unless provided otherwise in these IRs, all evidence is admissible. The onus is on the Co-Prosecutors to prove the guilt of the accused. In order to convict the accused, the Chamber must be convinced of the guilt of the accused beyond reasonable doubt.*
>
> *2. Any decision of the Chamber shall be based only on evidence that has been put before the Chamber and subjected to examination."*[35]

45. In the *Öcalan* case, the European Court of Human Rights (ECHR) Grand Chamber clearly set forth the right to an adversarial trial in a criminal case:

> *"The right to an adversarial trial means, in a criminal case, that both prosecution and defence must be given the opportunity to have knowledge of* ***and comment on*** *the observations filed and the evidence adduced by the other party. Various ways are conceivable in which national law may meet this requirement. However,*

[34] Emphasis added.
[35] Emphasis added.

whatever method is chosen, it should ensure that the other party will be aware that observations have been filed and will get a ***real opportunity*** *to comment on them".*[36]

46. Pursuant to these fundamental principles and rules of evidence, the Chamber has a duty to hear all that the Defence's arguments concerning the accusations against Mr KHIEU Samphân, as well as the entirety of and of the evidence adduced. The Defence must be guaranteed a real opportunity for discussion. This must and can only take place after the presentation of the entirety of the evidence. Normally, that discussion takes place during the closing arguments.

III. THE DEFENCE'S ARGUMENTS MUST BE HEARD

47. The recent changes to the *"key documents"* hearings are only a further indication that the Chamber does not intend to give the Defence a real opportunity to discuss the evidence adduced in the course of the trial.

48. The Chamber has already decided to limit closing briefs to 100 pages, whereas the debate on the admissibility of documents is still underway and many witnesses, experts and civil parties are yet to testify.

49. Moreover, with the purported aim of only *"assist[ing] the Chamber [as well as the parties] in the concluding phases of the trial",*[37] the Chamber also *"[decided] that portions of the Closing Briefs concerning the applicable law be submitted in advance of the conclusion of the hearing of evidence"*, adding that those portions were to be no more than 20 pages.[38]

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[36] ECHR, *Ocalan v. Turkey*, Application No. 46221/99, Grand Chamber Judgment, 12 May 2005, para. 146 (emphasis added).
[37] Clarification regarding applicable law briefs, Memorandum, **E163/5/6**, para. 4.
[38] Notification of Decision on Co-Prosecutors' Request to Additional Crime Sites within the Scope of Trial in Case 002/01 [E163] and deadline for submission of applicable law portion of Closing Briefs, Memorandum, 8 October 2012, **E163/5**, para. 4.

50. Having limited the remaining segments of the Defence's closing brief to100 pages, the Chamber considered that it had done the parties a favour in allowing them some "*latitude*" in relation to page limits![39]

51. Yet, the purported latitude is nothing compared to that given in relation to admissibility of documents, which has resulted in admitting thousands of documents into evidence. Despite the *"key documents"* hearings, which in fact do not qualify as trials, in their final arguments, the parties will still be left with the task of discussing the probative value of those thousands of documents and the entire body of evidence adduced.

52. So to date, 51 witnesses, experts and civil parties have been heard,[40] and 3981 documents have been allocated E3 classification.[41] Some of the documents supposed to have been subjected to examination were not actually subjected to examination.[42] Further hearings on the admissibility of documents ought to be scheduled. The Defence wishes to stress that the *"key documents"* presented thus far are yet to be examined for probative value and that such documents cannot be subtracted from the total number of documents due to be subjected to examination.

53. Against this background, it is odd to consider that closing briefs of no more than 100 pages can adequately cover the entirety of these testimonies and documents, not to mention the ones to come. It is absolutely impossible to adequately discuss the entirety of the evidence in a brief of that size (only six times longer than this motion). That infringes the rights of the Defence.

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[39] Further Notification of Modalities for Closing Briefs, Memorandum, 26 November 2012, **E163/5/4**, p. 2.
[40] 51 witnesses on the merits as of 29 January 2013, including Al ROCKOFF (TCW-565).
[41] 3981 documents as of 9 January 2013 according to the latest Written Record of Proceedings communicated to the parties on 28 January 2013, **E1/157**, p. 3.
[42] See, *inter alia*: Forthcoming document hearings and response to Lead Co-Lawyers' memorandum concerning the Trial Chamber's request to identify Civil Party applications for use at trial (E208/4) and KHIEU Samphan Defence request to revise corroborative evidence lists (E223), Memorandum, 10 October 2012, **E223/2**, para. 5 (troisième catégorie).

54. While Mr KHIEU Samphân's Defence is mindful of the fact that the Chamber is overwhelmed by the sheer number of documents it admits in the interest of expeditiousness, it is also quite concerned that this could adversely affect the purpose of the trial and its outcome.

55. It is high time the Chamber stopped pretending to be conducting a criminal trial. Unless the Chamber has already taken its decision on the merits, it cannot dispense with an adversarial debate or with a thorough assessment of the entire body of evidence. Such debate must take place at the end of the trial. If not, Mr KHIEU Samphân's right to a fair and adversarial trial would be infringed, as is the case at this time. The Chamber is requested to remedy this promptly.

56. **FOR THESE REASONS**, Mr KHIEU Samphân's Defence requests the Trial Chamber to:

- NOT PROCEED with the *"key documents"* hearings;
- GUARANTEE a real opportunity for a genuine adversarial debate at the end of the trial:

  1) by PERMITTING Mr KHIEU Samphân at the end of the trial to comment on all of the *"key documents"* presented, should he wish to do so;

  2) by ANNOUNCING already at this stage that it will not limit the parties' closing briefs to 100 pages and that this issue will be debated at the end of the trial;

  3) by GUARANTEEING to allocate the parties the time they require to present their closing arguments

	KONG Sam Onn Anta GUISSÉ Arthur VERCKEN Jacques VERGÈS	Phnom Penh Paris Phnom Penh Paris	[*Signed*] [*Signed*] [*Signed*] [*Signed*]
Date	Name	Place	Signature