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du dossier: SANN RADA



ព្រះរាជាណាចក្រកម្ពុជា
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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

TRIAL CHAMBER

TO: All parties, Case 002

Date: 5 April 2011

FROM: Nil Nonn, President, Trial Chamber

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



SUBJECT: Directions to parties concerning Preliminary Objections and related issues

Reference is made to the Chamber's earlier Directions (E35, E51, E51/5, E51/5/3 and E51/6), which indicated that comparatively brief preliminary objections submissions and responses were sought from the parties in the first instance. The Chamber also undertook to provide further directions to the parties in due course regarding the need for further submissions, where applicable, likely scheduling of oral arguments, and the time-frames and modalities for the determination of all preliminary objections.

Each Defence Team has now filed its preliminary objections and the Co-Prosecutors and Civil Parties their responses. The Trial Chamber consequently provides the following directions in relation to all preliminary objections received in accordance with the Chamber's previous directions:

1. National crimes (Criminal Code of the Kingdom of Cambodia (1956)) (NUON Chea, Khieu Samphan, IENG Thirith and IENG Sary)

The Chamber recalls its decision of 26 July 2010 on a preliminary objection in relation to the national crimes of premeditated murder and torture in Case 001. In that decision, the Chamber disagreed as to whether the statute of limitations precluded action against the accused. In its joint response to Defence Rule 89 Preliminary Objections of 21 March 2011 (E51/5/3/1), the Co Prosecutors submit that the statute of limitations had not expired against all accused in Case 002. They further indicate their intention to present evidence at trial to show that there was no reasonable possibility to prosecute all four accused until their surrender to the Cambodian government in 1996 and 1998 respectively, and that the statute of limitations was thus tolled until that time. They accordingly request the Trial Chamber to defer its decision on this matter until the judgement on the merits.

The Trial Chamber agrees with the Defence that this preliminary objection is best determined as soon as possible. It accordingly invites the Co-Prosecutors, no later than Friday 27 May 2011 to indicate the basis of its contention that national crimes are not statute-barred in relation to all accused in Case 002. Its submission is to be no greater than 15 pages in length (appending by way of annex all documentary or other evidence in support, or case file reference numbers). The deadline for any Defence response to this submission is Friday 17 June 2011. Each Defence team is allocated 5 pages in response individually (or 15 pages should Defence teams choose to consolidate these responses).

2. International crimes and forms of responsibility (including the principle of legality, statute of limitations and subject-matter jurisdiction) (KHIEU Samphan, NUON Chea, IENG Thirith and IENG Sary)

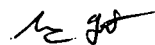
The Chamber does not consider that additional written submissions in relation to these objections are presently required, save for any supplementary submissions that the parties may seek in consequence of the later issuance of reasons by the PTC in relation to all Closing Order appeals. Where supplementary submissions are sought by any party, the Chamber invites all teams to identify, in a filing of no greater than 5 pages in length and within three weeks of today's date or the issuance of these reasons (as the case may be), the portions of those reasons for which supplementary submissions are proposed. The Chamber will then issue further directions in relation to these submissions in due course. Opportunity for oral argument in relation to these preliminary objections will be afforded at the Initial Hearing.

3. Amnesty and pardon (IENG Sary)

Having considered its submissions to date (E51/4 and E43), the Chamber will permit the IENG Sary team, should it wish, to file additional submissions on this question of no greater than 15 pages at a later date. The Chamber will advise the IENG Sary team of applicable deadlines, in addition to those in relation to responses, at a later date, to enable it to incorporate any supplementary submissions it considers necessary once reasons are issued in relation to its Closing Order appeal. Opportunity for oral argument in relation to this preliminary objection will be afforded at the Initial Hearing.

4. Prohibition against multiple prosecutions for the same offence (*Non bis in idem*) (IENG Sary)

Having considered its submissions to date (E51/4 and E43), the Chamber will permit the IENG Sary team, should it wish, to file additional submissions on this question of no greater than 15 pages at a later date. The Chamber will advise the IENG Sary team of applicable deadlines, in addition to those in relation to responses, at a later date, to enable it to incorporate any supplementary submissions it considers necessary once reasons are issued in relation to its Closing Order appeal. Opportunity for oral argument in relation to this preliminary objection will be afforded at the Initial Hearing.



5. Personal Jurisdiction (KHIEU Samphan)

Resolution of this question entails a mixed assessment of law and fact. Oral argument will accordingly not occur at the initial hearing but will instead be scheduled during an early stage of trial, following the hearing of evidence in relation to the role and responsibility of all four accused. No further written submissions or responses are envisaged at this stage. Further direction regarding the scheduling of these oral arguments will follow in due course.

Other issues

The Chamber notes that the following issues have been raised by the NUON Chea Defence team.

- a) *Alleged errors in the judicial investigation, alleged nullity and alleged violation of fair trial rights*
- b) *Allegations of political interference.*
- c) *The ECCC Internal Rules*

The Chamber will issue further directives or a reasoned decision in response to these issues in due course.

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