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ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

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

MEMORANDUM – TRIAL CHAMBER

Date: 11 April 2012

TO: **All parties, Case 002**

FROM: **Judge NIL Nonn, President, Trial Chamber**

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

SUBJECT: **Requests by the KHIEU Samphan Defence to Clarify the Status of Certain E3 Documents (E178) and its Motion E167**

1. The Trial Chamber is seised of a request from the KHIEU Samphan Defence to clarify the status of certain documents assigned document numbers with the prefix E3 ("E3 numbers") (E178). The Chamber is also seised of a separate motion in which the KHIEU Samphan Defence raises similar issues (E167). The Chamber replies by memorandum, as the concerns raised are essentially organizational ones or requests for clarification, and do not pertain to novel issues of fact or law. These memoranda are communicated in English only in the first instance, as advance courtesy copies, where the Chamber deems the parties to require the information they contain urgently, but they are also later filed in Khmer and French.

2. The Chamber clarifies that allocation of an E3 number signifies that a document has been put before the Chamber or the parties without objections being made (or, where objections are made to a document, these objections are rejected by the Chamber). Pursuant to Rules 87(2) and 87(3), the Chamber may base its decision on documents that have been put before the Chamber or the parties (*i.e.* their "content has been summarised, read out, or appropriately identified in court"), "subjected to examination" and not excluded on any of the five grounds specified in Rule 87(3)(a) to (e). The Chamber considers a document to have been subjected to examination if adequate opportunity has been given to the parties to object to its use, even if the parties do not in fact avail themselves of this opportunity. New documents that the Chamber deems to have met the criteria in Internal Rule 87(4) are also allocated E3 numbers. The assignment of E3 numbers is recorded by the Greffiers in the Written Record of Proceedings for each day of the trial and will also soon be notified to the parties through the Daily Trial Documents interface. Once assigned, an E3 number replaces any previous document number assigned to that document.

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3. During the earliest stages of the trial and on an exceptional basis, the Chamber also allocated E3 numbers to some documents which had been put before the Chamber or the parties, but which had not at that stage been subjected to examination. This was the case in relation to 124 documents cited in the footnotes to the Closing Order (D427), which were put before the Chamber and given E3 numbers during trial proceedings on 5 December 2011 in the interests of efficient trial management (E159). The parties were, however, subsequently given the opportunity to raise objections to those documents on 16 January 2012 and the Chamber therefore considers that these documents have now been subjected to examination. The Chamber's decision of 9 April 2012 (E185) ruled on the objections to these documents, amongst others.

4. In its motion, the KHIEU Samphan Defence requested clarification of the status of "8 out of the 13 previously non-E3 documents presented" by the Co-Prosecutors during trial proceedings on 9 February 2012 (E178, para. 5). In fact, the Co-Prosecutors referred to 9 separate documents on 9 February 2012, of which 3 had already been allocated E3 numbers.[1] Of the 6 documents allocated E3 numbers on 9 February 2012, the parties had previously been given the opportunity to object to 4 documents between 17 and 19 January 2012 (E159).[2] The parties were given the opportunity to object to the remaining 2 documents between 12 and 19 March 2012 (E172/5).[3] Therefore, as of 19 March 2012, all 6 of the documents presented by the Co-Prosecutors and allocated E3 numbers on 9 February 2012 had been put before the Chamber and subjected to examination. The Chamber has also ruled on the objections to 4 of these documents in its decision of 9 April 2012 (E185), and will rule on the remainder in due course.

5. In a separate motion (E167), the KHIEU Samphan Defence refers to documents cited in the Closing Order footnotes as relevant to both the first and second segments of the current trial (*i.e.* "historical background" and "administrative structures and communications structure and some roles of the Accused" (E155)) and to the fact that no Experts have to date been heard before the Chamber. It questions in consequence whether the historical background trial segment can genuinely said to have been concluded (paras 11-15). As should now be apparent from subsequent hearings and trial management memoranda, organization of the trial into segments is designed to guide the parties as to the principal focus of each phase, and to provide the parties with an opportunity to emphasize key documents in an organized sequence and at an appropriate juncture. Contrary to what is suggested in E167, the subdivision of the trial into segments aims to provide a logical structure to the trial in Case 002/01 and is without prejudice to a) the hearing of Experts at a later date on all subjects relevant to Case 002/01 (including earlier trial segments); b) the ability of parties to question witnesses not only on that current trial segment but all areas relevant to Case 002/01 (so as to avoid their unnecessary later recall); c) the Accused's right to silence (para. 13) and d) the Co-Prosecutors' burden of proof (para. 19).

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[1] The 9 documents mentioned by the Co-Prosecutors were D56-Doc.060, D243/2.1.9 (E3/25), D189.2, D313/1.2.38, D313/1.2.32, IS 20.30, IS 13.9, IS 6.2 (E3/99) and D262.26 (E3/147).

[2] Namely, D56-Doc.060, D189.2, IS 20.30 and IS 13.9.

[3] Namely, D313/1.2.38 and D313/1.2.32.

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