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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
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MEMORANDUM – TRIAL CHAMBER

សាធារណៈ / Public

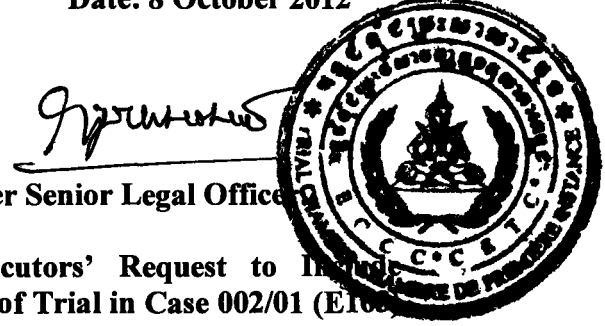
Date: 8 October 2012

TO: All parties, Case 002

FROM: NIL Nonn, President, Trial Chamber

CC: All Trial Chamber Judges, Trial Chamber Senior Legal Office

SUBJECT: Notification of Decision on Co-Prosecutors' Request to Include Additional Crime Sites within the Scope of Trial in Case 002/01 (E163) and deadline for submission of applicable law portion of Closing Briefs



1. To permit planning by the parties and to provide certainty in relation to the remaining portions of Case 002/01 to be heard at trial, the Trial Chamber wished to notify the parties and public of its decision on the Co-Prosecutors' Request to Expand the Scope of the Trial by including the following additional crime sites within the scope of Case 002/01 (E163):

- a) Executions of evacuees at sites in Kampong Tralach Leu District (District 12);
- b) Executions of former Lon Nol soldiers and officials at Toul Po Chrey; and
- c) Security Centre S-21 and related execution site Choeng Ek.

2. Following discussion of these proposed extensions at the recent Trial Management Meeting (“TMM”) and careful consideration of all submissions of the parties made at the TMM and subsequently, the Chamber considers that it is unable to entertain proposals to extend the scope of trial in Case 002/01 so as to include factual allegations concerning S-21 and District 12. The reasons for this are, firstly, that incorporation of these elements (whether due to the number of witnesses sought by the parties, anticipated difficulties in limiting the scope of these proposed extensions, or likely Defence objections to them) would risk a substantial prolongation of the trial in Case 002/01. The Chamber also remains unconvinced that these additional crime sites are closely connected to the existing factual allegations in Case 002/01 or that their inclusion fits within the logical sequence of the trial in Case 002 as described in the Severance Order (E124). Finally, the Trial Chamber is conscious that in ensuring an expeditious trial, it has had to allow for delays brought about by issues such as the lengthy process required to assess and then review IENG Thirith's fitness to stand trial. The current hospitalization of the Accused IENG Sary, and

consequent trial management challenges, also ensures that the Chamber does not consider significant expansion of the scope of trial in Case 002/01 to be a prudent exercise of its trial management discretion.

3. The Chamber has, however, given favourable consideration to incorporating into the scope of Case 002/01 killings at Toul Po Chrey, insofar as they are incidents which occurred immediately after the evacuation of Phnom Penh (principally, paragraphs 705-711 of the Case 002 Closing Order), but not otherwise extending to killings that occurred between 1976 and 1977.¹ Killings at Toul Po Chrey which immediately followed the fall of Phnom Penh appear to be a logical extension of the existing allegations in Case 002/01, and may be incorporated following a relatively brief extension of trial. In support of this extension, the Chamber intends to call only two additional individuals in support (namely, TCW-752 and TCW-389). It will also incorporate consideration of documents and other evidence relevant to this segment at a forthcoming document hearing, to be announced. The scheduling of the testimony of TCW-389 may also occur shortly, in view of the waiver granted in relation to him by the IENG Sary Defence. The parties are accordingly requested to commence immediate preparation for this testimony.

4. At the Trial Management Meeting, various alternatives for the submission of Closing Briefs were discussed, with a view to expediting the conclusion of Case 002/01. To assist the Chamber in the concluding phases of the trial, the Chamber requests that portions of the Closing Briefs concerning the applicable law be submitted in advance of the conclusion of the hearing of evidence in Case 002/01. It would assist the Chamber if these portions of the Closing Brief could be filed no later than Friday 21 December 2012, although the Chamber will entertain extension of this deadline if required by the parties. These submissions shall be no more than 20 pages in length (in English or French, or 40 pages in Khmer). It follows from this direction that the Closing Briefs requested soon after the close of the hearing of evidence in Case 002/01 may focus exclusively or mainly on the factual allegations at issue in the trial. Further directions regarding the remaining portions of the parties' Closing Briefs will follow in due course.

¹ A definitive list of Closing Order paragraphs officially incorporated into Case 002/01 in consequence of this decision has today been notified (E124/7.3)). Documents cited in these additional paragraphs will be discussed at a forthcoming document hearing (above, paragraph 3).