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

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MEMORANDUM – TRIAL CHAMBER

TO: All Parties, Case 002 **Date:** 19 February 2013

FROM: Nil Nonn, President, Trial Chamber

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

SUBJECT: Supplementary questions to the parties following hearing of 18 February 2013 in consequence of the Supreme Court Chamber's Decision on Co-Prosecutors' Immediate Appeal of the Trial Chamber's Decision concerning the Scope of Case 002/01 (E163/5/1/13)



1. In light of the information received by the Chamber during yesterday's severance hearing, the parties are requested to provide the below supplementary information to the Chamber during the continuation of this hearing tomorrow.
2. The Co-Prosecutors are requested to provide the paragraphs they consider would need to be added to the scope of trial in support of any extension sought beyond population movement Phase 1 and Phase 2 and Toul Po Chrey. In their filing E163 of 27 January 2012, the Co-Prosecutors indicated that paragraphs 192-204 and 415-475 of the Case 002 Closing Order should be added to Case 002/01 in order to include S-21. The Chamber's own analysis suggested that a number of additional paragraphs should be added in order to render coherent this proposed extension (in particular, paragraphs 949-974, in addition to paragraphs 178-191, 207-209, 916-936, 975-977). At the August 2012 Trial Management Meeting, the Co-Prosecutors appeared to agree that these additional paragraphs would also need to be added, even though the addition of further paragraphs may have an additional consequential impact on witnesses to be heard and documents relevant to the trial. Further, and should the Co-Prosecutors seek to add Grave Breaches charges in consequence of a proposed extension to S-21, as was suggested yesterday, further Indictment paragraphs (e.g. paragraphs 150-155, 1480-1488, 1491-1492, 1498-1510 and 1515-1520) would need to be added and additional evidence possibly adduced, specifically in relation to armed conflict and its international character. Please consider this information and provide a definitive list of all Indictment paragraphs proposed for inclusion.
3. In consequence of the SCC Decision, the Chamber has already received numerous requests from the parties for the adjournment of proceedings or relaxation of other trial deadlines. All parties are invited to comment on the below proposed trial schedule for the

following weeks and the timing of the decision on severance in light of the following considerations:

- i. The health of the Accused has been considered by the Trial Chamber and endorsed by the Supreme Court Chamber as a determining factor for any decision on the scope of the trial. Medical experts are scheduled to be heard by the Chamber in mid-March 2013 and their expertise may affect the determination of the scope of proceedings.
- ii. A written decision on severance, with extensive reasoning as mandated by the Supreme Court Chamber will very likely not be available in two official ECCC languages for another 2-3 weeks.
- iii. The testimony of experts Philip SHORT has been scheduled for next week and Elizabeth BECKER tentatively for the week after. Philip SHORT's availability is very limited, as is Elizabeth BECKER's, who has already been postponed twice. If these experts are not heard as currently scheduled, it is likely that the Chamber will lose the ability to hear them at all.
- iv. Should witnesses scheduled to testify prior to a written severance decision be postponed, or alternatively, could they testify at least in relation to the scope of trial as understood by all parties prior to the annulment of the Severance Order and related decisions? Please comment in relation to the following individuals whose testimony is scheduled imminently: SHORT, BECKER, TCW-724, TCW-794, TCW-100 and TCW-110.

4. In order to obtain the most accurate assessment possible of the likely prolongation of proceedings that would stem from the grant of the Co-Prosecutors' request to include S-21, the parties are requested to address the following issues:

- i. The Co-Prosecutors have calculated the time necessary to extend the scope of trial to S-21 to require no more than the hearing or rehearing of five individuals, namely KAING Guek Eav, TCCP-21, TCW-540, TCW-698 and TCW-232, entailing an additional 11 trial days. They also seek to put forward approximately 200 documents which would likely require an additional document hearing. Please confirm these projections, and in addition, clarify whether or not the Co-Prosecutors seek to include S-24 (Prey Sar) within this proposed extension.
- ii. The premise that the proposed extension could be accomplished following only a limited number of hearing days depends on the ability of the Accused to participate in trial or their readiness to waive their right to be present. The Chamber notes that for the better part of the last 2 months, one or more of the Accused have been hospitalized. The trial was able to continue only because the Accused waived their rights to be present in relation to the hearing of a limited number of individuals. Could the Defence teams indicate whether their clients' willingness to waive their right to be present would continue in the event the Accused were unable to attend proceedings and the above individuals relevant to S-21 were called?
- iii. Could the Co-Prosecutors clarify whether the estimates of time required for the conclusion of a new S-21 trial segment depends on the admission of transcripts from Case 001? In the light of the criteria for the introduction of trial transcripts from other trials in the Trial Chamber's Decision E96/7, the Defence teams should address whether or not they would seek to contest the admission into evidence of Case 001 transcripts concerning S-21, to which the Co-Prosecutors and Lead Co-Lawyers may respond.