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ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

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: 25 April 2014

FROM: NIL Nonn, President, Trial Chamber;

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

SUBJECT: Further information regarding remaining preliminary objections



1. Prior to the commencement of Case 002, the parties filed numerous preliminary objections pursuant to Internal Rule 89. At that time, the Chamber ruled on the preliminary objections it considered relevant and necessary to be decided prior to the evidentiary proceedings in Case 002/01 (e.g. E51/14, E116, E100/6, E122, E95/8, E51/15). The Chamber has since noted that several preliminary objections were deferred until later trials (E124, n. 7; E284, n. 212, 268, 271, 273-75). In this regard, the Chamber provides the following clarifications and seeks additional information from the parties.

2. As an initial matter, the Chamber considers that a number of the issues raised by the parties as preliminary objections do not concern the jurisdiction of the Chamber as envisaged by Internal Rule 89. The question concerning the crime of imprisonment (in E51/4 para. 27(e) and D427/1/6 paras. 205-207, cf. E188, paras 347, 351 (Case 001)) is more properly considered a request to change its legal characterisation pursuant to Internal Rule 98(2) and whether, according to the definition of this crime, the alleged perpetrators possessed the requisite *mens rea*. This will therefore be addressed in the judgement. The parties have also questioned whether the facts in the Closing Order fully meet the legal requirements to establish the crime of genocide (E58, paras 7-10). To address this challenge, the Chamber must examine the facts and evidence before applying the legal requirements. The Chamber therefore reserves ruling until the judgement phase. Likewise, the Trial Chamber agrees with the Pre-Trial Chamber (D427/3/15, para. 166) that the legal challenges to the charges of forced marriage and rape within forced marriage (E44, paras 25-30) raise questions of both law and fact and considers it premature to address these issues prior to the judgement phase in Case 002/02.

3. Furthermore, the Chamber considers there is no legal basis for the Lead Co-Lawyers for the Civil Parties' request to add charges of rape (outside the context of forced marriage) committed within Security Centres to the Closing Order (E99/1, paras 32-41, 43, 45). The Co-Investigating Judges specifically found that while rape did occur in security centres, these crimes could not be linked to the Accused as the evidence did not support a finding that the CPK leaders used rape as a policy in Security Centres (D427, paras 1426-1429). Although the Chamber may change the legal characterisation

of a crime as set out in the Closing Order *as long as no new constitutive elements are introduced* (Internal Rule 98(2)), the Chamber has no authority to add new facts or charges to the Closing Order that were dismissed by the Co-Investigating Judges, a decision that was not disturbed by the Pre-Trial Chamber.

4. On a separate matter, the Chamber notes that the preliminary objection regarding the customary international law basis for the definition of torture (E83, para. 9) and the request to recharacterise rape as a separately enumerated crime against humanity have been rejected by the Supreme Court Chamber (F28, paras 190, 183, 205, 213).

5. Having considered the above, there are two remaining preliminary objections that the Chamber considers should be addressed at this time: the statute of limitations for grave breaches of the Geneva Conventions (E43; E83, para. 6) and jurisdiction over the crime against humanity of deportation (E58, para. 11). Although the deadline for lodging preliminary objections has expired (E51), the Chamber would benefit from further information from the parties on these issues considering they were raised by the IENG Sary Defence prior to the deadline. Parties shall first indicate whether they adhere to the objections raised by the IENG Sary defence and, if so, clarify their respective positions on these topics in a single motion not exceeding 15 pages in English or French, or 30 pages in Khmer. The deadline for submissions is 16 May 2014.

6. All remaining preliminary objections are addressed in the Case 002/01 judgement. No submissions will be accepted on any other preliminary objection and no new preliminary objections may be raised at this time.