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E344/1

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

សាធារណៈ / Public

TRIAL CHAMBER

TO: All Parties, Case 002

Date: 31 March 2015

FROM: NIL Nonn, President of the Trial Chamber

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

SUBJECT: Decision on Civil Party Lead Co-Lawyers' Rule 87(4) Request
Regarding Civil Party D22/2500 with Confidential Annex A

1. The Trial Chamber is seized of a request filed by the Civil Party Lead Co-Lawyers ("Request") on 17 March 2015 to admit into evidence supplementary information given by Civil Party D22/2500 and to call her to testify during the hearings on the Tram Kak Cooperatives (E344, paras 1-2, p. 6; *See also* Confidential Annex A, E344.1). The Civil Party Lead Co-Lawyers submit that the supplementary information, dated 12 March 2015, fulfils the criteria set out in Rule 87(3) (E344, para. 9). They further submit that Annex A contains information related to the acts and conduct of the accused, namely the visit of four leaders including NUON Chea and KHIEU Samphan as described in Annex A (E344, paras 10-11). The Civil Party Lead Co-Lawyers add that this "pivotal piece of information" would become inadmissible without the oral testimony of Civil Party D22/2500 (E344, para. 13). The Co-Prosecutors submit that the information provided by Civil Party D22/2500 is relevant and that she should be called to testify since her accounts relate to the acts and conduct of the accused (T., 19 March 2015). Neither defence team objects to her appearance in court. On 19 March 2015, the Senior Legal Officer of the Trial Chamber informed the parties via e-mail that the Trial Chamber granted the Request to hear the Civil Party (E344/1.1). The reasons are given below.

2. According to Internal Rule 87(4), the Trial Chamber may admit any new evidence that it deems conducive to ascertaining the truth. The Chamber will determine the merit of a request to admit new evidence in accordance with the criteria in Rule 87(3). Rule 87(4) also requires that any party seeking the admission of new evidence shall do so by a reasoned submission. The requesting party must satisfy the Trial Chamber that the proposed evidence was either unavailable prior to the opening of the trial or could not have been discovered with the exercise of reasonable diligence. However, in certain

cases, the Chamber has admitted evidence which does not strictly speaking satisfy this criterion, including in instances where evidence relates closely to material already before the Chamber and where the proposed evidence is exculpatory and requires evaluation to avoid a miscarriage of justice, or where the other parties do not object to the evidence (E276/2 referring to E190 and E172/24/5/1).

3. The Civil Party Lead Co-Lawyers submit that the new evidence was not available before the start of the trial given that Civil Party D22/500 did not provide this information in her civil party application (E344, para. 14). They further submit that they exercised due diligence because they obtained the supplementary information from Civil Party D22/2500 as soon as the Civil Party “was willing to come forth with this information and was able to attend meetings” (E344, para. 14).

4. The Trial Chamber observes that the civil party application of Civil Party D22/2500 was filed on 26 March 2010, thus before the start of the trial. While this application did not include the evidence at issue on the acts and conduct of the Accused, it did indicate that the Civil Party worked in a special unit in Tram Kak District during the Democratic Kampuchea regime. The Chamber considers that the evidence regarding the acts and conduct of the Accused could thereafter have been discovered with the exercise of reasonable diligence, by questioning the Civil Party. The Lead Co-Lawyers were obliged to request admission of the evidence in a timely manner, at a minimum before the start of Case 002/02 given the inclusion of the topic of the Tram Kak cooperatives in that case. They failed to do so until March 2015. The Trial Chamber accordingly finds that the Civil Party Lead Co-Lawyers failed to exercise due diligence and that the Request is not timely.

5. However, the Trial Chamber considers that it is in the interests of justice to admit the supplementary information as well as to hear Civil Party D22/2500. The Trial Chamber notes that the parties do not object to the proposed evidence. The Trial Chamber further notes that Civil Party D22/2500 mentioned in her supplementary information that she saw KHIEU Samphan and NUON Chea once at her work place and that her chief told her who they were (E344.1). Another civil party, 2-TCCP-238, has testified that she saw KHIEU Samphan and NUON Chea in the Tram Kak District Cooperative (T., 26 January 2015, pp. 63-65). Accordingly, it is in the interests of justice to evaluate Civil Party D22/2500’s accounts on the presence of the two Accused at the cooperative together with other material already before the Chamber.

6. Having found that it is in the interests of justice to admit the supplementary form as well as to hear of Civil Party D22/2500 in court, the Trial Chamber therefore grants the Civil Party Lead Co-Lawyers Request and hereby assigns her the pseudonym 2-TCCP-980.

7. As the Civil Party is called to address only the limited issue of the presence of the Accused in Tram Kak District, the Trial Chamber grants the parties a total of half a day to hear 2-TCCP-980 in court.

8. This constitutes the Chamber’s official response to E344.