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Extraordinary Chambers in the Courts of Cambodia

Chambres Extraordinaires au sein des Tribunaux Cambodgiens

Kingdom of Cambodia

Nation Religion King

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TRIAL CHAMBER

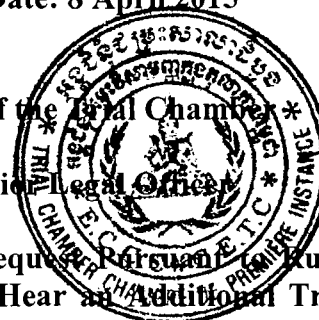
TO: All Parties, Case 002

Date: 8 April 2015

FROM: Judge YA Sokhan, on behalf of the President of the Trial Chamber

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

SUBJECT: Decision on International Co-Prosecutor's Request Pursuant to Rules 87(3) and 87(4) to Admit Documents and to Hear an Additional Trial Witness Relating to the Tram Kak District/ Kraing Ta Chan Segment of Case 002/02



1. The Trial Chamber is seised of a request filed on 5 March 2015 from the International Co-Prosecutor to admit 22 written records of interviews from several witnesses and civil parties heard in Case File 004 and to hear one additional witness in relation to the Tram Kak Cooperatives and Kraing Ta Chan Security Centre (E319/17, paras 1-11). The statements, which were disclosed in Case 002/02 on 11 and 18 February 2015 (E319/12 and E319/13), are further identified in a table annexed to the request of the International Co-Prosecutor, which also includes a general description of the statements as well as the points of the Closing Order to which they are said to relate (*See Confidential Annex G, E319/17.1.1*). The International Co-Prosecutor submits that these statements are “highly relevant” to the proceedings in Case 002/02 (E319/17, para. 3). No party responded with respect to the admission of the 22 statements. In addition, the International Co-Prosecutor submits that the proposed additional witness¹ could provide “unique and critically important evidence” due notably to the position she held in Tram Kak district during the relevant period and to the information she can provide in this respect (E319/17, paras 5-9). The NUON Chea and KHIEU Samphan Defence teams support hearing additional Witness 2-TCW-979 (T. 11 March 2015 (draft), pp. 45, 83, 88) and the Civil Party Lead Co-Lawyers do not object.

¹ The Trial Chamber assigns the pseudonym 2-TCW-979 to this witness.

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. The Chamber has previously indicated that a document not included on a party's initial Internal Rule 80(3) list constitutes new evidence subject to the requirements of Internal Rule 87(4) but that it may be admitted where the interests of justice so require (E282/2 referring to E190, paras 19-21).

3. The International Co-Prosecutor submits that the written records of interview for which admission is sought were taken in either 2013 or 2014 and were therefore not available before the opening of trial in June 2011. He further submits that the International Co-Investigating Judge authorised him to disclose these statements in Case 002/02 on 21 January 2015 and 4 February 2015 respectively (E319/17, para. 4).

4. The Trial Chamber observes that the statements were all taken in 2013 and 2014, including the statement of the proposed witness 2-TCW-979, and were accordingly not available before the opening of the trial in 2011 (*See* E319/11/1, para. 4). In addition, the Trial Chamber notes that the Office of the Co-Investigative Judges authorized disclosure of these statements only on 21 January 2015 (E319/12.1.1, E319/12.2) and 4 February 2015 (E319/13.1.1, E319/13.1.2, E319/13.1.3). The International Co-Prosecutor then disclosed these statements in Case 002/02 on 11 and 18 February 2015 (*See* E319/12, E319/13 and Confidential Annex G). Accordingly, their admission could not have been requested before the start of Case 002/02 and the current request is timely. The Trial Chamber further notes that the statements were taken by investigators from the Office of the Co-Investigative Judges and therefore meet the *prima facie* standards of reliability and authenticity (E319/11/1, para. 5). After reviewing the proposed statements, the Trial Chamber observes that these contain evidence relevant to crimes falling under the scope of Case 002/02 and to the policies which were allegedly implemented in a joint criminal enterprise. These statements are conducive to ascertaining the truth and are *prima facie* relevant to Case 002/02.

5. The introduction of new witnesses needs to satisfy the requirements enshrined in Rule 87(4) (E307/1, para. 5). The Trial Chamber bears in mind that the proceedings, while being fair and adversarial, must preserve a balance between the rights of the parties and the necessity to conclude them within a reasonable time (E312, para. 22).

6. The International Co-Prosecutor became aware of Witness 2-TCW-979 in May 2014, gaining access to a written record of interview on 26 May 2014 (*see* Confidential Annex G and E319/12.3.2). Her testimony was therefore not available to the International Co-Prosecutor before the start of trial in 2011. However the International Co-Prosecutor had the duty to request the hearing of this witness in a timely manner thereafter. The Chamber notes that the International Co-Prosecutor did not seek to call Witness 2-TCW-979 before the start of Case 002/02 or indeed at any point up until now. This stands in contrast to the general approach taken by the Co-Prosecutors regarding other individuals interviewed in connection with Cases 003 or 004, including where statements had not yet

been authorized for disclosure (E307/3/2, paras 19-22; *See also* E305/6, paras 23-24). The Trial Chamber accordingly finds that the International Co-Prosecutor failed to exercise due diligence and that the Request to hear this witness is not timely.

7. However, the Trial Chamber considers that it is in the interests of justice to hear Witness 2-TCW-979. The Trial Chamber notes that this Witness held an important position from 1973 until 1979 in Tram Kak district (E319/17, para. 5; E319/12.3.2, at A22-A25, A28). In light of her position, the Trial Chamber considers that Witness 2-TCW-979 can provide valuable information conducive to ascertaining the truth. The Trial Chamber notes that her written record of interview was used extensively by the NUON Chea Defence during the testimony of Witness 2-TCW-803 (*see* T. 11 March 2015 (draft), pp. 10-13; 29-32; and 36-49). Witness 2-TCW-979 could also assist the Chamber in establishing the authenticity of documents in relation to the Tram Kak district and Kraing Ta Chan (E319/17, para. 7; *see also* T. 11 March 2015 (draft), pp. 29-32). Additionally, the other parties do not object to her testimony, which could be scheduled after the upcoming adjournment and judicial recess, towards the conclusion of the presentation of evidence related to the Tram Kak district and Kraing Ta Chan. Accordingly, the hearing of Witness 2-TCW-979 is justified.

8. The Trial Chamber, therefore, finds that the requirements of Internal Rule 87(4) have been satisfied and grants the International Co-Prosecutor's request to admit the above-mentioned statements as evidence in Case 002/02 and the request to hear Witness 2-TCW-979. The parties are reminded that the use of these statements is subject to the procedural requirements set out in the Chamber's decision E319/7.

9. This constitutes the Chamber's official response to E319/17.