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E357/1

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: 30 September 2015

FROM: NIL Nonn, President of the Trial Chamber

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

SUBJECT: **Decision on Co-Prosecutors' Request To Correct and Supplement Documents Relating to Sector 5 Mobile Chief Ta Val and Sector 5 Secretary Heng Rin**



1. The Trial Chamber is seised of a request filed by the Co-Prosecutors on 19 August 2015, following a discussion that took place during the hearings of 12 and 13 August 2015 (E357) ("Request"). Pursuant to Internal Rules 87(3) and (4), the Co-Prosecutors seek to "correct or supplement" two documents that have been admitted into evidence in Case 002/02: E3/1900 (S-21 List of Prisoners Smashed on 6 March 1978) and E3/7403 (S-21 Confession of Heng Rin alias Mei). The Co-Prosecutors further seek to admit into evidence two related documents that may assist in the ascertainment of the truth: an S-21 List of Prisoners who entered in June 1977, and the S-21 Confession of Aok Haun alias Vat, Chairman of Mobile Brigade, Sector 5, Northwest Zone (E357, para. 3; with Annexes 2 and 3, respectively). The Co-Prosecutors submit that the latter two documents are "not strictly speaking new", as they were discovered when locating the original Khmer version of E3/1900 and the correct version of E3/7403 (E357, paras 3, 5). However, it is submitted that they relate to material already on the Case File and that the interests of justice require these sources to be evaluated together (E357, para. 5). They further submit that the two documents are relevant to Case 002/02, particularly to the topics related to S-21 Security Centre and Trapeang Thma Dam worksite (E357, paras 1, 6). No party responded to the Request.

2. According to Internal Rule 87(4), the Trial Chamber may admit, at any stage of the trial, all evidence that it deems conducive to ascertaining the truth, where that evidence also satisfies the *prima facie* standards of relevance, reliability and authenticity required under Rule 87(3) (E319/7, para. 8). 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 interests of justice require the sources to be evaluated together; where the proposed documents are exculpatory and require evaluation to avoid a miscarriage of justice; or where the other parties do not object to the evidence (E276/2, para. 2 referring to E190 and E172/24/5/1; E260, para. 5).

3. Concerning the Co-Prosecutors' request to admit the S-21 List of Prisoners who entered in June 1977 and the S-21 Confession of Aok Haun alias Vat, Chairman of Mobile Brigade, Sector 5, Northwest Zone, the Chamber considers that these two documents were available at the start of trial and could have been discovered earlier with the exercise of reasonable diligence. Accordingly, the Request in this respect is not timely. However, the Chamber considers that admitting these two documents into evidence could complement already existing evidence, as the two documents closely relate to E3/1900 and E3/7403, among other documents. The documents concern the arrest, detention and mistreatment of prisoners at S-21 Security Centre, particularly Sector 5 cadres, which is one of the forthcoming topics of the trial proceedings in Case 002/02. Based on the foregoing, and considering that no party opposed the request, the Chamber considers that admitting these two documents is in the interests of justice and would be conducive to ascertaining the truth.

4. Concerning document E3/7403 (S-21 Confession of Heng Rin alias Mei), as noted by the KHIEU Samphan Defence during the hearing of 13 August 2015, the Khmer version of this document is in fact the confession of a different person with the same name as Sector 5 Secretary Heng Rin (E1/330.1, p. 74). The Chamber considers that the request to replace this with the correct document (E357, para. 4 and Annex 4) concerns the correction of a clerical error rather than a request pursuant to Internal Rule 87(4). Noting that no party opposes this part of the Request, the Chamber considers it appropriate to replace the current Khmer version of E3/7403 with the correct Khmer document.

5. Similarly, the Chamber considers that Rules 87(3) and (4) are not applicable to the Co-Prosecutors' request to add the original Khmer version of document E3/1900 (S-21 List of Prisoners Smashed on 6 March 1978) to its English and French translations, which are already on the Case File (E357, para. 1 and Annex 1). The Chamber recalls that during the hearing of 12 August 2015, upon request by Judge Lavergne to clarify whether or not there exists an original Khmer version of document E3/1900, the Prosecution responded that an enquiry to this effect was ongoing and that submissions in writing would be filed in due course (E1/329.1, pp 2-4). As the English and French translations have already been admitted, and thus subjected to analysis pursuant to Rule 87(3) (E185/1.3, Annex 3, p. 11), the Chamber considers that the original Khmer version of this document may be admitted without further review.

6. This constitutes the Chamber's official response to E357.