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

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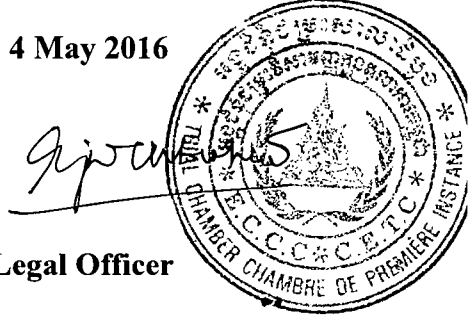
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TRIAL CHAMBER

TO: All Parties, Case 002 **Date: 4 May 2016**

FROM: NIL Nonn, President of the Trial Chamber

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



SUBJECT: Decision on NUON Chea's First Rule 87(4) Request to Call One Additional Witness and to Admit One Interview for the Case 002/02 Trial Segment on the Phnom Kraol Security Centre

1. The Trial Chamber is seized of a request by the NUON Chea Defence to summons a new Witness, 2-TCW-1028, at the earliest opportunity and to admit into evidence his DC-Cam statement ("Request", E390/1). While the request was filed on 24 March 2016, a courtesy copy was provided to the Chamber and the Parties on 21 March 2016 and the Chamber heard submissions and responses on the Request on 23 March 2016 (T., 23 March 2016).
2. The NUON Chea Defence submits that the evidence of 2-TCW-1028 is *prima facie* relevant to the Phnom Kraol Security Centre, reliable and conducive to ascertaining the truth (E390/1, para. 14). It also submits that because the request to hear this Witness was triggered by the Co-Prosecutors' request to hear 2-TCW-1016 (E390), it is not untimely (E390/1, para. 10). Further, while accepting that the DC-Cam statement of 2-TCW-1028 was available before the start of the trial, the NUON Chea Defence submits that it is in the interests of justice to hear his evidence as it is potentially exculpatory (E390/1, para. 15). According to the NUON Chea Defence, the Witness can provide accurate, detailed evidence as to Division 920 in Mondulkiri, including its structure, chain of command, arrests of soldiers from that division, as well as on the structure and chain of command of Battalion 502. It further submits that 2-TCW-1028 can testify regarding S-21, the armed conflict with Vietnam and internal purges (T., 23 March 2016 (Draft), p. 6; E390/1, paras 9, 11-14), and may be able to provide invaluable information in relation to the arrests of people in Sector 105 from 1977 (E390/1, para. 13). The other Parties do not object to the Witness being summoned and to his DC-Cam statement being admitted into evidence (T., 23 March 2016 (Draft), pp 7-9).

3. The Chamber recalls that 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). The Chamber determines 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, and where the proposed evidence is exculpatory and requires evaluation to avoid a miscarriage of justice (E383/2, para. 3).

4. The Chamber notes that the DC-Cam statement of 2-TCW-1028 is dated 2001 and was placed on the shared material drive in March 2007, long before the start of trial in 2011. Accordingly, the NUON Chea Defence has failed to exercise reasonable diligence and the Trial Chamber finds that the request is not timely. The Chamber will determine whether it should nevertheless grant the request in the interests of justice.

5. The Chamber notes that according to the summary of the DC-Cam statement of 2-TCW-1028 (E3/7960), the proposed Witness was in Sector 105 (i.e. the location of Phnom Kraol Security Centre) from 1975, served in Division 920 in early 1976 and in Sector military forces from early 1977 until the Vietnamese liberation (see E3/7960, pp. 29-30). The Witness is recorded as stating that “when division 920 had problems, the soldiers of region 105 had the power to arrest”. He describes arrests within Division 920, the arrest of Svay, the chief of the Koh Nhek district, and Khan Phoun, the deputy chief of “Mondulkiri province”, for an alleged plot with the Vietnamese. It appears that he can also provide some evidence on events in Phnom Penh, in particular the demise of Ta Ham, the “chief of the autonomous zone” and the aforementioned Svay, and subsequent events in Mondulkiri including the conflict with Vietnam (see E3/7960, pp. 30-31). The Chamber is therefore satisfied that this Witness’s evidence is *prima facie* relevant to several trial topics, including the Phnom Kraol Security Centre, Internal Purges and the nature of the armed conflict with Vietnam, and reliable. The Chamber is also satisfied that the evidence of 2-TCW-1028 relates closely to material already before the Chamber, such as the evidence on Division 920, events and significant individuals in Sector 105 and on the Phnom Kraol Security Centre, and that it is in the interests of justice to hear the Witness and admit his DC-Cam statement into evidence.

6. Considering that the evidence of 2-TCW-1028 is also relevant to Internal Purges, the Chamber will hear him during that trial topic and the Parties were notified of this by email on 8 April 2016.