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 CMS/CFO: Sann Rada

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

អង្គជំនុំជម្រះតុលាការកំពូល
 Supreme Court Chamber
 Chambre de la Cour suprême

សំណុំរឿងលេខ: ០០២/១៩-០៩-២០០៧-អ.វ.ត.ក/អ.ជ.ត.ក
 Case File/Dossier N°. 002/19-09-2007-ECCC/SC

Before: Judge KONG Srim, President
 Judge Chandra Nihal JAYASINGHE
 Judge SOM Sereyvuth
 Judge Agnieszka KLONOWIECKA-MILART
 Judge MONG Monichariya
 Judge Florence Ndepele MWACHANDE-MUMBA
 Judge YA Narin

Date: 26 March 2015
Language(s): Khmer/English
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DIRECTIONS CONCERNING PROPOSED WITNESSES IN APPEAL PROCEEDINGS OF CASE 002/01

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1. **THE SUPREME COURT CHAMBER** of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea between 17 April 1975 and 6 January 1979 (“Supreme Court Chamber” or “Chamber”, and “ECCC”, respectively) is seized of appeals against the Trial Chamber’s judgment in Case 002/01.¹ NUON Chea requests that the Supreme Court Chamber call nine witnesses in the Case 002/01 appeal proceedings.² The Chamber hereby adopts the following directions, to be followed by the parties in the Case 002/01 appeal with regard to proposed witnesses.

2. Some of the witnesses specified have been proposed before the Trial Chamber during the Case 002/01 trial proceedings and thus their identity is already in the public domain.³ The practice adopted thus far by the Trial Chamber consists of all witnesses being assigned pseudonyms from the moment they are proposed by the parties until they are heard or their requested testimony is rejected, irrespective of whether protective measures have been ordered.⁴ This is to avoid unwarranted intrusions into the proposed witnesses’ private lives, and accords with the efforts to maintain the integrity of evidence. Other proposed witnesses have become known to the parties in Case 002 as a consequence of disclosures of written records of interviews from Case 004.⁵ In this regard, the Trial Chamber devised a special

¹ Co-Prosecutors’ Appeal Against the Judgment of the Trial Chamber in Case 002/01, F11, 28 November 2014; NUON Chea’s Appeal Against the Judgment in Case 002/01, F16, 29 December 2014 (“NUON Chea Appeal Brief”); [*Corrigé I*] *Mémoire d’appel de la Défense de M. KHIEU Samphân contre le jugement rendu dans le procès 002/01*, F17, 29 December 2014 (corrected version filed on 31 December 2014).

² NUON Chea Appeal Brief, para. 730(a) and (c); Request to Obtain and Consider Additional Evidence in Connection with the Appeal Against the Trial Judgment in Case 002/01, F2, 1 September 2014 (“First Request”), para. 18(b); Third Request to Consider and Obtain Additional Evidence in Connection with the Appeal Against the Trial Judgment in Case 002/01, F2/4, 25 November 2014 (strictly confidential version notified to the parties on 5 December 2014; public redacted version notified on 15 December 2014) (“Third Request”), para. 34(b).

³ See Final Decision on Witnesses, Experts and Civil Parties to Be Heard in Case 002/01, E312, 7 August 2014.

⁴ See e.g. Trial Chamber Memorandum entitled “New Pseudonyms for Witnesses, Civil Parties and Experts proposed to be Heard in Case 002/02”, E305/15, 24 July 2014.

⁵ See e.g. International Co-Prosecutor’s Request to Admit Documents Relevant to Tram Kak Cooperatives and Kraing Ta Chan Security Centre Pursuant to Rules 87(3) & 87(4) (confidential), E319/5, 13 November 2014; [*Corrected I*] Decision on International Co-Prosecutor’s Request to Admit Documents Relevant to Tram Kak Cooperatives and Kraing Ta Chan Security Centre and Order on Use of Written Records of Interview from Case Files 003 and 004, E319/7, 24 December 2014 (“Decision on Cases 003 and 004 Witnesses”); International Co-Prosecutor’s Disclosure of Statements from Case File 004 Relevant to 1st Segment of Case 002/02 Trial, E319/8, 22 January 2015; International Co-Prosecutor’s Request to Admit Documents Relevant to Tram Kak Cooperatives and Kraing Ta Chan Security Centre Pursuant to Rules 87(3) & 87(4) (confidential), E319/11, 4 February 2015; International Co-Prosecutor’s Disclosure of Documents from Case File 004 Relevant to Case 002, E319/12, 11 February 2015; International Co-Prosecutor’s Disclosure of Documents from Case File 004 Relevant to Case 002 Pursuant to Case 004-D193/11, E319/13, 18 February 2015; International Co-Prosecutor’s Disclosure of Documents from Case File 004 Relevant to Case 002 Pursuant to Case 004-D193/13, E319/15, 27 February 2015. See also Information and Clarification Regarding the Disclosure Process in Case 002/002 [sic] in the Context of the Ongoing Investigations in Cases 003 and 004, E319/14, 23 February 2015.

procedure to preserve the confidentiality of ongoing investigations in Cases 003 and 004, while allowing adversarial discussion of the evidence during public hearings.⁶

3. With respect to proposed witnesses from Case 004, the Supreme Court Chamber observes that the disclosures were authorised by the International Co-Investigating Judge under strict restrictions directed at maintaining the integrity and confidentiality of the Case 004 investigation.⁷ For this reason, the Supreme Court Chamber considers it appropriate to adopt the special procedure formulated by the Trial Chamber in this regard and to instruct the parties to stand by it, *mutatis mutandis*, in the framework of the present appellate proceedings.

4. The Supreme Court Chamber turns to the measures relating the other proposed witnesses, none of whom is under an order for protective measures issued under the ECCC's Internal Rules. The Chamber considers that, notwithstanding this fact, the use of pseudonyms for these proposed witnesses may nevertheless be justified in order to protect the privacy of the persons concerned at this stage of the proceedings. However, these interests must be balanced against the principles of transparency and publicity of proceedings.⁸ In this regard, the Supreme Court Chamber considers that the weight to be accorded to the interests of privacy diminishes where the request to call a witness is repetitive of previous requests submitted at trial and the witness's identity was disclosed during those proceedings, or where the proposed witness may be considered a public figure.

5. In light of the foregoing, the Supreme Court Chamber has assigned pseudonyms only to some of the proposed witnesses, as listed in Annex A.⁹

⁶ Decision on Cases 003 and 004 Witnesses, paras 11-13 and Disposition.

⁷ See e.g. Decision on Co-Prosecutor's Urgent Request to Disclose Case 004 Interviews Relevant to 1st Segment of Case 002/02 Trial (strictly confidential), E319.2, 14 October 2014 ("First Disclosure Decision"), paras 23-26; Decision on International Co-Prosecutor's Urgent Request to Disclose Newly Posted Case 004 Interviews Relevant to 1st Segment of Case 002/02 Trial (strictly confidential), E319/8.3, 3 November 2014 ("Second Disclosure Decision"), paras 13-16.

⁸ See Practice Direction on Classification and Management of Case-Related Information, ECCC/004/2009/Rev.2, 24 April 2014, Article 1.2.

⁹ Annex A - List of Pseudonyms for Witnesses Proposed in Case 002/01 Appeal, F22.1, attached to the present decision.

DISPOSITION

6. For the foregoing reasons, the Supreme Court Chamber:

ORDERS the parties to comply with the following procedure:

- a) No party, counsel, or other individual shall, orally or otherwise, publicly identify the written records of interview authorised for disclosure in the Disclosure Decisions,¹⁰ or in any similar, subsequent authorisation from the International Co-Investigating Judge, during the Case 002/01 appeal proceedings as statements or interviews originating from Cases 003 or 004;
- b) No party, counsel, or other individual shall identify or disclose to any person or entity not authorised by the Disclosure Decisions any of the above written records of interviews by the date of interview or as a statement or interview originating from Cases 003 or 004, but instead shall identify the written records of interviews only by the Case 002 document number assigned after its disclosure in Case 002;
- c) At no time during the Case 002/01 appeal proceedings shall any party, counsel, or other individual who reads from, cites to, or otherwise uses any of the written records of interview that have been authorised for disclosure in the Disclosure Decisions identify the name of the Case 003 or 004 interviewee on the public record;
- d) Any party, counsel, or other individual who reads from, cites to, or otherwise uses any of the written records of interview that have been authorised for disclosure in the Disclosure Decisions shall identify the Case 003 or 004 witness only by a pseudonym assigned by the Trial Chamber for Case 002/02 or by the Supreme Court Chamber for Case 002/01, or will use only general words reasonably calculated to avoid identifying the witness; and
- e) Where a testifying witness or Civil Party is examined in the Case 002/01 appeal proceedings regarding their Case 003 or 004 written record of interview, the written

¹⁰ First Disclosure Decision; Second Disclosure Decision; Partial Decision on International Co-Prosecutor's Request to Disclose Case 004 Interviews Relevant to the Case 002/02 Trial and Case 002/01 Appeal, Dated 21 January 2015, E319/12.1.1, 27 January 2015, as amended by Amendment of Disclosure Decisions D193/4, D193/6, and D193/8 (confidential), E319/12.1.2, 30 January 2015; Decision on the International Co-Prosecutor's Case 002 Disclosure Requests D193/7 and D193/9 (strictly confidential), E319/13.1.1, 6 February 2015; Decision on International Co-Prosecutor's Case 002 Disclosure Requests Concerning a Witness (strictly confidential), E319/15.1, 24 February 2015 (collectively, "Disclosure Decisions").

record of interview shall be identified simply as a prior statement of the individual that was provided to the Office of Co-Investigating Judges.¹¹

ORDERS the parties to identify the proposed witnesses by assigned pseudonyms in all future submissions in the Case 002/01 appeal proceedings.

Phnom Penh, 26 March 2015

President of the Supreme Court Chamber



KONG Srim

¹¹ See Decision on Cases 003 and 004 Witnesses, Disposition.