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du dossier:Sann Rada.....

E305/16

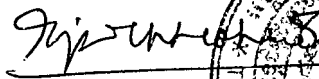
**ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ**

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា
Extraordinary Chambers in the Courts of Cambodia
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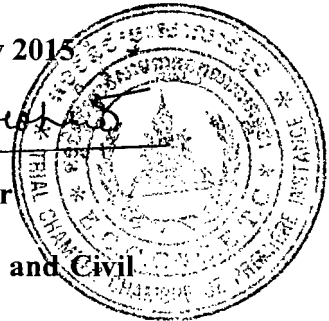
TRIAL CHAMBER

TO: All Parties, Case 002 **Date:** 16 January 2015

FROM: NIL Nonn, President of the Trial Chamber 

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

SUBJECT: Disposition of Pending Issues Concerning Proposed Witnesses and Civil Parties (CONFIDENTIAL)



1. On 8 April 2014, the Trial Chamber ordered the parties to file updated lists of witnesses, civil parties and experts in preparation for Case 002/02.¹ All the parties complied with the order and, based on the updated lists, the Trial Chamber issued a list of new pseudonyms for witnesses, civil parties and experts to be heard in Case 002/02.²

2. The Trial Chamber was subsequently seized of a number of requests by the parties relating to the proposal of additional witnesses, changes of designation as witnesses, civil parties or expert, as well as the correction of a number of pseudonyms. The Trial Chamber will address these issues in turn below. Separate decisions dealing with the witnesses, civil parties and experts proposed by the parties to testify in Case 002/2 will be issued in due course.

Office of the Co-Prosecutors' proposal of additional witnesses

3. In an attempt to comply with the Trial Chamber's request that the parties consider a reduction of the witness list, the Office of the Co-Prosecutors withdrew three witnesses relating to the Kampong Chhnang Airport worksite and proposed instead CHAN Man and 2-TCW-891.³ CHAN Man (formerly TCW-79) was proposed on the original 2011

¹ Order to File Updated Material

² List of New Pseudonyms for Witnesses, Civil Parties and Experts proposed by the Parties to be Heard in Case 002/02, E305/15.1 (Confidential).

³ Co-Prosecutors' Rule 87(4) Motion Regarding Proposed Trial Witnesses for Case 002/02, 28 July 2014, E307/3/2 (Confidential), para. 23.

witness list.⁴ The Trial Chamber hereby assigns him pseudonym 2-TCW-975 for Case 002/02.

4. The Co-Prosecutors also proposed one additional witness, HEM Moeun, in relation to Internal Purges.⁵ His Case 004 written records of interviews are dated November 2013 and April 2014. The Trial Chamber hereby assigns the witness pseudonym 2-TCW-976.⁶

NUON Chea Defence's request to change the status of 2-TCCP-242 and 2-TCCP-246 from Civil Parties to Witnesses

5. During the further initial hearing held on 30 July 2014, the NUON Chea defence clarified that it intended to call 2-TCCP-242 and 2-TCCP-246 to appear as witnesses and not as civil parties. It therefore requested that they be assigned witness numbers.⁷ The Civil Party Lead Co-Lawyers opposed the request.⁸

6. Pursuant to the Internal Rules, a Civil Party “cannot be questioned as a simple witness in the same case”.⁹ The Trial Chamber notes that both individuals are civil parties in Case 002,¹⁰ that they were already included in the NUON Chea updated list under the heading “Civil Parties” and that NUON Chea has not provided any supporting argument or documentation justifying the requested change in status from civil parties to witnesses.¹¹ Accordingly, the Trial Chamber rejects the NUON Chea Defence request.

Correction of pseudonym from Witness to Civil Party pseudonym (2-TCW-929)

7. The Civil Party Lead Co-Lawyers brought to the Trial Chamber’s attention that an individual proposed by the Office of the Co-Prosecutors as a witness (2-TCW-929) is in fact a civil party.¹² The Trial Chamber therefore has changed the designation of 2-TCW-929 to 2-TCCP-929. A corrigendum to E305/15.1 will be filed in accordance with this memo to reflect the correction.

⁴ See List of Proposed Witnesses, Experts and Civil Parties – Pseudonyms, E9/35.

⁵ Co-Prosecutors’ Rule 87(4) Motion Regarding Proposed Trial Witnesses for Case 002/02, 28 July 2014, E307/3/2 (Confidential), para. 24.

⁶ The Trial Chamber is mindful of KHIEU Samphan’s provisional objection to this witness on the basis that documentation relevant to this witness is unavailable (E307/7, para. 17).

⁷ Further Initial Hearing, T. 30 July 2014, p. 93.

⁸ Further Initial Hearing, T. 30 July 2014, pp 114-115.

⁹ Internal Rule 23(3).

¹⁰ OCIJ Order on the Admissibility of Civil Party Applicants from Current Residents of Phnom Penh, 6 September 2010, D406; OCIJ Order on the Admissibility of Civil Party Applicants from Current Residents of Prey Veng Province, 9 September 2010, D410.

¹¹ See Annex A: Updated Witness, Civil Party and Experts List (no protective measures are sought), E305/4.1, p. 14; Further Initial Hearing, T. 30 July 2014, p. 93.

¹² OCIJ Order on the Admissibility of Civil Party Applicants from Current Residents of Siem Reap Province, 15 September 2010, D424.

NUON Chea Defence's request to correct pseudonym from Witness to Expert (2-TCW-101)

8. The NUON Chea Defence noted that one individual it proposed as an expert has been assigned a witness pseudonym by the Trial Chamber (2-TCW-101).¹³ The Trial Chamber notes that the same individual was proposed by both the NUON Chea and the KHIEU Samphan defence teams as an expert.¹⁴ The Trial Chamber assigned a pseudonym to the same individual twice, once as expert (2-TCE-96) and the other time as witness (2-TCW-101), in what appears to have been a clerical error. A corrigendum to E305/15.1 will be filed in accordance with this memo to reflect the correction.

Witness selected by the Trial Chamber

9. As already indicated to the parties, Kev Chandara was added by the Trial Chamber to the list of witnesses for the Tram Kok Cooperatives and Kraing Ta Chan Security Centre trial topic.¹⁵ Kev Chandara (formerly TCW-301) was initially proposed by the NUON Chea Defence in its 2011 witness list.¹⁶ The Trial Chamber has assigned pseudonym 2-TCW-964 for Case 002/02.

¹³ Further Initial Hearing, T. 30 July 2014, p. 93; Annex A – New Witnesses, Civil Party and Expert for Case 002/02 – Nuon Chea Defence Team, 24 July 2014, E307/4.2, p. 3; List of New Pseudonyms for Witnesses, Civil Party and Experts proposed by the Parties to be Heard in Case 002/02, 24 July 2014, E305/15.1.

¹⁴ *Annexe I – Listes actualisées des témoins et experts qui ne demandent l'octroi d'aucune mesure de protection – Défense de M. KHIEU Samphân*, 9 May 2014, E305/5.1; Annex A – New Witnesses, Civil Party and Expert for Case 002/02 – Nuon Chea Defence Team, 24 July 2014, E307/4.2, p. 3.

¹⁵ See Scheduling Order for Evidentiary Proceedings, 17 December 2014, E328, p. 3; Tram Kok Cooperatives and Kraing Ta Chan Security Centre Witnesses, Civil Parties and Experts, E328.1.

¹⁶ See Annex A: Proposed Witness List (where no protective measures are sought) – NUON Chea Defence Team, E9/4/4.4; List of Proposed Witnesses, Experts and Civil Parties – Pseudonyms, E9/35.