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E319/11/1

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ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

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

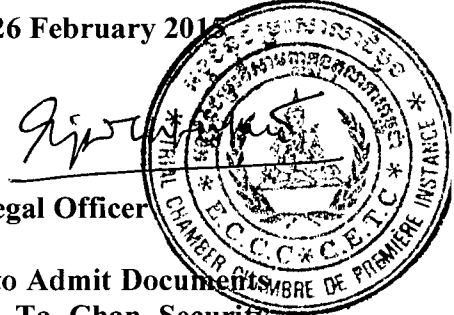
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TRIAL CHAMBER

TO: All Parties, Case 002

Date: 26 February 2015

FROM: NIL Nonn, President of the Trial Chamber



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

SUBJECT: Decision on International Co-Prosecutor's Request to Admit Documents Relevant to Tram Kak Cooperatives and Kraing Ta Chan Security Centre Pursuant to Rules 87(3) and 87(4) - Confidential

1. The Trial Chamber is seised of a request filed on 4 February 2014 from the International Co-Prosecutor to put before the Chamber written records of witness interviews from Case File 004, namely two statements from Witness 2-TCW-852, one statement from Witness 2-TCW-977, and one statement from Witness 2-TCW-822 (E319/11, paras. 1-4; See also confidential annex attached to this memorandum). The statements, which were disclosed on 22 January 2015 (E319/11, para. 1 referring to E319/8; See also E319/10), are further identified in a table annexed to the request of the International Co-Prosecutor (See Confidential Annex F, E319/11.1). The Co-Prosecutor submits that these statements are "highly relevant" to the proceedings in Case 002/02, in particular to the Tram Kak Cooperatives and Kraing Ta Chan Security Centre crime sites (E319/11, para. 2). No Party responded to this request.

2. According to Internal Rule 87(4), the Trial Chamber may admit any new 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). 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 earlier 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 Co-Prosecutor submits that the statements for which admission is being 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 only on 21 January 2015 (E319/11, para. 3).

4. The Trial Chamber recalls that while the lists of documents filed by the parties in 2011 covered the whole Case 002, it ruled on an exceptional basis that the lists filed in 2014 were a permissible revision to the 2011 lists. The operative date for considering whether evidence was available prior to the opening of the trial in Case 002/02 is 2011 (See E307/1/2 dated 21 October 2014). The statements from Witnesses 2-TCW-852 and 2-TCW-822 were taken on 11, 12 and 13 October 2014, respectively, and were accordingly not available before the opening of the Case. Witness 2-TCW-977's statement, taken on 14 November 2013, was not available either. The Trial Chamber considers that the International Co-Prosecutor exercised reasonable diligence in seeking admission of these statements at the earliest opportunity, initially requesting authorisation for their disclosure on 2 May 2014, shortly after the Trial Chamber's Decision on Additional Severance of Case 002 and Scope of Case 002/02 (E301/9/1).¹ Given that the Co-Investigating Judge authorised disclosure of these statements in Case 002/02 only on 21 January 2015 (See also E319/12.1.1), these statements could not have been dealt with by the Trial Chamber in E307/1/2.

5. 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. Witness 2-TCW-852 stated that he "could enter and exit Kraing Ta Chan" Security Centre and that some soldiers and government officers were sent to detention offices such as Kraing Ta Chan (E319/8.2.2 and E319/8.2.1); Witness 2-TCW-977 stated that he worked in a security centre located near Voat Angkuonh Dei Pagoda where "new citizens" were sent to and that some prisoners were tortured (E319/8.2.3); and Witness 2-TCW-822 stated that he worked in a district unit of Tram Kak and described the authority and power of persons in charge (E319/8.2.4). Witnesses 2-TCW-852 and 2-TCW-822 are scheduled to testify before the Trial Chamber in Case 002/02. Accordingly, the Trial Chamber considers that all of these statements are conducive to ascertaining the truth and are *prima facie* relevant to Case 002/02. Additionally, the Trial Chamber notes that the other parties did not object to the admission of the statements.

6. 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. 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.

7. This constitutes the Chamber's official response to E319/11.

¹ On the basis of the information available to the Trial Chamber, it appears that the International Co-Prosecutor requested the disclosure of "all written records of interview relevant to Case 002/02 from Case 004 to 002" on 2 May 2014 (E319, para. 2; See also E319/8.3, para. 2 and E319.2, para. 8).