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មន្ត្រីទទួលបន្ទុកសំណុំរឿង (Case File Officer/L'agent chargé)
..... SANN RADA

E368/1

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

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

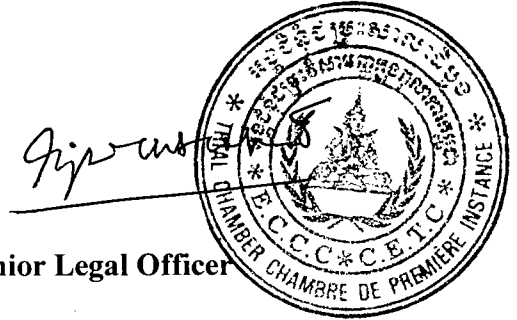
Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

TRIAL CHAMBER – Confidential

Date: 22 October 2015

TO: All Parties, Case 002

FROM: NIL Nonn, President of the Trial Chamber



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

SUBJECT: Decision on Nuon Chea's Rule 87(4) Request to Hear one Additional Witness for the Trial Topic on the Trapeang Thma Dam Worksite

1. The Trial Chamber is seised of a NUON Chea Defence request, filed on 23 September 2015, to hear additional witness 2-TCW-996 in relation to the trial topic of Trapeang Thma Dam worksite ("Request", E368). The NUON Chea Defence submits that witness 2-TCW-996 may provide essential and corroborative evidence consistent with the Defence case, notably on issues relating to the organisation of the leadership within Northwest Zone Sector 5, in which the Trapeang Thma Dam was situated, as well as the chain of command and the working conditions at the dam (E368, paras. 3, 6). The KHIEU Samphan Defence supports the Request (T. 30 of September, p. 84). The Co-Prosecutor does not object to the Request and submits that witness 2-TCW-996's testimony may be helpful to clarifying issues relating to the working conditions at the dam and the rebellion of the Northwest Zone cadres. The Civil Party Lead Co-Lawyers also do not object (T. 30 of September, pp. 83-84).

2. On 1 October 2015, the Chamber circulated a courtesy copy of a memorandum (filed on 5 October 2015 as E372) granting the NUON Chea Defence request to hear 2-TCW-996, with reasons to follow. The Chamber hereby provides reasons for its decision.

3. According to Internal Rule 87(4), which applies to the summons and the hearing of new witnesses (E307/1), 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 criteria of Internal Rule 87(3), including *prima facie* standards of relevance, reliability and authenticity (E319/7, para. 8 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

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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).

4. The Trial Chamber bears in mind that the proceedings, while being fair and adversarial, must preserve a balance between the rights of the parties and the necessity to conclude them within a reasonable time (E312, para. 22).

5. As a preliminary matter, the Trial Chamber finds that the filing of this Request is not timely. Although the DC-Cam statement of witness 2-TCW-996 was only taken around the start of the trial in July 2011 and the Chamber considers accordingly that it was not then available to the NUON Chea Defence, this statement has been in the public domain since that time. The NUON Chea Defence argues that its limited resources “did not allow it to research, analyse and identify every piece of potential exculpatory evidence in the public domain”. However, the Chamber notes that the statement was placed on the Case File on 8 December 2014 and subsequently received an E3 classification (E3/9076). Further, Witness 2-TCW-996’s written record of interview with the OCIJ in Case 004 (E319/19.3.18) was disclosed on 18 March 2015 and has subsequently been admitted in Case 002 (see E319/22/1). The Defence submits that its busy schedule prevented it from duly reviewing the witness interview until its preparations for the trial topic of the Trapeang Thma Dam (E368, paras. 13-14). Noting that the DC Cam statement and the Case 004 written record of interview were on the Case File for nine and six months respectively prior to the Request, the Trial Chamber finds that the NUON Chea Defence should reasonably have been aware of the relevance of witness 2-TCW-996 and has failed to exercise due diligence in making its Request.

6. The Trial Chamber finds, however, that it is nonetheless in the interests of justice to hear witness 2-TCW-996. Witness 2-TCW-996 supervised work in Ta Val’s mobile unit, in the Trapeang Thma Dam worksite in 1977 (see E3/9076, ERNs 00731156-57; E319/19.3.18, ERNs 01044799). In light of his position, the Trial Chamber considers that witness 2-TCW-996 can provide valuable information on issues regarding the organisation of the leadership within Northwest Zone Sector 5, in which the Trapeang Thma Dam was situated, the chain of command at the dam and the working conditions there, notably on food rations and medical assistance (see E3/9076, ERNs 00731157-62, 67-70; E319/19.3.18, ERNs 01044800-5). Witness 2-TCW-996 could also assist the Chamber by providing clarifications regarding the alleged rebellion of the Northwest Zone cadres and their alleged plot to overthrow the Democratic Kampuchea government, and the treatment of former Lon Nol soldiers in the Trapeang Thma Dam worksite (see E3/9076, ERNs 00731169-70).

7. The Trial Chamber, accordingly, finds that the requirements of Internal Rule 87(4) have been satisfied and grants the Request to hear additional witness 2-TCW-996 in Case 002/02.

8. This constitutes the Chamber’s official response to E368.