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E443/7

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

សាធារណៈ / Public

TRIAL CHAMBER

TO: All Parties, Case 002/02

Date: 18 January 2017

FROM: NIL Nonn, President of the Trial Chamber



**CC: All Trial Chamber Judges; Trial Chamber Senior Legal Officer;
Witness and Expert Support Unit (WESU); Office of Administration**

SUBJECT: Notice of Trial Chamber's Decision not to hear 2-TCW-946 (Walter HEYNOWSKI)

1. In May and July 2014, the NUON Chea Defence requested to expedite the hearing of Professor Walter Heynowksi, if necessary by video-link, due to his age (E305/4.2, T. 30 July 2014, p. 46). On 7 June 2016, the NUON Chea Defence renewed its request to hear Prof. Heynowksi, particularly regarding original documentation found at S-21 a few months after the fall of the regime (E412, para. 2). On 21 September 2016, the Chamber issued a decision on several requests by the NUON Chea Defence to hear additional witnesses in Case 002/02 wherein it noted that in lieu of hearing the testimony of Prof. Heynowksi, it had requested information from him regarding certain documents (E443).

2. The Trial Chamber subsequently obtained an orange logbook and S-21 photographs from Prof. Heynowksi, providing these to the parties and scheduling oral submissions on whether to admit the documents (E443/2, E443/2/1). The NUON Chea Defence requested to know whether Prof. Heynowksi had expressed a willingness to testify (T. 9 December 2016, p. 14 (DRAFT)). The KHIEU Samphan Defence requested that Prof. Heynowksi be called to testify to explain how he obtained the documents and kept them in his possession since 1980 (T. 9 December 2016, pp. 16-17 (DRAFT)). None of the parties objected to the admission of the documents and the Chamber has since admitted the logbook and S-21 photographs obtained from Prof. Heynowksi (E443/3, E443/6).

3. On 11 January 2017, the Chamber informed the parties that it did not envisage hearing any further witnesses and that it was the final day of evidentiary hearings in Case 002/02. It noted however that it might reopen the proceedings to hear the testimony of

Prof. Heynowksi via video-link if this could be arranged to take place no later than 31 January 2017.

4. After confirming Prof. Heynowski's willingness to testify, the Trial Chamber contacted the authorities of the Federal Republic of Germany regarding the possibility of hearing Prof. Heynowski via video-link from Germany. Despite the excellent cooperation demonstrated by the authorities of the Federal Republic of Germany, which clarified that hearing this witness from the seat of a UN agency in Berlin was not a possible option, the combination of certain technical difficulties and the time-consuming procedural requirements of judicial cooperation leads the Chamber to conclude that it will not be possible to conduct this hearing by the announced 31 January 2017 deadline. Accordingly, the Chamber informs the parties that proceedings will not be re-opened in order to hear this witness.

5. Full reasons of the decision denying the request to hear Prof. Heynowksi will be provided in due course.