

E457/7



**ឯកសារដើម**  
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**ជាតិ សាសនា ព្រះមហាក្សត្រ**

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

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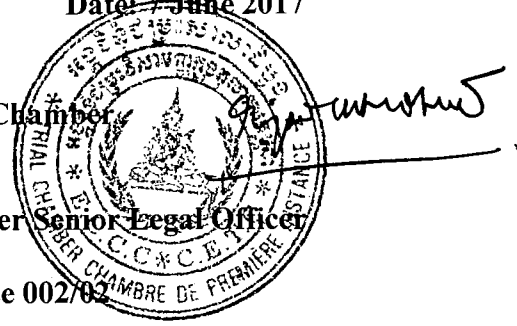
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**TRIAL CHAMBER**

**TO: All Parties, Case 002**

**Date: 7 June 2017**

**FROM: Judge NIL Nonn, President of the Trial Chamber**



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

**SUBJECT: Guidelines for Closing Statements in Case 002/02**

1. With a view to ensuring the smooth conduct of Closing Statements in Case 002/02, starting on 13 June 2017, the Trial Chamber provides the following guidelines to the parties.
2. *Witness protection/ integrity of investigation in cases 003 and 004* - The Parties are reminded of the Trial Chamber's memorandum E319/35/15 dated 31 May 2017, adopting the conclusions of the International Co-Investigating Judge's memorandum E319/35/14/3 of 22 May 2017. The Trial Chamber stresses that confidentiality restrictions continue to apply to the witnesses and documents included in Annex 3 to the Trial Chamber's memorandum. The Parties must therefore refer to those witnesses by their pseudonyms, where available, or by the number of the relevant WRI during the Closing Statements.
3. *Evidence not admitted and request for reconsideration* - Parties are reminded that the Chamber may base its decision only on evidence that has been put before the Chamber pursuant to IR 87(3). The Trial Chamber notes that, in its Closing Brief, the NUON Chea Defence has requested the Chamber to reconsider its decision to not admit the material set out in Annex 1. The Chamber will address this request at an appropriate time. During Closing Statements, Parties will be permitted, on an exceptional basis and without prejudice to the final decision, to make reference to material which is part of this request for reconsideration. Any Party choosing to refer to such material during Closing Statements shall state in each instance when doing so, in order that this will be clear to the other Parties as well as the public. In this context the Chamber expects the Parties to focus on evidence on which they rely in their Closing Briefs. In any case, during Closing Statements Parties will not be allowed to refer to material which has never been requested for admission and shared with the Chamber and the Parties.

4. *Reconsideration* - The Trial Chamber notes that, in its Closing Brief, the NUON Chea Defence has requested that the Chamber reconsider a number of rejected Defence witness requests and investigation requests. The Chamber will address these requests at an appropriate time.

5. *Torture-tainted statements* – The Chamber recalls that according to Article 321 of the Cambodian Code of Criminal Procedure any “Declaration given under physical or mental coercion shall have no evidentiary value”. Further, according to Article 15 of the Convention against Torture, “any statement which is established to have been made as a result of torture shall not be invoked in any proceedings, except against a person accused of torture as evidence that the statement was made”. The Chamber has held that torture-tainted evidence cannot be used for the truth of its contents. However objective information contained within confessions, such as the date of arrest, is not part of the statement and can be used. The same applies to annotations made on confessions by the interrogator or his superiors.

6. The Chamber recalls its finding that a real risk exists that torture was used at S-21 and other security centres to obtain confessions (E350/8, para. 79). Any party seeking to rely upon such evidence may rebut this preliminary determination in particular upon a showing of specific circumstances negating this risk. For this reason, during evidentiary hearings the Chamber did not permit the use of confessions which were obtained at security centres, including S-21, absent a showing that the statement was not torture-tainted.

7. As the Accused in this case are charged with the crime of torture, the Chamber must ultimately apply a different and higher standard of proof in its verdict in order to determine whether torture occurred. The preliminary determination by the Chamber that there is a real risk that evidence was obtained by torture may differ from its final conclusion based on the standard for conviction on the allegations of torture, considering the totality of evidence available at the judgement phase.

8. As the evidentiary proceedings have concluded, there is no longer a danger that *inter alia* witnesses and Civil Parties could be improperly influenced by torture-tainted evidence. The Chamber will therefore allow a Party, where it considers it necessary to reference such information during these Closing Statements, to do so. The Party shall however indicate, prior to discussing any such document, that the Chamber has attached a presumption that the evidence to be discussed was obtained by torture. This shall serve to provide fair notice of the nature of the evidence discussed, absent which the Parties and public could be misled.

9. The Chamber has adopted this approach to potentially torture-tainted materials in order to facilitate comprehensive and, as far as possible, uninterrupted Closing Statements.