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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

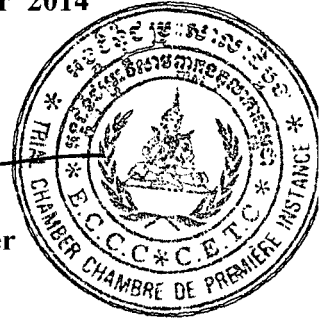
THE TRIAL CHAMBER

TO: All Parties in Case 002/02 13 October 2014

FROM: YA Sokhan, Acting President of the Trial Chamber 

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

SUBJECT: Clarification on the consequences of the severance of Case 002



1. The Chamber is seised of a request to hear further arguments in relation to the notion that Case 002/01 serves as a general foundation for Case 002/02, with a view to clarifying the practical and legal consequences, including evidentiary, of the severance of proceedings.¹ The Chamber notes that this request was made during the Further Initial Hearing, which was held the day after the Supreme Court Chamber Decision on Additional Severance was notified to the parties and before the parties had time to study the decision to the fullest.²

2. The Chamber notes that the SCC Decision clarified the status of the remaining charges and the procedural consequences of the additional severance and concluded that, as a result, such questions “should no longer impeach the preparation of the defence” in Case 002/02.³ The Chamber will therefore not entertain further arguments on this issue at this point in time. Should specific and concrete questions arise, however, during the conduct of the trial they will be discussed and ruled upon on a case by case basis.

¹ T. 30 July 2014 (Further Initial Hearing), pp. 25-28, 30-31, 33, 40. See also Indication des points de droit que la Défense de M. KHIEU Samphân entend soulever lors de l’audience initial du procès 002/02, E305/11, 9 June 2014, para. 8.
² T. 30 July 2014 (Further Initial Hearing), pp. 23-24, 28. See Decision on KHIEU Samphan’s Immediate Appeal Against the Trial Chamber’s Decision on Additional Severance of Case 002 and Scope of Case 002/02, E301/9/1/1/3, 29 July 2014 (“SCC Decision”).
³ SCC Decision, para. 86.

3. For the benefit of the Parties, the Chamber nevertheless wishes to distill the following key points from the SCC Decision and remind the Parties of related relevant guidance provided by this Chamber:

- a. The Case File remains the same for each trial in Case 002.⁴
- b. The evidence admitted in Case 002/01 is common to Case 002/02,⁵ with the effect that evidence already put before the Chamber or heard in Case 002/01 will be maintained in Case 002/02.⁶ This includes both testimonial and documentary evidence.
- c. There is therefore no formal need to renew any assessment of admissibility concerning such evidence.⁷ The E3 numbers assigned to evidence during the proceedings in Case 002/01 will remain the same in Case 002/02.⁸ Similarly, the testimonies heard during Case 002/01 will remain part of the evidence available in Case 002/02.
- d. However, and in order to ensure a full adversarial debate, questions of relevance may be raised and the parties will be afforded the opportunity to test and challenge evidence already put before the Chamber in Case 002/01 insofar as it relates to the new charges in Case 002/02.⁹
- e. Findings made in Case 002/01 including those based on evidence also relevant to Case 002/02 do not bind the Chamber, and common factual elements in all cases resulting from Case 002 will be established anew.¹⁰
- f. The Chamber will not import any attribution of criminal responsibility from Case 002/01 into Case 002/02.¹¹

⁴ T. 30 July 2014 (Further Initial Hearing), p. 21; Clarification regarding the use of evidence and the procedure for recall of witnesses, civil parties and experts from Case 002/01 in Case 002/02, E302/5, 7 February 2014, para. 7.

⁵ SCC Decision, paras 75, 85; Decision on Additional Severance of Case 002 and Scope of Case 002/02, E301/9/1, 4 April 2014, para. 23; Clarification regarding the use of evidence and the procedure for recall of witnesses, civil parties and experts from Case 002/01 in Case 002/02, E302/5, 7 February 2014, para. 7.

⁶ T. 30 July 2014 (Further Initial Hearing), p. 21; Decision on Additional Severance of Case 002 and Scope of Case 002/02, E301/9/1, 4 April 2014, para. 23; Clarification regarding the use of evidence and the procedure for recall of witnesses, civil parties and experts from Case 002/01 in Case 002/02, E302/5, 7 February 2014, para. 7.

⁷ SCC Decision, para. 75.

⁸ Clarification regarding the use of evidence and the procedure for recall of witnesses, civil parties and experts from Case 002/01 in Case 002/02, E302/5, para. 7.

⁹ See SCC Decision, para. 75.

¹⁰ See SCC Decision, para. 85.

¹¹ See SCC Decision, para. 85.