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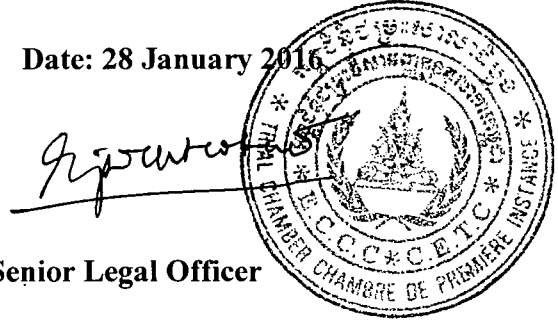
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TO: All Parties, Case 002/02

FROM: NIL Nonn, President of the Trial Chamber

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

Date: 28 January 2016



SUBJECT: Further Information on Key Document Presentation Hearings in Case 002/02 and Scheduling of Third Key Document Presentation Hearing

1. In Case 002/01, the Trial Chamber established a practice of holding Key Document Presentation Hearings, which provided the parties with an opportunity to present key documents they considered to be particularly relevant to each trial topic (see e.g. E170, E288/1/1). These hearings took into account that documentary evidence need not necessarily be tendered during the examination of individuals appearing before the Chamber and also served to ensure a greater measure of public accessibility to the documentary aspect of the trial. Due to some confusion arising from previous Key Document Presentation Hearings, the Chamber recalls in this memorandum its prior guidelines and clarifies several issues.

Guidelines for Key Document Presentation Hearings

2. In December 2014, the Chamber notified the parties that each Key Document Presentation Hearing would be limited to discussing documents relevant to the trial topic it follows (E315/1). The Chamber stated that during such hearings, parties may refer to documents already before the Chamber as well as to documents previously identified by the parties as relevant to Case 002/02. It also indicated that it would permit the parties and the Accused to comment on the documents presented by the other parties if they wished to do so (E315/1, para. 4). The Chamber directed the parties to circulate a list of their key documents to the Chamber and all parties prior to each hearing and to avoid repetition by not selecting documents which have already been discussed in detail in earlier proceedings (E315/1, para 5).

3. By e-mail of 24 April 2015, prior to the Key Document Presentation Hearing in Case 002/02 regarding the first trial topic of Tram Kak and Kraing Ta Chan (“First Hearing”), the Chamber clarified that “the parties have considerable latitude as to how they wish to utilise the time allocated to them for presentations on key documents.” The Chamber noted however that it would be most assisted by the presentation of documents directly related to the first trial topic and not to other locations. During the First Hearing, in response to a NUON Chea Defence request, the Chamber clarified that extracts from Civil Party Applications (CPAs) and written records of interview (WRIs) could be presented (T. 27 April 2015, pp. 61-63). The Lead Co-Lawyers included CPAs and one WRI in their presentation and the NUON Chea Defence included one WRI in its presentation (T. 27 April 2015, pp. 63-70, 75-81; T. 28 April 2015, pp. 4-5). Also during the First Hearing, the Chamber consistently ruled that the parties, including the Lead Co-Lawyers and KHIEU Samphan Defence could not present documents that were only relevant to national level policies (T. 28 April 2015, pp. 57-58).

4. During the Key Document Presentation Hearing on the second trial topic of worksites (“Second Hearing”), both Defence teams objected to the presentation of WRIs, particularly where it was not shown that the witness was deceased (T. 26 August 2015, pp. 25, 34-35). Both Defence teams submitted that the Key Document Presentation Hearings were akin to closing argument and therefore improper during the trial (T. 26 August 2015, pp. 25, 35). The Chamber overruled the objections (T. 26 August 2015, pp. 26-27, 29, 34).

5. On 1 September 2015, the Chamber reiterated that parties may refer to any document already admitted in Case 002/02 and that although the parties might be expected to rely more heavily upon contemporaneous documents, parties could also refer to WRIs. The Chamber reminded the parties that documentary evidence need not be tendered through witnesses and the Key Document Presentation Hearings thus allowed the Chamber and the parties to identify documents that were particularly relevant to the trial and provided public accessibility. It also noted that the absence of oral testimony and opportunity for confrontation are relevant considerations in assessing what, if any, probative value and weight to attach to WRIs and CPAs (T. 1 September 2015, pp. 46-47).

6. For the purposes of future Key Document Presentation Hearings, the Chamber provides the following clarifications.

- a. The Chamber reiterates its preference for documents directly related to the relevant trial topic while the parties will be granted some discretion as to how to use the time accorded to them;
- b. With the above understanding of their limitations, the parties may choose to present WRIs and CPAs;
- c. The Chamber will allow the parties further flexibility and permit the presentation of documents relevant to national level policies, although it notes that these documents might be more appropriate for the trial topic on the role of the accused;

- d. While recognising that it may not be possible to avoid altogether commenting on the probative value of documents, the Chamber encourages the parties to focus on presenting key documents (T. 28 April 2015, pp. 19-20);
- e. As the Chamber has ruled upon the admissibility of all documents proposed by the parties at the outset of trial, only admitted documents may be presented during these hearings;
- f. Documents obtained by torture must adhere to the Chamber's prior rulings on the use of such evidence.

Scheduling of Third Key Document Presentation Hearing

7. The Chamber provides the parties advance notice that the Key Document Presentation Hearing concerning the treatment of targeted groups including the Cham, Vietnamese, and former Khmer Republic officials will be scheduled for up to three days starting approximately 10 February 2016. The Chamber will permit documents during this hearing related to the treatment of Khmer Republic officials, although the Chamber notes that the parties were permitted to present these during the First and Second Hearings and will be permitted to do so at the Key Document Presentation Hearing on security centres (E315, para. 14). All parties should e-mail to all parties and the Chamber a list of documents they intend to present, along with the relevant ERNs in all available languages, on the day prior to the start of the hearings by 1:30pm.

8. The parties shall have 2 trial sessions (1/2 day) each to present documents relevant to the treatment of all three groups (i.e. Cham, Vietnamese, and Khmer Republic Officials) in an order the parties deem appropriate. During the third day of the hearing, the parties may make comments on documents presented by other parties.

9. Recognising that not all parties may wish to utilise this opportunity, the Chamber orders the parties to indicate by e-mail to the Chamber and other parties by 4 February 2016 both (1) whether they intend to present documents and (2) whether they intend to comment on documents presented by other parties.