



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

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មន្ត្រីទទួលបន្ទុកសំណុំរឿង / Case File Officer/L'agent chargé
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ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ
 Kingdom of Cambodia
 Nation Religion King
 Royaume du Cambodge
 Nation Religion Roi

សាធារណៈ / Public

TRIAL CHAMBER

TO: All Parties, Case 002 **Date:** 2 May 2016

FROM: NIL Nonn, President of the Trial Chamber

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

SUBJECT: Notice on Choeung Ek Bone Study and Warning Regarding Related Internal Rule 87(4) Requests



1. On the morning of 21 April 2016, the NUON Chea Defence sent an email to the Chamber's Senior Legal Officer and the parties, seeking the admission of a Phnom Penh Post article published on 6 February 2016 for use in the questioning of witness 2-TCW-865 who was to appear to testify the same day. The Defence also sought the admission of a "forensic report" on the bones from human skeletons found at Choeung Ek that is referred to in the article. The other parties did not object to the admission of the document and the Co-Prosecutors supported the request to obtain and admit the "forensic report". The Chamber admitted the newspaper article and granted the request to try to obtain the report, noting that it would inform the parties in due course of the results of its efforts to obtain it (T. 21 April 2016, p. 66 (Draft)).

2. The Chamber Greffier contacted Mr. Vooun Vuthy, the Director of Archaeology at the Ministry of Culture and Fine Arts, who was in charge of the study. Mr. Vuthy informs the Chamber that the report, consisting of 32 volumes in Khmer ("Choeung Ek Study"), was donated by the Choeung Ek Genocidal Center to the ECCC in 2014. The Chamber contacted Ms. Julie Fleischman, a PhD student who assisted Mr. Vuthy's team during one part of the Choeung Ek Study. Ms. Fleischman indicates that the Choeung Ek Study is not a forensic report since it was not completed for the purpose of legal proceedings. Rather it is an osteological (bone) study with an emphasis on skeletal trauma. Ms. Fleischman also informs the Chamber that a further project on the remains at Kraing Ta Chan was initiated on 21 April 2016 and is envisaged to be completed within two months. The Chamber also contacted Mrs. Ros Sophearavy, a Vice President of the Choeung Ek Genocidal Center, to inquire as to the donation of the Choeung Ek Study.

3. The Chamber informs the parties that Mrs. Sophearavy donated a copy of the Choeung Ek Study (32 volumes) to the ECCC, transferring the first twelve volumes to the Office of Administration in 2014. These first volumes, absent volume 6 which was missing, have been available in the ECCC Library since 27 January 2015. The Chamber has now obtained the remaining volumes (including Volume 6), which were

held at the Choeung Ek site. The entire Choeung Ek Study is now available for review only in the ECCC library in order to allow all parties access.

4. In addition, an "External Program Evaluation Report" of the Choeung Ek Study in English and Khmer ("Evaluation") has been available in the ECCC Library since February 2016. The Evaluation summarises the findings of the Choeung Ek Study. It has now been scanned and placed onto the Shared Materials Drive with ERNs 01235378-01235427 EN and 01235428-01235506 KH.

5. Based on this new information, the Chamber invites written submissions from the parties on whether the Choeung Ek Study should be admitted into evidence considering its length and availability only in Khmer. The Chamber also invites written submissions on the admissibility of the Evaluation. A combined written submission of no more than 10 pages shall be filed by Friday, 6 May in compliance with the Internal Rules and the Practice Direction on the Filing of Documents. The Chamber will also seek a copy of the Kraing Ta Chan Study when it is completed.

6. The Chamber takes this opportunity to warn the parties that late filed applications for the admission of evidence pursuant to Internal Rule 87(4) will be rejected. Applications which are submitted in close proximity to the testimony during which they are proposed to be used, particularly in a single language, unfairly place considerable pressure on the other parties and the Chamber and exhibit a lack of due diligence on the part of the filing party. The Chamber has exercised leniency in this regard, but in future will not look favourably on late filed requests, particularly when they relate to material which has been publicly available (and in this case in the ECCC's library) for a long time.