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E420/1

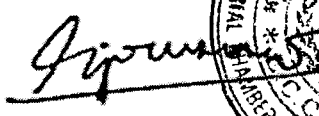
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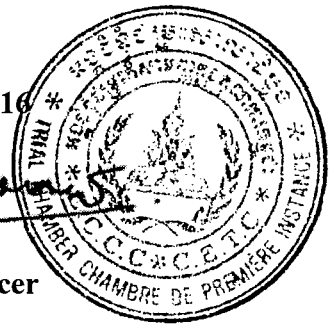
TRIAL CHAMBER

TO: All Parties, Case 002 **Date:** 1 July 2016

FROM: NIL Nonn, President of the Trial Chamber 

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

SUBJECT: Decision on KHIEU Samphan Urgent Request for Clarification of the Scope of Case 002/02 concerning Internal Purges



1. The Trial Chamber is seized of an urgent request for clarification of the scope of Case 002/02 concerning the topic of Internal Purges, filed on 24 June 2016 by the KHIEU Samphan Defence (E420, “Request”). On 22 June 2016, the KHIEU Samphan Defence circulated a courtesy copy of the Request to the parties (*see* email from the KHIEU Samphan Defence Team to the Senior Legal Officer of the Trial Chamber, 22 June 2016). On 23 June 2016, the Trial Chamber informed the parties that it would hear oral submissions at the hearing of 27 June 2016 (*see* email from the Legal Officer of the Trial Chamber to the parties, 23 June 2016).

2. The KHIEU Samphan Defence’s main contentions are that the scope of Case 002/02 concerning the topic of internal purges is limited to the facts that occurred either in the North Zone and East Zone in 1976 and 1978, respectively, as established in paragraphs 192 to 203 of the Closing Order, in as far as they are related to S-21 or Phnom Kraol; or to facts that occurred in Kampong Chhnang, Au Kanseng, and Tram Kok, as subsequently clarified in the Severance Order (Request, paras 11-35, 48-51). The KHIEU Samphan Defence submits that since allegations of internal purges committed outside those territorial and temporal limitations are outside the scope of Case 002/02, evidence of such allegations should be excluded from Case 002/02 (Request, paras 36-51). It further expresses concerns regarding the testimonies of 2-TCW-1005, 2-TCCP-236, 2-TCW-917, 2-TCW-976, 2-TCW-829, 2-TCW-1028, and 2-TCW-850, scheduled to testify on the internal purges trial topic from 27 June 2016, on the basis that none of these witnesses is in a position to provide relevant testimonies on internal purges falling within

the scope of Case 002/02 (Request, paras 52-61; *see also* T. (Draft) 27 June 2016, pp. 31-32, 35-36, 42-43).

3. The NUON Chea Defence agrees with the Request and submits that while the scope of purges has been limited to the North and East Zones in the Closing Order, the Chamber has also been seised of purges occurring in other Zones as long as they present a connection to S-21. It stresses that such evidence may be relevant to its argument that people were arrested because they were part of rebel factions preparing a *coup d'état* to overthrow the Centre (T. (Draft) 27 June 2016, pp. 37-38). The Co-Prosecutors submit that all the evidence related to the occurrence of purges is relevant not only for determining the responsibility of KHIEU Samphan but also to the existence of a policy regarding targeting of enemies and the role that security centres, notably S-21, played in the implementation of such policy. They submit in particular that the Chamber found witness 2-TCW-1005 to be relevant because he may provide evidence with regard to a letter he received from Office 870 in 1978 ordering him to send cadres from Kratie to Phnom Penh (T. (Draft) 27 June 2016, p. 39). The Civil Party Lead Co-Lawyers submit that the scope of Case 002/02 concerning the topic on internal purges is limited to two kinds of facts, those occurring in the North and East Zones relevant for showing the existence of a policy that targeted enemies in the DK regime, and those occurring in specific security centres, namely, S-21, Phnom Kraol and Au Kanseng. Noting this limitation to the scope, they submit that the Chamber may however hear evidence relevant to other facts as long as it is relevant to determine the role of the Accused and their participation in the policies within the JCE (T. (Draft) 27 June 2016, pp. 40-41).

4. The Chamber notes that the scope of Case 002/02 is provided for in the Trial Chamber's decision on further severance of Case 002, issued on 4 April 2014 (E301/9/1). An annex to that decision identifies paragraphs of the Case 002 Closing Order relevant to Case 002/02.

5. The underlying offences with which the Accused are charged appear at the end of the Closing Order, from paragraphs 1335 onwards so far as they are relevant to NUON Chea and KHIEU Samphan. The Trial Chamber does not understand "Internal Purges" to be an underlying offence.

6. The Trial Chamber is, however, seised of facts relating to five alleged policies said to have been designed and implemented by CPK leaders. One of these policies is characterised in the Closing Order as follows: "*The re-education of 'bad elements' and the killing of 'enemies', both inside and outside the Party ranks.*" (D427, para. 157.) The Closing Order alleges that "*Internal 'purges' occurred increasingly in parallel with the evolution of this policy.*" (D427, para. 192). This part of the Closing Order highlights two "*purge phenomena*": firstly in the Old and New North Zones; secondly in the East Zone.

7. The KHIEU Samphan Defence team has argued that the temporal and territorial scope of Case 002/02 concerning internal purges is limited to events in the North Zone in 1976 and the East Zone in 1978. They further identify Phnom Kraol security centre, Au Kanseng Security Centre (both in the Northeast), Tram Kok Cooperatives (in the Southwest) and Kampong Chhnang airport (in the West) as also relevant to Internal Purges. This limited reading of the Closing Order does not, however, reflect the scope of

Case 002/02 set out in the severance decision. The Closing Order has expressly identified locations and bodies outside of the Old and New North Zones and/or the East Zone as falling within the scope of Case 002/02. It does not further impose the temporal limitations for which the KHIEU Samphan Defence team argues.

8. On 12 September 2014, the Trial Chamber issued a decision on the sequence of trial proceedings in Case 002/02 (E315). This identified a segment of Case 002/02 trial dedicated to the following topic “D. Security Centres and Internal Purges” and listed three security centres: Au Kanseng, Phnom Kraol and S-21. The sequencing decision did not alter the scope of Case 002/02 or restrict the aforementioned policy to these three security centres. For instance, evidence relating to Kraing Ta Chan security centre was prioritised so as to be heard together with the Tram Kok cooperatives. As the sequencing decision expressly emphasised at paragraph 7:

no clear lines can be drawn between the topics into which this trial will be divided. Regardless of the sequence adopted, it is highly likely that a witness called to testify on one particular topic will also give evidence in relation to one or more other topics. Any sequence adopted for the conduct of the trial should therefore be considered by the Parties as an indication or guideline of the order in which the Chamber intends to hear the evidence in this case. All parties will need to demonstrate a degree of flexibility in this regard.

9. The scope of Case 002/02 therefore remains as set out in the Trial Chamber’s severance decision (E301/9/1). The sequence of trial topics, or the scheduling of particular witnesses to be heard nominally under one trial topic rather than another, does not alter the scope of Case 002/02.

10. The Trial Chamber notes that the relationship between the relevant policy alleged in the Closing Order and the underlying offences with which the Accused are charged is a matter to be addressed in the Judgment stage. This is all the Trial Chamber will say on the matter for the time being, except to note that it is regrettable that the matter was raised at such a late stage

11. This constitutes the Trial Chamber’s response to the Request.