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ORIGINAL DOCUMENT/DOCUMENT ORIGINAL

ថ្ងៃ ទទួល (Date of receipt/date de reception):
..... 03 / 11 / 2016

ម៉ោង (Time/Heure) : 15 : 20

មន្ត្រីទទួលបន្ទុកសំណុំរឿង / Case File Officer/L'agent chargé du dossier: **SANN RADA**

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

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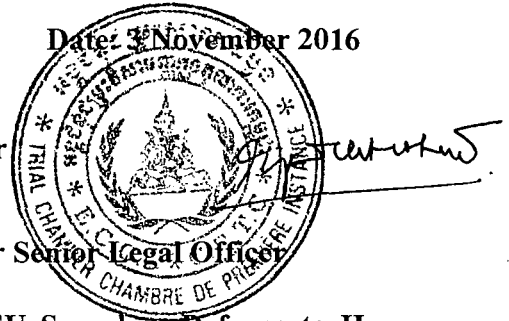
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TRIAL CHAMBER

TO: All Parties, Case 002

Date: 3 November 2016

FROM: NIL Nonn, President of the Trial Chamber



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

SUBJECT: Decision on Reiterated Request of KHIEU Samphan Defence to Hear Stephen HEDER (2-TCE-87) and François PONCHAUD (2-TCE-99) (E408/6)

1. The Trial Chamber is seized of a request filed on 9 August 2016 by the KHIEU Samphan Defence to hear Stephen HEDER (2-TCE-87) and François PONCHAUD (2-TCE-99), who were originally proposed as experts in its “Updated Lists and Summaries of Proposed Witnesses, Civil Parties and Experts” on 9 May 2014 (E305/5) (“Request”, E408/6). In oral submissions on 16 August 2016, the NUON Chea Defence and the Co-Prosecutors supported the Request to hear Stephen HEDER (2-TCE-87) (T., 16 August 2016 (DRAFT), pp. 31, 36) in relation to the trial topic on the Nature of the Armed Conflict. On 13 October 2016, the KHIEU Samphan Defence filed a request seeking clarification from the Chamber on whether it intended to rule on its Request (E408/6/1).

2. The KHIEU Samphan Defence requests the Chamber to hear Stephen HEDER (2-TCE-87) and François PONCHAUD (2-TCE-99) as replacements for Michael VICKERY (2-TCE-94). The KHIEU Samphan Defence submits that it is necessary to replace Michael VICKERY (2-TCE-94) as he is the only expert proposed by the Defence who was selected by the Chamber to testify. According to the KHIEU Samphan Defence, it is important to hear individuals proposed by the Defence as they may offer another view, which is in the interests of justice and may help to demonstrate the truth. The KHIEU Samphan Defence further submits that, like Michael VICKERY (2-TCE-94), Stephen HEDER (2-TCE-87) and François PONCHAUD (2-TCE-99) lived in Cambodia before 1975 and after 1979, spoke Khmer fluently and were therefore in a privileged position to gather statements first hand. The KHIEU Samphan Defence adds that they conducted research and acquired an extensive experience that could assist the Chamber. Stephen

HEDER (2-TCE-87) and François PONCHAUD (2-TCE-99) could therefore be heard both as experts and as fact witnesses on various topics in Case 002/02. In addition, the KHIEU Samphan Defence contends that Stephen HEDER (2-TCE-87) may provide insight regarding the ideology and administrative structure of the Khmer Rouge, while François PONCHAUD (2-TCE-99) may provide insight regarding religion and culture (E408/6, para. 6-8).

3. The Trial Chamber recalls that pursuant to Internal Rule 87(3), the Chamber may decline to hear evidence that is (a) irrelevant or repetitious; (b) impossible to obtain within a reasonable time; (c) unsuitable to prove the facts it purports to prove; (d) not allowed under the law; or (e) intended to prolong proceedings or frivolous. The Trial Chamber further recalls that it shall select those individuals to testify that it determines to be most conducive to ascertaining the truth, subject to the overall requirement that ECCC proceedings be fair and adversarial and preserve a balance between the rights of the parties, and that they be brought to a conclusion within a reasonable time (E312, para. 22). The Trial Chamber also recalls that ascertaining the truth does not require the testimony of an unlimited number of witnesses and, provided the Chamber has adequately weighed the complexities of the case and the evidence offered by the accused, it is well-established that the Trial Chamber may order the reduction of the number of witnesses the parties have requested to hear (E312, para. 27).

4. As a preliminary matter, the Chamber recalls that its selection of witnesses, Civil Parties, and experts is guided by its duty to ascertain the truth. While it endeavours to hear individuals proposed by all Parties, there is no requirement to ensure proportionality in this regard.

5. The Trial Chamber notes that the topics for which the requested experts have been proposed differ in many respects from those on which Michael VICKERY (2-TCE-94) was to testify. Michael VICKERY (2-TCE-94) was selected by the Trial Chamber in relation to subjects including internal divisions within the CPK, internal purges, security centres and execution sites (E408). In contrast, Stephen HEDER (2-TCE-87) was proposed by the KHIEU Samphan Defence to testify regarding the communication system, treatment of specific groups, cooperatives and work sites, as well as security centres and execution sites. François PONCHAUD (2-TCE-99) was proposed by the KHIEU Samphan Defence to testify regarding historical context, the armed conflict, cooperatives and worksites, as well as treatment of specific group (E305/5.2). Accordingly, the Chamber considers that the two proposed experts would not strictly replace Michael VICKERY (2-TCE-94) in terms of the substantive issues to be addressed.

6. The Chamber further notes that both Stephen HEDER (2-TCE-87) and François PONCHAUD (2-TCE-99) testified as witnesses in Case 002/01 and that their respective testimonies remain part of the evidence available in Case 002/02 (E318, para. 3(b)). Stephen HEDER (2-TCE-87) testified for 7 days covering various topics also relevant to Case 002/02, including Khmer Rouge administrative structures, Khmer Rouge ideology, Khmer Rouge policies and practices against Vietnamese and Chams, as well as internal purges (T., 9-11 July 2013 and T., 15-18 July 2013). François PONCHAUD (2-TCE-99) testified for 3 days, covering various topics, including cooperatives and worksites, religious persecutions, forced marriage, and Khmer Rouge leadership (T., 9-11 April 2013). In addition, the Chamber notes that it has selected another expert, Stephen

MORRIS (2-TCE-98), who has been heard on matters relevant to the Nature of the Armed Conflict trial topic (see T., 18-20 October 2016 (DRAFT)). In light of the topics that were already covered during the testimony of Stephen HEDER (2-TCE-87) and François PONCHAUD (2-TCE-99) in Case 002/01, as well as the selection of Stephen MORRIS (2-TCE-98), the Chamber finds that it would be repetitious to call Stephen HEDER (2-TCE-87) and François PONCHAUD (2-TCE-99) to testify again in Case 002/02. Further, the Chamber finds that recalling these individuals would cause an undue delay to the proceedings.

7. The Trial Chamber thus rejects the request to to call Stephen HEDER (2-TCE-87) and François PONCHAUD (2-TCE-99). This constitutes the Trial Chamber's response to E408/6.