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

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TRIAL CHAMBER

សាធារណៈ / Public

TO: All parties, Case 002

Date: 3 August 2012

FROM: Nil Nonn, President, Trial Chamber;

CC: All judges of the Trial Chamber; Trial Chamber Senior Legal Officer.



SUBJECT: Scheduling of Trial Management Meeting to enable planning of the remaining trial phases in Case 002/01 and implementation of further measures designed to promote trial efficiency

1. The Chamber has recently carried out projections of the likely duration of Case 002/01 on the basis of current progress. These projections indicate that the hearing of evidence in Case 002/01 would be unlikely to conclude until 2014. Given the intention of the Chamber to conclude the hearing of evidence in Case 002/01 in 2013, and to commence Case 002/02 soon after the conclusion of the evidence in Case 002/01, the Trial Chamber has recently issued a number of decisions designed to enhance trial efficiency (e.g. E 96/7, E201/2).

2. On Friday 17 August 2012, the Trial Chamber will hold a Trial Management Meeting designed to facilitate planning for the remaining phases of Case 002/01 and to provide notice of further measures intended to expedite proceedings in this trial. Should the Trial Management Meeting not conclude on that day, it will be resumed on a subsequent date to be announced.

3. The Trial Chamber invites the parties to identify issues for discussion at the Trial Management Meeting to the Senior Legal Officer no later than Friday 10 August 2012. Below are issues that the Trial Chamber intends to raise, along with various suggestions for their resolution. Where these measures are unopposed by the parties, no discussion of them is required at the Trial Management Meeting.

A. Measures to enhance trial efficiency

i. Reduction of Trial Chamber's partial list of witnesses, Experts and Civil Parties for the first trial in Case 002 (E131/1.1)

4. The Chamber has recently determined, in the interests of trial efficiency, that the testimony of a number of Experts will not be heard during the first trial as following the

Severance Order, their evidence does not appear to be of key relevance to Case 002/01 (E215, para. 3).

5. Following a review of the remaining individuals on the Chamber's partial list of witnesses, Experts and Civil Parties (E131/1.1), the Chamber also considers that the testimony of an additional number is likely to be essentially repetitious of the testimony offered by others or to have no direct and immediate relevance to the facts included in the first trial. The Chamber therefore envisages withdrawing the below witnesses and Civil Parties from that list on grounds that they may not need to be heard orally before the Chamber in Case 002/01:

- TCW-320
- TCW-620
- TCW-638
- TCW-354¹
- TCW-475
- TCCP-186
- TCW-780
- TCW-234
- TCW-707

In addition, the hearing of a number of further individuals has been deferred, pending ultimate decision on whether they will be heard in Case 002/01:

- TCCP-142
- TCCP-178
- TCW-645
- TCW-679
- TCW-548
- TCW-796

6. The Chamber considers the Trial Management Meeting to be an opportunity for a first and informal discussion of this matter. Additional names may be added to this list by the Chamber or suggested by the parties. The parties, should they choose, may nonetheless seek to tender the statements of these individuals pursuant to the provisions in Decision E96/7.

ii. Other measures

7. The Chamber has recently commenced the practice of asking all witnesses to indicate before they give evidence whether they have reviewed their prior statements before the Co-Investigating Judges (OCIJ), and whether they confirm that they are true. Where the interests of transparency and public information so requires, the Chamber may either briefly summarize the contents of these statements in court or place them on the ECCC website (E201/2). The Chamber has noted the reservations of at least one Defence team regarding this practice (e.g. 'Memorandum in Support of Request for Clarification of Oral Ruling of 12 June 2012', IENG Sary Defence letter to the Senior Legal Officer of 14 June 2012). However, the Chamber considers this to be vital to ensuring that significant in-court time is not wasted by needless repetition by witnesses of sworn statements already made before the OCIJ. Where a witness declares that their prior statements are true and accurately recorded in the OCIJ written records, parties will be authorized to ask

¹ Not initially in E131/1.1 but added in E172.

further questions only where there is a need for clarification of relevant matters that are insufficiently covered by these statements, or not dealt with during questioning before the OCIJ. The parties therefore have the right to test the witness' credibility on areas within or beyond their prior statements, where grounds exist to do so. This, however, is not synonymous with requiring witnesses to repeat at length the contents of their statements, where they have indicated that they recall and stand by them.

8. The Chamber notes that some parties utilize two lawyers (one national and one international) and on occasion three lawyers to question individual witnesses, Experts or Civil Parties in court. This often results in repetitive questioning, and can sometimes appear to lack coordination between counsel. All parties are encouraged to consider instead utilizing one lawyer (whether national or international) to lead the in-court examination of each individual or to take other measures to avoid repetition. In view of the Lead Co-Lawyers' role in support of the Prosecution (Internal Rule 23(1)(a)), the Chamber asks the Lead Co-Lawyers and Co-Prosecutors to collaborate in order to avoid repetitive in-court questioning by these parties. Although witnesses and Civil Parties called may be questioned on all areas relevant to Case 002/01, all individuals called before the Chamber are heard during the trial segment where the Chamber considers their evidence most relevant.

9. In order to reduce the length of time the Accused must continually sit, the Chamber would be willing to contemplate sitting instead on Mondays and Tuesdays and Thursdays and Fridays each week (utilizing Wednesdays for deliberations). The Defence teams are invited to indicate at the Trial Management Meeting whether they would consider this likely to benefit their clients.

B. Planning for the remaining phases of trial in Case 002/01

i. Evidence to be called and planning for remaining evidentiary phases of the trial

10. E131/1.1 includes a provisional list of witnesses, Experts and Civil Parties for the earlier trial segments, covering 1) the structure of Democratic Kampuchea; 2) roles of each Accused during the period prior to the establishment of Democratic Kampuchea, including when these roles were assigned; 3) role of each Accused in the Democratic Kampuchean government, their assigned responsibilities, the extent of their authority and the lines of communication, throughout the temporal period with which the ECCC is concerned and 4) policies of Democratic Kampuchea on the issues raised in the Indictment. It indicated that witnesses and Civil Parties relevant instead to the remaining factual portions of the first trial in Case 002 (concerning military structures, and population movement phases one and two) will be identified at a later date.

11. The Chamber invites all parties to identify at the Trial Management Meeting a limited number of witnesses, Experts and Civil Parties from their earlier lists who they consider are essential to examine during the population movement (phases one and two) segments of the trial. Having heard the submissions of the parties, the Chamber will in due course indicate which of these individuals shall be heard at trial and provide notification of this on the Case File. At a later date, opportunity to identify documents from the parties' earlier lists relevant to population movement will also be provided.

12. The Chamber is in receipt of the NUON Chea Defence's request for a public hearing on calling of Defence witnesses (E212), and the Co-Prosecutors' response (E212/1). The NUON Chea Defence (and other Defence teams) may, at the Trial Management Meeting, indicate briefly which witnesses are considered vital to rebut the allegations against the Accused, provided these submissions are brief, reasoned, and do not merely canvass areas on which the Trial Chamber has already repeatedly ruled. All parties are further reminded that of the totality of 1054 witnesses, experts and Civil Parties sought in Case 002, only a small percentage of the most relevant of these individuals can reasonably be heard within the confines of a fair and expeditious trial. Some decisions on witnesses, Experts and Civil Parties sought by the parties have already been issued by the Chamber; further will follow in due course.

ii. Co-Prosecutors' Request to Expand Scope of Trial in Case 002/01

13. Despite the Chamber's concerns as to the pace of trial (which has given rise to this Trial Management Meeting), the Co-Prosecutors have repeatedly urged extension of the scope of charges to be addressed in Case 002/01 (most recently, E163 and *Cambodia Daily*, Wednesday 11 July 2012, pp. 1-2). Although the principal focus of the Chamber's efforts to date has been to ensure greater streamlining and trial efficiency, the Chamber has nonetheless also devoted significant time and resources to assessing the impact of acceding to the Co-Prosecutor's request to expand the scope of Case 002/01 in the manner proposed by E163. The attached annex provides an indication of a modest extension the Chamber may be willing to contemplate in relation to executions on 17 April 1975 of evacuees at sites in Kampong Tralach Leu District (District 12), and of former Lon Nol soldiers and officials in 1975 at Toul Po Chrey, as well as a number of issues that would remain to be resolved should this proposal be adopted.

14. As this annex shows, acceding to even a relatively modest request for extension of the scope of Case 002/01 entails resolution of a number of issues and prolongation of proceedings in Case 002/01. As many witnesses potentially relevant to this proposed extension have yet to be heard before the Chamber, Defence concerns as to adequacy of notice may nonetheless be accommodated within the confines of the current trial. Additional trial proceedings concerning documents, in the main not addressed in the Annex, would further need to be addressed by the Chamber and the parties in the event these proposed extensions were accepted.

15. At the Trial Management Meeting, the Trial Chamber will invite submissions from the parties on the following questions:

- a) The Co-Prosecutors are invited to indicate what, if any, impact they consider failure to grant this proposed extension may have on their ability to meet their burden of proof in Case 002/01. The Co-Prosecutors and Lead Co-Lawyers are further invited to indicate whether the envisaged benefits offered by this proposed extension outweighs the risks created by a prolongation of trial proceedings, particularly in view of the interests of victims of Khmer Rouge era crimes in reaching an early verdict.
- b) The Defence teams are requested to provide at the Trial Management Meeting reasoned oral submissions regarding the time required by them to adequately prepare their defence to the areas of the indictment described in the confidential annex (and thus the earliest date on which they consider the individuals listed in this annex might be called before the Chamber).

ii. Assessment of victim impact and character, Closing Statements and reparation.

16. At the conclusion of the hearing of evidence on the current and previously-scheduled trial segments, the Co-Prosecutors' proposed extensions (if granted) and population movement phases one and two, Case 002/01 will conclude with testimony regarding victim impact, the character of the Accused and Closing Statements. To facilitate planning, the Chamber wished to provide advance notice to the parties of the envisaged modalities for conducting these phases of the trial.

17. At the conclusion of the evidentiary phases in Case 002/01, the Chamber will first grant each Defence team three days to present evidence as to the Accuseds' character. The Defence teams will shortly be called upon to identify which witnesses, if any, they wish to call for this purpose.

18. The Chamber will then permit the Civil Party Lead Co-Lawyers one week of in-court time to present evidence of the suffering of Civil Parties, and hence, the impact of the crimes tried in Case 002/01 on victims. Pursuant to Internal Rule 80 *bis* (4), further directions as to the date by which the Lead Co-Lawyers shall file their final claim for collective and moral reparation will be provided in due course.

19. Reforms carried out to the system of Civil Party participation before the ECCC were motivated by the wish to ensure that proceedings in Case 002/01 may result in meaningful reparation for victims (*see e.g.* Internal Rule 23 *quinquies* (3)(b)). In view of limited donor funds and finite human resources in both the Lead Co-Lawyers' and Victims' Support Sections, the Chamber suggests that the Lead Co-Lawyers prioritize for development a small number of reparations awards out of the totality currently contemplated pursuant to this sub-rule, and commence preparation for their implementation as soon as possible.

20. As the Trial Chamber currently intends to conclude Case 002/01 as expeditiously as possible and then to commence trial on other portions of the indictment in Case 002, the Chamber provides advance notice to the parties that the filing of voluminous Closing Briefs is not contemplated at the conclusion of Case 002/01. The Chamber is considering limiting the length of Closing Briefs (for the Co-Prosecutors) to 75 pages (in English or French, and the corresponding length in Khmer), 50 pages (English or French) (for the Lead Co-Lawyers) and 50 pages (English or French) (for each Accused). As these briefs shall be due (in Khmer and at least one other official ECCC language) within one calendar month of the conclusion of trial proceedings in Case 002/01, the parties are on notice of the need to prepare these briefs in parallel with trial proceedings and to make suitably phased arrangements for translation. As an alternative to written Closing Statements, the Chamber may be willing to instead allow Closing Statements to be given entirely orally. The parties will be provided an opportunity to indicate their preferences at the Trial Management Meeting.

C. Miscellaneous

i. Requests for remote access to the S-Drive

21. The Chamber notes the request of some parties to discuss modalities for obtaining remote access to the S-Drive at the Trial Management Meeting (E207 and E207/1). Oversight of the Office of Administration, including on this issue, was until recently done

on an informal basis by Judge CARTWRIGHT, but such initiatives have since been discontinued (E191/2, para. 17). It follows that any concerns regarding administrative support to the trial must now be raised directly with the Administration by the affected party or parties concerned. Although further discussion of these requests will therefore not be entertained at the Trial Management Meeting, the Trial Chamber has nonetheless relayed them onto the Office of Administration for action.

ii. Deadlines for applications to admit new documents

22. In order to be considered timely, applications to place new documents before the Chamber relevant to a witness, Expert or Civil Party scheduled to be heard before the Chamber must be lodged at least two weeks in advance of that individual's testimony. Internal Rule 87(4) requests filed at the last minute will be rejected. Ample guidelines have already been provided by the Chamber regarding the criteria to be satisfied for the admission of new documents (*see e.g.* E131/1, E190, E172/24/4 and E172/24/5/1, in addition to numerous oral rulings).

iii. Misuse of the Daily Documents Interface

23. To provide the parties with a convenient mechanism to inform the bench and the other parties of documents they will use in court the next day, the Chamber created a Daily Documents Interface and required the parties to upload documents they intended to use in connection with a witness, Expert or Civil Party one day in advance of their testimony. This was also designed to enable the Chamber to identify documents that do not qualify for use in court or any other difficulties. The Daily Documents Interface is not intended for the uploading of proposed new documents before the Chamber, which may instead be put before the Chamber only following a successful application pursuant to Internal Rule 87(4).

24. The Chamber notes that the parties often upload large quantities of material onto this interface – far in excess of what could feasibly be put to an individual on any given court day – including new documents. The volume of material uploaded ensures that it is unrealistic for the Chamber to review these documents. The parties are reminded that the purpose of the Daily Documents Interface is not to upload all documents that might feasibly be relevant to an individual's testimony, but rather, key documents (no more than 5-10) that the parties are certain to use (or will in all probability be used) in the course of their examination.

iv. Relationship between treating physicians and the Accused's Co-Lawyers

25. The Trial Chamber will at the Trial Management Meeting discuss with the parties measures designed to preserve the independence of medical examinations of the Accused ordered by the Chamber.

iv. Format of the Trial Management Meeting

26. Although issuing this order as public in order to facilitate public information, the Trial Management Meeting will be conducted in closed session, given its technical focus. Parties need not appear robed before the Chamber during this meeting and the presence of the Accused is not envisaged. A redacted transcript of the Trial Management Meeting or other public document outlining decisions taken following this meeting will be placed on the Case File in due course.