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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;
Acting Director and Deputy Director,
Office of Administration;
Chief, Defense Support Section; **05 December 2013**

FROM: NIL Nonn, President of the Trial Chamber

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

SUBJECT: Scheduling of and Agenda for Trial Chamber Management Meeting in Case 002/02 (11-13 December 2013)



Introduction

1. On 8 November 2013, the Trial Chamber informed all parties that it would hold a Trial Management Meeting to facilitate the planning for Case 002/02 (E301). The Trial Chamber initially gave notice of its intention to raise two issues for discussion: (i) the scope of Case 002/02 (and future trial segments); and (ii) a tentative trial schedule for Case 002/02. The Trial Chamber requested comments from the parties on this proposed agenda by 20 November 2013.

Implementation of the Supreme Court Chamber Recommendation to Appoint a Second Panel of the Trial Chamber

2. In its summary of reasons for its second Decision on severance of 23 July 2013, the Supreme Court Chamber proposed the constitution of a second panel of the Trial Chamber as one of the means to ensure that the next segment of Case 002 commences as soon as possible (E284/4/7). On 25 November 2013, the Supreme Court Chamber issued its full reasons for its Decision on severance, in which it indicated that it is “the responsibility of the President of the Trial Chamber to avail himself of the existing possibilities” to form a second panel to try Case 002/02 (E284/4/8).

3. With a view to implementing the recommendation of the Supreme Court Chamber, the Trial Chamber, as a preliminary matter, therefore includes discussion on the available framework relevant to the formation of a second panel of the Trial Chamber in the Trial

Management Meeting agenda. Further to the specific guidance provided by the Supreme Court Chamber, the discussion will assist the President to assess the time-frame within which a second panel might be established. The discussion will also give an opportunity for the Parties to put forward their comments in relation to this matter and allow the public to understand the progress in the preparation of Case 002/02.

Review of Parties Submissions and Comments

4. The Trial Chamber received submissions and comments from each of the parties in Case 002.¹ The Civil Party Lead Co-Lawyers agreed to the agenda proposed by the Trial Chamber and did not suggest any additional agenda items. The Co-Prosecutors requested that the agenda include two further items: (i) discussion of how evidence that was presented during the course of Case 002/01 will be treated in Case 002/02; and (ii) discussion of the impact that the factual findings in the Case 002/01 Trial Judgment could have on Case 002/02. The Co-Prosecutors gave notice of their positions on these issues, as well as their views on the scope of the trial in Case 002/02 and the need to expedite the proceedings. The Nuon Chea Defence Team notified the Trial Chamber of its intention to raise two issues which are likely to impact upon the Chamber's planning for the trial in Case 002/02, related to defence funding and the possibility of a second panel of Judges being constituted. The Khieu Samphan Defence Team did not raise any additional agenda items but presented its comments and views on defence team funding and the possibility of commencing Case 002/02 before a final judgment in Case 002/01 is rendered.

5. The Trial Chamber emphasises that the initial purpose of the Meeting was to address practical and technical issues central to the preparation of Case 002/02 (See Internal Rule 79(7)). After the Supreme Court Chamber Decision referred above, the focus has shifted to the issue of the appointment of a second panel of the Trial Chamber that must be determined as a preliminary matter. Accordingly, substantive legal issues will be addressed in future adversarial hearings or through written briefs. During the Meeting, however, the Trial Chamber will provide the parties with an opportunity to identify legal issues relevant to planning of Case 002/02 (see Agenda Item 5 below). Submissions and arguments on these issues will be heard at a later date.

6. The financial concerns raised by the Nuon Chea Defence Team and the Khieu Samphan Defence Team, as well as the administrative aspects of trial management more generally, will be addressed under Agenda Item 2.

Agenda for Trial Management Meeting

7. Having considered the submissions and comments of the parties and in light of the recommendation of the Supreme Court Chamber concerning a second panel, the Trial Chamber issues the agenda attached below. In order to facilitate the discussion, the Trial Chamber requests the attendance of the Acting Director and Deputy Director of the Office of Administration at the Meeting to answer questions from the Chamber and the parties.

¹ A copy of the emails sent by the Defence teams and the Civil Parties Lead Co-Lawyers to the Trial Chamber Senior Legal Officer is attached to this memorandum. The submissions by the Co-Prosecutors were filed in the case file (E301/1)

Agenda for Trial Management Meeting, 11-12 December 2013

Item 1: Implementation of the Supreme Court Chamber Recommendation to Appoint a Second Panel of the Trial Chamber:

Subject to the Trial Chamber retaining all its current resources, the President estimates that the judgement in Case 002/01 can be issued during the second quarter of 2014. The Chamber would therefore start hearings in Case 002/02 soon afterwards, provided that the scope of the second trial segment has been determined by then.

The President of the Trial Chamber has determined that all the Judges comprising the current Trial Chamber panel and the current support staff are needed to focus exclusively on the preparation of the judgement in Case 002/01, to ensure its timely issuance. Accordingly, new judges would be required if a second panel is to be established. The President has further assessed that 5 national and 5 international legal staff will be required to support a second panel.

The Trial Chamber will invite the ECCC Acting Director and Deputy Director of the Office of Administration to answer the following questions before inviting the parties to pose any further questions on these matters:

- 1) *Subject to the jurisdiction of the President to appoint alternate Judges as set out in the ECCC Agreement and the ECCC Law, which Judges outside the current Trial Chamber are available to be appointed to sit in Case 002/02, were a second panel to be established?*
- 2) *If the identified Judges were to be appointed by the President or by any other body, how soon would they and the necessary support staff be available to take up their duties and to begin work?*

The Trial Chamber will invite comments from the parties concerning the appointment of a second panel of the Trial Chamber. The parties are asked specifically to address the following question:

- 3) *Do you foresee any legal, administrative or other practical obstacles or implications which may affect the expeditious deployment of a second panel of the Trial Chamber?*

Item 2: Discussion of the administrative aspects of trial management in Case 002:

These questions are relevant to enable the President of the Trial Chamber to identify the range of possibilities concerning the appointment of a second panel and to address questions specifically raised by parties. The Trial Chamber will invite the ECCC Acting Director and Deputy Director of the Office of Administration to answer the following questions before inviting the parties to put any further questions on this matter:

- 4) *Can you briefly describe the ECCC budget structure for the biennium 2014-2015 and the progress concerning its approval status? More particularly, can you discuss the funding situation of the ECCC, including the*

pledges and contributions already made, and the current and future fundraising efforts made by the Court to ensure that the required funding is made available?

5) United Nations Document A/68/532 dated 16 October 2013 contains a request by the Secretary General of the United Nations to the General Assembly for a subvention to the ECCC. This document is publicly available through the United Nations official documents repository. *Can you briefly explain this report and the Secretary General's request, and their relevance in connection with the ECCC budget and financial status and also provide any relevant update concerning the Secretary General's request?*

Item 3: Scope of Case 002/02 (and future trial segments):

In paragraphs 61-62 of its reasoned decision E284/4/8, the Supreme Court Chamber suggests that, under certain preconditions, it might be legally possible for the Co-Prosecutors to withdraw charges. This would appear to introduce an additional factor in the determination of the scope of any second trial segment. It also raises a number of legal questions that need to be discussed and determined. The current schedule does not provide the parties with sufficient time to debate this complex legal issue at the Trial Management Meeting. Nonetheless, it will benefit whoever ultimately determines this issue if an initial discussion on the scope of Case 002/02 is held which will help indicate the parties' preliminary views. Therefore, as a starting point and in order to deal with expeditiously with this issue, the Trial Chamber will invite submissions from the parties as to the charges that ought to be included in Case 002/02. The parties are requested specifically to address the following issues:

6) In its Decisions E284/4/7 and E284/4/8, the Supreme Court Chamber has given some indications on what charges Case 002/02 should include at a minimum.

[All parties] On the basis of the above: What charges/crime-sites should be included in case 002/02? On the basis of these proposals can parties estimate the length of ensuing proceedings?

Item 4: Tentative trial schedule for Case 002/02: the Trial Chamber seeks submissions from the parties concerning the schedule for the trial (and future Trial Management Meetings) in Case 002/02. Please address the following issue:

7) *[All parties] Insofar as you are able to indicate at this time, is there anything which is likely to limit your availability for future Trial Management Meetings or adversarial hearings, including an initial hearing, over the next twelve months?*

Item 5: Identification of issues central to Case 002/02: the Trial Chamber will provide the parties with an opportunity to identify some of the issues they consider central to Case 002/02, which have not already been raised during the Meeting.

Other Arrangements

8. The Trial Management Meeting will be held in public on 11 and 12 December 2013, from 9 a.m. to 4 p.m., and a transcript will be produced. As already indicated, the format of the Meeting will follow that of Trial Management Meetings held in Case 002/01. In light of the number of items under discussion, the Meeting will continue on 13 December 2013, should that be necessary.

9. Sections or Units of the ECCC are required to be present during the discussion under the specific Agenda items relevant to their activities. They may attend other parts of the Meeting, but should, in any event, remain on standby to provide further information at the Chamber's request. More particularly, the Chamber would welcome the attendance of the Chief, Defence Support Section, should the Acting Director and Deputy Director of the Office of Administration so direct.