ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

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

Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

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TRIAL CHAMBER

TO: **All Parties, Case 002** **Date: 8 September 2015**

FROM: **NIL Nonn, President of the Trial Chamber**

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

SUBJECT: **Decision on Co-Prosecutors' Motion To Admit Testimony from the Case 002/01 Appeal Evidentiary Hearings of 2, 3 and 6 July 2015**

1. The Trial Chamber is seised of a request filed by the Co-Prosecutors on 3 August 2015 ("Request") in which they seek to admit the transcripts from appeal proceedings in Case 002/01 ("Appeal Transcripts"), dated 2 July 2015 (F1/1.1), 3 July 2015 (F1/2.1) and 6 July 2015 (F1/3.1) respectively (E356, para. 2). The Appeal Transcripts contain the testimony before the Supreme Court Chamber of witnesses SAO Van (2-TCW-989), SAM Sithy (2-TCW-990) and TOIT Thoeurn (2-TCW-829) (E356, para. 1). The Co-Prosecutors submit that this testimony is relevant to upcoming segments of the Case 002/02 trial (E356, paras 2-3). The Co-Prosecutors further submit that the Written Records of Interview and/or the DC-Cam statements of these three witnesses are already placed on Case 002/02 Case File (E356, para. 2). In addition, witness SAO Van is scheduled to testify before the Trial Chamber in the topic related to the treatment of targeted groups (E356, para. 2 and E346/2 para. 3(a)). They submit that the admission of the Appeal Transcripts before the Chamber will provide the most complete record of the evidence given by these three witnesses (E356, para. 3).

2. The KHIEU Samphan Defence opposes the Request in relation to the transcript of SAM Sithy's testimony (F1/2.1), contending that this testimony is irrelevant to Case 002/02 as it refers to the execution of former Khmer Republic Officials in or around Phnom Penh in the days following the evacuation of the city (E356/1, paras 5-6). The Lead Co-Lawyers and the NUON Chea Defence did not file responses.

3. According to Internal Rule 87(4), the Trial Chamber may admit any new evidence that it deems conducive to ascertaining the truth. The Chamber will determine the merit

of a request to admit new evidence in accordance with the criteria in Rule 87(3). Rule 87(4) also requires that any party seeking the admission of new evidence shall do so by a reasoned submission. The requesting party must satisfy the Trial Chamber that the proposed evidence was either unavailable prior to the opening of the trial or could not have been discovered with the exercise of reasonable diligence. However, in certain cases, the Chamber has admitted evidence which does not strictly speaking satisfy this criterion, including in instances where evidence relates closely to material already before the Chamber and where the proposed evidence is exculpatory and requires evaluation to avoid a miscarriage of justice, or where the other parties do not object to the evidence (E276/2, para. 2 referring to E190 and E172/24/5/1).

4. The Chamber notes that the Appeal Transcripts are dated 2, 3 and 6 July 2015 respectively and, therefore, were unavailable prior to the opening of the trial in Case 002/02. The Chamber considers that the Appeal Transcripts contain evidence relevant to the Case 002/02 trial, including the treatment of former Khmer Republic Officials and soldiers as well as the individual criminal responsibility of the Accused. Although the evidence of SAM Sithy does not specifically concern the sites identified in the Severance Decision as relevant to the treatment of former Khmer Republic Officials in Case 002/02 (i.e. Tram Kok Cooperatives, 1st January Dam Worksite, S-21 Security Centre and Kraing Ta Chan Security Centre: E301/9/1.1, p. 2), the Chamber considers it relevant in so far as it provides background information on the treatment of former Khmer Republic Officials and is relevant to the JCE policies charged in Case 002/02 (Closing Order, paras 205-209; E301/9/1.1, para. 2(iv)(d)).

5. The Written Records of Interview and/or the DC-Cam statements of witnesses SAO Van, SAM Sithy and TOIT Thoeurn are already placed on Case 002/02 Case File (see E127/7.1.8, E319/12.3.12 and E3/9118 for SAO Van; E3/5201 for SAM Sithy; and E319.1.27 and E319.1.28 for TOIT Thoeurn). The Chamber further notes that TOIT Thoeurn has been proposed to testify as a witness in Case 002/02. Accordingly, the Appeal Transcripts may complement the evidence related to these witnesses, which has been already admitted by this Chamber. In light of the above, the Chamber considers that admitting the Appeal Transcripts would be conducive to ascertaining the truth and grants the Co-Prosecutors' request.

6. This constitutes the Chamber's official response to E356.