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ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/date de reception):
..... 11 05 2016

ម៉ោង (Time/Heure) : 13:30

មន្ត្រីទទួលបន្ទុកសំណុំរឿង (Case File Officer/L'agent chargé):
..... Sann Rada

E395/1

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

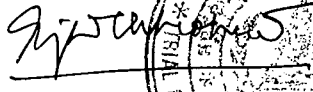
អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា
Extraordinary Chambers in the Courts of Cambodia
Chambres Extraordinaires au sein des Tribunaux Cambodgiens


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

សាធារណៈ / Public

TRIAL CHAMBER

TO: All Parties, Case 002 **Date:** 11 May 2016

FROM: NIL Nonn, President of the Trial Chamber 

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

SUBJECT: Request for briefing on significance of conflicting factions within the DK leadership

1. The Trial Chamber is seised of three motions filed by the NUON Chea Defence requesting to hear 25 witnesses on the topics of S-21 and Internal Purges (E391, E392 and E395). The Defence submits that their testimony is “relevant to the heart of the defence case of Mr. NUON Chea, and in particular, the contention that the DK leadership was divided into conflicting factions, some of which were secretly supported by Vietnam” (E391, para. 23; *see also*, E392, paras 4, 21; E395, para. 4). It also submits that certain arrests and detentions were lawful, if those arrested were suspected of an offence (T. 28 April 2016, p. 88; E392, para. 22).
2. In response to E391, the Civil Party Lead Co-Lawyers submit that the NUON Chea Defence does not reason how the proposed evidence relates to any of the factual allegations within the scope of Case 002/02 or explain how the evidence sought could be exculpatory (E391/1, paras 14, 18). They request the Chamber to seek clarification from the NUON Chea Defence on how the requested evidence relates to the Closing Order and/or evidence already before the Trial Chamber or, in the alternative, to reject the request summarily (E391/1, para. 20).
3. In order to assist the Chamber’s consideration of E391, E392 and E395, it provides the Defence an opportunity to further explain how the existence of conflicting factions could provide a defence to the charges in the Closing Order or could be considered to be a mitigating circumstance. The Chamber is familiar with the NUON Chea Defence filings before the Supreme Court Chamber (*see e.g.* F2/8 and F2/4/3/3/6/1) and therefore cross-reference, incorporation or rehearsal of these prior submissions where this is not necessary to explain how the arguments relate to Case 002/02 is unlikely to be of assistance to the Trial Chamber.
4. Specifically, the Chamber requests written briefing from the NUON Chea Defence, with reference to the relevant paragraphs of the Case 002 Closing Order, on the following question: How would the assessment of NUON Chea’s criminal

responsibility be affected by further evidence tending to prove the existence of conflicting factions or rebellions, whether supported by other countries or not?

5. The NUON Chea Defence is invited to file a Rule 92 submission in compliance with the Internal Rules and the Practice Direction on the Filing of Documents on or before 10 June 2016. If the NUON Chea Defence avails itself of this opportunity, the other parties will have an opportunity to respond within 10 days.