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 Subject: Communication to parties in Case 002 regarding scheduling of opening statements and the hearing of the substance in Case 002, and information in advance of hearing on 19-20 October 2011

The Chamber will very shortly issue, pending translation, a number of inter-related decisions, orders and memoranda that schedule the commencement of the trial on the substance in Case 002 and provide relevant information to the parties in advance of it. To provide maximum advance notice to the parties of their contents, and to assist in preparation for these early trial segments, the Chamber advises the parties of the following:

#### Scheduling of Opening Statements in Case 002

Opening statements in Case 002 will be held on Monday 21 November 2011, commencing at 9.00 a.m. in the ECCC Main Courtroom. They shall continue over the following days and shall be heard in open session.

The hearing will commence with the reading of the counts against each Accused in Case 002. The factual allegations in the Indictment will not be read out.

Opportunity will then be given to the Co-Prosecutors to make their opening statement in accordance with Internal Rule 89 *bis*. The Co-Prosecutors shall be allocated a total of two days for this purpose. As will be explained in the Chamber's pending decision in response to the Co-Prosecutor's request for reconsideration of its Severance Order, the Accused must confront all allegations contained in the Indictment in Case 002. While the Chamber's Severance Order of 22 September 2011 (E124) separates proceedings into a series of smaller trials, it is envisaged that the first trial will provide a general foundation for all the charges, including those which will be examined in later trials. The Co-Prosecutors shall accordingly present opening statements in relation to all charges and factual allegations against the Accused in the Indictment. It follows that the Co-Prosecutors' request for reconsideration on this order and for a hearing on this matter will be rejected and that the trial in Case 002 will commence in consequence in November 2011.

In accordance with Internal Rule 89 *bis*, each Accused or his/her lawyers will then be given an opportunity to respond to the opening statement of the Co-Prosecutors. The Trial

Chamber has allocated one half-day to each Defence team for this purpose. Should any Accused wish to make a statement in the course of this hearing, this shall form part of the half day allocated to that Defence team.

The Chamber notes that pursuant to Internal Rule 89bis, opening statements by the Lead Co-Lawyers or responses to the statements of other parties are not contemplated and will not be authorized by the Chamber. No restriction is placed on the attendance of a limited number of Civil Parties at the opening statements, in accordance with the usual practice. It is for the Lead Co-Lawyers to determine how many Civil Party Lawyers and Civil Parties, respectively, shall occupy the seating in the area allocated to Civil Parties in the courtroom.

#### Scheduling of the hearing of the substance

At the Initial Hearing, the Trial Chamber provided to the parties a provisional list of experts, witnesses and civil parties relevant to the first trial segments in Case 002.

Opportunity for oral argument was provided on that list at the Initial Hearing, and objections regarding some proposed witnesses and experts have been filed before the Chamber. A decision in relation to all objections relevant to witnesses and experts for these early trial segments will be issued shortly. To assist in planning, the Trial Chamber will soon provide to the parties a definitive list of witnesses, experts and civil parties who may be called during the first trial segments, and will also indicate the order of witnesses to be called before the Chamber during its first trial segment (28 November 2011-16 December 2011). This list is drawn from those experts, witnesses and civil parties contained on the list provided to the parties at the Initial Hearing. Witnesses relevant to the factual portions of the first trial (concerning population movement phases one and two) will be communicated to the parties at a later date.

Following the conclusion of opening statements, the hearing of evidence in Case 002 will commence at 9 a.m. on Monday 28 November 2011 in accordance with the witness order that will very shortly be communicated to the parties.

As indicated in previous orders, the Chamber will in due course set deadlines for the filing of objections, if any, to the admissibility of various documents sought to be admitted by the parties. In advance of the above trial session, the parties are requested to indicate to the other parties and the Chamber which, if any, documents or exhibits they will seek to tender in connection with the early witnesses to be called at trial no later than 1 November 2011.

Any objections to these documents by the other parties shall then be filed before the Chamber within 10 days of notification of each indication. A memorandum containing further guidelines for these objections will be issued this week. Deadlines in relation to documents relevant instead to later phases of the trial will be communicated in due course.

Pursuant to Internal Rule 79(6), the hearing of the substance will be presumptively public and conducted to the maximum extent possible in open session.

This first trial segment will conclude no later than Friday 16 December 2011. The Chamber will then recess for the Christmas and New Year period until Wednesday 4 January 2012,

between which dates no filings will be accepted by the Court Management Section. Time limits for filing documents shall nevertheless run during the judicial recess. Where a time limit falls on a day during the above recess, the due date for filing will become Thursday 5 January 2012. Trial proceedings will resume before the Trial Chamber on Monday 9 January 2012.

The Chamber will provide further information regarding the timing of later trial segments, including judicial recesses, in due course.

The parties are encouraged to raise any remaining issues that they consider may impede the efficiency of the early portion of the hearing of the substance informally with the Trial Chamber Senior Legal Officer as soon as possible and in any event no later than Tuesday 1 November 2011 .

Notification in advance of hearing on fitness to stand trial on 19-20 October 2011

The Trial Chamber is in receipt of a letter from the Lead Co-Lawyers requesting authorization to allocate an increased number of seats to Civil Party lawyers which would otherwise remain empty following the Chamber's order to limit to all parties' representation to no more than four lawyers at any time. The Chamber advises that as this limitation has been decided in the interests of ensuring the efficiency of proceedings, it will not reconsider its decision concerning the number of lawyers allowed to represent the parties in the courtroom for this specific hearing. However, it has no objection to the remaining seats in the area allocated to the Civil Parties being used by individual Civil Parties or Civil Party lawyers.

The Lead Co-Lawyers had earlier indicated unpreparedness for the hearing of 19 October and requested an adjournment of this hearing. In its Order of 12 October 2011 (E125/1/1), the Trial Chamber had rejected the possibility of an adjournment but offered the Lead Co-Lawyers the option of instead filing written submissions before the Chamber at a later date. The Chamber advises the other parties that the Lead Co-Lawyers have opted to provide oral submissions on 19 October 2011. Accordingly, the Trial Chamber's initial scheduling order for this hearing remains unchanged.

In view of the possibility of flooding next week, the Chamber has sought clarification from the Office of Administration regarding modalities for advance warning to the Chamber should the hearing need to be postponed. We will advise you of the outcome of this in due course. Should postponement of the hearing be required, and in view of the presence of internationally-resident counsel and experts, the Chamber will hold the hearing at the first available opportunity following 19 October 2011. Counsel are requested to plan for this contingency when finalising travel arrangements. The Witness and Expert Support Unit has ensured that the international expert can remain in Phnom Penh, if necessary, during the week commencing Monday 24 October 2011.

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