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

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ជាតិ សាសនា ព្រះមហាក្សត្រ
Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

TRIAL CHAMBER

Date: 29 November 2011

TO: **All parties, Case 002;**

FROM: **Judge NIL Nonn, Trial Chamber President**

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

SUBJECT: **Notice of Trial Chamber's disposition of remaining pre-trial motions (E20, E132, E134, E135, E124/8, E124/9, E124/10, E136 and E139) and further guidance to the Civil Party Lead Co-Lawyers**

This memorandum confirms that document E141 of 18 November 2011 constitutes the Trial Chamber's official response to the above motions, all of which raised questions concerning ongoing trial management. It follows that the IENG Sary Defence's subsequent response to one of these motions (E136/1), concerning the Co-Prosecutor's request to establish an efficient system of documentary management at trial, will also be taken into account by the Chamber in the context of ongoing trial management. Responses and replies to this motion by the other parties are therefore not contemplated. However, these and related issues may be raised by the parties with the Trial Chamber Senior Legal Officer in the context of ongoing informal trial management meetings, which are designed to identify and resolve practical issues of this type.

The Chamber also wishes to emphasize that Internal Rule 89*ter*, pursuant to which the Chamber's Severance Order was made, confers upon the Trial Chamber a discretionary trial management competence and is without right of appeal. On 18 October 2011, the Chamber ruled on the Co-Prosecutor's request for reconsideration of that order (E124/7). That decision expressly referred to the Lead Co-Lawyers' Notice of Request for Reconsideration, which indicated they would file a further brief "as soon as a consensus has been reached among the Civil Party Lawyers" (E124/4). Notwithstanding the Lead Co-Lawyers' notice, the Trial Chamber in its decision clarified that it ruled on this request expeditiously, in order to safeguard its ability to commence the trial of the substance in Case 002 in 2011 (E124/7, para. 6). It follows that separate decisions by the Trial Chamber to subsequent Civil Party filings E124/8 of 18 October 2011 and E124/10 of 22 November 2011 are not contemplated, as these motions are in substance repetitive

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of issues on which the Trial Chamber has already ruled. Further motions seeking reconsideration of the Severance Decision – whether styled as requests for 'clarification', responses or otherwise – will also not receive a response from the Trial Chamber and may be considered a deliberate attempt to delay proceedings.

Memorandum E141 responded, however, to a number of the parties' practical questions in relation to the early phases of trial in Case 002/01 (including many of these raised by the above motions, as well as the Co-Prosecutor's request for clarification (E124/9)). The Chamber has also repeatedly emphasized that it will issue further guidelines and directions where necessary to ensure effective ongoing trial management in due course.

The Chamber in its Severance Order (E124) clarified that as "[u]nder the applicable legal framework, Civil Parties no longer participate individually on the basis of their particular harm suffered" and that "[l]imiting the scope of facts to be tried during the first trial accordingly has no impact on the nature of Civil Party Participation at trial" (para. 8). The basis of this observation is that *all* testimony sought at trial (whether from witnesses, Experts or Civil Parties) will be limited to that relevant to a determination of the facts at issue in Case 002/01. Civil Parties who cannot speak to the facts at issue in Case 002/01 but whose experience is instead relevant to the subject-matter of future trials may, however, be heard during these trials.

The Chamber in its Severance Order also indicated that "formulation of reparations claims ... by the Lead Co-Lawyers should take account of Internal Rule 23*quinquies* (1)(a)" (E124, para. 8). This sub-rule indicates that reparations within the ECCC legal framework shall provide benefits to the Civil Parties that address the harm stemming from the commission of crimes for which an Accused is convicted. It follows that the Chamber may – in relation to reparations sought pursuant to Internal Rule 23*quinquies* (3)(a) – only consider harm suffered stemming from the charges and allegations which form the basis of Case 002/01. As above, and where the specific harm suffered by the Civil Parties instead relates to the subject-matter of future trials, this will be relevant to these trials. Concerning the new form of reparations envisaged by Rule 23*quinquies* (3)(b) (whose costs are not borne by the convicted person), the Severance Order does not debar the elaboration of specific projects which give appropriate effect to the awards sought by the Lead Co-Lawyers. Initiatives sought in relation to this new form of reparation (in particular those aiming to secure sufficient external funding) may be conducted in parallel with the entire trial in Case 002. However the Chamber urges the Lead Co-Lawyers to focus efforts on awards that may be relevant to Case 002/01 and deliverable within or soon after the issuance of the verdict in that case.

It is also recalled that the Chamber has, on 29 June 2011 and 19 October 2011, held two separate hearings pursuant to Internal Rule 80*bis* (4) requesting the Lead Co-Lawyers to provide initial specifications of the substance of the reparations awards they intend to seek within their final claim for collective and moral reparation pursuant to Rule 23*quinquies* (3)(b). The impact of the Severance Order in this regard was acknowledged by the Chamber. The purpose of these hearings was to enable the Chamber to provide initial oversight and guidance, where necessary, to ensure conformity of the awards

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sought with the ECCC legal framework, to ensure the effective deployment of donor and other resources, and to maximize the possibility of Civil Parties obtaining meaningful reparation. A decision on these initial specifications will follow in due course. Where necessary, the Chamber will in this decision indicate:

a) which of the reparations awards presently contemplated by the Lead Co-Lawyers appear to fall within the scope of Case 002/01;
b) which of the awards identified appear to fall outside the scope of Case 002/01 (and thus will not be further considered during this trial) but which may instead be relevant to future trials; and
c) which of the specific projects identified by the Lead Co-Lawyers may fall entirely outside the scope of the ECCC legal framework.

Finally, the Chamber notes the letter of 25 November 2011 from the Civil Party Lead Co-Lawyers, following the Trial Chamber's memorandum allocating responsibility for the questioning of three Civil Parties to be called during the first trial segment to the Lead Co-Lawyers (E131/10), requesting clarification as to the permissible scope of this questioning.

The Chamber has already clarified, but reiterates, that the focus of the first trial session is on the portions of the Indictment highlighted on page 2 of memorandum E141, pertaining to historical background. However, and in order to avoid unnecessary recall of Civil Parties and witnesses called during this session, they may also be questioned on other areas within their knowledge relevant to the scope of Case 002/01. No questioning on areas outside the scope of this trial will, however, be permitted.

Where exceptional circumstances exist, a party may make an oral application before the Chamber for leave to question a witness or Civil Party on all matters relevant to Case 002, including those that may instead form the subject of future trials. However, the Chamber expects that only rarely will such applications be entertained.