

ឯកសារដើម
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E142/2



ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

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

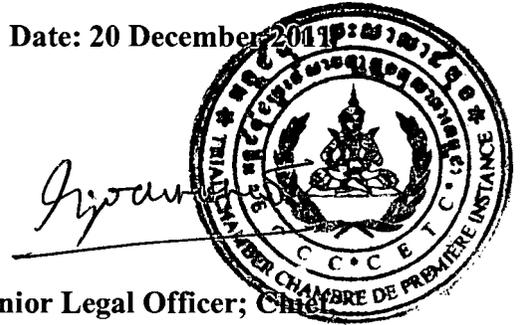
Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

TRIAL CHAMBER

Date: 20 December 2011

TO: All parties, Case 002;

FROM: Judge NIL Nonn, Trial Chamber President



CC: All Trial Chamber Judges; Trial Chamber Senior Legal Officer; Chief Interpretation and Translation Unit

SUBJECT: Translation requests in support of NUON Chea Motion E142 and IENG Sary Letter to the Trial Chamber Senior Legal Officer of 11 December 2011 (E142/1)

Reference is made to the above NUON Chea Defence request alleging inconsistencies between the audio recording and the written record of witness interviews (E142). The NUON Chea Defence submits that a review of a sample of written records and audio recording of interviews previously conducted by the Office of the Co-Investigating Judges (OCIJ) suggests a pattern of inconsistencies that undermine the credibility of the entire judicial investigation. The NUON Chea Defence requests that the Trial Chamber conducts an investigation pursuant to Internal Rule 35(2)(b) to determine whether OCIJ investigators knowingly and wilfully obstructed the investigation in Case 002 by unlawfully tampering with evidence. At a minimum, they request that the records of testifying witnesses should be investigated before each particular witness is called. The review conducted by the NUON Chea Defence concerns the written records and audio recordings of 6 witnesses, or a total of 13 written records.

The IENG Sary Defence, in its letter of 11 December 2011, requests the Trial Chamber to direct the Court Management Section to provide full transcripts for each OCIJ interview conducted with the witnesses scheduled to testify in Case 002. They further request the Chamber to direct the Interpretation and Translation Unit (ITU) to translate these transcripts into English and Khmer.

Although a decision on Motion E142 remains pending, the Chamber in this memorandum addresses the implications of both requests for the ITU and issues the following guidelines for the parties:

The Chamber notes that the Case File contains more than 750 written records of witness interviews conducted by the OCIJ during the investigation phase. Pursuant to Rule 25, these interviews were usually also audio-recorded. Both the audio recordings and the written records were placed in the Case File on a rolling basis and were from that point onwards available to the parties. As a general practice, audio recordings were not transcribed or translated.

The written record, in accordance with accepted practice in civil law systems, is not a verbatim record of the interview. However the Chamber notes that each written record, including those reviewed by the NUON Chea Defence, indicates that it has been read back to the witness, who confirmed the accuracy of its contents by providing a signature or a thumbprint. A copy of the written record was then provided to the witness. The veracity or accuracy of this statement, in relation to witnesses who will be heard before the Chamber, can therefore be confirmed directly in court with that witness, without the need for lengthy recourse back to the audio recordings of their interview.

The Chamber therefore advises that it will entertain allegations of inconsistency between the audio recording and written statements only where these are a) identified with sufficient particularity and b) pertain to alleged discrepancies on the substance which have clear relevance to the ongoing trial. Translation requests in support of these objections must consequently specifically identify and be limited to the portions of the relevant statement and audio recording transcript containing the alleged inconsistency. Blanket requests for translation of entire, voluminous audio recordings or transcripts will not be entertained and the ITU have been directed by the Chamber to suspend work on current requests, which extend to hundreds of pages but which specify no alleged error or showing of potential relevance to trial proceedings (*see further* E131/1).

As these audio recordings exist in Khmer, it is not unreasonable to expect qualified Cambodian Defence lawyers to review the substance of these recordings, and indicate for the benefit of the Defence teams to which they belong and the ITU those portions that can be credibly alleged by the Defence to be exculpatory for their client. This, contrary to the IENG Sary Defence allegations, does not amount to using “[o]ur Cambodian Co-Lawyers and Case Managers [as ...] translators” but is necessary in the interests of effective resource allocation and to avoid overwhelming the ITU with requests for the translation of large volumes of material whose relevance to the trial has not been demonstrated.

The Chamber notes that the review conducted by the NUON Chea Defence is relevant to five witnesses currently scheduled to testify during trial 002/01. The IENG Sary letter concerns all individuals identified by the Chamber as potential witnesses in Case 002/01. The Chamber will consider challenges to the testimony of these witnesses on a case-by-case basis but reminds the Defence that it bears the burden of identifying any alleged inconsistency with sufficient particularity, and of providing to the Chamber and the other parties with timely notice of these allegations and the documents relevant to them.