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មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé
..... SANN RADA

E211/2

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

សាធារណៈ / Public

TRIAL CHAMBER

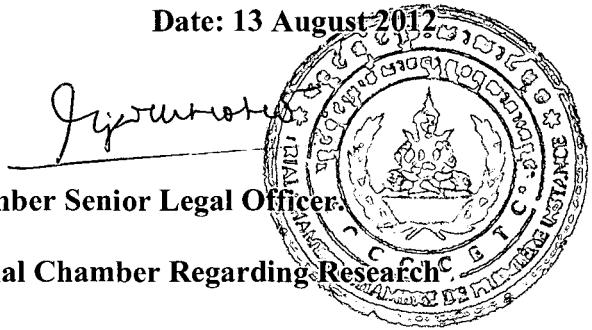
Date: 13 August 2012

TO: All parties, Case 002

FROM: Nil Nonn, President, Trial Chamber.

CC: All Trial Chamber judges; Trial Chamber Senior Legal Officer.

SUBJECT: NUON Chea Defence Notice to the Trial Chamber Regarding Research¹ at DC-Cam (E211).



1. On 19 June 2012, the NUON Chea Defence notified the Trial Chamber that it intends to undertake independent research to verify the chain of custody and provenance of DC-Cam documents relied upon by the Co-Prosecutors (described in E161.1) and requested the Trial Chamber inform them if such actions are incorrect (E211). The Co-Prosecutors responded to this Notification on 28 June 2012 (E211/1).
2. As the Co-Prosecutors indicate, the ECCC legal framework precludes investigations carried out by the parties, but not a review of information that is publicly available.¹ There has accordingly never been any prohibition on the Defence reviewing information that is in the public domain, and, if desired, requesting that this material be placed on the Case File or put before the OCIJ or Trial Chamber in accordance with their filing deadlines.
3. The present notification was filed after the testimony of two witnesses from DC-Cam, VANTHAN Dara and CHHANG Youk, called specifically by the Trial Chamber to answer questions regarding the provenance and chain of custody of DC-Cam documents at issue in Case 002/01. The Trial Chamber will therefore not revisit general issues of provenance and chain of custody of DC-Cam documents. All parties were granted the opportunity to question these witnesses when they were heard before the Chamber, and the NUON Chea Defence availed themselves of this opportunity.² On 9 April 2012, the Trial Chamber rejected all Defence objections concerning the provenance of documents originating from DC-Cam (E185). The Chamber has further ruled that parties need not provide information concerning provenance and chain of custody as a precondition to the

¹ See A110/I, 10 January 2008 & D164/2, 19 June 2009, para. 14 (clarifying that parties may review public source documents and request the OCIJ to place this information on the Case File, and that such inquiries do not “affect the prohibition for the parties to accomplish their own investigative actions”); see also, before the Pre-Trial Chamber, D365/2/10, 15 June 2010, paras 2, 12 & D154/2, 19 June 2009, para. 14.
² Transcript, 24 January 2012, pp. 43-105 (VANTHAN Dara); Transcript, 2 February 2012, pp. 61-114 and 6 February 2012, pp. 4-108 (CHHANG Youk).

admissibility of documents, but that this information may assist the Chamber in its assessment of the probative value of that material.³

4. While under the ECCC legal framework the NUON Chea Defence may not carry out investigations, where it is in possession of material in the public domain which it believes to be relevant to the Chamber's assessment of the reliability, authenticity or probative value of documents before the Chamber, it has a number of options available to it under the Internal Rules. It may, for example, file written submissions pursuant to Internal Rule 92 particularizing issues which it believes to be relevant to the Chamber's assessment of the probative value (and thus weight) to be accorded to particular documents before the Chamber, or seek the admission of additional material pursuant to Internal Rule 87(4), where the requirements of this sub-rule can be satisfied. The present Notification makes no such application. Nor does it particularize any objection to any particular document or category of documents before the Chamber.

5. This constitutes the Chamber's official response to Documents E211 and E211/1.

³ E185, para. 16 (concerning the Co-Prosecutor's filing on indicia of reliability (E 158)); *see also* E185, para. 30 (finding that contemporaneous DK-era documents held by DC-Cam are "entitled to a rebuttable presumption of *prima facie* relevance and reliability (including authenticity).")