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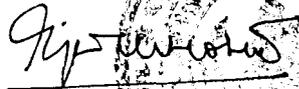
អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា
Extraordinary Chambers in the Courts of Cambodia
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

Kingdom of Cambodia
Nation Religion King
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សាធារណៈ / Public

TRIAL CHAMBER

TO: All Parties, Case 002 **Date:** 27 June 2013

FROM: NIL Nonn, President of the Trial Chamber 

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

SUBJECT: Decision on NUON Chea's Request that the Chamber not provide prior statements to Tuol Po Chrey witnesses before testifying (E292/2)

1. The Trial Chamber is seized of a request from the NUON Chea Defence that the Chamber order that TCW-689, TCW-505, TCW-386 and the driver from E186.1R, not be given or shown any information, including their prior statements, before testifying before the Chamber (E292/2).
2. It is settled practice before this Trial Chamber that witnesses are given the opportunity to refresh their memory by reviewing their previous statements given to the Office of Co-Investigating Judges prior to their testimony (E141, p. 4. *See also* T., 19 March 2012, p. 64). The practice enhances the efficiency of proceedings insofar as it avoids using in-court time for this purpose (E141/1) and it is consistent with the practice followed at the stage of judicial investigation where witnesses heard are entitled to receive a copy of their written record of interview.
3. The NUON Chea Defence submits that this practice should not be used in connection with the questioning of TCW-689, TCW-505, TCW-386 and the driver from E186.1R, or any other persons summonsed in their stead, as “the examination of any evidence concerning Tuol Po Chrey is ‘delicate’” (E292/2, para. 10). The NUON Chea Defence submits there is currently no evidence before it concerning NUON Chea's responsibility for the events at Tuol Po Chrey, and that current testimony is conflicting as concerns the number and alleged composition of victims at Tuol Po Chrey (E292/2, para. 9).
4. The Chamber has previously held that it will not entertain requests for reconsideration, except were a fresh application justified by new evidence is made (*see* E238/11/1, para. 7). The Chamber notes that the Defence has continuously challenged the

practice of providing the witnesses with prior statements but now argues that specific circumstances justify a deviation of the settled practice with regard to the four witnesses (E292/2, paras. 7, 11).

5. The Trial Chamber notes that the arguments of the Defence do not identify any cogent reasons why the circumstances in fact differ from other witnesses. The fact that the witnesses may testify on the responsibility of the Accused for the events in question is not different from that of other witnesses who have testified, whether as to the facts, or the Accused's responsibility in connection to other events, and who had the benefit of refreshing their memory before testifying. Moreover, the Chamber's practice of allowing witnesses the opportunity to refresh their memory by reviewing their previous statements was specifically not excluded for any witnesses who provide linkage evidence to the accused's responsibility. This issue was considered by the Chamber and it does not therefore consider it necessary to deviate from its settled practice.

6. Nor is the Chamber convinced that possible contradictions and conflicting accounts warrant a departure from the settled practice, as this applies also to other witnesses. The previous practice of providing witnesses with a copy of their prior statement(s) shall therefore remain unchanged. Accordingly, the Trial Chamber denies the request of the NUON Chea Defence.

7. The Chamber further confirms its previous guidelines, and that the Witness/Expert Support Unit (WESU) is to provide a witness with a copy of their prior statement(s) in order to refresh their testimony prior to testifying. However, other than for the purposes of locating, identifying or confirming the identity of any of the additional witnesses sought by the parties in light of the Trial Management Meeting of 13 June 2013, WESU is not to provide any of those witnesses with any additional information or documentation prior to a witness's testimony.

8. This constitutes the Chamber's official response to E292/2.