



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

ការិយាល័យសហចៅក្រមស៊ើបអង្កេត
OFFICE OF THE CO-INVESTIGATING JUDGES
BUREAU DES CO-JUGES D'INSTRUCTION

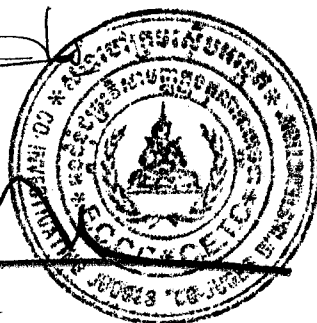
TO: **NUON Chea and IENG Sary** Date: 30 October 2009
A: **Defence Teams**
SON Arun
Michiel PESTMAN
Victor KOPPE
ANG Udom
Michael G. KARNAVAS

Declassified to Public
12 April 2013

FROM: **You Bunleng**
DE:

Marcel Lemonde
Co-Investigating Judges

CONFIDENTIAL



SUBJECT: **NUON CHEA'S FIFTEENTH REQUEST FOR INVESTIGATIVE ACTION;**
OBJET: **AND RELATED LETTERS FROM IENG SARY'S LAWYERS CONCERNING EVIDENCE OBTAINED THROUGH TORTURE**

REF: 002/19-09-2007-ECCC-OCIJ – **D130/11**; 002/19-09-2007-ECCC-OCIJ – **D130/7**; 002/19-09-2007-ECCC-OCIJ – **D130/7/2**

In Nuon Chea's Request, dated 1 September 2009, the Defence asked the Co-Investigating Judges to:

- “(a) identify, with precision, any and all torture-tainted evidence it intends to rely upon (including material contained in the SMD)—for the truth of its contents or otherwise—in substantiating the OCP's allegations against Nuon Chea;
- (b) identify, with precision, any and all torture-tainted evidence (including material contained in the SMD which was considered for the above-stated purpose but ultimately rejected; and

ឯកសារបញ្ជាក់ថាជាច្រើនប្រភេទតាមច្បាប់ស៊ើប
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ថ្ងៃ ខែ ឆ្នាំ នៃការបញ្ជាក់ (Certified Date/Date de certification) 30 / 10 / 2009
មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé du dossier: **Ratanak**

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ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/Date de reception) 30 / 10 / 2009
ម៉ោង (Time/Heure) 11:30
មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé du dossier: **Uch Arun**



*(c) in each case, clearly articulate the precise methodology employed in determining the torture-tainted evidence's forensic value*¹.

The Defence for Nuon Chea further “join and adopt the IENG Sary Request and urge the OCIJ to grant the relief requested as soon as possible”². The Letter in question, dated 17 July 2009, the content of which was reiterated in a second letter, dated 7 August 2009, requests the Co-Investigating Judges to provide the following information:

- “1. To what extent has the OCIJ identified, concretely, any material contained in the Introductory Submission which constitutes material obtained under torture. This would include inter alia any reports or analyses relied upon or generated by the OCP which contain information obtained by torture;*
- 2. To what extent has the OCIJ identified, concretely, any material that is derivative from information obtained by torture;*
- 3. To what extent has the OCIJ set standards on what constitutes information obtained by torture;*
- 4. To what extent has the OCIJ established guidelines on the use of information obtained by torture;*
- 5. To what extent has the OCIJ used information which was obtained by torture as a means of gathering further information;*
- 6. To what extent does the OCIJ intend to disclose to the Charged Persons the information it has which it believes is the product of torture, or derivative thereof.”*³

As the IENG Sary Defence team points out in its second letter, parts of their first letter are related to their third request for investigative action and, thus, will be the subject of a separate response; this is equally true of parts of the Nuon Chea Request.⁴ Moreover, as the Nuon Chea Defence team notes in its Request, our Order relating to evidence obtained by torture⁵ is currently on appeal and, accordingly, any response to the request appears premature *a priori*.

Nevertheless, given the absence of a decision on appeal, to date, we have decided to inform the Defence teams now that, subject to any modification thereof by the Pre-Trial Chamber, we have every intention of applying the principles set out in our order transparently.

¹ D130/11 Nuon Chea's Fifteenth Request for Investigative Action, 1 September 2009, 00372524-00372528, para. 7.

² D130/11 Nuon Chea's Fifteenth Request for Investigative Action, 1 September 2009, 00372524-00372528, p. 4.

³ D130/7, IENG Sary's lawyers letter concerning the identification of and reliance on evidence obtained through torture, 17 July 2009, 00352184-00352185; D130/7/2 IENG Sary's lawyers 2nd letter concerning the identification of and reliance on evidence obtained through torture, 7 August 2009, 00360855-00360856.

⁴ D130/7/2 IENG Sary's lawyers 2nd letter concerning the identification of and reliance on evidence obtained through torture, 7 August 2009, 00360855-00360856, p. 2; D130/11 Nuon Chea's Fifteenth Request for Investigative Action, 1 September 2009, 00372524-00372528, para. 7(c).

⁵ D130/8, Order on Use of Statements Which Were or May Have Been Obtained by Torture, 28 July 2009, 00355926-00355933.



However, as we have already indicated in our previous order, a full assessment of such evidence cannot be conducted "*until the end of the investigation, when the case file is deemed complete*"⁶. It is only when each piece of direct or derivative evidence that we have identified as raising an issue of torture has been assessed, on a case by case basis, after the end of the judicial investigation, that the Defence requests can be satisfied in the text of the Closing order.

⁶ D130/8 Order on use of statements which were or may have been obtained by torture, 28 July 2009, 00355926-00355933, para. 28.

