

អវិជ្ជាជន្ម ២៥៤/២

BEFORE THE OFFICE OF THE CO-INVESTIGATING JUDGES
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

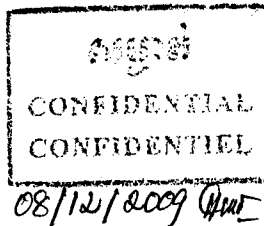
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ADDENDUM TO FIRST 'REQUEST FOR INVESTIGATION'

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ADDENDUM

1. Pursuant to Rule 35 of the ECCC Internal Rules (the 'Rules') and further to its First 'Request for Investigation' filed on 30 November 2009¹ (the 'Request'), counsel for Charged Person Nuon Chea (the 'Defence') submit this addendum to the Office of the Co-Investigating Judges (the 'OCIJ').
2. The OCIJ recently issued an order in which it, *inter alia*, set out the standard to be applied with respect to the exercise of its discretion under Rules 35(1) and 38(1): 'For the Co-Investigating Judges to exercise their discretion in imposing sanctions, *an obligation and a corresponding violation should be identified*. The Co-Investigative Judges will then determine whether the alleged violation was such that a warning or sanction may be issued.'²
3. As noted in the Request, Rule 35(1)(d) creates an *obligation* on 'any person' to refrain from 'threaten[ing], intimidat[ing], caus[ing] any injury or offer[ing] a bribe to, or otherwise interfer[ing] with a witness, or potential witness, who is giving, has given, or may give evidence in proceedings before the Co-Investigating Judges or a Chamber'. Furthermore, pursuant to Rule 35(4), 'Cambodian Law shall apply in respect of sanctions imposed on a person found to have committed any act set out in sub-rule 1'. The relevant Cambodian Law in this regard is Article 51 of the 1992 UNTAC Criminal Code,³ which states: 'Any person who threatens, intimidates, or places pressure upon a witness in a judicial proceeding is guilty of the misdemeanor of coercion and thereby incurs a punishment of one to two years in prison.'

¹ At the time of filing, this document had not yet been placed on the case file.

² Document No D-97/9/7, Public 'Order on the Request by the Ieng Sary Defence Team for Sanctions against the Co-Prosecutors', 26 November 2009, ERN 00405575-00405579, para 8 (emphasis added).

³ Formally, the 'Provisions Dated September 10, 1992 Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia during the Transitional Period'. (Pending final adoption of the new penal code, the 1992 UNTAC Criminal Code remains the current law in force.) *N.B.* The version of the 1992 UNTAC Criminal Code contained in the ECCC Legal Compendium lists Article 51 as 'Coercion of Witnesses'; other versions of the same code list this provision as Article 55.

4. Recent remarks by the Prime Minister of the Royal Government of Cambodia ('RGC') suggest yet another *violation* of Rule 35(1)(d):

'I am not interfering with the court. But it is not the court that stopped the war. Be careful—the court will create war, causing division of society again', Hun Sen said in a speech in the capital Phnom Penh.

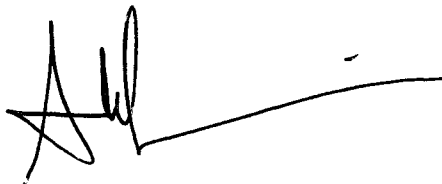
The premier made his remarks days after lawyers for a former Khmer Rouge leader demanded that investigators at the war crimes tribunal question Hun Sen and government officials over alleged interference.

'Again and again, I see they want to question (more people). *Be careful, this is the issue of death*', Hun Sen said during a ceremony to mark the international day of disabled people.⁴

When viewed in conjunction with the Prime Minister's previous comments (that he had already blocked the testimony of certain potential ECCC witnesses⁵) and those of RGC spokesperson Khieu Kanharith (that current members of government should not provide testimony to the Tribunal⁶), Hun Sen's most recent remarks will be seen as a *direct, physical threat* against potential witnesses who may wish to give evidence in OCIJ proceedings. Moreover, in the context of Cambodian politics, the Prime Minister's message is as menacing as it is clear: ECCC officials—including defence lawyers and investigative judges—pursue high-level witness testimony at their peril.

5. Accordingly, the Defence hereby requests the OCIJ to take these additional and rather alarming submissions into consideration in deciding the Request.⁷

CO-LAWYERS FOR NUON CHEA



P-1- Michiel PESTMAN & Victor KOPPE

⁴ AFP, 'Cambodian PM denies interfering with KRouge court', 3 December 2009; *see also* Cheang Sokha, *The Phnom Penh Post*, 'PM denies KRT interference, warns of possible civil unrest', 4 December 2009, p 2; Eang Mengleng & Bethany Lindsay, *The Cambodia Daily*, 'More KR Trials May Cause Civil War, PM Warns', 4 December 2009, pp 1-2.

⁵ *See* Request, para 6.

⁶ *Ibid*, para 7.

⁷ *N.B.* These submissions will be treated in accordance with the position articulated at paragraph 3 of the Request.