

From: smith5@un.org
Sent: Tuesday, November 20, 2012 1:38 PM
To: Susan Lamb
Cc: a.vercken.cetc@gmail.com; antaguisse@yahoo.fr; Dararasmey CHAN; Leang Chea; Mathilde CHIFFERT; Andrew CAYLEY; Andrew Ianuzzi; Arun Son; Dale Lysak; Jasper PAUW; Keith RAYNOR; Marie CAPOTORTO; Matteo Crippa; Michael Karnavas; Michiel Pestman; Mosseny So; Phalla Prum; Sheherazade BOUARFA; Socheata Seng; Tanya PETTAY; Tarik Abdulhak; Udom Ang; Vera MANUELLO; Victor Koppe; Vincent De Wilde d'Estmael; diablenuir@wanadoo.fr; Eleonor FERNANDEZ; Michael G. Karnavas; Katrina Marie Natale; Vichet PHANG; Ang PICH; Sambath Pich; Joshua ROSENSWEIG; samonnk@yahoo.com; Bunkheang Seng; Elisabeth SIMONNEAU-FORT; Helen Virginia SULLIVAN; suzanatomanovic60@gmail.com; Mariska VAN DELFT; Huot VENG; Chakriya Yet
Subject: Re: Proposal of an Efficient Mechanism to Respond to Nuon Chea's Objections to OCP Written Statements and Transcripts and Any Other Parties Objections If They Arise
Attachments: Letter from Ieng Sary Defence requesting guidelines re witness statement requests and objections.pdf
Follow Up Flag: Follow up
Flag Status: Flagged

Dear Susan

We understand the Trial Chamber will issue an order and directions on the prosecution request to respond cumulatively to the Defence objections to documents as well as on the date and the procedure of the hearings on these matters, however, in response to the Ieng Sary Defence letter we wish to make clear that the Defence has misunderstood the position with respect to these filings.

The filing by the Nuon Chea defence, although framed as a "response" is an initial set of objections to the admission of evidence proposed by the Co-Prosecutors, and contains legal submissions in support of these objections. The "response" seeks relief independent of the Co-Prosecutors' filing - e.g. requesting clarification from the Chamber as to the legal standards applicable to the admission of witness statements, and challenging several categories of evidence on the basis of (ostensibly) new arguments, made following the Chamber's ruling on the admission of witness statements (E96/7). This filing may be followed up with further specific objections, as both Nuon

Chea's defence and Ieng Sary's defence have now indicated.

The title the Defence choose to place on their filing does not change the underlying procedures which the Chamber has put in place. In accordance with procedures that have been in force since the start of the trial, the Co-Prosecutors are entitled to an opportunity to respond to the Defence's legal, procedural and factual objections. The Chamber has already indicated that it intends to permit adversarial debate in relation to statements proposed by the Co-Prosecutors and Civil Party Lead Co-Lawyers (paragraphs 9 and 12 of memorandum E223/2).

Once the Co-Prosecutors file their joint response to the totality of legal and factual objections filed by the defence (if the Chamber agrees with the proposed procedure), we submit that it would be appropriate to hold a public hearing given the scope of the issues to be addressed and their impact.

Best Regards Bill

-----Susan Lamb/UNAKRT wrote: -----

To: Tanya Rene PETTAY/UNAKRT@UNAKRT

From: Susan Lamb/UNAKRT

Date: 11/19/2012 10:32AM

Cc: a.vercken.cetc@gmail.com, antaguisse@yahoo.fr, CHAN.Dararasmey@eccc.gov.kh, Chea.Leang@eccc.gov.kh, CHIFFERT.Mathilde@eccc.gov.kh, Andrew CAYLEY/UNAKRT@UNAKRT, Andrew Ianuzzi/UNAKRT@UNAKRT, Arun Son/UNAKRT@UNAKRT, Dale Lysak/UNAKRT@UNAKRT, Jasper PAUW/UNAKRT@UNAKRT, Keith RAYNOR/UNAKRT@UNAKRT, Marie CAPOTORTO/UNAKRT@UNAKRT, Matteo Crippa/UNAKRT@UNAKRT, Michael Karnavas/UNAKRT@UNAKRT, Michiel Pestman/UNAKRT@UNAKRT, Mosseny So/UNAKRT@UNAKRT, Phalla Prum/UNAKRT@UNAKRT, Sheherazade BOUARFA/UNAKRT@UNAKRT, Socheata Seng/UNAKRT@UNAKRT, Tarik Abdulhak/UNAKRT@UNAKRT, Udom Ang/UNAKRT@UNAKRT, Vera MANUELLO/UNAKRT@UNAKRT, Victor Koppe/UNAKRT@UNAKRT, Vincent De Wilde d'Estmael/UNAKRT@UNAKRT, William Smith/UNAKRT@UNAKRT, diabloir@wanadoo.fr, FERNANDEZ.Eleonor@eccc.gov.kh, "Michael G. Karnavas" <michaelgkarnavas@gmail.com>, Natale.KatrinaMarie@eccc.gov.kh, PHANG.Vichet@eccc.gov.kh, PICH.Ang@eccc.gov.kh, Pich.Sambath@eccc.gov.kh, ROSENSWEIG.Joshua@eccc.gov.kh, samonnk@yahoo.com, Seng.Bunkheang@eccc.gov.kh, SIMONNEAU-FORT.Elisabeth@eccc.gov.kh, SULLIVAN.Helen@eccc.gov.kh, suzanatomanovic60@gmail.com, VANDELFT.Mariska@eccc.gov.kh, VENG.Huot@eccc.gov.kh, Yet.Chakriya@eccc.gov.kh
Subject: Re: Proposal of an Efficient Mechanism to Respond to Nuon Chea's Objections to OCP Written Statements and Transcripts and Any Other Parties Objections If They Arise

Dear Ms. Pettay,

Indeed, we haven't yet responded to the substance of the Co-Prosecutors' requests but we will shortly issue directions on the way forward in relation to all the issues it raises.

As we'd previously put the parties on notice that document hearings (including on written statements) may be scheduled in short order, I've since indicated only that these hearings are now unlikely to occur in December 2012, to assist the parties in planning.

Best regards,
Susan

-----Tanya Rene PETTAY/UNAKRT wrote: -----

To: Susan Lamb/UNAKRT@UNAKRT

From: Tanya Rene PETTAY/UNAKRT

Date: 11/19/2012 10:18AM

Cc: a.vercken.cetc@gmail.com, antaguisse@yahoo.fr, CHAN.Dararasmey@eccc.gov.kh, Chea.Leang@eccc.gov.kh, CHIFFERT.Mathilde@eccc.gov.kh, Andrew CAYLEY/UNAKRT@UNAKRT, Andrew Ianuzzi/UNAKRT@UNAKRT, Arun Son/UNAKRT@UNAKRT, Dale Lysak/UNAKRT@UNAKRT, Jasper PAUW/UNAKRT@UNAKRT, Keith RAYNOR/UNAKRT@UNAKRT, Marie CAPOTORTO/UNAKRT@UNAKRT, Matteo Crippa/UNAKRT@UNAKRT, Michael Karnavas/UNAKRT@UNAKRT, Michiel Pestman/UNAKRT@UNAKRT, Mosseny So/UNAKRT@UNAKRT, Phalla Prum/UNAKRT@UNAKRT, Sheherazade BOUARFA/UNAKRT@UNAKRT, Socheata Seng/UNAKRT@UNAKRT, Tarik Abdulhak/UNAKRT@UNAKRT, Udom Ang/UNAKRT@UNAKRT, Vera MANUELLO/UNAKRT@UNAKRT, Victor Koppe/UNAKRT@UNAKRT, Vincent De Wilde d'Estmael/UNAKRT@UNAKRT, William Smith/UNAKRT@UNAKRT, diablenoir@wanadoo.fr, FERNANDEZ.Eleonora@eccc.gov.kh, Natale.KatrinaMarie@eccc.gov.kh, PHANG.Vichet@eccc.gov.kh, PICH.Ang@eccc.gov.kh, Pich.Sambath@eccc.gov.kh, ROSENSWEIG.Joshua@eccc.gov.kh, samonnk@yahoo.com, Seng.Bunkheang@eccc.gov.kh, SIMONNEAU-FORT.Elisabeth@eccc.gov.kh, SULLIVAN.Helen@eccc.gov.kh, VANDELFT.Mariska@eccc.gov.kh, VENG.Huot@eccc.gov.kh, Yet.Chakriya@eccc.gov.kh, "Michael G. Karnavas" <michaelgkarnavas@gmail.com>, suzanatomanovic60@gmail.com
Subject: Re: Proposal of an Efficient Mechanism to Respond to Nuon Chea's Objections to OCP Written Statements and Transcripts and Any Other Parties Objections If They Arise

(See attached file: Letter from Ieng Sary Defence requesting guidelines re witness statement requests and objections.pdf)

Dear Ms. Lamb,

Attached please find a letter from the Ieng Sary Defence on this matter.

Sincerely,

Tanya Pettay
Legal Consultant
Ieng Sary Defence Team

-----Susan Lamb/UNAKRT wrote: -----

To: William Smith/UNAKRT@UNAKRT
From: Susan Lamb/UNAKRT
Date: 11/17/2012 06:57PM
Cc: a.vercken.cetc@gmail.com, antaguisse@yahoo.fr, CHAN.Dararasmey@eccc.gov.kh, Chea.Leang@eccc.gov.kh, CHIFFERT.Mathilde@eccc.gov.kh, Andrew CAYLEY/UNAKRT@UNAKRT, Andrew Ianuzzi/UNAKRT@UNAKRT, Arun Son/UNAKRT@UNAKRT, Dale Lysak/UNAKRT@UNAKRT, Jasper PAUW/UNAKRT@UNAKRT, Keith RAYNOR/UNAKRT@UNAKRT, Marie CAPOTORTO/UNAKRT@UNAKRT, Matteo Crippa/UNAKRT@UNAKRT, Michael Karnavas/UNAKRT@UNAKRT, Michiel Pestman/UNAKRT@UNAKRT, Mosseny So/UNAKRT@UNAKRT, Phalla Prum/UNAKRT@UNAKRT, Sheherazade BOUARFA/UNAKRT@UNAKRT, Socheata Seng/UNAKRT@UNAKRT, Tanya Rene PETTAY/UNAKRT@UNAKRT, Tarik Abdulhak/UNAKRT@UNAKRT, Udom Ang/UNAKRT@UNAKRT, Vera MANUELLO/UNAKRT@UNAKRT, Victor Koppe/UNAKRT@UNAKRT, Vincent De Wilde d'Estmael/UNAKRT@UNAKRT, diablenoir@wanadoo.fr, FERNANDEZ.Eleonor@eccc.gov.kh, Natale.KatrinaMarie@eccc.gov.kh, PHANG.Vichet@eccc.gov.kh, PICH.Ang@eccc.gov.kh, Pich.Sambath@eccc.gov.kh, ROSENSWEIG.Joshua@eccc.gov.kh, samonnk@yahoo.com, Seng.Bunkheang@eccc.gov.kh, SIMONNEAU-FORT.Elisabeth@eccc.gov.kh, SULLIVAN.Helen@eccc.gov.kh, VANDELFT.Mariska@eccc.gov.kh, VENG.Huot@eccc.gov.kh, Yet.Chakriya@eccc.gov.kh
Subject: Re: Proposal of an Efficient Mechanism to Respond to Nuon Chea's Objections to OCP Written Statements and Transcripts and Any Other Parties Objections If They Arise

Dear Bill,

There is much merit to this suggestion, which we will weigh fully and get back to you all on shortly.

On a related note, it currently looks as if we will not hold a document hearing between now and the end of 2012. It is likely to instead be held fairly early in 2013, at a date yet to be decided. I hope this assists in planning.

Best regards,
Susan

-----William Smith/UNAKRT wrote: -----

To: Susan Lamb/UNAKRT@UNAKRT
From: William Smith/UNAKRT
Date: 11/16/2012 02:01PM
Cc: Matteo Crippa/UNAKRT@UNAKRT, Andrew CAYLEY/UNAKRT@UNAKRT, Andrew Ianuzzi/UNAKRT@UNAKRT, antaguisse@yahoo.fr, Arun Son/UNAKRT@UNAKRT, a.vercken.cetc@gmail.com, CHAN.Dararasmey@eccc.gov.kh, Chea.Leang@eccc.gov.kh, CHIFFERT.Mathilde@eccc.gov.kh, Dale Lysak/UNAKRT@UNAKRT, diablenoir@wanadoo.fr, FERNANDEZ.Eleonor@eccc.gov.kh, Jasper PAUW/UNAKRT@UNAKRT, Keith RAYNOR/UNAKRT@UNAKRT, Marie CAPOTORTO/UNAKRT@UNAKRT, Michael Karnavas/UNAKRT@UNAKRT, Michiel Pestman/UNAKRT@UNAKRT, Mosseny So/UNAKRT@UNAKRT, Natale.KatrinaMarie@eccc.gov.kh, Phalla Prum/UNAKRT@UNAKRT, PHANG.Vichet@eccc.gov.kh, PICH.Ang@eccc.gov.kh, Pich.Sambath@eccc.gov.kh, ROSENSWEIG.Joshua@eccc.gov.kh, samonnk@yahoo.com, Seng.Bunkheang@eccc.gov.kh, Sheherazade BOUARFA/UNAKRT@UNAKRT, SIMONNEAU-FORT.Elisabeth@eccc.gov.kh, Socheata Seng/UNAKRT@UNAKRT, SULLIVAN.Helen@eccc.gov.kh, Tanya Rene PETTAY/UNAKRT@UNAKRT, Tarik Abdulhak/UNAKRT@UNAKRT, Udom

Ang/UNAKRT@UNAKRT, VANDELFT.Mariska@eccc.gov.kh, VENG.Huot@eccc.gov.kh, Vera MANUELLO/UNAKRT@UNAKRT, Victor Koppe/UNAKRT@UNAKRT, Vincent De Wilde d'Estmael/UNAKRT@UNAKRT, Yet.Chakriya@eccc.gov.kh
Subject: Proposal of an Efficient Mechanism to Respond to Nuon Chea's Objections to OCP Written Statements and Transcripts and Any Other Parties Objections If They Arise

Dear Susan and the parties

The Co-Prosecutors note Nuon Chea Defence's "Preliminary Response to Co-Prosecutors' Request to Put Before the Chamber Written Statements and Transcripts" (E96/8/1), filed on 8 November 2012. This filing contains a number of objections to the admission of the statements proposed by the Co-Prosecutors as well as further legal submissions on the principles applicable to the admission and consideration by the Chamber of witness statements in lieu of oral testimony. We take issue with several of the arguments and objections put forward and intend to make submissions in response. The purpose of this email is to propose an efficient mechanism for the filing of objections and response(s) and minimize the number of responses that the Chamber may receive.

The Chamber's memorandum E223/2 directs the parties to file any objections to proposed witness statements no later than Friday, **26 April 2012** (para 14). The Nuon Chea defence have indicated in their preliminary response that they may file further objections within this time frame, and other parties may be filing separate objections. We propose that the Co-Prosecutors be permitted to file a joint response to all of the objections to their proposed witness statements by **24 May 2012**. We also propose that a hearing then be held at which succinct oral submissions could be made on these issues. A similar procedure could be adopted in respect of statements proposed by other parties.

Given the breadth of the legal issues raised and the fact that separate written sets of objections may be filed, we would also appreciate an opportunity to request an extension of the page limit for our combined response. We would make that request immediately following 26 April 2013. We will certainly endeavour to keep our written response as brief as possible, but a final assessment on what is reasonably necessary can only be made once all objections have been received.

In accordance with the Chamber's directions in paragraph 9 of memorandum E223/2, we are reviewing our proposed statements (as well as the status of translations which will be available by the indicated deadline of 29 February 2013) and will inform the Chamber in the near future whether we consider that reductions could be made to the number of our proposed statements. At this stage, we do not anticipate that the number of statements could be reduced drastically.

We would very much appreciate it if instructions as to the above proposed mechanism could be given as soon as possible so that all parties can plan and assist the Chamber in the most effective manner.

Kind regards

Bill Smith