

**BEFORE THE TRIAL CHAMBER  
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

**FILING DETAILS**

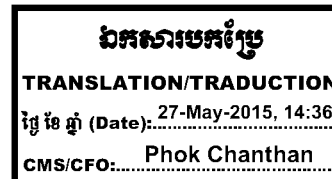
**Case No:** 002/19-09-2007-ECCC/TC

**Party Filing:** Mr KHIEU Samphân

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**Mr Khieu Samphân's Defence Request for a Forensic Analysis of Document E3/2107**

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Before:

**The Trial Chamber**

Judge NIL Nonn  
Judge Jean-Marc LAVERGNE  
Judge YOU Ottara  
Judge Claudia FENZ  
Judge YA Sokhan

**The Co-Prosecutors**

CHEA Leang  
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**All Civil Party Lawyers**

**NUON Chea's Defence**

**MAY IT PLEASE THE TRIAL CHAMBER**

1. By decision of the Trial Chamber (“the Chamber”), hearings on the merits of Case 002/02 resumed on 8 January 2015.<sup>1</sup> The hearings are devoted to consideration of evidence relating to cooperatives in Tram Kok District and the Kraing Ta Chan Security Centre (“the Centre”).<sup>2</sup>

2. In this context, doubts have arisen with regard to Document E3/2107 which the Office of the Co-Prosecutors requested from DC-CAM on 27 September 2007.<sup>3</sup> This document is said to be an undated report sent by the Chief of the Centre (Ta Ann) to the Tram Kak District Committee. Its authenticity was challenged during the cross-examination of Witness SREY Than,<sup>4</sup> especially in respect of the following handwritten annotation:

*“Reeducation Office 105  
Up until today we have smashed 15,000 enemies.  
May the party be advised.  
Reeducation Office, District 105.  
An [Illegible]”<sup>5</sup>*

3. In view of these doubts, the Defence for Mr KHIEU Samphân expressed its intention to seek a forensic analysis in order to determine the authenticity of the page on which the annotation appears and the different handwritings in which it is written.<sup>6</sup> Taking note of the Defence’s intention, the President of the Chamber requested the Defence to file a written and reasoned request to this effect.<sup>7</sup>

4. In compliance with the said instruction, the Defence therefore requests the Chamber to order an additional investigation under Internal Rule 93<sup>8</sup> of the ECCC.

<sup>1</sup> Trial Transcript (“T.”) 24 November 2014, **E1/246.1**, approximately [09.15.40].

<sup>2</sup> Decision on Sequencing of Trial Proceedings in Case 002/02, 12 September 2014, **E315**.

<sup>3</sup> Formal request for material from the Documentation Center of Cambodia (DC-CAM), 27 September 2007, **IS 23.2**.

<sup>4</sup> T. 24 February 2015, **E1/268.1**.

<sup>5</sup> Undated report from Kraing Ta Chan Security Centre to the District Committee, **E3/2107**, ERN FR 00655725, ERN EN 00290205 and ERN KH 00068049.

<sup>6</sup> T. 24 February 2015, **E1/268.1**, between [11.27.55] and [11.34.04].

<sup>7</sup> T. 24 February 2015, **E1/268.1**, between [13.44.22] and [13.47.12].

<sup>8</sup> ECCC, Internal Rules, Revision of 16 January 2015, Rule 93.

I – **A document crucial to the ascertainment of the facts in the first trial segment of Case 002/02**

5. This document is particularly relevant to the charges against the Accused in this first trial segment of Case 002/02. In fact, the Defence notes that the section of the Closing Order relating to the Centre<sup>9</sup> contains three references to the questioned page of Document E3/2107. The first reference is at paragraph 500 where it is stated that among the alleged contemporaneous documents from the Centre, “*Another report from An to the district committee advises that up until the date of the report [date unknown], 15,000 detainees had been executed.*”<sup>10</sup> The same page is referenced a second time at paragraph 514 as follows: “*A DK-era report from Kraing Ta Chan’s chairman to the district notes that until that date (unknown), they had smashed 15,000 enemies. This suggests that the total number of those killed at Kraing Ta Chan was greater than 15,000.*”<sup>11</sup> Lastly, paragraph 1385 of the Closing Order points to “*documentary records establishing the deaths of more than 12,000 people at S-21 and more than 15,000 at Kraing Ta Chan.*”<sup>12</sup>

6. However, although the Closing Order states that “[i]t is unclear how many prisoners were detained at Kraing Ta Chan between April 1975 and January 1979. The capacity of the prison is also unknown,” it tries to make estimates using two other documents: E3/4086 and E3/2110.<sup>13</sup> These documents are alleged to be monthly reports from the Centre to the district dated July and November 1977 providing an update about the prison population. They report 39 executions in July<sup>14</sup> and 92 executions in November.<sup>15</sup> It can thus be seen that there are considerable variations in the scale of the executions allegedly perpetrated at the Centre. Indeed, that is why document E3/2107 is so crucial. This is because it is the only document on the case file that mentions such a number of executions.

7. However, the document is fraught with numerous inconsistencies. Indeed, there have been numerous criticisms of the form of the handwritten annotation referring to these 15,000

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<sup>9</sup> Closing Order, Office of the Co-Investigating Judges, 15 September 2010, **D427**, paras. 489 to 515.

<sup>10</sup> *Ibid.*, para. 500.

<sup>11</sup> *Ibid.*, para. 514.

<sup>12</sup> *Ibid.*, para. 1385.

<sup>13</sup> *Ibid.*, para. 500.

<sup>14</sup> Report from the Kraing Ta Chan Centre to the District Committee, **E3/4086**, ERN 00276557.

<sup>15</sup> Report from the Kraing Ta Chan Centre to the District Committee, **E3/2110**, ERN Fr 00290272 (sic).

executions (II). Moreover, the Defence notes serious substantive contradictions that support its theory that it is a forgery. In fact, the figure of 15,000 executions is inconsistent with the figures in documents E3/4086 and E3/2110 and the historical context (III). Lastly, the post-Democratic Kampuchea exhumations discussed at the hearings also do not corroborate such a number of executions (IV).

## II – A document disputed in its form

8. The questioned annotation is on page 3 of the document and it comes immediately after a first confession. This is already strange, at the very least, in view of the nature of the annotation which is apparently meant to be an overall summary of the executions perpetrated. Furthermore, as pointed out by the Translation Unit, it is a separate sheet with a writing that is different from that in the rest of the document.<sup>16</sup> Moreover, the size of the writing and its meaning are also not consistent with the rest of the document.

9. In addition, Witness PECH Chim pointed out that the annotation is written in two different handwritings: the first stating: “*The Re-education Center 105. Up to date, we have smashed the enemy of 15,000 persons*” and the second, allegedly Ta An’s handwriting, stating: “*Please, the Party, be informed. The Re-education Center 105.*”<sup>17</sup> Accordingly, there is no guarantee that this page is truly part of the document and that it was not a post-regime addition.

10. Furthermore, Witness SREY Than, a member of the staff of the Centre, in his capacity as typist,<sup>18</sup> has first-hand experience to verify the authenticity of these documents from the Centre as well as their authors. In fact, when two documents from the Centre were shown to him,<sup>19</sup> he was able to identify the appended signatures as being those of Ta An,<sup>20</sup> the purported Chief of the Centre. However, when he was shown the questioned handwritten annotation, he was not able to authenticate the signature that is purported to be Ta An’s.<sup>21</sup>

<sup>16</sup> E3/2107, ERN EN 00290205: “*separate page, scribbled note not in the handwriting of the rest of the document*”.

<sup>17</sup> Written Record of Witness Interview, 6 December 2009, E3/5786, A.39; T. 24 April 2015, E1/292.1, after [09.26.20].

<sup>18</sup> See, for example: Written Record of Witness Interview, 16 September 2008, D125/129, ERN EN 00231674-00231675; Written Record of Witness Interview, 29 December 2009, D232/93, questions 10 to 14 and 29 to 35; T. 23 February 2015, E1/267.1, between [9.30.49] and [9.32.57], L. 1 to 16.

<sup>19</sup> E3/2421 and E3/2425.

<sup>20</sup> T. 23 February 2015, E1/267.1, between [15.11.28] and [15.19.43].

<sup>21</sup> T. 24 February 2015, E1/268.1, between [11.31.02] and [11.37.25]: “*I cannot tell you about the signature in the*

11. Lastly, the Defence points out that the doubts about the authenticity of the annotation are reinforced by evidence given before the Chamber regarding the use of forgeries under the regime. Witnesses KHOEM Boeun and NEANG Ouch, both former Khmer Rouge cadres, confirmed the existence of such forgeries.<sup>22</sup>

### III – Substantive numerical inconsistencies

#### 1. Presentation of the data in Documents E3/4086 and E3/2110 and their context

12. Document E3/4086 states that in July 1977, 18 new prisoners entered the Centre, bringing the total number of detainees to 81. In the course of that month, 2 prisoners died from illness and 39 were swept away, bringing the number of inmates down to 40. Document E3/2110, for its part, reports that in November 1977, 75 new prisoners entered, raising the inmate population of the Centre to 184. Of these 184 persons, 92 were “purged”, 6 died from illness and one lieutenant-colonel was removed to the sector, thus leaving 85 prisoners in the Centre.

13. These two documents allegedly date back to the second half of 1977. However, MEAS Sokha and SAY Sen, both of whom were prisoners at the Centre in 1977, testified that it was precisely in 1977 that mass executions were allegedly perpetrated at the Centre.<sup>23</sup>

#### 2. Prosecution theory regarding document E3/2107

14. It appears that the Prosecution theory regarding the document is that it is a monthly report covering the month of January 1977. Indeed, at the hearing of 24 April 2015, the International Co-Prosecutor said “*that’s [...] E3/2107, which covers the period of December ’76 to January ’77.*”<sup>24</sup> However, this theory suffers from serious numerical inconsistencies when considered alongside Documents E3/4086 and E3/2110 as well as the evidence of former prisoners from the Centre. Moreover, we shall also see that such inconsistencies persist in spite of the extension of the timeframe allegedly covered by the document.

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*red circle as I cannot recognize it.”*

<sup>22</sup> Written Record of Witness Interview, 21 May 2014, E319/12.3.2, A. 212; T. 4 May 2015, E1/296.1, between [14.15.59] and [14.17.40]. See also, T. 11 March 2015, E1/275.1, between [10.49.10] and [11.00.26].

<sup>23</sup> See, for example, (MEAS Sokha) T. 22 January 2015, E1/250.1, after [10.49.12], L 14 to 22. See also, (SAY Sen) T. 4 February 2015, E1/256.1, before [13.57.04] and between [15.15.58] and [15.20.42].

<sup>24</sup> T. 24 April 2015, E1/292.1, before [16.00.37].

### 3. Major numerical contradictions

15. Accepting that this report covers the month of January 1977, several contradictions appear when the figure of 15,000 executions is considered alongside the other two reports and in the context in which these reports were prepared. First, and quite evidently, it seems impossible that a Centre such as Kraing Ta Chan with extremely primitive facilities and equipment, lacking any form of mechanization and with a staff numbering less than 20 could have executed and buried 15,000 persons in one month. Second, this report does not list 15,000 confessions. In fact, no document on the case file<sup>25</sup> or testimony<sup>26</sup> provides a basis for even coming close to such a figure. Finally, according to the witnesses heard by the Chamber with regard to Kraing Ta Chan, the significant executions allegedly occurred in 1977. Thus, MEAS Sokha, pointed out in court that the executions occurred “[...] *after the harvest season*”,<sup>27</sup> that is toward the end of the year. Therefore, the possibility that such a mass execution occurred in January 1977 is not consistent considering the timeframe and is completely contradictory in terms of numbers taking into account the 92 executions mentioned in the November 1977 report.<sup>28</sup>

16. For the sake of argument, let’s assume that this report covers the period from 1973 (the date when the Centre is alleged to have been established<sup>29</sup>) to January 1977, that is 36 months of activity. However, using the 15,000 figure to determine the average monthly number of executions, we obtain a result of 416.<sup>30</sup> That being so, this figure of 15,000 again flies completely in the face of the evidence of MEAS Sokha and of SAY Sen<sup>31</sup> concerning the mass executions of 1977 and the 92 executions of November 1977. Similarly – and this is a third hypothesis – extending the timeframe of the questioned document so that it corresponds with the Centre’s total period of activity (1973 to January 1979), we obtain a monthly average of 208 executions. However, this result suffers from the exact same inconsistencies as the previous one.

17. Finally, accepting the figure of 92 executions for the month of November 1977 as a high

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<sup>25</sup> See, in particular, “*Trankâk District in the grip of the Khmer Rouge*”, Henri Locard, December 1996, **D313/1.2.16**, ERN 00217693-4 and in particular the section entitled “*II- The Krang Krâ Chan Archives*”.

<sup>26</sup> The question of the post-Democratic Kampuchea exhumations will be covered hereafter.

<sup>27</sup> T. 22 January 2015, **E1/250.1**, after [10.49.12], lines 10-17.

<sup>28</sup> Report from the Kraing Ta Chan Centre to the District Committee, **E3/2110**, ERN Fr 00290272 (sic).

<sup>29</sup> See for example *Trankâk District in the grip of the Khmer Rouge*”, Henri Locard, December 1996, **D313/1.2.16**, ERN 00217717-8.

<sup>30</sup>  $15,000/36 = 416.6$ .

<sup>31</sup> Let us recall that SAY Sen said that he was arrested in 1974. See **E1/256.1** at around [11.16.48].

level estimate of the number of executions carried out in one month (for the sake of argument, the Defence rounds this up to 100), it would have taken 150 months, or 12 and a half years, to reach 15,000 executions.<sup>32</sup> However, the fact is that the Centre never operated for more than 6 years (January 1973 to January 1979).

#### **IV - The impossibility of using the post-regime exhumations to corroborate these alleged 15,000 executions**

18. Witness KEO Chandara and Civil Party SAY Sen testified about the exhumations conducted after the fall of the Khmer Rouge regime and as a result of which approximately 10,000 skulls were allegedly exhumed from the mass graves surrounding the Centre. However, SAY Sen neither personally witnessed these exhumations nor participated in them in any way whatsoever.<sup>33</sup> He only learnt of these exhumations through hearsay.<sup>34</sup> Accordingly, the Defence considers that his testimony on this matter is insufficiently probative to be taken into account. Moreover, the Defence shall now outline the multiple contradictions in KEO Chandara's testimony which defy credibility.

##### **1. Internal contradictions in witness KEO Chandara's testimony**

19. First of all, it would appear that the witness lied in court. Indeed, when questioned by the NUON Chea Defence team about an article he allegedly wrote about his experience in Democratic Kampuchea and PEN Sovan's interceding in his favour after the regime, the witness denied both allegations.<sup>35</sup> However, document E337/2.1, *searching for the truth*, effectively shows that the witness wrote an article about his experience and that Pen SOVAN intervened in his favour after the regime.<sup>36</sup> Moreover, the witness claimed that he participated in these exhumations whilst he was chief of Ta Phem commune.<sup>37</sup> However, BIN Heng, another witness who was interviewed by the Co-Investigating Judges, also claims that he was chief of Ta Phem commune starting in May 1979 and, in fact, points out that the work of the commune committee consisted in launching "[...] *propaganda to persuade the misled people to come to report*

<sup>32</sup> 100 people executed every month for a total of 15,000 executions.  $15,000/100 = 150$  (month).

<sup>33</sup> T. 6 February 2015, **E1/258.1**, after [15.17.57].

<sup>34</sup> T. 25 March 2015, **E1/282.1**, after [15.29.45].

<sup>35</sup> T. 2 February 2015, **E1/255.1**, after [15.51.08] to [15.54.56].

<sup>36</sup> "*Searching for the truth*", first quarter 2013, **E337/2.1**, ERN EN 01064943 to 01064947.

<sup>37</sup> Written Record of Witness Interview, 29 October 2007, **E3/5837**, ERN 00223456-57. See also "*Searching for the truth*", **E337.2.1**, ERN 01064947, where the witness claims that he was appointed to his post a few months after January 1979.

*themselves [...]*".<sup>38</sup>

20. Beyond these remarks of a general nature, the witness's testimony on the exhumations also contains numerous contradictions. First of all, the number of skulls that were unearthed during the post-regime exhumations repeatedly changed during his testimony. Before the Co-Investigating Judges, the witness indicated that 10,045 bodies (skulls) had initially been exhumed but that after a second count, only 10,011<sup>39</sup> were left. Before the Court, the witness provided three new figures, 12,112<sup>40</sup>, 12,132 and 12,012.<sup>41</sup> In fact, the witness also contradicted himself with regard to his participation in the counts. In his written record of interview, the witness claims that he took part in the second count, before the skulls were placed in a stupa.<sup>42</sup> However, he testified before the Chamber that he did not participate in the count.<sup>43</sup> Also, when specifically questioned about the identity of the people who were involved in these counts, he only mentioned monks.<sup>44</sup>

21. With regard to the conduct of the exhumations, KEO Chandara testified before the Chamber that many bones were lost between the exhumation of the bodies and when the skulls were placed in a stupa owing to wild animals and to people living close to the Centre.<sup>45</sup> However, this explanation contradicts the witness's statements according to which the bones had in fact been "[...] *store[d] in the wooden house to avoid any disturbing [...]*".<sup>46</sup> In fact, it even appears that the bones were transported to another location before being placed in the stupa.<sup>47</sup> These explanations provided by the witness to justify why bones were allegedly lost are therefore contradictory and unconvincing.

22. Moreover, it is necessary to underscore here that the persons who allegedly took part in the counting of the bones (monks) had no relevant (forensic) training for this kind of activity. Moreover, when dealing with violent deaths,<sup>48</sup> the authentication of bones is even more difficult

<sup>38</sup> Written Record of Witness Interview, 15 December 2009, **D232/86**, ERN 00424730, A5.

<sup>39</sup> Written Record of Witness Interview, 29 October 2007, **D25/24**, ERN 00223456-7.

<sup>40</sup> T. 2 February 2015, **E1/255.1**, [14.07.13] to [14.10.30].

<sup>41</sup> *Ibid.*, between [14.13.50] and [14.15.44].

<sup>42</sup> Written Record of Witness Interview, 29 October 2007, **D25/24**, ERN 00223456-7.

<sup>43</sup> T. 2 February 2015, **E1/255.1**, after [15.14.06] to [15.16.12] and [15.16.12] to [15.17.45].

<sup>44</sup> *Ibid.*, between [14.15.44] and [14.17.15]. See also **E1/256.1**, after [10.15.55].

<sup>45</sup> T. 2 February 2015, **E1/255.1**, between [14.13.50] and [14.15.44].

<sup>46</sup> *Ibid.*

<sup>47</sup> T. 4 February 2015, **E1/256.1**, between [10.48.30] and [10.51.24].

<sup>48</sup> See, for example, Closing Order, **D427**, para. 513.



for people who are not trained. In fact, according to KEO Chandara, the OXFAM staff that was present during the exhumations apparently considered that these were “[...] *not human remains*.”<sup>49</sup> Hence, this figure of approximately 10,000 skulls is even less probative.

23. Finally, the witness told both the Co-Investigating Judges and the Court that OXFAM was present during the exhumations.<sup>50</sup> However, none of what the witness said on this issue has been confirmed by OXFAM. Indeed, when contacted by the Office of the Co-Investigating Judges, OXFAM stated that, contrary to what the witness said, it was not in possession of any document coming from the Centre.<sup>51</sup> Moreover, OXFAM indicated that none of its staff members deployed to Cambodia in 1979 matched the descriptions provided by the witness.<sup>52</sup>

## 2. External contradictions in witness KEO Chandara’s testimony

24. According to the witness’s testimony, these post-Democratic Kampuchea exhumations allegedly involved 8 pits in which approximately 10,000 adult bodies were allegedly found.<sup>53</sup> This would therefore lead to an average of 1,250 bodies per pit.<sup>54</sup>

25. However, the witness also stated that these 8 pits were of different sizes. The largest was 4 metres wide by 4 metres long and 3 metres deep while the others were approximately 2 metres by 2 or 3 and 1 metre deep.<sup>55</sup> Consequently, the distribution of bodies among these pits was necessarily uneven, with the largest being at least 8 times greater in volume than the others. In other words, according to the testimony, the largest pit must have contained much more than 1,250 bodies while the others contained far less. However, it seems impossible that a pit of 48 cubic metres<sup>56</sup> could even contain 1,250 adult bodies. This appears to be even less realistic given that MEAS Sokha testified that when they had to execute about 130 people – the most executions he remembers – he had to dig a pit 3 metres wide and 3 metres deep.<sup>57</sup> In addition, SAY indicated that he “[...] *dug about 20 to 30 pits and in each pit they buried --- I don’t know ---*

<sup>49</sup> T. 2 February 2015, **E1/255.1**, after [14.07.13].

<sup>50</sup> See, for example, Written Record of Witness Interview, 27 October 2009, **D232/46**; **E1/255.1** and **E1/256.1**.

<sup>51</sup> Written Record of Investigation Action, 7 January 2010, **D232/98**, ERN 00428018.

<sup>52</sup> Annex A, email exchange, **D232/98.1**, ERN 00428020.

<sup>53</sup> T. 2 February 2015, **E1/255.1**, between [14.07.13] and [14.10.30].

<sup>54</sup>  $10,000/8 = 1,250$ .

<sup>55</sup> T. 4 February 2015, **E1/256.1**, between [10.05.07] and [10.07.19]; between [10.14.38] and [10.16.44].

<sup>56</sup>  $4 \text{ metres} \times 4 \text{ metres} \times 3 \text{ metres} = 48 \text{ m}^3$ .

<sup>57</sup> T. 21 January 2015, **E1/249.1**, between [12.00.10] and [12.02.45].

*maybe 10 to 20 bodies of the prisoners who were executed.*"<sup>58</sup> There again, this figure of (at least) 10,000 bodies distributed among 8 pits is fully disproved by the statements of those who were supposedly in charge of digging the pits. Indeed, according to these statements by SAY Sen, we would have a maximum of 400 bodies distributed among 20 pits.<sup>59</sup>

26. More broadly, the 10,000 figure is inconsistent with SAY Sen's statements to OCIJ investigators. Indeed, he estimated that "[...] *from 1976 to 78, between 10 and 40 prisoners were executed at Kraing Ta Chăn every week*".<sup>60</sup> According to these estimates, the maximum number of executions during this period is 6,240.<sup>61</sup> Moreover, during the inspection of the site, the investigators spoke with a certain SAK Aorn whose house is built on a grave and who explained to them that "[...] *in 1982 the local authority had exhumed the site. 30 bodies were recovered from one grave and 90 from another*".<sup>62</sup> Finally, it is worth recalling what Henri LOCARD said about these exhumations: "*The official figures for the number of people exterminated at Kraing Krâ Chan is 10,045 skulls found. No doubt, like all the figures given in the early days of the Heng Samrin regime, this is very likely exaggerated. But it is not an impossibility. Half this figure – or about 5,000 could be a reasonable estimate.*"<sup>63</sup>

27. To conclude, the Defence notes that the questioned handwritten annotation is fraught with many contradictions, in terms both of substance and of form. Indeed, the witnesses who, by virtue of their experience, were able to authenticate the document have all noted inconsistencies (handwritings and signatures). Moreover, the substance of the annotation flies in the face of the testimonies of former prisoners and common sense.

28. **FOR THESE REASONS**, the Defence requests the Trial Chamber to **ORDER** a forensic handwriting analysis of document E3/2107 in its entirety and of the page containing the handwritten annotation in particular. In particular, the designated expert should be tasked with comparing the handwriting on page ERN 00068049 with the handwriting in the rest of the document and comparing the signature at the bottom of that page to the other signatures that are

<sup>58</sup> T. 25 March 2015, **E1/282.1**, between [15.19.10] and [15.24.21].

<sup>59</sup>  $20 \times 20 = 400$ .

<sup>60</sup> Site Identification Report, 17 March 2009, **E3/5828**, ERN 00363338-39.

<sup>61</sup>  $(40 \times 52) \times 3 = 6,240$ .

<sup>62</sup> Site Identification Report, 17 March 2009, **E3/5828**, ERN 00363339-40.

<sup>63</sup> "*Tramkâk District in the grip of the Khmer Rouge*", Henri Locard, December 1996, **D313/1.2.16**, ERN 00217717.

said to be Ta ANN's in documents E3/2425<sup>64</sup> and E3/2421.<sup>65</sup> To this end, the Chamber is also requested to **ORDER** DC-CAM, which is apparently in possession of the original copy of the document, to allow the expert to consult the document in carrying out his or her assignment.

	KONG Sam Onn	Phnom Penh	<i>[signed]</i>
	Anta GUISSÉ	Phnom Penh	<i>[signed]</i>
	Arthur VERCKEN	Paris	<i>[signed]</i>

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<sup>64</sup> ERN KH 00270926.

<sup>65</sup> ERN KH 00271180.