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ORIGINAL DOCUMENT/DOCUMENT ORIGINAL

ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/date de reception):
..... 17 / 11 / 2015

ម៉ោង (Time/Heure) : 15:20

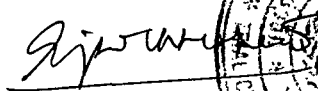
មន្ត្រីទទួលបន្ទុកសំណុំរឿង / Case File Officer/L'agent chargé
..... S. ANNANANDA

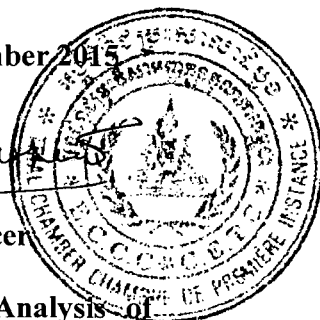
ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ
Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

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

TRIAL CHAMBER

TO: All Parties, Case 002 **Date:** 17 November 2015

FROM: NIL Nonn, President of the Trial Chamber 

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

SUBJECT: Decision on KHIEU Samphan Request for a Forensic Analysis of Document E3/2107

1. The Trial Chamber is seised of a request filed by the KHIEU Samphan Defence on 19 May 2015 (“Request”) for a forensic handwriting analysis of document E3/2107 (E349, paras 3-4, 28). No party responded to the Request.
2. The KHIEU Samphan Defence challenges the authenticity of document E3/2107, which purports to be an undated report sent by Ta An to the Tram Kak District Committee referring to the number of individuals executed at Kraing Ta Chan Security Centre (“the Document”)(E349, para. 2). The Defence submits that the Document, which was obtained by the Co-Prosecutors from DC-Cam, is of particular importance to Case 002/02 given that reliance is placed upon it in the Closing Order in several instances (E349, paras 5-7). The Defence contends that the Document is a forgery and, as evidence thereof, points to: the presence of the handwritten note on a separate sheet; apparent differences in the handwriting on the document; the failure of witnesses PECH Chim and SREY Than to identify Ta An as the signer of the note; inconsistencies within the document; and the existence of forgery and falsification of records during the Democratic Kampuchea generally (E349, paras 7-11). Finally, it submits that other documents and testimony contradict the figure of 15,000 executions in Kraing Ta Chan Security Centre referred to in the Document (E349, paras 12-27).
3. As a preliminary matter, the Chamber notes that the Request is untimely. The Document was part of the Introductory Submission filed on 11 April 2007 (IS 18.4) and the English and French translations were filed in March 2009 and March 2011, respectively. The Co-Investigating Judges made reference to the Document in the Case

002 Closing Order (D427, FNs 2173, 2221). Furthermore, it was proposed by the Co-Prosecutors in their initial lists of documents in April 2011 (E9/31.8, p.3) – to which the KHIEU Samphan Defence had an opportunity to respond – before it was admitted by the Chamber in December 2012 (E185/1.3, p. 27). The KHIEU Samphan Defence therefore did not avail itself of numerous opportunities to raise this issue with the Office of Co-Investigating Judges, the Pre-Trial Chamber and the Trial Chamber, instead waiting until the Chamber had nearly completed the examination of evidence relevant to Kraing Ta Chan. Such last minute filings may cause delay to the proceedings and affect the right to a fair and expeditious trial (ECCC Law, Article 33 new). Nonetheless, the Chamber considers it to be in the interests of justice to assess the substance of the Request.

4. Pursuant to Internal Rule 93, the Trial Chamber may, at any time, order additional investigations, including expert opinions, when it considers that a new investigation is necessary. In addition, Internal Rule 31 provides that the Chamber may seek expert opinion on “any subject deemed necessary to their investigations or proceedings before the ECCC”. The role of experts is to enlighten the Chamber on specific issues of a technical nature, requiring special knowledge in a specific field (E215, para. 16). The Chamber will, therefore, request an expert opinion within the meaning of Internal Rules 31 and 93 only when the expertise is crucial to assist the Chamber in reaching a determination of the issues before it.

5. The Chamber notes that the only version of the Document that is currently available is a photocopy from DC-Cam since the original has not been located (E3/188, pp. 4-5). At a minimum, this prevents any genuine handwriting comparisons and creates serious obstacles to a proper forensic examination which, in such circumstances, could only be considered unsuitable to prove the facts it purports to prove (IR 87(3)(c)).

6. In any case, the Chamber is not satisfied that it is necessary to order a forensic handwriting analysis of the Document. Assessing whether the note is written by a different author from other parts of the document, and/or whether the note itself is written by two separate authors, does not require, in this circumstance, the assistance of an expert. Indeed, two witnesses with relevant, contemporaneous knowledge, PECH Chim and SREI Than, provided testimony on this issue (T., 24 April 2015, pp. 10-11; T., 24 February 2015, pp. 41-42). It is also noteworthy that the English translation of the Document contains the following language: “*Separate page, scribbled note not in the handwriting of the rest of the document*” (E3/2107, ERN 00290205). Accordingly, the Chamber will be in a position to make its own determination regarding the authenticity of the document without the assistance of an expert.

7. The KHIEU Samphan Defence also raises arguments which go to the weight and probative value of the Document, in particular with respect to the accuracy of the figure of 15,000 executions in Kraing Ta Chan Security Centre and inconsistencies with respect to the testimony of witness KEO Chandara and Civil Party SAY Sen. These are matters for consideration by the Trial Chamber during its deliberations on the facts of the case, including allegations of executions at the Kraing Ta Chan Security, and do not militate in favour of the proposed forensic handwriting analysis.

8. In light of the above, the Trial Chamber finds that the KHIEU Samphan Defence has not demonstrated that it is necessary to order a forensic handwriting analysis of the Document (E3/2107) pursuant to Internal Rule 93 and denies the Request.

7. This constitutes the Chamber's official response to E349.