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ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

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

Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

MEMORANDUM – TRIAL CHAMBER

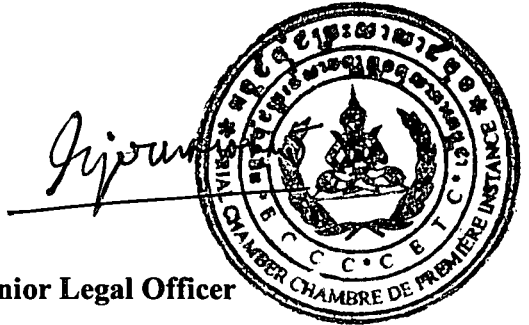
Date: 2 November 2011

TO: All parties, Case 002 សាធារណៈ / Public

FROM: Judge NIL Nonn, President, Trial Chamber

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

SUBJECT: Trial Chamber Response to NUON Chea’s Request to Temporarily Stay the Proceedings in Case 002 (E131/2)



Reference is made to the NUON Chea Defence request for a temporary stay of the proceedings in Case 002 on grounds that the investigations completed by the Co-Investigating Judges in this case were allegedly unfair (E131/2). The Trial Chamber has recently ruled on this issue in its Decision on NUON Chea Motions Regarding Fairness of Judicial Investigation (E116). This decision is currently the subject of immediate appeal to the Supreme Court Chamber. In its prior request (E51/3), the NUON Chea Defence raised similar factual issues and requested the same relief as it now seeks. These and similar issues have also previously been considered before other ECCC Chambers (*see e.g.*, D171/5, D171/4/5, E93/4, E93/9, E116/1/1).

The NUON Chea Defence now seeks a temporary stay of the proceedings until (1) its appeal of E116 and a criminal complaint in the Phnom Penh Municipal Court have been decided upon and (2) “an independent assessment of the Tribunal’s ability to deliver justice” has been completed. Internal Rule 104 clearly states that an immediate appeal does not stay the proceedings before the Trial Chamber. Nor does the ECCC legal framework envisage stays of proceedings pending decisions of ordinary Cambodian courts. The NUON Chea Defence does not specify what “independent assessment” of the Trial Chamber it seeks, and by whom.

The Trial Chamber accordingly considers there to be no basis to grant a temporary stay of proceedings in Case 002. The request in Motion E131/2 is therefore denied.

This constitutes the Trial Chamber’s official response to Motion E131/2.