

ក្រុមបេធាវីការពារក្តី អៀង សារី
IENG SARY DEFENCE TEAM
EQUIPE DE DEFENSE DE IENG SARY

ANG Udom and Michael G. KARNAVAS

Co-Lawyers for IENG Sary

11 December 2011

To: **Susan Lamb**
Trial Chamber Senior Legal Officer

Cc: **All Defence Teams**
Office of the Co-Prosecutors
All Civil Parties
Office of Administration
ITU
CMS
DSS

សាធារណៈ / Public

Re: **Transcripts of Witness Interviews**

ឯកសារដើម
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/Date de reception): 16 / 12 / 2011
ម៉ោង (Time/Heure): 10:20
មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé du dossier: UCh. ARUN

Dear Ms. Lamb,

We request that the Trial Chamber direct CMS to provide full transcripts for each OCIJ interview conducted with the witnesses scheduled to testify in Case 002. We further request that the Trial Chamber direct ITU to translate these transcripts into English and Khmer. Finally, we request that the parties be advised whether transcripts may be relied upon at trial pending their translation into all three working languages of the ECCC.

We make this request because we are concerned that actual transcripts of OCIJ witness interviews are not available on the Case File for all witnesses who will be testifying. We are furthermore concerned that where transcripts *are* available, they are available *only* in Khmer and the Defence has been unable to secure English translations. The problem with relying on witness summaries rather than full transcripts has been pointed out multiple occasions by the parties. For example:

- On 22 July 2011, the IENG Thirith Defence “selected a sample of the OCIJ Written Records which are on the case file and compared them with the original audio-recordings of interviews to see whether the Written Records contain a fair representation of the content of the interviews. This comparison reveals that the OCIJ Written Records are generally inaccurate, tend to exclude exculpatory evidence, and frequently fail to identify the original source of pieces of information.”¹

¹ IENG Thirith Defence Response to ‘Co-Prosecutors’ Rule 92 Submission Regarding the Admission of Written Witness Statements Before the Trial Chamber’, 22 July 2011, E96/2.



- On 6 October 2011, the International Co-Prosecutor pointed out that he had noticed that witness statements of Case 002 witnesses in Cases 003 and 004 had a number of inconsistencies and omissions when compared to the audio recordings of the witness interviews. He stated that he has “noted a number of inconsistencies or omissions when comparing the written statements in Cases 003 and 004 to the audio recordings of those interviews....”²
- On 17 November 2011, the NUON Chea Defence requested investigation to the audio and written records of OCIJ witness interviews.³ It stated: “[a] recent review by the Defence of a sample of written and audio witness records conducted by the Office of the Co-Investigating Judges (the ‘OCIJ’) in Case 002 has revealed material inconsistencies between the written and audio records of key interviews.”⁴

We have made inquiries into obtaining transcripts of the OCIJ interviews of each of the Civil Parties and witnesses identified by the Trial Chamber for the initial trial segment.⁵ We have been informed that ITU will not translate most of the existing Khmer transcripts for us and CMS has informed us that we cannot obtain transcription of the audio recordings for which transcripts are not yet available unless we indicate only specific portions of the audio for which we require translation. This situation is unacceptable. We cannot rely on the OCIJ’s witness summaries due to the many inaccuracies noted above. Our Cambodian Co-Lawyer and Case Manager are not translators. They are very busy and it is not possible for them to transcribe audio recordings or translate Khmer transcripts so that the entire team can work with them.

Concerning reliance at trial on transcripts which have not been translated, we note that in court on 7 December 2011, a transcript of an OCIJ witness interview was relied upon by the Civil Party lawyers, even though this transcript has not been made available to the parties in all three working languages of the ECCC.⁶ The Trial Chamber has previously stated that “[w]hen documents are introduced at trial, these should ordinarily be available in all three ECCC official languages. The party seeking to introduce a document bears the responsibility of ensuring the timely availability of this document in all ECCC official languages.... Failure to ensure the timely translation of documents will limit the moving parties’ ability to utilize these documents at trial.”⁷ It is unclear whether the Civil Party lawyers attempted to have this transcript translated prior to relying on it at trial.

² International Co-Prosecutor’s Disclosure to Trial Chamber Regarding Interviews of Case 002 Witnesses in Cases 003 and 004 with Strictly Confidential Annex A, 6 October 2011, E127.

³ Request for Rule 35 Investigation Regarding Inconsistencies in the Audio and Written Records of OCIJ Witness Interviews, 17 November 2011, E142.

⁴ *Id.*, para. 1.

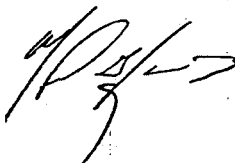
⁵ Please see attached summary of steps taken by the Defence concerning this matter.

⁶ A Civil Party lawyer questioned Civil Party TCCP-123 and referred to Document **D208/3.2**.

⁷ Memorandum: Witness Lists for Early Trial Segments, Deadline for Filing of Admissibility Challenges to Documents and Exhibits, and Response to Motion E109/5, E131/1, 25 October 2011, p. 3.

We would be most grateful for the Trial Chamber to consider and accept these requests as soon as possible, in order to provide CMS and ITU sufficient time to complete these tasks before the relevant witnesses are scheduled to appear.

Respectfully submitted,



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