

E204/2



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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
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TRIAL CHAMBER

សាធារណៈ / Public

Date: 20 July 2012

TO: All parties, Case 002

FROM: NIL Nonn, President, Trial Chamber

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

SUBJECT: Response to NUON Chea's request for disclosure of Forwarding Order in Case 003 (E204)



1. The Trial Chamber is seised of a request from the NUON Chea Defence to order the Co-Prosecutors to disclose a "Forwarding Order in Case 003" and to place this document on Case File 002/19-09-2007/ECCC/TC. The NUON Chea Defence also repeats its request to the Trial Chamber to schedule the testimony of various individuals in Case 002. The Co-Prosecutors responded to the motion on 11 June 2012 (E204/1).
2. The Trial Chamber is not currently seised of any case other than Case 002, and therefore does not have access to confidential documents pertaining to any pending judicial investigation. Only the Co-Investigating Judges have the legal authority to reclassify confidential Case 003 investigative materials, or to grant access to such materials to those who are not parties to the investigation (*see* Internal Rule 56(2) and Practice Direction on Classification and Management of Case-Related Information). The Chamber therefore has no jurisdiction to grant the request.
3. In any event, the NUON Chea Defence does not specify the basis on which its application is made, but merely invokes NUON Chea's right to a fair trial and the general "spirit of fairness and equality of arms" (E204). Although the Co-Prosecutors may be in the unique position of being parties both to the proceedings in Case 002 and to the judicial investigation in Case 003 (and consequently, of having access to confidential documents that are not available to the other parties in Case 002, or indeed the Chamber), the Chamber does not consider this to violate the principle of equality of arms. This situation arises from the structure of the ECCC and occurs commonly with national prosecuting authorities in both civil and common law jurisdictions. Further, the Co-Prosecutors in their response indicate that they are mindful of their obligation to disclose any material in their possession that may suggest the innocence or mitigate the guilt of any Accused in Case 002, but rightly note that the NUON Chea Request neither alleges nor seeks to demonstrate that the

material sought is in any way relevant to the case against the Accused NUON Chea. The Request instead appears to be a furtherance of the NUON Chea Defence strategy of raising issues of no relevance to Case 002/01 upon which the Chamber has already commented (E214/1, p. 10).

4. In response to the request to schedule the testimony of various witnesses, the Chamber notes that the NUON Chea Defence has asked the Chamber to hear more than 500 witnesses in Case 002 (E9/4/4.4). The Chamber reiterates that, in order to ensure a fair and expeditious trial, not all of these witnesses can be heard. The Chamber has already identified the witnesses it deems most relevant to the subject-matter of Case 002/01 (E131/1.1), and has clarified that decisions on other witnesses sought by the parties will be issued in due course (*see e.g.* E131/1.1, E172).

5. This constitutes the Chamber's official response to motion E204.