

BEFORE THE TRIAL CHAMBER**EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA****FILING DETAILS****Case No:** 002/19-09-2007-ECCC/TC**Party Filing:** The Defence for IENG Sary**Filed to:** The Trial Chamber**Original language:** ENGLISH**Date of document:** 23 August 2012**CLASSIFICATION****Classification of the document
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**IENG SARY'S REQUEST TO HEAR EVIDENCE FROM THE INTERPRETER
CONCERNING WITNESS PHY PHUON'S SECOND OCIJ INTERVIEW WHEREBY
IRREGULARITIES OCCURRED AMOUNTING TO SUBTERFUGE**

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All Defence Teams**All Civil Parties**

Mr. IENG Sary, through his Co-Lawyers (“the Defence”), pursuant to Rules 93 and 21 of the ECCC Internal Rules (“Rules”), hereby requests the Trial Chamber to call the interpreter who was present at the second OCIJ interview of Witness Ton Rochoem (“Phy Phuon”) to give evidence at a public, oral hearing concerning the circumstances of this interview. This Request is made necessary because of definitive irregularities regarding Phy Phuon’s second interview that were raised orally by the Defence before the Trial Chamber.¹ Based on informal discussions with the interpreter, the Defence has serious concerns about the integrity of the investigation and Mr. IENG Sary’s fair trial rights.² The recording of the second interview appears to have been an act of subterfuge: a staged interview where questions and answers were prepared based on a prior unrecorded interview and then read into a recording device, creating the illusion that the recording reflects the actual interview. The Trial Chamber invited the Defence to make a written request to call the interpreter to give evidence,³ recognizing that the circumstances of Phy Phuon’s second interview presented a “very critical issue.”⁴ Accordingly, the Defence submits this Request to have the interpreter testify under oath regarding the way in which Phy Phuon’s second interview was conducted.

I. BACKGROUND

1. On 24 November 2011, in the course of doing its due diligence, and while preparing for trial, the Defence requested that the Interpretation and Translation Unit (“ITU”) transcribe the audio recording of both of Phy Phuon’s interviews with OCIJ investigators. On 20 July 2012, the Defence again requested that the ITU transcribe the audio recording of Phy Phuon’s second OCIJ interview. The transcription was received on 25 July 2012.
2. On 25 July 2012, prior to Phy Phuon taking the stand in the afternoon and outside of his presence, the Defence raised to the Trial Chamber concerns about the interview that OCIJ investigators conducted with Phy Phuon on 21 September 2008. The Defence indicated to the Trial Chamber that, as a matter of due diligence, the Khmer-speaking members of the team had reviewed the audio recording of Phy Phuon’s

¹ Transcript, 25 July 2012, E1/96.1, p. 61-64.

² While the Defence recognizes that pursuant to Rule 76(7), the Closing Order purportedly cures procedural defects, in this instance, the irregular and inappropriate method by which Phy Phuon’s second statement was taken seems beyond cavil and, as argued herein, calls into question the weight to be given to his testimony.

³ Transcript, 1 August 2012, E1/100.1, p. 86.

⁴ *Id.*

OCIJ interview during the preparation for the examination of this witness.⁵ It appeared to the Khmer-speaking members of the team that Phy Phuon was reading answers from a document;⁶ that the interview “wasn’t a conversation; it was a question being read and answer being read back.”⁷ Based on this review of the audio recording, the Defence requested that the recording be transcribed into English.⁸ The Defence noted that the audio recording was “only a tape of 10 to 12 minutes” and the transcription was only “four pages.”⁹ The content of the four-page transcription was almost identical to the written record of interview (E3/63). The Defence raised questions as to what occurred during the portion of the interview that was not recorded, and whether Phy Phuon was provided answers which he then read out in response to questions he was asked.¹⁰

3. Upon hearing the Defence’s observations, President Nil Nonn questioned Phy Phuon about his OCIJ interview:

During the [OCIJ] interviews, if you can recollect, how were you asked questions? For example, were questions posed to you and you responded, or were you fed with some answers where you could read from a written paper?¹¹

Phy Phuon responded that he “told them what [he] witnessed – saw – from the very beginning, starting from 1967 onwards.”¹²

4. President Nil Nonn then questioned:

When, during the course of the questioning, were questions being posed to you, then you responded to the questions, then another question was put and then another response was made. Was it the procedure during such interview?¹³

⁵ Transcript, 25 July 2012, E1/96.1, p. 61-62.

⁶ *Id.*, p. 62.

⁷ *Id.*

⁸ The Defence received the English transcription just prior to the start of the afternoon trial session and raised the issue with the Trial Chamber immediately after commencement of the proceedings. Transcript, 25 July 2012, E1/96.1, p. 63.

⁹ Transcript, 25 July 2012, E1/96.1, p. 62.

¹⁰ *Id.*

¹¹ *Id.*, p. 70-71.

¹² *Id.*, p. 71.

¹³ *Id.*

Phy Phuon responded: “Questions were raised, responses were made. The investigators put some questions to me, and I responded to the questions I was asked.”¹⁴

5. Phy Phuon further stated: “After question and answer sessions ... I was read out the documents. After the document was read out and I agreed, then I gave my thumbprint on the papers.”¹⁵ He stated that both interviews were recorded, although he was not played a tape of the recordings.¹⁶ Phy Phuon told the Trial Chamber that he believed the written records of witness interview accurately reflected what he told the OCIJ investigators.¹⁷

6. On 1 August 2012, the Defence questioned Phy Phuon about the circumstances surrounding his OCIJ interview. Observing that it appeared from the English written record of interview that the interview began at 9:00 in the morning and ended at 11:00 in the evening,¹⁸ although the audio recording of the interview was only 14 minutes, the Defence asked Phy Phuon how long the interview lasted.¹⁹ Phy Phuon replied that “the interview was conducted in the morning and it also continued in the afternoon.”²⁰ When asked to describe what happened during the entire interview, Phy Phuon replied: “[t]hey posed questions to me, and I responded and probably they also had the audio recording at the time.”²¹ Phy Phuon indicated that “before the start of the audio recording, I was asked some questions,” but he could not recall the questions he was asked.²² He could not recall “the detailed event” of the interview.²³ Phy Phuon later stated, however, that the questions “started at 9 a.m. to 11 a.m., so it was two hours, and I acknowledge this. At that time, questions were posed to me and read out and that the recording was kept.”²⁴

¹⁴ Transcript, 25 July 2012, E1/96.1, p. 71.

¹⁵ *Id.*

¹⁶ *Id.*, p. 72.

¹⁷ Transcript, 25 July 2012, E1/96.1, p. 70.

¹⁸ Transcript, 1 August 2012, E1/100.1, p. 3.

¹⁹ *Id.* The Khmer version of E3/63 does not specify whether the interview ended at 11:00am or 11:00pm. The exact length of the audio recording of the interview is 13 minutes, 18 seconds.

²⁰ *Id.*, p. 4.

²¹ *Id.*, p. 4-5.

²² *Id.*, p. 7.

²³ *Id.*

²⁴ *Id.*, p. 13-14.

7. Phy Phuon asked to hear the audio recording of his OCIJ interview because he did not know what was on it and could not provide details about the interview.²⁵ The Defence also requested to play the audio recording so that Phy Phuon could hear it.²⁶ The Defence observed that, upon listening to the audio recording, it appeared to the Khmer-speaking members of the Defence that the interview was “written as opposed to spoken, because some of the language used comes out that way, and ... when we ... compared [the transcription] to the actual summary, miraculously the summary dovetails [with] the transcription.”²⁷ The Trial Chamber declined the Defence’s request to play the recording because the tone of the recording and the manner in which the questions were asked would only be apparent to the Khmer Judges of the Bench.²⁸ The Defence requested that the interpreter who assisted in the OCIJ interview be called to testify to clarify the circumstances of the interview.²⁹ The Trial Chamber, agreeing that the issue was “very critical,”³⁰ requested that the Request be put in writing.³¹
8. On 1 August 2012, the Defence spoke to the interpreter who was present during the OCIJ interview of Phy Phuon. The interpreter indicated that the OCIJ investigators did conduct a lengthy interview with Phy Phuon that was not recorded. Written questions and answers were then prepared by the OCIJ investigators based on this unrecorded interview, and those questions and answers were read into a recording device. The interpreter stated that he read out the questions and Phy Phuon read out the answers. A written record of interview was then prepared based on these recorded questions and answers.

II. LAW

9. Article 31 of the Cambodian Constitution (“Constitution”) provides that “[t]he Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human [R]ights, the covenants and conventions related to human rights, women’s and children’s rights.”

²⁵ Transcript, 1 August 2012, E1/100.1, p. 8.

²⁶ *Id.*, p. 9.

²⁷ *Id.*, p. 9-10.

²⁸ Transcript, 1 August 2012, E1/100.1, p. 11-13.

²⁹ *Id.*, p. 83-84.

³⁰ *Id.*, p. 86.

³¹ *Id.*

10. Article 128 new of the Constitution provides that the Judiciary “shall guarantee and uphold impartiality and protect the rights and freedoms of the citizens.”
11. Article 14 of the 1966 International Covenant on Civil and Political Rights (“ICCPR”) (which has been incorporated into the Constitution, the Agreement³² and the Establishment Law³³) sets out internationally recognized fair trial rights guaranteed to an Accused in a criminal proceeding. Article 14(1) provides: “[i]n the determination of any criminal charge against him ... everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.” Article 14(3) ensures that:

In the determination of any criminal charge against him, *everyone shall be entitled to the following minimum guarantees, in full equality:*
... (e) To examine, or have examined, the witnesses against him *and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him...*³⁴

12. Article 35 new of the Establishment Law, which incorporates Article 14 of the ICCPR, provides:

In determining the charges against the accused, *the accused shall be equally entitled to the following minimum guarantees ...*

e. to examine the evidence against them and *obtain the presentation and examination of evidence on their behalf under the same conditions as evidence against them;*³⁵

13. Rule 93(1), which reproduces Article 339 of the Cambodian Criminal Procedure Code (“CPC”),³⁶ provides, in relevant part: “[w]here the Chamber considers that a new investigation is necessary it may, at any time, order additional investigations.” Rule 93(2)(b) provides that this investigation may include the interviewing of witnesses.

³² Agreement, Art. 12(2), provides that the Extraordinary Chambers “shall exercise their jurisdiction in accordance with international standards of justice, fairness and due process of law, as set out in Articles 14 and 15 of the 1966 [ICCPR], to which Cambodia is a party.”

³³ Establishment Law, Art. 33 new, provides: “The Extraordinary Chambers of the trial court *shall* ensure that trials are fair and ... conducted in accordance with existing procedures in force, with full respect for the rights of the accused ... [and] *shall* exercise their jurisdiction in accordance with international standards of justice, fairness and due process of law, as set out in Articles 14 and 15 of the [ICCPR].” (Emphasis added).

³⁴ Emphasis added.

³⁵ Emphasis added.

³⁶ CPC, Art. 339, provides: “If it believes that a new research is needed, the court can issue an order through the judgment for additional investigations.... Under the same conditions of the investigating judge, this [assigned] judge may ... interview witnesses.”

14. Rule 21(1) provides that the applicable ECCC Law and Rule 93 “*shall* be interpreted so as to *always* safeguard the interests of ... [the] Accused ... and so as to ensure legal certainty and transparency of proceedings, in light of the inherent specificity of the ECCC, as set out in the ECCC Law and the Agreement.”³⁷ In this respect, Rule 21(1)(a) provides that “ECCC proceedings shall be fair and adversarial and preserve a balance between the rights of the parties.”

III. ARGUMENT

15. In the interest of a fair and transparent trial process, the Trial Chamber should exercise its investigative authority and summon the interpreter to present evidence relating to Phy Phuon’s second OCIJ interview. The information provided to the Defence suggests that OCIJ investigators have deliberately created the impression that a summarized written record of interview represents an accurate reflection of a witness’s interview with OCIJ investigators.³⁸ This amounts to subterfuge. Based on the Defence’s informal conversation with the interpreter, it appears that the audio recording of the interview was staged: a prior unrecorded interview occurred, the OCIJ investigators prepared questions and answers based on the unrecorded interview, and those questions and answers were then read into a recording device. This conflicts with Phy Phuon’s recollection of these events before the Trial Chamber. Neither Phy Phuon’s testimony before the Trial Chamber, the written record of interview, or the audio recording provide an accurate account of Phy Phuon’s second interview with OCIJ investigators. The written record of interview does not indicate that Phy Phuon was asked questions prior to the start of the audio recording nor does the audio recording match the length of the interview. Pursuant to Rule 93, the Trial Chamber has the authority to conduct further investigations when necessary, including interviewing witnesses.³⁹ Here, just such a necessity has presented itself.

16. The circumstances leading to this Request make clear the need for accurate accounts of witnesses’ interviews with OCIJ investigators and complete audio recordings of those interviews. Phy Phuon is an important witness in Case 002/01, as demonstrated

³⁷ Emphasis added.

³⁸ See Written Record of Witness Interview, 21 September 2008, E3/63.

³⁹ Rule 93 parallels Article 339 of the Criminal Procedure Code.

by the fact that he testified for five days on topics ranging from the evacuation of Phnom Penh to the structure and role of the Ministry of Foreign Affairs (“MFA”).⁴⁰ Upon examination by the Defence, Phy Phuon was unable to recall the questions he was asked during his 2008 OCIJ interview.⁴¹ He gave conflicting answers regarding the length of this interview,⁴² as he has done with regard to other important events, such as his role at the MFA.⁴³ There are also material contradictions between Phy Phuon’s first and second OCIJ interviews. In Phy Phuon’s first interview, he stated that Mr. IENG Sary never had any meetings with staff to discuss disappearances from the MFA. Phy Phuon also stated that he himself was unaware of the disappearances of MFA personnel.⁴⁴ He did not state that Mr. IENG Sary possessed or read confessions. In Phy Phuon’s second interview, however, he stated that he was aware of arrests from the MFA and that Mr. IENG Sary told him about receiving confessions.⁴⁵ Since the actual interview (as distinct from the reading of pre-prepared questions and answers) was apparently not recorded, it is unknown why these contradictions exist or if they were explored by the investigators. For example, without taking evidence from the interpreter, we do not know if Phy Phuon was influenced or otherwise induced into contradicting the statements he made previously under oath (or any of the other statements he made during the second OCIJ interview).

⁴⁰ See Transcript, 25 July 2012, E1/96.1; Transcript, 26 July 2012, E1/97.1; Transcript, 30 July 2012, E1/98.1; Transcript, 31 July 2012, E1/99.1; Transcript, 1 August 2012, E1/100.1; Transcript, 2 August 2012, E1/101.1.

⁴¹ Transcript, 1 August 2012, E1/100.1, p. 7.

⁴² *Id.*, p. 4, 13. See also *supra*, Background, para. 6.

⁴³ See Transcript, 31 July 2012, E1/99.1, p. 90-93 (emphasis added):

[PHY PHUON]: ... *I did not work in security section.* ... [PHY PHUON]: *With regard to security section, I already stated that I did not engage in security matters, I was engaged in administration.* ... Q [MR. KARNAVAS]: And So Hong never tasked you or supervised you on security; is that your testimony under oath? A [PHY PHUON]: *No, he has not assigned me on any security task.* Q [MR. KARNAVAS]: Okay. And that is never, never ever assigned you to any security tasks? I just want to be very, very clear that that is your position. A [PHY PHUON]: *No, never.*

C.f. Transcript, 1 August 2012, E1/100.1, p. 53 (emphasis added):

Q [MR. KARNAVAS]: Sir, here you have your superior, So Hong, saying that you are responsible, among other things, for security. Do you still maintain that you had nothing to do with security while you were at the Ministry of Foreign Affairs? A [PHY PHUON]: I wish to reiterate that in the ministry, first person was Om Ieng Sary; second in command, Bong So Hong; third, I was in the position. *So, with regard to security, the three of us would be in charge.* ... *I was in charge of administration, who at the same time dealt with security matters.*

⁴⁴ Written Record of Witness Interview, 5 December 2007, E3/24, p. 8-9.

⁴⁵ Written Record of Witness Interview, 21 September 2008, E3/63, p. 4.

17. Without further investigation by the Trial Chamber, the Defence will be deprived of the opportunity to test this evidence by examining the means by which Phy Phuon's second statement was made, as it has the right to do under the Constitution,⁴⁶ ECCC laws and procedure⁴⁷ and the ICCPR.⁴⁸ The Defence cannot adduce other evidence to correct the prejudice that arises from irregularities in Phy Phuon's second OCIJ interview.⁴⁹ If defects in the investigative process had already been cured by the Closing Order, President Nil Nonn presumably would not have found that this is a "very critical issue."⁵⁰ A lack of investigation into this matter would render the judicial process a charade where irregularities and intentional or unintentional conduct are buried and overlooked (or deliberately not dealt with) while at the same time a truth-seeking process is purportedly advanced. The interpreter's testimony is necessary because it will determine the amount of weight, if any, that may be given to the statements made in Phy Phuon's second interview. It will additionally assist the Trial Chamber in evaluating Phy Phuon's credibility and the weight that may be given to his in-court testimony. The Defence does not request an "open-ended" investigation involving anonymous individuals. The Request is limited to a specific, discrete issue requiring testimony from an identifiable person who was present during the interview in question. Further, as the Request is narrowly tailored to the circumstances of Phy Phuon's second interview, the interpreter's testimony will not unnecessarily prolong the proceedings.

18. This is not the first instance where irregularities have occurred in the taking of witness statements. The Defence has previously raised concerns about material differences between some OCIJ witness statements and the audio recordings.⁵¹ In some cases,

⁴⁶ Constitution, Art. 31, provides: "the Kingdom of Cambodia shall recognize and respect human rights as stipulated in ... the covenants and conventions related to human rights [which would include the ICCPR]."

⁴⁷ Establishment Law, Arts. 33 new, 35 new; Agreement, Art. 12(2); Rule 21(1)(a), which requires "fair and adversarial proceedings [that] preserve a balance between the rights of the parties."

⁴⁸ ICCPR, Art. 14(3).

⁴⁹ *C.f.* Decision on NUON Chea Motions Regarding Fairness of Judicial Investigation (E53/1, E82, E88 and E92), 9 September 2011, E116, para. 19: "The Chamber considers that it is a fair and public trial, in relation to which the Accused has the opportunity, amongst other things, to request that exculpatory witnesses be called before the Chamber, to adduce documentary or other evidence considered necessary to ascertain the truth, and to cross-examine witnesses and otherwise rebut the evidence and allegations against him, which constitutes a further corrective to any alleged defects in the judicial investigation to date."

⁵⁰ Transcript, 1 August 2012, E1/100.1, p. 86.

⁵¹ See Letter from IENG Sary Defence Team to Trial Chamber's Senior Legal Officer titled "Objections to Witness Statement", 9 July 2012, E96/7/1; Request for Rule 35 Investigation Regarding Inconsistencies in the Audio and Written Records of OCIJ Witness Interviews, 17 November 2011, E142.

there are witness statements but no audio recordings.⁵² In other cases, it is clear from the audio recording that there was a prior unrecorded interview with the witness.⁵³ For example, in June, Mr. Oeun Tan testified that he was questioned by OCIJ investigators and that this interview was recorded.⁵⁴ He then indicated that, a day prior to his interview, investigators questioned him for the entire day without recording their questions or his answers.⁵⁵ The OCIJ witness interview did not mention this prior interview. The OCP acknowledged the existence of doubt as to “what was placed on the record and what interviews took place.”⁵⁶ International Co-Prosecutor Andrew Cayley has raised similar concerns regarding “a number of inconsistencies or omissions” in the OCIJ witness statements and audio recordings for Cases 003 and 004.⁵⁷ The international investigator who conducted Phy Phoun’s second OCIJ interview was singled out in a filing by the NUON Chea Defence as having **a.** conducted several OCIJ witness interviews off the record, **b.** spliced together multiple interviews into a single witness statement, and **c.** included statements in written records of interview which are not heard in the audio recordings of those interviews.⁵⁸

19. The possibility that the questions and answers in Phy Phoun’s second interview were based on a prior unrecorded interview raises serious concerns about the reliability of the written record of his interview and, indeed, *all* written records of interview. The OCP has requested that the Trial Chamber rely exclusively on approximately 1400 witness statements rather than taking *viva voce* testimony,⁵⁹ and the Trial Chamber has treated the OCIJ’s written records of interview as “faithful and accurate”

⁵² For example, D199/15, from which it appears that there are at least 12 witness statements that have no audio recordings available on the Case File.

⁵³ See D125/92R at 00:07:58-00:08:10.

⁵⁴ Transcript, 14 June 2012, E1/87.1, p. 47.

⁵⁵ *Id.*, p. 47-48.

⁵⁶ *Id.*, p. 53.

⁵⁷ 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, para. 14.

⁵⁸ See Request for Rule 35 Investigation Regarding Inconsistencies in the Audio and Written Records of OCIJ Witness Interviews, 17 November 2001, E142, paras. 5-7. This investigator is no longer employed by the ECCC.

⁵⁹ Co-Prosecutors’ Rule 92 Submission regarding the Admission of Witness Statements before the Trial Chamber, 15 June 2011, E96; Co-Prosecutors’ Request to Admit Witness Statements Relevant to Phase 1 of the Population Movement, 15 June 2012, E208; Co-Prosecutors’ Request to Admit Witness Statements Relevant to Phase 2 of the Population Movement and Other Evidentiary Issues with Confidential Annexes I, II, III and Public Annex IV, 5 July 2012, E208/2; Co-Prosecutors’ Further Request to Put Before the Chamber Written Statements and Transcripts with Confidential Annexes 1 to 16, 27 July 2012, E96/8.

reflections of the actual interviews.⁶⁰ The contradictions in Phy Phuon's testimony and written statements, in conjunction with the concerns already raised about the international investigator who conducted the OCIJ interview, render the need for further investigation by the Trial Chamber critical.

20. The Constitution,⁶¹ the Agreement,⁶² the Establishment Law,⁶³ the Rules,⁶⁴ and the ICCPR⁶⁵ require the Trial Chamber to ensure that Mr. IENG Sary receives a fair trial. Mr. IENG Sary cannot receive a fair trial unless he is allowed to properly examine the evidence against him. As recognized by President Nil Nonn, irregularities in the taking of Phy Phuon's second OCIJ interview present a "very critical issue":⁶⁶ they go to the heart of Mr. IENG Sary's ability to test and challenge Phy Phuon's credibility, the weight which should be accorded to his testimony and the Trial Chamber's ability to ascertain the truth. Given Phy Phuon's importance to this case, and the reliance that the Trial Chamber and OCP place on written records of interview, it is essential that the circumstances of Phy Phuon's OCIJ interview are clarified. As President Nil Nonn stated, the ECCC is an "Extraordinary Chambers";⁶⁷ as such, the standards and safeguards provided for in ECCC law and procedure must be viewed in the context of international standards.⁶⁸ President Nil Nonn also stated that the ECCC adheres to and principally relies upon the Rules.⁶⁹ These Rules explicitly provide a remedy: Rule 93. In accordance with this Rule, the Trial Chamber should exercise its

⁶⁰ See, e.g., Transcript, 15 December 2011, E1/23.1, p. 21-24, where Judge Lavergne questioned Mr. Long Norin about the written record of his interview with OCIJ investigators. The written record of interview summarized a 98-page transcript of the interview. Mr. Long Norin indicated that he recognized his signature and thumbprint on the record but did not recall having the written record read aloud to him by the investigators. Judge Lavergne asked Mr. Long Norin if the statements in the written record were a "faithful and accurate reflection of what he told the investigators." *Id.*, p. 23. Mr. Long Norin replied that he could not recall when he "made that statement with those people." *Id.* Judge Lavergne stated, "I did not ask if and when he remembered these statements, but I'm asking if these statements reflect what he said or could have said and told the investigators." *Id.* Mr. Long Norin replied, "[e]verything was written in this statements" but he could not "exactly recall when [he] gave the statement to the Office of the Co-Investigating Judges; I have lost a lot of memory." *Id.* Judge Lavergne thanked the witness and had no further questions for him. *Id.*, p. 24.

⁶¹ Constitution, Art. 31 and 128 new.

⁶² Agreement, Art. 12(2).

⁶³ Establishment Law, Art. 33 new and 35 new.

⁶⁴ Rule 21.

⁶⁵ ICCPR, Arts. 14(1), 14(3) (incorporated into ECCC law and procedure by Article 33 new of the Establishment Law and Article 12 of the Agreement).

⁶⁶ Transcript, 1 August 2012, E1/100.1, p. 8.

⁶⁷ *Id.*, p. 86.

⁶⁸ The ECCC has recognized this by incorporating international legal standards, specifically the ICCPR, into the Agreement, Establishment Law and the Rules. Article 14(3) of the ICCPR guarantees to an Accused the right to examine the evidence against him.

⁶⁹ Transcript, 1 August 2012, E1/100.1, p. 86.

authority to summon the interpreter to give evidence. While further investigation may raise uncomfortable questions about the integrity of the OCIJ's investigative process, decisive action by the Trial Chamber would demonstrate its commitment to ensuring fair and transparent proceedings for all parties. A failure to take immediate action on this matter – when there is an eyewitness to the interview who is readily available – would signal to the public, the parties and other ECCC entities that the ECCC is not a model Court but, rather, a Court that is content to forego both procedural and substantive fairness in favor of willful blindness.

WHEREFORE, for all the reasons stated herein, the Defence respectfully requests the Trial Chamber to call the interpreter of Phy Phuon's second OCIJ interview to give evidence at a public, oral hearing.

Respectfully submitted,

ANG Udom



Michael G. KARNAVAS

Co-Lawyers for Mr. IENG Sary

Signed in Phnom Penh, Kingdom of Cambodia on this 23rd day of **August, 2012**