

	ធនាគារជាតិ ORIGINAL DOCUMENT/DOCUMENT ORIGINAL ថ្ងៃទី ទាំង ទទួល (Date of receipt/date de réception): 29 11 2011 ពេល (Time/Horaire): 10:30 អនុប្រធានបណ្ឌិតសាមញ្ញក្នុងក្រសួងពេជ្យ /Case File Officer/L'agent chargé ឱ្យដោឡូយ..... SAVIN RANO Extraordinary Chambers in the Courts of Cambodia Chambres Extraordinaires au sein des Tribunaux Cambodgiens	E 118/4 ព្រះរាជាណាចក្រកម្ពុជា នា ទានី សាសនា ព្រះមហាក្សត្រ
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TRIAL CHAMBER

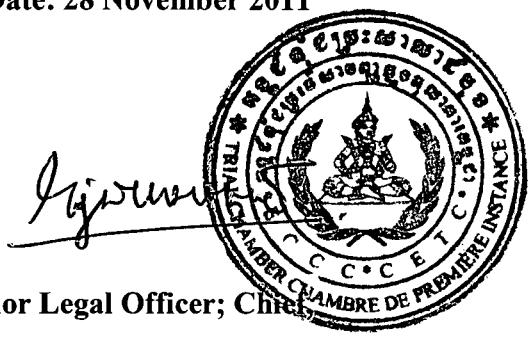
Date: 28 November 2011

TO: All parties, Case 002;

FROM: Judge NIL Nonn, Trial Chamber President

CC: All Trial Chamber Judges; Trial Chamber Senior Legal Officer; Chief Court Management Section

SUBJECT: Response to IENG Sary Defence Request for Access to Strictly Confidential Documents on the Case File (E118)



Reference is made to the IENG Sary Defence request for access to all strictly confidential documents on the Case File (E118). Although the IENG Sary Defence has access to the generic titles of these documents, it submits this is inadequate to protect the Accused's fair trial rights. The Co-Prosecutors submit that a request for all strictly confidential documents without distinction and irrespective of whether those documents may be introduced at trial is unreasonable, lacks specificity and is without legal foundation (E118/2). They nevertheless agree that the full titles, or when necessary redacted titles, of strictly confidential documents should be available to all parties. The IENG Thirth Defence submit that medical documents and reports should not be subject to general disclosure and are properly classified as strictly confidential (E118/1). The KHIEU Samphan Defence agree that medical documents should remain strictly confidential (E118/3).

The Trial Chamber has reviewed the contents of the strictly confidential partition of the case file in Case 002. Of the approximately 4,600 strictly confidential documents in Case 002, about 750 are medical records and reports. Of the remaining 3,850 strictly confidential documents, approximately 500 are assessments by the Witness/Expert Support Unit ("WESU") to determine whether protective measures are necessary, 1,700 are complaints and 1,400 are Civil Party applications and their attachments. Only a small number (approximately 30) of these documents have been identified by a party as relevant to Case 002/01 in their witness, document and exhibit lists filed in Case 002 to date, all but one of which are Civil Party applications or complaints.

In order to preserve the rights of all parties, the Trial Chamber provides the following directions:

Medical records

These documents will remain strictly confidential in the interests of protecting the privacy of the Accused to which they refer.

WESU risk assessments

In accordance with its practice to date, the Chamber will continue to receive applications and other material pertaining to protective measures on a strictly confidential basis. Assessments are carried out routinely by WESU and the vast majority of them to date have found no basis for the grant of protective measures (and in consequence, recommend none). These assessments are filed strictly confidentially on the request of the Civil Parties, as their disclosure on the confidential portion of the case file (and consequent distribution to almost 4000 other Civil Parties) may either unnecessarily disclose highly personal information or create a need for protective measures where otherwise none might exist. Where protective measures are recommended by WESU in relation to a witness or Civil Party who will be called at trial, this assessment will be disclosed to the Lead Co-Lawyers, Defence and Co-Prosecutors in a timely fashion.

Civil Party applications and complaints

The Trial Chamber notes that the vast majority of documents on the strictly confidential partition of the case file comprise Civil Party applications and complaints. The original justification for this classification was to restrict disclosure pending determination of requests for protective measures. There are currently very few pending issues relevant to protective measure before the Trial Chamber in Case 002. Following consultation with the parties, the Chamber agrees that there is no longer any justification for a blanket classification of Civil Party applications and complaints as strictly confidential. The Trial Chamber by this directive accordingly directs the Court Management Section to reclassify as confidential all Civil Party applications and complaints currently on the strictly confidential partition of the case file in Case 002.

Other documents

A small number of documents presently on the strictly confidential partition of the case file do not fall within any of the above categories. The Trial Chamber is currently reviewing these documents to determine whether they should retain their strictly confidential classification or instead be reclassified as confidential. The parties will be advised of the outcome of this review in due course.

Documents on the strictly confidential portion which have not to date been identified as relevant to Case 002/01

The Trial Chamber agrees that additional information should be provided to the parties via more descriptive titles of many documents that retain their strictly confidential classification following the above reclassification exercise. To facilitate this, the Chamber is currently reviewing the titles of documents in the strictly confidential partition of the case file and, where necessary and appropriate, will replace generic titles with more specific and/or redacted titles which provide an indication of their contents. The parties will

be notified once this process is concluded. The Trial Chamber recalls that parties seeking to later adduce additional documents must, pursuant to Internal Rule 87(3), satisfy the extremely high threshold of showing that these documents could not have been disclosed within the applicable deadlines with the exercise of due diligence, and that their late admission is vital in the interests of justice.

This constitutes the Trial Chamber's official response to motion E118