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ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/date de reception):
.....16/01/2015.....

ម៉ោង (Time/Heure) :15:30.....

...../Case File Officer/L'agent chargé
SANN RADA

E321/2/2

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

TRIAL CHAMBER

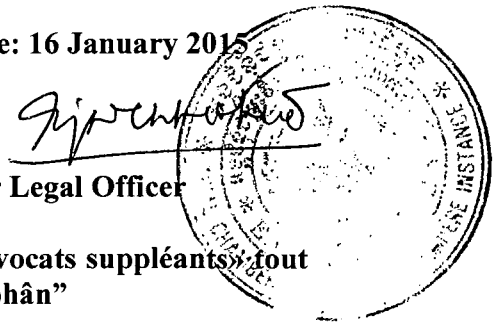
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TO: All Parties, Case 002 **Date: 16 January 2015**

FROM: NIL Nonn, President of the Trial Chamber

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

SUBJECT: Decision on “Demande urgente de retirer aux «avocats suppléants» tout accès aux rapports médicaux de M. KHIEU Samphan”



1. The Trial Chamber is seized of an urgent request by the KHIEU Samphan Defence to withdraw Court Appointed Standby Counsel’s access to KHIEU Samphan’s medical records (“Request” and “Standby Counsel”, respectively) (E321/2/1). The KHIEU Samphan Defence submits that Standby Counsel should not have access to these documents because they are strictly confidential, covered by medical confidentiality and the right to privacy (E321/2/1, paras 9-11). They further submit that Standby Counsel are not part of the proceedings and cannot take part until such time as they may be called to replace current Counsel (E321/2/1, paras 3, 11-12).
2. The Trial Chamber is also seized of KHIEU Samphan’s request for reconsideration of the Decision on the Appointment of Court Appointed Standby Counsel for KHIEU Samphan (E321/2, “Decision on Standby Counsel”). In essence, the Defence argues that the appointment of Standby Counsel is contrary to the principle of independence of defence counsel, interferes with the independence of current Counsel and, consequently, with KHIEU Samphan’s right to fair trial. (T. 8 January 2015, Draft Transcript, pp 4, 7-10).
3. The Trial Chamber recalls that the legal framework for ECCC does not provide for reconsideration of Trial Chamber decisions. The Chamber will therefore only consider an issue anew where a fresh application justified by new circumstances is made (see E314/5/3, para. 2). The Chamber finds that no new circumstances or arguments have been raised which have not already been considered by the Chamber. The request for reconsideration is therefore rejected.
4. In its Decision on Standby Counsel, this Chamber ruled that the “role of Standby Counsel shall be to prepare and maintain the capacity to take over the defence of KHIEU

Samphan at any time should the Chamber determine it necessary to replace current Counsel” and that Standby Counsel “will immediately familiarise themselves with the Case File and the pleadings” (E321/2, para. 19). This ruling necessarily implies that Standby Counsel must have access to all documents necessary to become familiar with the Case File, including strictly confidential documents.

5. Furthermore, the Chamber is authorised to provide Standby Counsel with access to strictly confidential documents pursuant to Article 2(d)(iii) of the Practice Direction on the Classification and Management of Case-Related Information (*ECCC/003/2009/Rev.2*). This provision defines as strictly confidential any document, case file or portion thereof, which is “open only to the Judges and such other persons, including court staff who require access in the discharge of their duties, expressly given access by the Court”. In line with this provision, the Chamber has granted Standby Counsel access to strictly confidential documents including the Accused’s medical reports, which are otherwise covered by medical confidentiality and the right to privacy, in the discharge of their duty to be ready to take over KHIEU Samphan’s defence should the Chamber deem that to be required. The Chamber further notes that Standby Counsel are court-appointed professionals who have sworn an oath before the Court of Appeal and are bound by confidentiality.

6. Accordingly, there is no basis to withdraw Standby Counsel’s access to KHIEU Samphan’s medical records and the Trial Chamber dismisses the Request.