



E330/1/11

**KINGDOM OF CAMBODIA**  
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**BAR ASSOCIATION OF THE KINGDOM OF CAMBODIA**

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du dossier: SAM ONN

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No: 1504/BAKC/15

Phnom Penh, 13 July 2015

President of the BAKC

Lawyer BUN Hun

Council of the BAKC

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- 24- Lawyer LONG Dara
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- 26- Lawyer SAR Sovan
- 27- Lawyer LIEN Chenda

**To: H.E. President of the Trial Chamber****Extraordinary Chamber in the Courts of Cambodia****Subject:** Review of Counsel KONG Sam Onn's Conduct in Proceedings of Case 002/02

**Ref:**

- Law on the Status of Lawyers of the Kingdom of Cambodia (1995)
- Code of Ethics for Lawyers for the Bar Association of the Kingdom of Cambodia ["Code of Ethics for Lawyers"]
- Order to Refer Conduct of Counsel for KHIEU Samphan to Appropriate Professional Bodies, by ECCC, dated 19 December 2014 (E330)
- Judge NIL Nonn's Letter dated 26 January 2015 to President of the Bar Association of the Kingdom of Cambodia (E330/1)
- Counsel KONG Sam Onn's Letter dated 20 October 2014
- Counsel KONG Sam Onn's Request for Intervention dated 04 November 2014
- Counsel KONG Sam Onn's Letter of Clarification dated 25 June 2015
- Decision of the Council of Bar Association during the Meeting of 26 June 2015

With reference to the abovementioned subject and references, I have the honour to inform you that after having received your letter dated 26 January 2015, the BAKC held a meeting to discuss and decide on the case of Counsel KONG Sam Onn as follows:

**a. Facts**

1. Mr KONG Sam Onn is a member of the Counsel for KHIEU Samphan in Case 002/01 and Case 002/02. Case 002/01 was concluded by the ECCC Trial Chamber, subject to appeal until 29 December 2014. Prior to the expiry of appeal period, the Trial Chamber scheduled evidentiary proceedings in Case 002/02 commencing from 17 October 2014.

2. Prior to 17 October 2014, Mr KHIEU Samphan and his defence, including Mr KONG Sam Onn, had requested the Trial Chamber to reconsider the scheduling of proceedings on the substance in Case 002/02.

3. On 17 October 2014, during a hearing on the substance in Case 002/02, Mr KONG Sam Onn and his international colleague indicated that they were unwilling to participate in the proceedings in Case 002/02 until they had filed their appeal brief in Case 002/01 and then abandoned the courtroom.

4. Mr KONG Sam Onn raised two reasons for the Counsel abandoning the courtroom on 17 October 2014:

- The Counsel had insufficient resources; and
- The Counsel was instructed by his client (Mr KHIEU Samphan) to devote all his endeavour, time and resources to filing an appeal against the Case 002/01 [Trial Judgement] and not to participate in the proceedings in Case 002/02 until after the expiry of appeal period.

5. The Trial Chamber endeavoured to accommodate the Accused and his defence team by extending the schedule of proceedings and reducing the number of hearing days in Case 002/02.

6. Hearings in Case 002/02 were rescheduled for 28 October 2014. Mr KONG Sam Onn was permitted by his client to participate in the proceedings in order to indicate unwillingness to participate in further proceedings until after the expiry of appeal period, which falls on 29 December 2014, to protect the interest of his client in Case 002/01.

#### **b. Law**

1. Article 1 of the Law on the Status of Lawyers states, “A professional lawyer is independent and free to serve the judicial sector.”

2. Paragraphs 2,3 and 4 of Article 37 of the Code of Ethics for Lawyers state:

“The lawyer shall strictly maintain the independence and the dignity of the legal profession before the court.

The lawyer shall abide by the procedural rules and regulations of the court. The lawyer shall not use any dishonest approaches and shall abide by the confrontational approach.

The lawyer has the rights to present any matters that he/she perceives may bring about benefits for his/her client.”

3. Article 38 of the Code of Ethics for Lawyers of 2012 states, “A lawyer shall demand and make efforts for true fair trial, law compliance and due process.”

4. Article 39 of the Code of Ethics for Lawyers of 2012 states, “A lawyer shall not cause any delay in any court proceeding through negligence or on unreasonable ground, which may affect the justice.”

#### **c. Findings**

1. A professional lawyer is independent and free to serve the judicial sector. This means that in the practice of his/her legal profession, a lawyer is independent in the performance of his

technical work in accordance with the code of conduct and regulations applicable to the provision of legal service for his/her client, without being subject to the pressure or interference from any individual or institution. To protect the interest of his/her client, the lawyer shall consult, accept and listen to his client's instructions. The lawyer is a judicial assistant to society, not to court. Although the lawyer performs his/her duties in the interest of his/her client, he cannot act against law or intends to delay proceedings on unspecified grounds.

2. In the case of Mr KONG Sam Onn, the BAKC finds that his failure to particulate in the proceedings of Case 002/02 followed his client's willingness to protect his interest without violating any applicable laws and regulations. Mr KONG Som Onn's refusal to attend the proceedings did not result from the intention to delay court proceedings that would jeopardise the interest of justice, but he had vivid reasons in accordance with Articles 37 and 39 of the Code of Ethics for Lawyers of 2012. His refusal to attend the proceedings of Case 002/02 was merely intended to allow the Counsel to afford sufficient time and use all the resources to prepare the appeal until after the expiry of appeal period against the Case 002/01 Trial Judgement, that is, by 29 December 2014. Mr KONG Sam Onn and his client (Mr KHIEU Samphan) already apprised the Trial Chamber of this specific stance.

3. The BAKC notes that after 29 December 2014, Mr KONG Sam Onn participated in all the proceedings of Case 002/02 as promised by him and Mr KHIEU Samphan and as requested by the Court.

#### **d. Decision**

The Council of BAKC, after having held thorough discussions during its meeting on 26 June 2015, finds that **Mr KONG Sam Onn's conduct** mentioned in E330 dated 19 December 2004 by the Trial Chamber **does not constitute a professional misconduct**.

May Excellency please be informed accordingly.

Please accept, Excellency, the assurances of my highest consideration.

Copied to:

- Council of the BAKC
- Lawyer KONG Som Onn
- Documentation – Archive

**President**  
[signed and seal of the BAKC]

**Lawyer BUN HUN**