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E408/5

**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**

សាធារណៈ / Public

**TO: All Parties, Case 002**  
**Mr. Michael G. KARNAVAS**  
**Mr. ANG Udom**

**Date: 4 August 2016**

**FROM: Judge YA Sokhan, for President of the Trial Chamber**



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

**SUBJECT: Outstanding issues relating to Expert Michael Vickery (2-TCE-94)**

1. The Trial Chamber recalls that Michael Vickery (2-TCE-94) was designated to appear as an expert in Case 002/02 on 27 May 2016 (E408). Following his designation, the Witness Expert Support Unit (“WESU”) contacted Mr. Vickery, who in June 2016 confirmed his availability to start testifying on 1 August 2016 (*See* E408/4).
2. On 22 June 2016, the Co-Lawyers for IENG Sary and MEAS Muth filed an urgent confidential request seeking leave to file submissions to impose limitations on the testimony of Mr. Vickery (E408/1). On 30 June 2016 the Trial Chamber denied this request. However, the Chamber ordered WESU to inform Mr. Vickery of the confidentiality concerns raised by the Co-Lawyers for IENG Sary and MEAS Muth, in order to give him an opportunity to inform the Chamber whether he considers that the situation prevents him from being completely forthcoming about his expert opinion in this case (E408/2). On 1 July 2016, Mr. Vickery again confirmed his availability to WESU by email (*See* E408/4).
3. On 11 July 2016, Mr. Vickery informed WESU by email that finally he had decided not to testify as an expert in this case, as he thought it would be too strenuous. WESU offered possible services, such as audio-visual testimony to minimise the strain on Mr. Vickery. Mr. Vickery responded that apart from his own concerns, he had “consulted with a lawyer friend experienced in these matters” and was convinced that he should not testify (*See* E408/4).

4. On 13 July 2016, the Co-Lawyers for IENG Sary and MEAS Muth filed an urgent confidential request for the Trial Chamber to reconsider its decision on its request seeking leave to file submissions with respect to the testimony of Mr. Vickery (E408/2/1). Also on 13 July 2016, the Co-Prosecutors filed a Rule 87(4) request for the admission of documents relating to Mr. Vickery and Henri Locard (2-TCE-90) (E415/2). The Chamber issued an oral ruling on 27 July 2016 noting that the request so far as it related to Mr. Vickery was moot (T. 26 July 2016, pp. 82-83(Draft)).
5. On 13 July 2016, the Trial Chamber instructed WESU to contact Mr. Vickery and to ask him to formally inform the Chamber of his decision whether or not he accepts the designation as an expert, and to provide a reason why he has now decided not to testify. The Trial Chamber also requested a medical certificate if there were medical reasons, and also asked whether there were any practical measures which could be taken to alleviate the strain of the testimony.
6. On 14 July 2016, The KHIEU Samphan Defence requested the admission of an article written by Mr. Vickery pursuant to Rule 87(4) (E408/3).
7. On 15 July 2016, the Trial Chamber was informed by WESU that Mr. Vickery had confirmed that he would not testify, and stated that the information which he had given was “sufficient”. Mr. Vickery indicated that he would not be providing any formal notification or medical documentation and would not consider any alternative practical measures (*See* E408/4).
8. On 15 July 2016, the Parties were informed by email, on behalf of the Trial Chamber that Mr. Vickery would not be testifying, and that any responses or filings pertaining to Mr. Vickery were suspended until further notice. Given that the expert has now confirmed that he will not testify in this case, the following requests, so far as they relate to Mr. Vickery are now moot: (1) the confidential Rule 87(4) request filed by the Co-Prosecutors on 13 July 2016 (E415/2); (2) the confidential request filed by the Co-Lawyers for IENG Sary and MEAS Muth on 13 July 2016 for reconsideration of the Trial Chamber decision denying leave to file submissions with respect to the testimony of Mr. Vickery (E408/2/1); and (3) the confidential Rule 87(4) request filed by the KHIEU Samphan Defence on 14 July 2016 (E408/3).