



**ឯកសារដើម**  
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du dossier: Ratanak

**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**

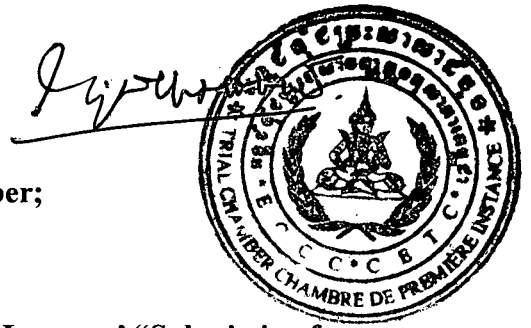
**សាធារណៈ / Public**

**Date: 23 September 2011**

**TO: Civil Party Lead Co-Lawyers**

**FROM: NIL Nonn, President, Trial Chamber**

**CC: All Judges of the Trial Chamber;  
All Judges of the Supreme Court Chamber;  
All parties, Case 002;  
Trial Chamber Senior Legal Officer**



**SUBJECT: Trial Chamber's disposition of Lead Co-Lawyers' "Submission for purpose of reconsideration and Correction of Memorandum E62/3/10/4" (E62/3/10/4/1) and Motion E117**

Reference is made to Motion E62/3/10/4/1 of 18 August 2011 in which the Civil Party Lead Co-Lawyers request the Trial Chamber to reconsider its majority decision of 29 July 2011 (E62/3/10/4), restricting distribution of the Expert Report on the medical fitness of Accused IENG Thirith and NUON Chea (then classified as strictly confidential) to the Civil Party Lead Co-Lawyers and any individual Civil Party Lawyers designated by the Lead Co-Lawyers to support them on this issue pursuant to Internal Rule 12ter(6).

This decision had followed requests for restricted access to these reports by the two Defence teams in question, and the Trial Chamber's own view that their subject-matter necessitated a balance between "the rights of the Accused to privacy concerning medical information, against the public's right to know the basis on which an application on fitness to stand trial will be determined" (E62/3/10). The Chamber's Scheduling Order in advance of this hearing (E110) had nonetheless stressed that to the maximum extent possible, this hearing was likely to be conducted in open session. On 23 September 2011, the IENG Thirith Defence reiterated these objections in response to the Civil Party Lead Co-Lawyers' request for reclassification, and also sought clarification and continued restrictions in relation to those strictly confidential documents referred to in part during the public hearing on fitness to stand trial (E117/1).

In Motion E62/3/10/4/1, the Lead Co-Lawyers request the Chamber to amend Decisions E62/3/10 and E62/3/10/4 and grant unrestricted access also to all 37 Civil Party lawyers to these medical reports and other related documents in the Case File. The Lead Co-

Lawyers further request clarification on the status of decision E62/3/10/4 as a legal document.

On 29 August 2011, the Lead Co-Lawyers additionally filed a notice of appeal (E62/3/10/5) of decision E62/3/10/4 to the Supreme Court Chamber pursuant to Internal Rules 105(2) and (3), 106 and 107(4), although as of that date, the Trial Chamber had yet to dispose of the Lead Co-Lawyers' Motion E62/3/10/4/1 then before it. On 21 September 2011, the Supreme Court Chamber rejected this notice of appeal as inadmissible (E62/3/10/5/).

On 13 September 2011, a further Motion (E117) was filed by the Lead Co-Lawyers requesting reclassification as confidential various strictly confidential documents concerning the fitness of the Accused to stand trial, which were put before the Chamber and discussed in open session during the fitness hearing of 29-31 August 2011.

In disposing of this request for reconsideration, the Trial Chamber notes that the entirety of the three-day hearing concerning the Accused NUON Chea and IENG Thirith's medical fitness was conducted in open session. In particular, the Expert Reports to which the Lead Co-Lawyers seek unrestricted access were extensively discussed. During this hearing, the Chamber made the following oral ruling reclassifying all documents put before the Chamber previously classified as strictly confidential, including the two Expert Reports in question, as public:

The Chamber notes that it has initially classified most documents relating to the medical condition of the accused as strictly confidential on an interim basis. The Chamber recalls that, according to Article 9 of the Practice Direction on Classification of Documents, reclassification is possible at any time. In this process, interested parties are consulted. The Chamber further recalls its decision of yesterday that the discussion about medical issues and fitness to stand trial should proceed in a public hearing. To expedite proceedings, the Chamber advises the parties of the following procedure. Each party who wishes to put a document initially classified as confidential or strictly confidential before the Chamber in a public hearing can do so without making any formal application. Provided the Chamber does not object, that document is then deemed to have been reclassified as public (T., 31 August 2011, pp. 1-2).

The Chamber notes the IENG Thirith Defence request of 23 September 2011 for clarification as to the current classification of the above documents, and their objection to the reclassification as public of the entirety of these documents merely because portions of them were discussed in open session (E117/1). As these reports were, however, extensively discussed in open session, the Chamber has reclassified those documents as public. As the relevant documents are now accessible to all Civil Party lawyers, Motion E62/3/10/4/1 is accordingly moot.

With regard to Motion E117, the Chamber notes that the list of documents for which the Lead Co-Lawyers now seek reclassification extends beyond the above documents, which were formally put before the Chamber and reclassified during the fitness hearing. The Chamber sees no basis to revisit its earlier classification of these additional documents.

The Trial Chamber clarifies that decisions E62/3/10 and E62/3/10/4, being signed by its President and notified to the parties through the usual channels, constitute official decisions of the Trial Chamber, and are subject to appeal (where such right exists). The Trial Chamber will in its discretion issue decisions in memorandum format where their subject-matter pertains largely to trial management, in order to expedite proceedings.

The Trial Chamber notes that Motion E62/3/10/4/1 is the second filing from the Lead Co-Lawyers on this issue, which has been determined to be moot. It further reminds the parties of its request during the Trial Management Meeting that they refrain, in the interests of ensuring the expeditiousness of proceedings, from the lodging of repetitive and lengthy filings, particularly concerning matters on which the Chamber has already ruled. The Trial Chamber notes in this regard that requests for reconsideration are not contemplated within the ECCC legal framework. Appropriate recourse is instead through appeal, where this is permissible.

This constitutes the Trial Chamber's official disposition of Motions E62/3/10/4/1 and E117.