

002/19-09-2007-ECCC/TC

**BEFORE THE TRIAL CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

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CIVIL PARTY LEAD CO-LAWYERS REQUEST TO THE TRIAL CHAMBER TO RECLASSIFY THE DOCUMENTS PUT BEFORE THE CHAMBER DURING THE INITIAL HEARING ON FITNESS TO STAND TRIAL FROM STRICTLY CONFIDENTIAL TO CONFIDENTIAL AND NOTIFY THEM TO ALL CIVIL PARTY LAWYERS

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Before:

The Trial Chamber
 Judge NIL Nonn, President
 Judge Silvia CARTWRIGHT
 Judge YA Sakhan
 Judge Jean-Marc LAVERGNE
 Judge THOU Mony

Distribution to:

Civil Party Lead Co-Lawyers Request to the Trial Chamber to Reclassify the Documents put before the Chamber during the Initial Hearing on Fitness to Stand Trial from Strictly Confidential to Confidential and Notify them to all Civil Party Lawyers.

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PROCEDURAL BACKGROUND

1. On 6 July 2011 the Trial Chamber issued a Memorandum¹ addressed to all parties informing that the expert medical reports regarding Ieng Thirith and Nuon Chea remained classified as strictly confidential following the request of their lawyers to maintain such a classification.²
2. However, the Chamber granted access to these documents to the Co-Prosecutors, the defense counsels for each Accused and the Civil Party Lead Co-lawyers (LCL). The Chamber indicated that the LCL were allowed to grant access to these documents “to an individual civil party lawyer if agreement has been reached pursuant to Internal Rule 12ter (5) (b) and (6) that a Civil Party lawyer is to make oral or written submissions on the application on behalf of the consolidated group”.³ On 15 July 2011 the LCL requested the amendment of this Memorandum⁴ in order to grant access to all Civil Party Lawyers. On 29 July 2011 the majority of the Chamber rejected the request.⁵ On 18 August the LCL filed a submission for the purpose of reconsideration and correction of the above mentioned memorandum from the Chamber.⁶ On 23 August 2011 the position of the LCL was affirmed by the dissenting opinion of Judge Lavergne.⁷
3. On the 23 August 2011 the LCLs submitted a notice of Appeal against the decision of 29 July 2011.⁸

¹ Memorandum to Counsel for the Parties, E62/3/10, 6 July 2011.

² Defence Objection to Trial Chamber’s Announcement to Put the Medical Report by Dr. Campbell on the “Confidential Part of the Case File, E62/3/7, 29 June 2011.

³ Memorandum to Counsel for the Parties, E62/3/10, 6 July 2011, p. 2

⁴ Urgent Request for the Trial Chamber to amend Memorandum E62/3/10 (formerly E106), E62/3/10/1, 15 July 2011.

⁵ Decision on Lead Co-Lawyer’s “Urgent Request for the Trial Chamber to amend Memorandum E62/3/10 (formerly E106)”, E62/3/10/4, 29 July 2011.

⁶ Submission for the purpose of reconsideration and correction of memorandum E62/3/10/4, E62/3/10/4/1, 18 August 2011.

⁷ Opinion dissidente du juge Jean-Marc Lavergne concernant la décision de la Chambre prise dans le mémorandum E62/3/10/4, 23 Aout 2011.

⁸ Déclaration d’appel des co-avocats principaux pour les parties civiles contre la décision E62/3/10/4, 25 Aout 2011.

Civil Party Lead Co-Lawyers Request to the Trial Chamber to Reclassify the Documents put before the Chamber during the Initial Hearing on Fitness to Stand Trial from Strictly Confidential to Confidential and Notify them to all Civil Party Lawyers.

4. During the preliminary public hearings on the fitness to stand trial held from 29 to 31 August 2011 several documents related to the issue, including the expert opinion of Professor Campbell were discussed publicly.
5. The Chamber recalled that the discussion about medical issues and fitness to stand trial should proceed in a public hearing. Furthermore, the Chamber recalled that no formal requirement is needed when a party wishes to put a document initially classified as confidential or strictly confidential before the Chamber in a public hearing. The Chamber stated that in this case “Provided the Chamber does not object that document is then deemed to have been reclassified as public”.⁹
6. The LCLs raised in several submissions mentioned above the importance and the absolute right for all civil party lawyers to be notified of these documents in order to fulfill their professional mandate as Civil Party Lawyers and ensure an effective representation of their clients.
7. The LCLs note additionally that the submission filed by the Co-Prosecutors in relation to the questions to be raised to the four experts newly designated and the submission from the defense of Ieng Thirith regarding the questions and comments for the new experts have been classified as confidential.¹⁰
8. The fact that the documents that were initially classified as « strictly confidential » have been discussed in public hearings and comprehensive abstracts of their contents and conclusions disclosed should implicitly yet necessarily be understood as changing the strictly confidential nature of the documents which, it should be recalled, should in principle be notified to the sole judges, with some limited exceptions.
9. Accordingly one should interpret the declaration of the judges during the hearings of September 29 and 30 as acknowledging that these documents became public.

Nevertheless, these documents are still on the strictly confidential part of the Case File.

⁹ Transcript E1/10/1, 31 August 2011, p 2

¹⁰ Ieng Thirith Defence Questions and Comments for Experts in Accordance with Trial Chamber’s ‘Order Appointing Experts’, E111/3, 2 September 2011; Co-Prosecutors’ Questions and Comments for Psychiatric Experts regarding Accused Ieng Thirith, E111/ 2, 2 September 2011.

Civil Party Lead Co-Lawyers Request to the Trial Chamber to Reclassify the Documents put before the Chamber during the Initial Hearing on Fitness to Stand Trial from Strictly Confidential to Confidential and Notify them to all Civil Party Lawyers.

10. It would be paradoxical to consider that those documents are still to be treated as strictly confidential, while their contents, in some cases in their integrality, were read in a public hearing setting. As a consequence, there can be no prevailing justification to retain the strictly confidential classification, as such classification became obsolete.

III. REQUEST

For the reasons mentioned above, the Co-Lead Lawyers for Civil Parties request the Chamber that:



- (i) The documents pertaining to the fitness of the accused listed below be reclassified and put into the confidential part of the Case File : A100/I, A134/I, A195/I/1, A195/I/2, A38/I, B12, B14/1, B15/1, B16, B17, B18, B19, B2, B25/1, B27/1, B29/1, B3, B39/1, B41/1, B45, B46/1, B48/1, B5, B6, D24/II, D24/IV, D24/IX, D24/VII, D76/III, D76/IV, E10/1, E10/10, E10/11, E10/12, E10/13, E10/14, E10/15, E10/2, E10/3, E10/31, E10/32, E10/4, E10/5, E10/6, E10/7, E10/8, E10/9, E11, E11/1, E11/10, E11/11, E11/12, E11/13, E11/14, E11/15, E11/2, E11/3, E11/4, E11/5, E11/6, E11/7, E11/8, E11/9, E12, E12/1, E12/10, E12/11, E12/12, E12/13, E12/14, E12/15, E12/2, E12/3, E12/31, E12/32, E12/4, E12/5, E12/6, E12/7, E12/8, E12/9, E17.1, E17/1/2.3, E17/1/2.4, E17/1/2.5, E17/1/2.6, E62/2, E62/2.1, E62/3/1/1, E62/3/12, E62/3/12.1, E62/3/12.2, E62/3/13, E62/3/13, E62/3/13/Corr-1, E62/3/3.1, E62/3/4.1, E62/3/4.2, E62/3/4.3, E62/3/4/1, E62/3/4/1.1, E62/3/4/1.1.2, E62/3/4/2, E62/3/4/2.1, E62/3/4/2.1.1, E62/3/5/Corr-1, E62/3/6.1, E62/3/6.2, E62/3/6.31, E62/3/6.4, E62/3/6.5, E62/3/6/1, E62/3/6/2, E62/3/6/2.1, E62/3/6/2.1.1, E62/3/6/3, E62/3/6/3.1, E62/3/6/4, E62/3/6/4.1, E62/3/6/4.2, E62/3/6/4.2/Corr-1, E62/3/6/4.3, E62/3/6/4.4, E62/3/6/4/Corr-1, E62/3/6/5, E62/3/6/5.1, E62/3/6/5/Corr-1.

Civil Party Lead Co-Lawyers Request to the Trial Chamber to Reclassify the Documents put before the Chamber during the Initial Hearing on Fitness to Stand Trial from Strictly Confidential to Confidential and Notify them to all Civil Party Lawyers.

002/19-09-2007-ECCC/TC

- (ii) That the Chamber instructs the Greffiers to notify the relevant documents to all Civil Party Lawyers (see inventory attached).

Respectfully submitted,

Date	Name	Location	Signatures
Septembre 12, 2011	PICH Ang National Lead Co-Lawyer	Phnom Penh	
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