

BEFORE THE TRIAL CHAMBER**EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA****FILING DETAILS****Case No:** 002/19-09-2007-ECCC/TC**Party Filing:** Mr KHIEU Samphan**Filed To:** The Trial Chamber**Original Language:** French**Date of Document:** 5 March 2012**CLASSIFICATION****Classification Suggested by the Filing Party:** Public**Classification by the Trial Chamber:** សាធារណៈ/Public**Classification Status:****Review of Interim Classification:****Records Officer's Name:****Signature:**

**Request by the Defence for Mr KHIEU SAMPHAN for Clarifications on the Status of
Certain Documents Identified as "E3" Documents**

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Samy SALOMON**Before:****The Trial Chamber**Judge NIL Nonn
Judge Silvia CARTWRIGHT
Judge YOU Ottara
Judge Jean-Marc LAVERGNE
Judge YA Sokhan**Co-Prosecutors**CHEA Leang
Andrew CAYLEY**All Civil Party Lawyers****All Defence Teams**

MAY IT PLEASE THE TRIAL CHAMBER

1. Article 1.3 of Practice Direction ECCC/01/2007/Rev. 7 provides that the symbol E3 shall be assigned to “*each document from the investigation case file which has been put before the Trial Chamber according to Rule 87(2) of the Internal Rules.*”

2. Yet, Internal Rule 87(2) provides that “*any decision of the Chamber shall be based only on evidence that has been put before the Chamber and subjected to examination.*”

3. However, it appears that to this day many documents have indeed been put before the Chamber and have been identified by the symbol E3, but were not subjected to examination during the proceedings.

4. For example, at the hearing of 9 February 2012, the Co-Prosecutors drew the attention of the public to the submission of 13 documents. Yet the hearing of 9 February was not scheduled for the production of documents:

As this hearing does not concern the admissibility of any documents proposed to be put before the Chamber, time has not been allocated for responses by the other parties to these presentations.¹ (Emphasis added).

5. In spite of this remark, following the hearing, and although no adversarial debate had taken place, 8 out of the 13 previously non-E3 documents presented were identified as such.²

6. Other documents have received the E3 symbol without being put before the Chamber, and without adversarial debate. This includes, for example, 124 documents mentioned in the footnotes to the Historical Background section of the Closing Order.³

7. As such, Mr KHIEU Samphan’s Defence believes it is justified in requesting that the Chamber clearly indicate the status of documents it has identified as E3 documents.

8. Are these documents that it believes it could use in its deliberations without further examination?

¹ Scheduling of oral hearings on documents (13-16 February 2012), 8 February 2012, E170, par. 4

² Written record of proceedings “9 February 2012 Substantive hearing on evidence – Day 29”, 28 February 2012, E1/41, p. 7 to 10.

³ List of documents attached with the Written Records of the Proceedings on 05 December 2011, 23 December 2011, E1/16.2

9. Are these documents about which the Chamber intends to schedule an adversarial hearing at a later stage pursuant to Internal Rule 87(2)?

FOR THESE REASONS

The Trial Chamber is requested to:

- SPECIFY the exact status of documents it has identified as E3 documents.

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Date	Name	Place	Signature