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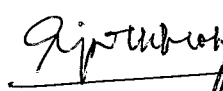
ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ
Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា
Extraordinary Chambers in the Courts of Cambodia
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

សាធារណៈ / Public

TRIAL CHAMBER

TO: All Parties, Case 002 **Date:** 24 October 2014

FROM: NIL Nonn, President of the Trial Chamber 

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

SUBJECT: Warning to counsel for NUON Chea and KHIEU Samphan



1. During the course of Opening Statements in Case 002/02 on 17 October 2014, both Khieu Samphan and Nuon Chea informed the Chamber that they had instructed their respective Defence teams to boycott the proceedings. National and international counsel for each Accused subsequently abandoned the courtroom. A number of reasons were advanced for the boycott including a lack of sufficient resources (by the KHIEU Samphan Defence team at T. 17 October 2014, p. 81) and the pending application for disqualification of the bench (by the NUON Chea Defence at T. 17 October 2014, p. 73, and by the KHIEU Samphan Defence at T. 17 October 2014, pp. 75-76).

2. In the context of the currently pending applications for the disqualification of current Trial Chamber judges filed by both Defence teams, NUON Chea has alleged that according to Article 559 of the Cambodian Criminal Procedure Code of 2007, a judge subject to a motion for disqualification is required to cease to participate to that trial. The Chamber notes that current proceedings are in fact regulated by Internal Rule 34(5), which clearly provides that a judge subject to disqualification motion may continue to participate in proceedings pending a decision. While these two provisions differ, Internal Rule 34(5) accords with international standards in this regard.¹ Accordingly, contrary to Defence submissions based on an incorrect understanding of the legal framework, there is no legal requirement to stop proceedings and this cannot be relied upon as a basis for obstructing proceedings.

¹ See *Prosecutor v. Seromba*, ICTR Appeal Judgement, para. 21(The Trial Chamber’s decision on whether or not to suspend a trial while a motion for disqualification is pending is a discretionary one); *Prosecutor v. Galic*, ICTY Appeal Judgement, para. 33.

3. In light of these developments, the Trial Chamber informed the parties that the Trial Management Meeting (TMM), scheduled for 21 October 2014 to discuss the legal and practical consequences of new disclosure from the Office of the Co-Prosecutors, would also address resource issues and related matters. In its communication to the parties on 20 October 2014, the Trial Chamber directed all the parties to attend, and invited the Director and/or the Deputy Director of the Administration to attend this part of the TMM (See Annex 1).

4. Despite being directed to attend the TMM, which concerned management issues rather than a hearing to advance the substance of the case, national and international counsel for both NUON Chea and KHIEU Samphan failed to either appear or provide any valid justification for their absence, in violation of a direct order of the Trial Chamber.

5. Internal Rule 38 establishes in relevant part that:

1. The Co-Investigating Judges or the Chambers may, after a warning, impose sanctions against or refuse audience to a lawyer if, in their opinion, his or her conduct is considered offensive or abusive, obstructs the proceedings, amounts to abuse of process, or is otherwise contrary to Article 21(3) of the Agreement.
2. The Co-Investigating Judges or the Chambers may also refer such misconduct to the appropriate professional body.

6. The Trial Chamber finds that the conduct described above amounts to an obstruction of proceedings. The Trial Chamber therefore notifies the parties that this memorandum constitutes an official warning for misconduct to national and international counsel for both Khieu Samphan and Nuon Chea, pursuant to Internal Rule 38.

7. In order to avoid any possible misunderstandings, Co-counsel for both KHIEU Samphan and NUON Chea are directed to inform the Chamber immediately upon stopping the current boycott.

8. The Chamber has not been able to form a complete view of the issue of insufficient resources raised by the KHIEU Samphan Defence team (see T. 17 October 2014, p. 81; E314/5/1, paras 9, 19-20) due to counsels' unexplained absence from the TMM. In order to form a complete picture of the situation, the Trial Chamber requires the KHIEU Samphan Defence to address this issue. Accordingly, the Chamber orders the parties to appear at a follow-up Trial Management Meeting (TMM) to be held on Tuesday 28 October 2014 from 9.00 am. The Trial Chamber clarifies that this will constitute the last opportunity for the KHIEU Samphan Defence to discuss current resource issues with the Chamber.

9. During the TMM, the parties will also be provided an opportunity to address the Co-Prosecutors' request to assign *amici curiae* counsel and advance proceedings, a courtesy copy of which was distributed on 22 October 2014.

10. In view of these developments and ongoing issues regarding disclosure, the Trial Chamber cancels the hearings scheduled to begin on 27 October 2014. New hearing dates will be provided in due course.