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 មន្ត្រីទទួលបន្ទុកសំណុំរឿង / Case File Officer/L'agent chargé
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E214/4

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

សាធារណៈ / Public

TRIAL CHAMBER

Date: 26 October 2012

TO: Departmental Disciplinary Committee for the First Judicial Department, Appellate Division, New York State Supreme Court

FROM: President NIL Nonn, Trial Chamber

CC: Executive Director, New York State Bar Association



All Trial Chamber Judges

Trial Chamber Senior Legal Officer

All parties, Case 002

Defence Support Section

Bar Association of the Kingdom of Cambodia

SUBJECT: Addendum - Continuing professional misconduct of lawyer admitted to your Bar Association

Reference is made to the notifications of 29 June 2012 (E241 and E214/1) and of 18 October 2012 (E214/2) from the ECCC Trial Chamber, which described a consistent pattern of professional misconduct on the part of Mr. Andrew IANUZZI, a defence lawyer appearing before it and a member of the New York State Bar Association.

The Trial Chamber now wishes to advise you of further misconduct by Mr. IANUZZI in the interim, which the Trial Chamber would be grateful to have considered in addition with the factual allegations contained in its referral of 29 June 2012 and of 18 October 2012.

During proceedings before the Trial Chamber on 19 October 2012, the following remarks were made by Mr. IANUZZI (Transcript, 19 October 2012, pages 36-37 (excerpts)):¹

4 MR. IANUZZI:

5 Thank you, Mr. President. I have been trying, upon very good
6 advice, to be as amable as possible. However, this is the very
7 first time I've ever heard this. Such conditions were never
8 placed on these documents. We were told we could present any

¹ Appended to this memorandum is the entirety of the relevant pages cited in this memorandum.

9 document we felt was relevant to this stage of the proceedings.
10 So, to be told now, at 11 a.m., two minutes before I'm about to
11 begin my presentation - which, I might add, centred on those very
12 two documents you just mentioned - I find that remarkable -
13 remarkable, to say the least. And I'll leave it at that.

14 [10.58.02]

15 What - where are you coming from, Mr. President? Why weren't
16 these indications given to the parties ages ago? This is exactly
17 what I meant--

18 MR. PRESIDENT:

19 The Trial Chamber advised you earlier and also mentioned the
20 ground that you would hold the two documents for the moment.
21 The reason is that we - we will not repeat the ground. And the
22 opportunity to present documents -- the Trial Chamber will give
23 you another opportunity, especially on the schedule to hear the
24 witness who will come to testify on the document, in case of Mr.
25 Philip Short.

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1 And Mr. Stephen Heder has not been yet decided on summoning him
2 to come to testify. However, the Trial Chamber will give
3 opportunity to the parties to present the documents in relation
4 to their books, or their essays, or their documents in an
5 appropriate time.

Prior to the lunch adjournment on the same day of proceedings, Mr. IANUZZI continued as follows
(Transcript, 19 October 2012 pages 59-60):

24 MR. PRESIDENT:

25 Is there any issue for the international defence counsel for Mr.

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1 Nuon Chea?

2 MR. IANUZZI:

3 Thank you, Mr. President. I apologize for speaking without my
4 microphone, but I was just trying to make the point that my
5 colleague, Mr. Vercken, raised a new issue, and that issue was
6 whether or not parties would be able to object to the documents,
7 and I completely agree.

8 This morning is the very first time anyone on this stage heard
9 that from you, Mr. President. It was never communicated to the
10 parties. Had it been communicated to the parties, obviously -
11 obviously - all of us on this side of the stage would have made
12 objections, would have made substantive comments, would have
13 responded, reacted -- done something in response to what
14 happened. What was communicated to us was a document
15 presentation.

16 And I think my friend's use of the word "press conference" is
17 quite accurate. It was simply to show document, without comment,
18 without debate. That was what we were told.

19 [11.40.35]

20 So, for you, Mr. President, to tell us this morning -- again, at
21 a very late hour -- that all of a sudden it's an adversarial
22 hearing, I find it remarkable - remarkable. You are a remarkable

23 Presiding Judge - truly.

In response to these remarks and upon the resumption of trial proceedings on that day, Judge Lavergne, on behalf of the Trial Chamber President, made the following oral ruling (Transcript, 19 October 2012, pages 70-71):

19 With respect to the second oral decision of this Chamber,
 20 concerning Counsel Andrew Ianuzzi, sir, would you kindly rise?
 21 Over the course of this morning's hearing, Counsel Ianuzzi,
 22 international counsel for the defence of the accused person Nuon
 23 Chea, proceeded once again to make several and various comments
 24 with the view to contest or criticize the decisions that had just
 25 been issued by the Chamber with respect to the conduct of

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1 proceedings. On many occasions, counsel had been forewarned that
 2 such behaviour and such comments were inappropriate and that he
 3 was no longer authorized to continue.

4 [13.49.01]

5 In addition to these comments, he addressed the President in a
 6 repeated manner by qualifying the President of this Chamber as a
 7 "remarkable" Judge. The manner in which such comments were
 8 uttered and the tone with which counsel delivered such comments
 9 and addressed the President leaves no doubt of the discourteous
 10 and disrespectful nature of his comments and is entirely
 11 insulting towards the President and, indeed, the entire
 12 composition of this Chamber.

13 Because of the entirely inappropriate and unacceptable behaviour
 14 of the lawyer, the Chamber solemnly and hereby warns Counsel
 15 Ianuzzi that, pursuant to Rule 38 of the Internal Rules with
 16 respect to misconduct of a lawyer, continuance of such behaviour
 17 may lead to refusal of his participation in the Chamber and a
 18 refusal to be given audience.

19 Thank you.

If you have further questions, or require additional information from the Trial Chamber, please address your enquiries to:

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Encl.