



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

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

**ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ**

Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

អង្គជំនុំជម្រះតុលាការកំពូល

Supreme Court Chamber
Chambre de la Cour suprême

សំណុំរឿងលេខ: ០០២/០០២/២៣-០៤-២០១២-អ.វ.ត.ក / អ.ជ.ត.ក(២)

Case File/Dossier N°. 002/23-04-2012-ECCC/SC(2)

Before: Judge KONG Srim, President
Judge Motoo NOGUCHI
Judge SOM Sereyvuth
Judge Agnieszka KLONOWIECKA-MILART
Judge MONG Monichariya
Judge Chandra Nihal JAYASINGHE
Judge YA Narin

Date: 2 May 2012
Language(s): English/Khmer
Classification: PUBLIC

ឯកសារដើម
ORIGINAL/ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ (Date): 02-May-2012, 13:26
CMS/CFO: Sann Rada

**DECISION ON NUON CHEA’S REQUEST TO ACCEPT LATE FILING
PURSUANT TO RULE 39(4)**

Accused
NUON Chea

Lawyers for the Accused
SON Arun
Michiel PESTMAN
Victor KOPPE

Co-Prosecutors
CHEA Leang
Andrew CAYLEY

Civil Party Lead Co-Lawyers
PICH Ang
Elisabeth SIMONNEAU-FORT

THE SUPREME COURT CHAMBER of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”):

BEING SEISED of a request filed by the Co-Lawyers for NUON Chea (“Defence”) to accept a late filing of their immediate appeal against the Trial Chamber’s decision¹ regarding alleged inconsistencies in the audio and written records of witness interviews conducted by the Office of the Co-Investigating Judges (“Request”);²

RECALLING that on 10 April 2012 the Greffiers of the Supreme Court Chamber granted the Defence’s request to file their immediate appeal in English first with the Khmer translation to follow, stating that the Defence “may *file* the immediate appeal in EN on Wed., 18 April and the KH on Fri., 20 April;”³

NOTING that on 18 April 2012, the deadline to lodge an immediate appeal against the Trial Chamber’s decision, the Defence circulated via e-mail to the parties and the Trial and Supreme Court Chambers a courtesy copy of the English version of their immediate appeal, and that on 20 April 2012 the Defence formally filed the English and Khmer versions of the appeal;

CONSIDERING that the Request observes that a courtesy copy of the immediate appeal was circulated to all parties within the prescribed time limit and submits that this practice “has been utilized in the past where strict conditions have been relaxed by the Trial Chamber [and that] this accounts for the Defence’s mistaken approach in the instant case;”⁴

CONSIDERING that the Co-Prosecutors submit that the Defence has failed to provide valid reasons to condone the late filing in hand but defer to the discretion of this Chamber in determining whether or not to accept it;⁵

¹ Decision on NUON Chea’s Request for a Rule 35 Investigation Regarding Inconsistencies in the Audio and Written Records of OCIJ Witness Interviews, 13 March 2012, E142/3.

² Request to Accept Late Filing of Appeal Against Trial Chamber Decision Regarding Inconsistencies Between Audio and Written OCIJ Witness Interviews, 23 April 2012, Doc. No. 1.

³ Email from Andrew Iannuzzi to Christopher Mark Ryan “Re: Immediate Appeal Against E142/3”, 23 April 2012, Doc. No. 1.1.1 (emphasis added).

⁴ Request, para. 2.

⁵ Co-Prosecutors’ Response to NUON Chea’s Request to Accept Late Filing of Appeal Against Trial Chamber Decision Regarding Inconsistencies in OCIJ Witness Interviews, 25 April 2012, Doc. No. 2, paras 6-7.

CONSIDERING that a courtesy copy of a party's filing does not bear any legal value, is not final, and cannot substitute for an official filing, and that this is also the approach and practice of the Trial Chamber;⁶

RECALLING that in October 2011, the Greffiers of the Supreme Court Chamber similarly permitted the Defence to file the English version of an immediate appeal by the prescribed deadline with the Khmer translation of the appeal to follow, and that the Defence did formally file the English version of the immediate appeal by the prescribed deadline;⁷

NOTING that the Defence has failed to provide a compelling reason justifying an exception to the principle that "[a]ll time limits set out in the applicable laws [...] must be respected" and that "failure to do so shall lead to the invalidity of the action in question;"⁸

RECALLING, for the benefit of all parties, that this Chamber has previously established the following principles concerning time limits of immediate appeals:

- Where a party wishes to request under Article 7.2 of the Practice Direction on Filing⁹ that the Supreme Court Chamber grant permission to file an immediate appeal in French or English in the first instance with the Khmer translation to follow at the first opportunity, the party shall demonstrate the existence of "exceptional circumstances."¹⁰ Should these exceptional circumstances concern the time necessary for translation, the party shall provide this Chamber with proof of the date on which the relevant filing was submitted for translation;
- Where the Supreme Court Chamber authorises a party to submit the Khmer translation after the expiration of the time limit for an immediate appeal, the party shall nevertheless officially file the appeal in French or English by the deadline;

⁶ Email from Matteo Crippa to Andrew Iannuzzi "Re: Immediate Appeal Against E142/3", 2 May 2012, Doc. No. 3.1 (clarifying that there is no practice at the Trial Chamber according to which courtesy copies may be exceptionally considered as official filings and thus comply with deadlines).

⁷ See Decision on Immediate Appeal by NUON Chea Against the Trial Chamber's Decision on Fairness of Judicial Investigation, 27 April 2012, E116/1/7, para. 2 (referring to the immediate appeal E116/1/1 filed in English on 10 October 2011).

⁸ Internal Rule 39(1).

⁹ Practice Direction on Filing of Documents Before the ECCC, ECCC/01/2007/Rev.7 ("Practice Direction on Filing").

¹⁰ Article 7.2 of the Practice Direction on Filing.

- Where a request under Article 7.2 of the Practice Direction on Filing is granted, time limits imposed upon all parties shall run from the date of notification of the Khmer translation of the appeal.¹¹ This principle applies to responses and replies as well as the time limits provided for by Rules 108(2) and (4)(bis);

FOR THE FOREGOING REASONS, THE SUPREME COURT CHAMBER:

REJECTS the Request;

DIRECTS the Greffiers of the Trial Chamber to reject the immediate appeal as belated.

Phnom Penh, 2 May 2012

President of the Supreme Court Chamber



Kong Srim

¹¹ Decision on Ieng Sary's Appeal Against the Trial Chamber's Decision on Its Senior Legal Officer's Ex Parte Communications, 25 April 2012, E154/1/1/4, para. 2; Decision on Immediate Appeal by NUON Chea Against the Trial Chamber's Decision on Fairness of Judicial Investigation, 27 April 2012, E116/1/7, para. 5.