ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

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

អង្គជំនុំជម្រះតុលាការកំពូល
Supreme Court Chamber
Chambre de la Cour suprême

សំណុំរឿងលេខ: ០០២/១៩-កញ្ញា-២០០៧-អ.វ.ត.ក-អ.ជ.ស.ម/អ.ជ.ត.ក(១៨)
Case File/Dossier N°. 002/19-09-2007-ECCC-TC/SC(18)

Before: **Judge KONG Srim, President**
Judge Chandra Nihal JAYASINGHE
Judge Agnieszka KLONOWIECKA-MILART
Judge MONG Monichariya
Judge Florence Ndepele Mwachande MUMBA
Judge SOM Sereyvuth
Judge YA Narin

Date: **18 December 2012**
Language(s): **Khmer/English**
Classification: **PUBLIC**

DECISION ON CO-PROSECUTORS' REQUEST FOR APPEAL HEARING ON SCOPE OF TRIAL IN CASE 002/01 OR LEAVE TO FILE JOINT REPLY

Co-Prosecutors
CHEA Leang
Andrew CAYLEY

Accused
IENG Sary
KHIEU Samphan
NUON Chea

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

Co-Lawyers for IENG Sary
ANG Udom
Michael KARNAVAS

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SON Arun
Victor KOPPE
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Co-Lawyers for KHIEU Samphan
KONG Sam Onn
Anta GUISSÉ
Arthur VERCKEN
Jacques VERGÈS

1. **THE SUPREME COURT CHAMBER** of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea between 17 April 1975 and 6 January 1979 ("Supreme Court Chamber" and "ECCC", respectively) is seized of a motion filed by the Co-Prosecutors on 21 November 2012 requesting a public oral hearing be held in relation to an immediate appeal they filed on 7 November 2012 against a decision of the Trial Chamber concerning the scope of the trial in Case 002/01.[1] In the alternative, the Co-Prosecutors request leave to file a joint reply to the responses of all three Accused to the Immediate Appeal.[2] On 23 November 2012, IENG Sary filed a response opposing the Motion,[3] to which the Co-Prosecutors did not reply. NUON Chea and KHIEU Samphan did not respond to the Motion.

2. The Co-Prosecutors submit that their request to hold public oral arguments on the Immediate Appeal is "due to the importance of the issues being raised to all parties and the people of Cambodia."[4] IENG Sary responds that there is no justification for the Supreme Court Chamber to grant such a hearing in this case.[5]

3. Since filing the Motion, the Co-Prosecutors have filed separate replies to the responses of all three Accused to the Immediate Appeal.[6] The Immediate Appeal is now fully briefed and comprises ample public, written submissions which, in the Supreme Court Chamber's view, sufficiently expose the Co-Prosecutors' sole expressed reason for requesting the hearing, namely the importance of the issues raised. Recalling that immediate appeals may be determined on the

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[1] Co-Prosecutors' Request for a Public Oral Hearing of the Immediate Appeal of the Decision Concerning the Scope of Trial in Case 002/01 or in the Alternative Request to File a Joint Reply to the Three Defence Responses, E163/5/1/6, 21 November 2012 ("Motion"), para. 3; Co-Prosecutors' Immediate Appeal of Decision Concerning the Scope of Trial in Case 002/01 with Annex I and Confidential Annex II, E163/5/1/1, 7 November 2012 ("Immediate Appeal").
[2] Motion, para. 4.
[3] IENG Sary's Response to the Co-Prosecutors' Request for a Public Oral Hearing of the Immediate Appeal of the Decision Concerning the Scope of Trial in Case 002/01 or in the Alternative Request to File a Joint Reply to the Three Defence Responses, E163/5/1/7, 23 November 2012 ("Response").
[4] Motion, para. 3. The Co-Prosecutors also cite Article 8.4 of the Practice Direction on the Filing of Documents before the ECCC, Revision 7, 3 August 2011, which states that "[a] reply to a response shall only be permitted where there is to be no oral argument on the request, and such reply shall be filed within 5 calendar days of notification of the response to which the participant is replying." *See* Motion, para. 3 *and* fn. 5.
[5] Response, paras. 4-7. IENG Sary further submits that "[t]he Supreme Court Chamber does not have jurisdiction to hear freestanding requests […] at this stage of the proceedings" (*see* Response, para. 1, fn. 2) and that the Co-Prosecutors should have made their request as part of the Immediate Appeal. *See* Response, paras. 2-3. The Supreme Court Chamber does not agree. The request for a public hearing in this case is a derivative of the Immediate Appeal itself and therefore necessarily made as part thereof.
[6] Co-Prosecutors' Reply to IENG Sary Response to Appeal of Decision Concerning the Scope of Trial in Case 002/01, E163/5/1/8, 26 November 2012; Co-Prosecutors' Reply to NUON Chea Response to Appeal of Decision Concerning the Scope of Trial in Case 002/01, E163/5/1/10, 3 December 2012; Co-Prosecutors' Reply to KHIEU Samphan Response to Appeal of Decision Concerning the Scope of Trial in Case 002/01, E163/5/1/11, 7 December 2012.

basis of written submissions only,[7] and having reviewed all the relevant filings, the Supreme Court Chamber considers that no need arises at this stage for any further arguments on the Immediate Appeal. Should the Supreme Court Chamber require further submissions at a later stage, the parties will be notified accordingly.

4. For the foregoing reasons, the Supreme Court Chamber **DENIES** the Co-Prosecutors' request for a public hearing on the Immediate Appeal and **DISMISSES** their alternative request to file a joint reply as moot.

Phnom Penh, 18 December 2012

President of the Supreme Court Chamber

KONG Srim

[7] Rule 109(1) of the Internal Rules of the ECCC, Revision 8, 3 August 2011.