



7th PLENARY SESSION OF JUDGES OF THE ECCC

2-9 February 2010

Defence Support Section: Press Statement

1. The Defence Support Section (DSS) participated in this week's Plenary, as a non-voting member, during which the participation of civil parties was discussed.
2. Judges and Prosecutors have adopted a number of amendments aimed at promoting a more effective and efficient system of civil party participation at the trial stage. In future trials, the civil parties will form a consolidated group and pursue a single claim for reparations. Their legal representation will be coordinated by Lead Civil Party Lawyers. These changes go some way in addressing the shortcomings experienced in the first trial at the ECCC.
3. However, the DSS has two major concerns with respect to the rights of the accused. Firstly, under the new regime the defence is seriously disadvantaged in terms of resources. The new Lead Civil Party Lawyers' team - consisting of eight lawyers - will be supported by (approximately) 10 further teams of civil party lawyers. This is likely to provide a total of at least 40 lawyers to represent civil party interests in support of the prosecution. When combined with lawyers from the Office of Co-Prosecutors, it swells the ranks of those working to convict the accused to more than 50. This figure must be compared to each defence team, which consists of only four lawyers. Such a considerable imbalance in resources can only serve to undermine the equality of arms and, therefore, the fairness of the proceedings.
4. Secondly, the DSS is concerned that the amendments have removed any meaningful right for the accused to challenge the admissibility of civil party applications brought against them. Under the new regime, the defence will be deprived of any right to challenge the admissibility of civil parties at trial. Instead, they will have only 10 days to appeal against the investigating judges' decisions on (approximately) 4000 civil party applications. In other words, if an accused wants to exercise his 'right' to challenge the application of every civil party, he will need to file 400 appeals a day, in two languages. Impossible! According to international standards an accused's right to appeal must be practical and effective. In adopting these amendments, the Plenary has left the accused with a right that is merely theoretical.

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