

**BEFORE THE TRIAL CHAMBER OF THE
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

FILING DETAILS

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URGENT DEFENCE REQUEST TO DETERMINE DEADLINES

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I INTRODUCTION

1. On 15 September 2010, the Office of the Co-Investigating Judges issued the Closing Order,¹ from which the defence for both Madame Ieng Thirith and Mr. Nuon Chea (**Charged Persons**) appealed (**Defence Appeals**).² On 13 January 2011 the Pre-Trial Chamber (**PTC**) issued its 'Decision on Ieng Thirith's and Nuon Chea's Appeals against the Closing Order' (**Appeal Decision**).³
2. The Appeal Decision contains the conclusion of the decision, but not the underlying reasoning. The defence submits that the deadlines start to run from the issuance of the final Closing Order and do not commence before the reasoned decision is provided to the parties pursuant to Internal Rule 77(14).

II SUBMISSIONS

3. The Appeal Decision states that '[t]he Pre-Trial Chamber has determined the final disposition of the Appeal, which it hereby pronounces. The reasons for this shall follow in due course'.⁴
4. Internal Rule 80 provides a deadline for compiling witness lists. Internal Rule 89 provides a deadline for raising preliminary objections. Both deadlines start running from the date the Indictment becomes final. Whilst the wording of the Appeal Decision suggests that the Closing Order has become final with the Appeal Decision, the defence submits it only becomes final when the Pre-Trial Chamber issues a reasoned Decision.

¹ OCIJ, Closing Order, 15 September 2010, Document No. D427.

² Ieng Thirith Defence Appeal from the Closing Order, 18 October 2010, Document No. D427/2/1, Nuon Chea Defence Appeal from the Closing Order, 18 October 2010, Document No. D427/3/1.

³ PTC, Decision on Ieng Thirith's and Nuon Chea's Appeals against the Closing Order, 13 January 2011, Document No. D427/2/12.

⁴ Appeal Decision, page 5.

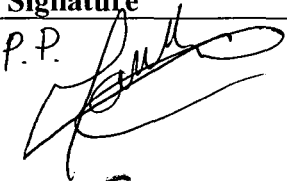
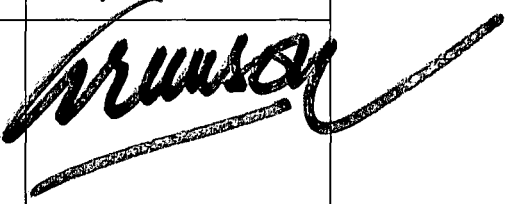
5. Rule 77 of the Internal Rules sets out the procedure applicable to Pre-Trial Appeals and Applications and provides at Rule 77(14) that '[a]ll decisions under this Rule [...] shall be reasoned [...]'].

Therefore, decisions cannot qualify as a 'decision' under the Rules unless and until they are reasoned. Accordingly, only when the underlying reasons for the Appeal Decision are issued does the Appeal Decision become a 'decision'.

6. Further, compiling a witness list in accordance with Internal Rule 80(2) and formulating preliminary objections in accordance with Internal Rule 89(1) require the defence to know the reasons upon which the Pre-Trial Chamber has based its Decision. The defence submits it would be prejudiced if required to formulate jurisdictional objections without knowledge of the Pre-Trial Chamber's reasoning on these specific issues. Likewise, it would be prejudicial for the defence to be required to provide a witness list without knowledge of the underlying reasoning for the final Indictment.
7. Requiring the defence to do so would amount to a violation of Article 14(3) of the International Covenant on Civil and Political Rights, which guarantees an accused person the right to be '(a) to be informed promptly and in detail [...] of the nature and cause of the charge against him' and '(b) to have adequate time and facilities for the preparation of his defence [...]'].

III CONCLUSION

8. The defence therefore respectfully requests the Trial Chamber to clarify the deadlines imposed under Internal Rules 80 and 89; and secondly to order that these deadlines start running from the date upon which the Pre-Trial Chamber provides the underlying reasons for its Appeal Decision. Considering the nature of the request, the defence further respectfully requests the Trial Chamber to issue such an order as soon as possible.

Party	Date	Name Lawyers	Place	Signature
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