



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia
Chambres extraordinaires au sein des tribunaux cambodgiens

ព្រះរាជាណាចក្រកម្ពុជា D392/2/2

ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia
Nation Religion King

Royaume du Cambodge
Nation Religion Roi

អង្គបុរេជំនុំជម្រះ

Pre-Trial Chamber
Chambre Préliminaire

Criminal Case File N° 002/19-09-2007-ECCC/OCIJ (PTC78, 81, 82, 84, 92, 98, 99, 100, 102, 106, 111, 112, 117, 122, 123, 135 and 144)

Before: Judge PRAK Kimsan, President
Judge Rowan DOWNING
Judge NEY Thol
Judge Catherine MARCHI-UHEL
Judge HUOT Vuthy

Criminal Case File N° 002/19-09-2007-ECCC/OCIJ (PTC 114 and 115)

Before: Judge PRAK Kimsan, President
Judge Katinka LAHUIS
Judge NEY Thol
Judge Catherine MARCHI-UHEL
Judge HUOT Vuthy

Date: 04 May 2011

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PUBLIC
DIRECTIONS TO THE CO-LAWYERS FOR IENG SARY, IENG THIRITH AND NUON CHEA TO FILE A RESPONSE TO THE APPEALS LODGED BY THE CIVIL PARTY APPLICANTS

Co-Prosecutors

CHEA Leang
Andrew CAYLEY

Accused

IENG Sary
NUON Chea
IENG Thirith

Lawyers for the Civil Parties

NY Chandy
LOR Chhunthy
Kong Pisey
HONG Kim Suon
YUNG Phanit

Co-Lawyers for the Accused

ANG Udom
Michael G. KARNAVAS
PHAT Pouy Seang
Diana ELLIS
SON Arun

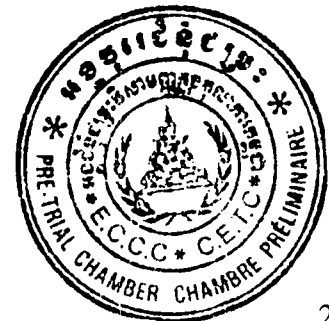


002/19-09-2007-ECCC/OCIJ (PTC 78, 81, 82, 84, 92, 98, 99, 100, 102, 106, 111, 112, 114, 115, 117, 122, 123, 135 and 144)

KIM Mengkhy
 MOCH Sovannary
 Martine JACQUIN
 Philippe CANONNE
 Elizabeth RABESANDRATANA
 Mahdev MOHAN
 Olivier BAHOUGNE
 SILKE Studzinsky
 DELAHAIE Annie
 Fabienne TRUSSES-NAPROUS
 SIN Soworn
 BAUDOUIN Patrick
 GUIRAUD Marie
 LYMA Nguyen
 CHET Vannly
 TY Srinna
 VEN Pov
 DESFORGES Laure
 DURAND Isabelle
 GAUTRY Françoise
 MARTINEAU Christine
 Pascal AUBOIN
 Ferdinand Djammen-Nzepa
 Emmanuel ALTIT
 Emmanuel JACOMY
 Julien RIVET
 Barnabe NEKUIE
 Nicole DUMAS
 Daniel LOSQ

Michiel PESTMAN
 Victor KOPPE

PICH Ang



002/19-09-2007-ECCC/OCIJ (PTC 78, 81, 82, 84, 92, 98, 99, 100, 102, 106, 111, 112, 114, 115, 117, 122, 123, 135 and 144)

THE PRE-TRIAL CHAMBER of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) is seized of 94 appeals lodged by a total of 1747 individuals whose applications to become a Civil Party have been rejected by the Office of the Co-Investigating Judges. A number of these appeals have been filed in English and Khmer, the languages elected by the Accused and their Co-Lawyers and others filed in French and Khmer have been translated and notified into English. In total, 75 appeals have been notified to the Co-Lawyers in English and Khmer thus far. However, 19 appeals, namely **PTC 78, 81, 82, 84, 92, 98, 99, 100, 102, 106, 111, 112, 114, 115, 117, 122, 123, 135 and 144** have not yet been translated into English (“Appeals not available in English”).

1. Pursuant to Internal Rule 77bis (2), the Co-Lawyers are allowed to file a response to the appeals lodged by Civil Party applicants, within a 5 days deadline. Article 8.5 of the Practice Direction on Filing of Documents before the ECCC (“Practice Direction”), Rev. 5,¹ which was applicable at the time the appeals were filed, provides that the time limit for the Co-Lawyers to respond to each appeal would in principle run from the time they receive notification of said appeal in English and Khmer as the Co-Lawyers have elected to file and receive documents in these two languages.
2. The Chamber notes that the Co-Lawyers for IENG Sary have indicated in their Response to the Appeal of Civil Party Applications rejected by the OCIJ that “[t]he Defence relies on the discretion of the Pre-Trial Chamber to determine whether the Office of the Co-Investigating Judges has applied the correct test when evaluating Civil Party applications correctly pursuant to Rule 23bis while encouraging the Pre-Trial Chamber to take a flexible and inclusive approach in its determination of the admissibility of the Civil Party Appeals”.² Although this response was filed in the case PTC101, which relates to the Appeal against Order on Admissibility of Civil

¹ Practice Direction on Filing of Documents before the ECCC (“Practice Direction”), ECCC/01/2007/Rev. 5, adopted on 17 September 2010. The Chamber notes that the Practice Direction has been amended on 2 March and now provides that the deadline to respond to a filing commences “on the first calendar day following the days of service of the Notification of the document in Khmer and *one other official language of the ECCC*” [our emphasis]. For proceedings filed after 2 March 2011, the parties are not entitled anymore to wait until they receive proceedings in Khmer and the other language they have elected to respond to it, unless otherwise directed by the Co-Investigating Judges or the Chamber,

² IENG Sary’s Response to the Appeal of Civil Party Applications rejected by the OCIJ, D399/2/2 (“IENG Sary Response”), para. 1.



002/19-09-2007-ECCC/OCIJ (PTC 78, 81, 82, 84, 92, 98, 99, 100, 102, 106, 111, 112, 114, 115, 117, 122, 123, 135 and 144)

Party Applicants from current resident of Takeo, the Co-Lawyers made clear that they “maintain [their] position to all Civil Parties and Civil Party applicants”. They, indeed, filed no other response to any of the 75 appeals that were notified to them in English and Khmer and that the deadlines for filing a response to these appeals have now expired.

3. IENG Thirith and NUON Chea have thus far filed no response to any of the 75 appeals that were notified to them in English and Khmer and the deadlines for filing a response to these appeals have now expired. There is no indication that the Defence teams would act differently in relation to the Appeals not available in English, which, the Chamber emphasizes, raise similar issues.
4. While it is estimated by the Translation Unit that the translation of the Appeals not available in English would take up to 2 months, the Pre-Trial Chamber recalls that all these are currently available in Khmer, which is one of the language of the Co-Lawyers, as well as in French and that 75 of the appeals are available in English. As the translation of all the appeals into English would significantly delay their determination, which may have a negative impact on the rights of the civil party applicants, parties to the trial, and the organization of the trial, the Pre-Trial Chamber considers that it is in the interest of the administration of justice to direct the Co-Lawyers to use their internal linguistic resources to respond to the Appeals not available in English, should they elect to do so, by using the Khmer and, if possible, the French versions, together with the appeals that have been translated. Hence, the Pre-Trial Chamber considers it appropriate to direct the Co-Lawyers to respond to the Appeals not available in English without waiting for their English translation.
5. Given the number of appeals involved, the Pre-Trial Chamber considers that a period of fifteen days is appropriate for the Co-Lawyers to file a response, should they elect to do so.
6. It is noted that a similar direction is also given to the French speaking Defence Co-Lawyers in respect of those appeals not yet translated from English into French.



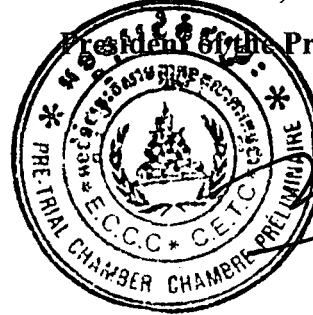
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THEREFORE, THE PRE-TRIAL CHAMBER HEREBY DIRECTS

That any responses by the Co-Lawyers to the appeals in cases **PTC 78, 81, 82, 84, 92, 98, 99, 100, 102, 106, 111, 112, 114, 115, 117, 122, 123, 135 and 144** should be filed by 19 may 2011, 4:00 pm.

Phnom Penh, 04 May 2011

President of the Pre-Trial Chamber



PRAK KIMSAN