

D55/1/12

**EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA
BEFORE THE OFFICE OF THE CO-PROSECUTORS**

Case File No. : 002/19-09-2007-ECCC/OCIJ (PTC06)
Date of Document : 19 February 2009
Party Filing : Co-Lawyers for the Civil Parties
Language : Khmer and English
Type of Document : Public

ឯកសារដើម	
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL	
ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/Date de reception):	
19 / 02 / 2009	
ពេលវេលា (Time/Heure):	
11:00	
មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé du dossier:	
S.A. Amy	

**Civil Party Co-Lawyers' Reminding Letter to Respond to the Joint Request For
Reconsideration of the Pre-Trial Chamber's Assessment of the Legal Status of the
Internal Rules in the Decision on NOUN Chea's Appeal Against Order Refusing
Request For Annulment**

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Pre-Trial Chamber:

- Judge PRAK Kimsan, President
- Judge HOUT Vuthy
- Judge Rowan DOWNING
- Judge NEY Thol
- Judge Katinka LAHUIS

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CERTIFIED COPY/COPIE CERTIFIÉE CONFORME	
ថ្ងៃ ខែ ឆ្នាំ ត្រឹមត្រូវ (Certified Date/Date de certification):	
19 / 02 / 2009	
មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé du dossier:	

1. On 26 August 2008, the Pre-Trial Chamber (“PTC”) ruled on Nuon Chea’s Appeal Against its Order Refusing Request for Annulment (“Decision”). In its Decision, the PTC observed that with regard to the relationship between the CPC and the Internal Rules, the latter form a “self-contained regime of procedural law [...] which do not stand in opposition to the CPC”. Consequently, it considers that the Internal Rules ‘to constitute the primary instrument to which reference should be made in determining procedures before the ECCC where there is a difference between the procedures in the Internal Rules and the CPC. Provisions of the CPC should only be applied where a question arises which is not addressed by the Internal Rules’.¹
2. On 13 October 2008, the Co-Lawyers for the Civil Parties submitted to the Pre-Trial Chamber a Joint Request for Reconsideration² of the Pre-Trial Chamber’s assessment of the Legal Status of the Internal Rules in the forementioned Decision
3. The Co-Lawyers for the Civil Parties have submitted several arguments to support their Request. First, the Internal Rules have been adopted by the Plenary which has ‘no authority to adopt [such] Rules that amount to a self-contained regime of procedural law. Only the National Assembly has legislative power. Neither the Agreement on the Establishment of the Extraordinary Chambers in the Courts of Cambodia or the ECCC Law delegates such law-making power to the Plenary’ They simply have not been granted legislative powers and cannot usurp them by simply saying so in an opinion.
- ’. Second, the Co-Lawyers for the Civil Parties considered that “even if the Internal Rules were valid, they rank below the CPC under the principle that *lex superior* has primacy over *lex inferior*. [and that the determination of the PTC in its Decision] is erroneous as a matter of law and has discriminatory effects on Civil Parties’ rights”.

¹ *Case against Nuon Chea*, 002/19-09-2007-ECCC/OCIJ (PTC06), Decision on Nuon Chea’s Appeal against order refusing request for annulment, 26 August 2008, Doc.No. 55/I/78, para 14-15.

² *Case against Nuon Chea*, 002/19-09-2007-ECCC/OCIJ (PTC06), Civil Party Co-Lawyer’s Request for Reconsideration of Nuon Chea’s Request for Annulment, Doc.No. 55/I/9, 13 October 2008.

Civil Party Co-Lawyer’s Reminding Letter
to Respond the Request for Consideration

4. The Co-Lawyers for the Civil Parties have requested the PTC (i) to reconsider its determination regarding the relationship between the Internal Rules and the CPC and (2) in the case where the Internal Rules are held valid, to determine in accordance with the relevant laws, that the CPC prevails over the Internal Rules in the case of any conflict or difference between them.
5. The Request for Reconsideration has been submitted to the PTC more than 4 months ago. So far the PTC has failed to respond. This failure has an impact on the upcoming Appeal hearings on 24 February 2009 and 27 February 2009.
6. During the hearing of the PTC on the Appeal of Khieu Samphan Against the Order Refusing the Request for Translation of the Case File, the Co-Lawyers for the Civil Parties requested the application of their right to speak provided by the CPC, even if a written pleading had not been submitted earlier. The PTC refused this request during this hearing.³ In the Procedural Background of this Decision, the PTC referred only to its decisions of August 26, 2008 on Nuon Chea's Appeal and of 20 March 2008 on Civil Party Participation in the Appeal Against the Provisional Detention Order of Nuon Chea and ignored the pending Request for Reconsideration.
7. The Co-Lawyers for the Civil Parties respectively expect a reasoned decision on their Request before the upcoming Appeal Hearings this month.

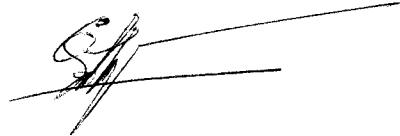
For these reasons stated above,

the Co-Lawyers for the Civil Parties request the Pre-Trial Chamber to respond as soon as possible to the Request for Reconsideration dated 13 October 2008.

Respectfully submitted by

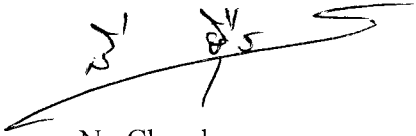
³ *Case against Khieu Samphan*, 002/19-09-2007/ECCC/OCIJ (PTC011), Written version of Oral Decision on Application by the Co-Lawyer for the Civil Parties Concerning Oral Submissions, Doc.No. A190/I/6, 4 December 2008.

Co-Lawyers for the Civil Parties

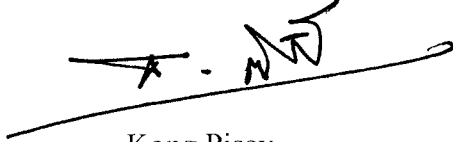


Lor Chunthy
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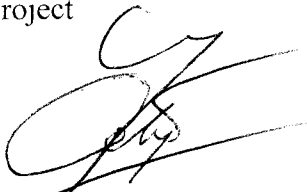
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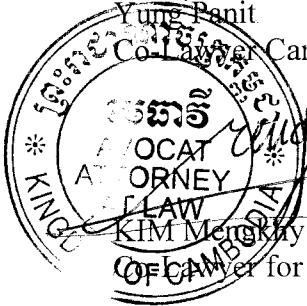


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Signed in Phnom Penh on 19 February 2009.