D138/1/18

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ
Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

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

អង្គបុរេជំនុំជម្រះ
Pre-Trial Chamber
Chambre Préliminaire

In the name of the Cambodian people and the United Nations and pursuant to the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea.

Criminal Case File N° 002/19-09-2007-ECCC/OCIJ (PTC 18)

Before: **Judge PRAK Kimsan, President**
Judge Rowan DOWNING
Judge NEY Thol
Judge Katinka LAHUIS
Judge HUOT Vuthy

Greffiers: **Chanrath SAR**
Entela JOSIFI

Date: **13 July 2009**

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PUBLIC

DECISION ON ADMISSIBILITY ON "APPEAL AGAINST THE CO-INVESTIGATING JUDGES' ORDER ON BREACH OF CONFIDENTIALITTY OF THE JUDICIAL INVESTIGATION"

Co-Prosecutors
CHEA Leang
Robert PETIT
YET Chakriya
William SMITH
TAN Senarong
Anees AHMED

Charged Person
IENG Sary

Lawyers for the Civil Parties
HONG Kim Suon
LOR Chunthy
NY Chandy
KONG Pisey
YONG Phanith
KIM Mengkhy
MOCH Sovannary
Silke STUDZINSKY
Martine JACQUIN
Philippe CANNONE
Pierre Olivier SUR
Elizabeth RABESANRATANA
Olivier BAHOUGNE
David BLACKMAN
Annie DELAHAIE

Co-Lawyers for the Charged Person
ANG Udom
Michael G. KARNAVAS

ឯកសារបានចំតបម្លងត្រឹមត្រូវតាមច្បាប់ដើម
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ថ្ងៃ ខែ ឆ្នាំ នៃការបញ្ជាក់ (Certified Date/Date de certification):
13 / JUL / 2009
មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé du dossier: SANN RADA

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THE PRE-TRIAL CHAMBER of the Extraordinary Chambers in the Courts of Cambodia ("ECCC") is seized with the "Appeal [of the Co-Lawyers for Ieng Sary] Against the Co-Investigating Judges' Order on Breach of Confidentiality of the Judicial Investigation" ("The Appeal") of 10 March 2009.

INTRODUCTION

1. On 3 March 2009, the Co-Investigating Judges issued an Order on Breach of Confidentiality of the Judicial Investigation ("Confidentiality Order") directed to the Co-Lawyers for Ieng SARY, Messrs. Michael G. KARNAVAS and ANG Udom.

2. On 10 March 2009, the Co-Lawyers for Ieng Sary filed an Appeal with the Pre-Trial Chamber against the Confidentiality Order and requested an expedited filing schedule and public oral hearing of the Appeal.

3. On 26 March 2009, the Co-Lawyers for Civil Parties filed a "Statement" with the Pre-Trial Chamber in relation to the Appeal.

4. 27 March 2009, the Co-Prosecutors filed their "Observations" with the Pre-Trial Chamber in relation to the Appeal.

5. On 27 March 2009, the Unrepresented Civil Party, Theary Chan SENG, filed a statement with the Pre-Trial Chamber in relation to the Appeal and requested to "speak in person at the [hearing on this Appeal]."

6. On 7 April 2009, the Pre-Trial Chamber issued a Direction to the Co-Lawyers for Ieng Sary concerning Co-Prosecutors "Observations" on the Appeal. On 21 April 2009, the Co-Lawyers for Ieng Sary filed their Response to the Pre-Trial Chamber's Directions.

PRELIMINARY PROCEDURAL MATTERS RELATED TO THIS APPEAL

7. The Pre-Trial Chamber notes that there are four preliminary procedural issues raised in the submissions of the Co-Lawyers for Ieng Sary, the Co-Prosecutors and the Civil Parties, including the Unrepresented Civil Party Theary C. Seng, which are as follows:

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1. Who has standing as the filing party for this Appeal;[1]

2. Are the Co-Prosecutors party to this Appeal;[2]

3. Are the Civil Parties in case 002,[3] including Unrepresented Civil Party, Theary C. Seng,[4] parties to this Appeal;

4. Request for oral hearing.[5]

I. Who has standing as the filing party for this Appeal

8. In their "Observations," the Co-Prosecutors' raised the following issue:

> "The Co-Prosecutors observe that the Pre-Trial Chamber may consider dismissing the Appeal for lack of standing of the Appellant IENG Sary. The Confidentiality Order was issued under Internal Rules 35 and 38 solely against the Defence Counsel. Appellant IENG Sary has, therefore, no standing to file this Appeal; nor does the Confidentiality Order provide him a cause of action to move the Pre-Trial Chamber. Even if the Appellant had the standing and the cause of action, the Appeal is not permissible under [Internal] Rule 74(3) which exhaustively enumerates the kinds of appeals that a charged person may bring before the Pre-Trial Chamber.
>
> [...]
>
> The Appeal, as presented, has been filed by Charged Person IENG Sary. IENG Sary has no standing to file this Appeal; nor does the Confidentiality Order provide him a cause of action to file this Appeal. The Confidentiality Order was not passed against IENG Sary. The Appeal does not demonstrate that he suffered any prejudice or denial of rights that need to be remedied, at appeal, by the Pre-Trial Chamber."[6]

9. In their "Response to the Directions issued by the Pre-Trial Chamber on 7 April 2009," the Co-Lawyers explain:

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[1] Co-Prosecutors' Observations on Ieng Sary's Appeal Against the Co-Investigating Judges' Confidentiality Order", 27 March 2009, D138/1/5 ("The Co-Prosecutors' Observations"), paras. 3 and 6.
[2] Co-Prosecutors' Observations, para. 5.
[3] Statement of Co-Lawyers for Civil Parties on Ieng Sary's Appeal Against the OCIJ Order on Breach of Confidentiality of the Judicial Investigation ("Statement of Co-Lawyers for Civil Parties"), 26 March 2009, D138/1/4, para 5
[4] Statement of Unrepresented Civil Party [Theary C. SENG] on Ieng Sary's Appeal Against the OCIJ Order on Breach of Confidentiality of the Judicial Investigation" ("Statement of Unrepresented Civil Party"), 25 March 2009, D138/1/3, para. 3.
[5] Co-Prosecutors' Observations, paras. 10-14.
[6] Co-Prosecutors'Observations, paras. 3 and 6.

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> "It is the Co-Lawyers who have standing to file the Appeal rather than Mr. IENG Sary, although Mr. IENG Sary fully concurs with the Co-Lawyers that the [Co-Investigating Judges] Order on the Breach of Confidentiality of the Judicial Investigation ("Confidentiality Order") threatens to violate his right to fair and transparent judicial proceedings. Any confusion relating to the identity of the filing party does not result in the dismissal of the Appeal
>
> [...]
>
> 3. The Appeal was titled "Ieng Sary's Appeal Against the [Co-Investigating Judges] Order on Breach of Confidentiality of the Judicial Investigation & Request for Expedited Filing Schedule and Public Oral Hearing." This may have given the incorrect impression that the Appeal was filed simply on behalf of Mr. IENG Sary. However, the first sentence of the introduction to the Appeal should have clarified any confusion in the matter by explaining that it was the "Co-Lawyers for Mr. IENG Sary, Ang Udom and Michael G. Karnavas, ("The Defence") [who] submit this Appeal against the "Order on Breach of Confidentiality of the Judicial Investigation."" To clarify, the Appeal is being filed by the Co-Lawyers of Mr. IENG Sary in their personal capacities as they were the subject of the [Co-Investigating Judges]' Order."[7]

10. Based on these submissions by the Co-Lawyers, the Pre-Trial Chamber finds that the Co-Lawyers of Ieng Sary have standing as the "filing party" for this Appeal.

II. Are the Co-Prosecutors party to this Appeal

11. In their "Observations on Ieng Sary's Appeal Against the Co-Investigating Judges' Confidentiality Order", dated 27 March 2009, the Co-Prosecutors' raised the following issue:

> "The matter of interference in the administration of justice, similar to contempt in certain national and international jurisdictions, is principally an issue between the court and the alleged offender. The Co-Prosecutors, therefore, do not consider themselves as full parties to these proceedings but only as an "interested party", being officers of this Court. Given their limited role in this Appeal and the consequential narrow scope of these Observations, the Co-Prosecutors do not take any position on all the factual submissions made by the

[7] Co-Lawyers For Ieng Sary's Response to the Directions Issued by the Pre-Trial Chamber on 7 April 2009 ("Co-Lawyers Response to the Pre-Trial Chamber Directions"), dated 21 April 2009, D138/1/7, paras. 2A and

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> Appellant, except to the extent that the Co-Prosecutor directly address in these Observations."[8]

12. In their "Response to the Directions issued by the Pre-Trial Chamber on 7 April 2009", the Co-Lawyers submit:

> "It is immaterial to the Co-Lawyers whether, for the present Appeal, the Co-Prosecutors ("OCP") are considered to be a full party or simply an interested party to the present Appeal
>
> [...]."[9]

13. The Pre-Trial Chamber observes that this Appeal relates to an Order of the Co-Investigating Judges finding the Co-Lawyers responsible for conduct in breach of the principle of confidentiality of investigations, finding that such conduct may be sanctioned under Internal Rules 35 and 38. Internal Rules 35 and 38 address respectively, conduct that is in "Interference with the Administration of Justice" and that which represents "Misconduct of a Lawyer." The role of the Prosecutor does not necessarily extend to cases related to the conduct included in Internal Rules 35 and 38.

14. The role of the Co-Prosecutors of the ECCC in the Internal Rules is strictly related to the ongoing cases and investigations of crimes within the jurisdiction of the ECCC.[10] The Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea ("The ECCC Law") provides a list of the crimes under the jurisdiction of the ECCC. The conduct which is subject of the Co-Investigating Judges' Confidentiality Order does not appear in that list of crimes. The Pre-Trial Chamber finds that the role of Co-Prosecutors does not automatically extend to procedures related to interference with the administration of justice and/or misconduct of a lawyer.

15. In support of their argument, considering themselves only as an "interested party", being "officers of this Court", the Co-Prosecutors put forward two examples from the practice of the ICTY Chambers,[11] which indicate that Prosecutors may be requested by the Court to participate or assist in the first instance and/or even in the appeal proceedings in cases related to contempt of court allegations.

[8] Co-Prosecutors' Observations, para. 5.
[9] Co-Lawyers Response to the Pre-Trial Chamber Directions, para. 2C.
[10] ECCC Internal Rules, Rules 49, 50 and 53.
[11] Co-Prosecutors' Observations, footnotes 5 and 6.

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16. The Pre-Trial Chamber notes that the Cambodian Criminal Procedure Code does not provide on proceedings related to conduct that constitutes "contempt of court." The Internal Rules do not specify who may be considered as parties to contempt of court cases. The Pre-Trial Chamber needs therefore to seek guidance in procedural rules established at the international level.[12]

17. Rule 77(C)(i) of the Rules of Procedure and Evidence of the ICTY, provides:

> "Rule 77 Contempt of the Tribunal
>
> [...]
>
> (C) When a Chamber has reason to believe that a person may be in contempt of the Tribunal, it may:
>
> (i) direct the Prosecutor to investigate the matter with a view to the preparation and submission of an indictment for contempt [...]."[13]

18. Rule 77(C)(i) of the Rules of Procedure and Evidence of the ICTR provides identically in this respect.

19. Rule 171 of the ICC Rules of Procedure and Evidence provides on cases similar to the one before the Pre-Trial Chamber. The ICC Rules do not appear to foresee a role for the Prosecutor in such cases.

20. The Pre-Trial Chamber finds that the role of an investigator in contempt of court proceedings may be given to the Prosecutor during first instance proceedings. This procedure before the Pre-Trial Chamber is an appellate procedure. In relation to such proceedings, the international Tribunals' Rules of Procedure and Evidence provide as follows:

21. Rule 117 of the ICTR Rules of Procedure and Evidence provides:

> "Rule 117: Expedited Appeals Procedure
>
> (A) An appeal under Rule [...] 77 shall be heard expeditiously on the basis of the original record of the Trial Chamber. [...]

[12] Article 12 of the Agreement Between the United Nations and the Royal Government of Cambodi[illegible] Prosecution under Cambodian Law of Crimes Committed During the Period of Democratic Kambu[illegible]
[13] ICTY Rules of Procedure and Evidence, Rule 77.

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(B) Rules 109 to 114 shall not apply to such appeals."

22. Rule 116 *bis* of Part Seven of the ICTY Rules of Procedure and Evidence relevantly provides relating to appeals under Rule 77 (contempt), in this respect:

> "(A) shall be heard expeditiously on the basis of the original record of the Trial Chamber [.....]"
>
> (B) Rules 109 to 114 shall not apply to such appeals."

23. Rules 109 to 114 of the ICTY and ICTR Rules of Procedure and Evidence provide the steps to be followed in normal appellate proceedings. By way of excluding such "normal" steps from the procedure that governs appeals under Rules 77, the ICTY and ICTR Rules imply that a mere review of the "original record of the [first instance court proceedings]" would be sufficient to decide on such appeals. The ECCC Internal Rules follow this approach also. This view is supported by, Internal Rule 77(1)(second sentence) of the ECCC Internal Rules which directs that:

> "Appeals referred to in sub-rule 73(c) shall be filed with the Greffier of the Chamber, who shall keep a register, inform the authority that made the decision and, if necessary, request it to provide any relevant documents."

24. This is not the practice for other appeals within the jurisdiction of the Pre-Trial Chamber.

25. The ECCC Internal Rules do not foresee a role for the Co-Prosecutors in cases of appeals against orders issued under Internal Rules 35 and/or 38. Seeking guidance in the Rules of ICTY, ICTR and ICC as mentioned before, which do not foresee a role for the Prosecutor at the appellate stage of such proceedings, the Pre-Trial Chamber observes that this finding is in accordance with international procedures.

26. The Pre-Trial Chamber finds that the Co-Prosecutors are not automatically a party and that in this Appeal it will not be assisted by the Co-Prosecutors being joined as a party.

III. Are the Civil Parties to criminal case 002, including Unrepresented Civil Party, Theary C. Seng parties to this Appeal

27. The parties to case 002 were notified of the Appeal, as there was initially ambiguity in respect of the appealing party. Now that it has been clarified who has standing as the filing

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party for the Appeal and the provisions upon which the Appeal is based, filings from other parties may be inappropriate.

28. On 26 March 2009, the Co-Lawyers for the Civil Parties submitted statements in relation to the Appeal.[14] The Co-Lawyers for the Civil Parties submit that "the discussion on the transparency of the Court is very crucial and fundamental and the Confidentiality Order affects Civil Parties and their Co-Lawyers as well."[15]

29. The Co-Lawyers for the Civil Parties explain that they "suffer the same experiences as the Defence as it pertains to: (i) the long time between filing of a document and notification and (ii) the not understandable selectiveness of documents being published on the Court's website."[16]

30. On 27 March 2009, the Unrepresented Civil Party Theary C. SENG submitted a statement on the Appeal against the Co-Investigating Judges Confidentiality Order. The Unrepresented Civil Party "requests the right to speak in person at the upcoming Pre-Trial Chamber hearing on [the Appeal] against the [Co-Investigating Judges'] Order on Breach of Confidentiality [...], pursuant to the Pre-Trial Chamber's 29 August 2008 Public Directions on Unrepresented Civil Parties' Right to Address the Pre-Trial Chamber in Person."[17]

31. The Co-Lawyers for Ieng Sary in their "Response to the Directions issued by the Pre-Trial Chamber on 7 April 2009", filed on 21 April 2009, refer only slightly[18] to the Statement of Co-Lawyers for Civil Parties and do not directly comment on whether they can be considered as a party for the purposes of this appellate procedure. They took "no position on [the Unrepresented Civil Party's] request."[19]

32. The Pre-Trial Chamber notes that this appellate procedure relates to conduct as foreseen in Internal Rules 35 and 38 and as such this procedure differs in its purpose and scope from appellate criminal proceedings related to safeguards for the rights of parties of specific criminal cases. The role of the Civil Parties, as foreseen by the ECCC Internal Rules relates to specific criminal proceedings only and is designed to allow victims of crimes within ECCC jurisdiction to support the prosecution and to seek collective and moral reparations.[20] As the Co-Prosecutors have no standing in this procedure, inviting the Civil Parties to

[14] Statement of Co-Lawyers for Civil Parties, 25 March 2009, D138/1/3.
[15] Statement of Co-Lawyers for Civil Parties, para. 5.
[16] Statement of Co-Lawyers for Civil Parties, para. 6.
[17] Statement of Unrepresented Civil Party, para. 3.
[18] Co-Lawyers Response to the Pre-Trial Chamber Directions, para. 8 point b.
[19] Co-Lawyers Response to the Pre-Trial Chamber Directions, para.10.
[20] ECCC Internal Rules, Rule 23(1)(a) and (b).

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support them is not possible for the current Appeal. Claims for reparations are not relevant in this appeal to provide standing for Civil Parties.

IV. Request for Oral Hearing

33. The Co-Lawyers for Ieng Sary, in both the Appeal Brief and the Reply to Pre-Trial Chamber Directions dated 7 April 2009, request an oral hearing of this Appeal.[21] They argue that matters of a high importance and of general interest are being considered and that according to the Internal Rules the presumption is that for all pre-trial appeals there will be an oral hearing.[22]

34. The Pre-Trial Chamber has noted that Internal Rule 77(1) provides for a different procedure in relation to the initial procedural steps to be followed when Appeals provided for in Internal Rule 73(c) are filed. Internal Rule 77(1) directs that for such Appeals the initial step is to inform the authority that rendered the appealed decision and to request it to provide any relevant documents, if necessary. This different treatment by sub-Rule 77(1) of appeals under sub-Rule 73(c) is deliberate and addresses the distinct nature of such appeals compared to other appeals within the jurisdiction of the Pre-Trial Chamber. The Internal Rules do not otherwise treat appeals under Internal Rule 73(c) differently from the other appeals within the jurisdiction of the Pre-Trial Chamber.

35. The rules and practice of International Tribunals provide that appeals of a nature similar to this Appeal may be determined, in second instance, entirely on basis of written briefs. For such appeals the rules that apply normally in other appellate proceedings "shall not apply."[23]

36. The Pre-Trial Chamber shall, as a general rule, consider these appeals on the basis of written submissions. Considering the specific nature of the current appellate procedure particularly that no opposing party has standing and, as the Pre-Trial Chamber has no questions which may be answered during a hearing, it rejects the request for an oral hearing.

[21] Appeal paras. 8-11 and Co-Lawyers Response to Pre-Trial Chamber Directions paras. 2/D and 7-9.
[22] Appeal para. 10.
[23] See paras. 22 and 23 above and the ICTY Rules of Procedure and Evidence, Rule 116 *bis* (B) and ICTR Rules of Procedure and Evidence, Rule 117 (B).

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ADMISSIBILITY OF THE APPEAL

37. The Confidentiality Order was issued on 3 March 2009. The Appeal Brief was filed on 10 March 2009 and therefore within the time provided for in Internal Rule 75(3) of the ECCC Internal Rules.

38. In arguing admissibility of the Appeal, the Co-Lawyers submit:

> "The Confidentiality Order is somewhat unclear with regards to the precise rules upon which it is based. Reference is however made to the Defence having violated "Internal Rule 56(1) and Article 21(3) of the 2003 Agreement" a breach that "may be sanctioned under [Internal] Rules 35 and 38 of the Internal Rules.
>
> [Internal] Rule 35(6) of the ECCC Internal Rules provides that "any decision under this Rule shall be subject to appeal before the Pre-Trial Chamber or the Supreme Court Chamber as appropriate." This right of appeal is confirmed by [Internal] Rule 73 (c) which sets out the jurisdiction of the Pre-Trial Chamber. It appears to be beyond doubt that the Confidentiality Order constitutes a "decision under this Rule" and as such is subject to appeal before the Pre-Trial Chamber."[24]

39. The Pre-Trial Chamber notes that on 15 January 2009 the Co-Investigating Judges put the Co-Lawyers for Ieng Sary on notice that it is for the judges to decide when and how to disclose confidential case file material.[25] The Pre-Trial Chamber finds that this letter does not represent a ruling within the meaning of the term as provided for in Article 3.12 of the ECCC Practice Direction on Filing of Documents. The essence of Article 3.12 is that, any such rulings issued by the Co-Investigating Judges or the Pre-Trial Chamber shall be related to a review and determination of the status of specific "document(s)" and not of the whole case file in general.

40. On 3 March 2009 the Co-Investigating Judges issued the Confidentiality Order[26] finding that:

[24] Appeal, paras. 6 and 7.
[25] Internal Memorandum of the Co-Investigating Judges on the Confidentiality of Case File Documents, 15 January 2009, A238/1/Corr.1.
[26] Co-Investigating Judges Confidentiality Order, 3 March 2009, D138.

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"the Defence's decision to publish [...] documents in direct defiance of the Co-Investigating Judges' 15 January 2009 decision prohibiting publication of case file material, violates Internal Rule 56(1) and Article 21(3) of the [..] Agreement."[27]

and that:

"This breach may be sanctioned under [Internal] Rules 35 and 38 of the Internal Rules."[28]

41. On those grounds, the Co-Investigating Judges ordered the following:

1. "The abovementioned lawyers shall immediately:

   a) Cease posting information or documents related to the judicial investigation other than those documents published on the ECCC website; and
   b) Remove the offending content from the Defence website. If this content is not removed within 48 hours, said lawyers will commit a further breach of this Order, and will thus expose themselves to the legal consequences.

2. A copy of this Order shall be forwarded to:

   a) The Bar Association of the Kingdom of Cambodia;
   b) The American Bar Association;
   c) The Alaska State Bar Association; and
   d) The Defence Support Section

so that these bodies may decide on appropriate action."

42. It is relevant to consider the ECCC Internal Rules 56(1), 35 and 38, and Article 3.12 of the Practice Direction on Filing of Documents, and Article 21(3) of the Agreement.

[27] Co-Investigating Judges Confidentiality Order, para 19.
[28] Co-Investigating Judges Confidentiality Order, para 20.

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43. The Pre-Trial Chamber notes that, within the meaning of the provisions of Internal Rule 56, it is correct to conclude that the Co-Lawyers, by proceeding to publish in their website case file documents without first seeking the approval of the relevant judicial authority for each document, acted in defiance of the general rule of confidentiality of investigations and of the recognized standards and ethics of the legal profession. However, the finding of Co-Investigating Judges that the Co-Lawyers acted in direct defiance of the 15 January 2009 "decision" and consequently this breach may be sanctioned under Internal Rule 35 is not correct.

44. The Co-Investigating Judges' letter of 15 January 2009 does not represent an "order", and the existence of an "order" and its subsequent "violation" are essential prerequisites for Internal Rule 35 to then be applied in instances of disclosure of confidential information. Therefore, the Confidentiality Order is found to not represent a "decision under Internal Rule 35". There was no "order" "violated" within the scope of Internal Rule 35(1)(a), being the Rule upon which the Co-Investigating Judges rely when making their finding.

45. The Pre-Trial Chamber further notes that the Confidentiality Order, in its concluding part under (1)(a) where it provides for the Co-Lawyers to "[c]ease posting information or documents related to the judicial investigation other than those documents published on the ECCC website," represents a type of order not subject to appeal before the Pre-Trial Chamber under the Internal Rules. No appeal right is provided anywhere within Internal Rule 38 save where disciplinary action has been taken by BAKC, as provided for in Internal Rule 38(3). As far as the Appeal is lodged against this part of the order, it is therefore inadmissible.

46. Additionally, the Confidentiality Order, in its concluding part under (1)(b) where it orders the Co-Lawyers to "remove the offending content from the Defence website," also represents an order of the type that, for the same reasons, cannot be appealed to the Pre-Trial Chamber under the Internal Rules.

47. The second sentence of this part of the Order, which reads: "if this content is not removed within 48 hours, said lawyers will commit a further breach of this Order, and will thus expose themselves to legal consequences," represents a warning within the meaning of the term as provided for in Internal Rule 38(1). The Pre-Trial Chamber finds that this warning refers to the probability of a conduct that would constitute "*une nouvelle violation*" of the order. In the English version of the Confidentiality Order, the Pre-Trial Chamber notes that

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this was translated as "further breach". Considering the French original of the Order, the English version should have referred to "a new violation."

48. The Pre-Trial Chamber notes that this part of the Order does not represent a "disciplinary action by the BAKC" as provided for in Internal Rule 38(3). Pursuant to Internal Rule 38, "warnings" are not subject to appeal before the Pre-Trial Chamber. This part of the Appeal is therefore also inadmissible.

THEREFORE, THE PRE-TRIAL CHAMBER HEREBY DECIDES:

The Appeal is inadmissible.

Phnom Penh, 13 July 2009

Pre-Trial Chamber **President**

Rowan DOWNING NEY Thol Katinka LAHUIS HUOT Vuthy PRAK Kimsan

Greffiers

Chanrath SAR Emilia JOSIFI

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