



ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

អង្គជំនុំជម្រះតុលាការកំពូល

Supreme Court Chamber
Chambre de la Cour suprême

ឯកសារដើម
ORIGINAL/ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ (Date): 25-Dec-2012, 14:14
Uch Arun
CMS/CFO:.....

សំណុំរឿងលេខ: ០០២/១៩-០៩-២០០៧-អ.វ.ត.ក-អ.ជ.ស.ដ/អ.ជ.ត.ក(២១)
Case File/Dossier N°. 002/19-09-2007-ECCC-TC/SC(21)

Before:
Judge **KONG Srim, President**
Judge **Chandra Nihal JAYASINGHE**
Judge **Agnieszka KLONOWIECKA-MILART**
Judge **MONG Monichariya**
Judge **Florence Ndepele Mwachande MUMBA**
Judge **SOM Sereyvuth**
Judge **YA Narin**

Date: 25 December 2012
Language(s): Khmer/English
Classification: PUBLIC

DECISION ON MOTION FOR EXTENSION OF TIME TO FILE IMMEDIATE APPEAL

Co-Prosecutors
CHEA Leang
Andrew CAYLEY

Accused
NUON Chea

Civil Party Lead Co-Lawyers
PICH Ang
Elisabeth SIMONNEAU-FORT

Co-Lawyers for NUON Chea
SON Arun
Victor KOPPE
Michiel PESTMAN

1. **THE SUPREME COURT CHAMBER** of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea between 17 April 1975 and 6 January 1979 (“Supreme Court Chamber” and “ECCC”, respectively) is seized of a motion filed on 13 December 2012 by the Co-Lawyers for NUON Chea (“Defence”) requesting an extension of time until 8 January 2013 to file an immediate appeal against a decision of the Trial Chamber filed on 23 November 2012 concerning a request for summary action against the Minister of Foreign Affairs and International Cooperation of the Kingdom of Cambodia.¹ The Defence also requests leave to file, in English with a Khmer translation to follow, an immediate appeal against another decision of the Trial Chamber filed on 23 November 2012 concerning a request for immediate action against governmental interference with the administration of justice.² In support of the Motion, the Defence submits that a lack of clarity about procedures and deadlines for filing immediate appeals has recently arisen.³ The Co-Prosecutors have not responded to the Motion.

2. The Supreme Court Chamber notes that, on 6 February 2012, the Trial Chamber issued a memorandum indicating periods of judicial recess for the year 2012, including one from 24 December 2012 to 4 January 2013 (“Winter Recess”), during which the Trial Chamber would not sit and filings would not be permitted.⁴ The 2012 Memorandum specified that “[d]uring the periods indicated, [...] the Court Management Section will not accept any document for filing in Case 002” and that “[w]here a time limit falls on a day during the above recess, the due date for filing will become the first working day following the recess period.”⁵

3. On 10 December 2012, the Supreme Court Chamber received an inquiry about procedures for filing immediate appeals for which deadlines fall during Winter Recess.⁶ The Supreme Court Chamber responded that all filing deadlines and procedures indicated within the Internal Rules⁷ and Practice Direction⁸ should be observed as usual.⁹ The following day, the Trial

¹ Request for Extension of Time for Filing of Immediate Appeal against Trial Chamber Decision on Rule 35 Request for Summary Action against Minister of Foreign Affairs HOR Namhong, E219/3/1/1.1, 13 December 2012 (“Motion”), paras. 1-5, *referring to* Decision on Rule 35 Request Calling for Summary Action Against Minister of Foreign Affairs HOR Namhong (E219), E219/3, dated 22 November 2012 and filed 23 November 2012 (“Decision on Summary Action”).

² Motion, para. 6, *referring to* Decision on Application for Immediate Action Pursuant to Rule 35, E189/3, dated 22 November 2012 and filed 23 November 2012 (“Decision on Immediate Action”).

³ Motion, paras. 1-6.

⁴ Memorandum from Judge NIL Nonn, President of the Trial Chamber, entitled “Judicial recesses during 2012”, E165, 6 February 2012 (“2012 Memorandum”).

⁵ 2012 Memorandum, para. 2.

⁶ Electronic mail from Tanya Rene PETTAY, Legal Consultant for IENG Sary, entitled “question concerning winter recess”, sent on 10 December 2012 at 12h21.

⁷ Internal Rules of the ECCC, Revision 8, 3 August 2011 (“Internal Rules”).

⁸ Practice Direction on the Filing of Documents before the ECCC, Revision 8, 7 March 2012 (“Practice Direction”).

Chamber issued a memorandum indicating periods of judicial recess for the year 2013, reiterating similar filing procedures and deadlines as in the 2012 Memorandum, but this time specifying that “[t]his does not affect the filing of documents with any other Chamber, including immediate appeals with the Supreme Court Chamber.”¹⁰

4. Pursuant to Rules 39(3) and 107(1) of the Internal Rules, the deadlines for filing immediate appeals against the Decision on Summary Action and the Decision on Immediate Action both fell on 24 December 2012.¹¹ The Defence submits that, in reliance on the 2012 Memorandum, it concluded that the 24 December 2012 deadline had been “moved” to 8 January 2013.¹² Pointing to Rule 106(2) of the Internal Rules, which states that “immediate appeals shall be filed with the Greffier of the Trial Chamber”, the Defence argues that its conclusion that immediate appeals before the Supreme Court Chamber were affected was reasonable.¹³ The Defence’s requests are accordingly made pursuant to Rule 39(4) of the Internal Rules and Article 7.2 of the Practice Direction in a bid to compensate for their timeframe for the submission of both immediate appeals having been “unexpectedly and substantially shortened.”¹⁴

5. As a general rule, filing deadlines are only suspended if they fall on Saturdays, Sundays, Cambodian public holidays, or other official holidays observed by the ECCC.¹⁵ Rule 39(1) of the Internal Rules allows for the possibility that time limits be set, *inter alia*, “by decision of the judges”, but only “where appropriate”. Rule 39(4) of the Internal Rules also empowers judges “to extend any time limits set by them” or to “recognise the validity of any action executed after the expiration of a time limit prescribed in these [Internal Rules] on such terms, if any, as they see fit.”¹⁶ Any periods during which the Trial Chamber indicates it will not sit do not qualify as official holidays, and have no effect whatsoever on the judicial duties that the Supreme Court Chamber is bound to discharge.

6. There is nothing in the Internal Rules or Practice Direction that empowers the Trial Chamber to prohibit the Court Management Section from accepting filings during periods of judicial recess. Unless otherwise instructed by the Office of Administration, the ECCC is always

⁹ Electronic mail from Sheila PAYLAN, Legal Officer for the Supreme Court Chamber, entitled “Re: question concerning winter recess”, sent on 10 December 2012 at 16h12.

¹⁰ Memorandum from Judge NIL Nonn, President of the Trial Chamber, entitled “Judicial recesses during 2013”, E253, 11 December 2012 (“2013 Memorandum”), para. 2.

¹¹ Advance courtesy notice of the Supreme Court Chamber’s present decision on the Motion was provided to the Defence by electronic mail on 20 December 2012 at 13h59.

¹² Motion, paras. 1-3.

¹³ Motion, paras. 3, 5.

¹⁴ Motion, para. 5.

¹⁵ See Rule 39(3) of the Internal Rules. See also Article 2.3 of the Practice Direction.

¹⁶ See also Article 8.1 of the Practice Direction.

deemed open and operational, including for the purpose of filing documents.¹⁷ As such, while the Trial Chamber may consider it appropriate to extend filing deadlines during periods of judicial recess, there is no reason or basis for the Trial Chamber to prohibit parties from voluntarily filing documents before their extended deadlines or new applications or pleadings during those periods. The Supreme Court Chamber therefore considers that the Trial Chamber's instructions in the 2012 Memorandum created confusion about procedures and deadlines for filing immediate appeals, and that such confusion constitutes good cause for granting the relief sought by the Defence.

7. For the foregoing reasons, the Supreme Court Chamber **GRANTS** the Motion in its entirety.

Phnom Penh, 25 December 2012

President of the Supreme Court Chamber



KONG Srim

¹⁷ The Office of Administration has issued memoranda specifying official holidays observed by the ECCC. Nothing in these memoranda supports any conclusion that the Court Management Section would not be accepting filings during periods of judicial recess. *See* Information Circular from KRANH Tony, Acting Director of the Office of Administration, and Knut ROSANDHAUG, Deputy Director of the Office of Administration, entitled "Official Holidays for 2012", E165.1, 1 December 2011. *See also* Information Circular from KRANH Tony, Acting Director of the Office of Administration, and Knut ROSANDHAUG, Deputy Director of the Office of Administration and Coordinator of the United Nations Assistance to the Khmer Rouge Trials, entitled "Official Holidays for 2013", E253.1, 5 December 2012.