



**អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា**

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

**ព្រះរាជាណាចក្រកម្ពុជា**  
**ជាតិ សាសនា ព្រះមហាក្សត្រ**

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

**អង្គបុរេជំនុំជម្រះ**  
Pre-Trial Chamber  
Chambre Préliminaire

D236/1/1/8

*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*

Case File N° 004/07-09-2009-ECCC/OCIJ (PTC20)

**Before:** Judge PRAK Kimsan, President  
Judge BEAUVALLET Olivier  
Judge NEY Thol  
Judge BWANA Steven James  
Judge HUOT Vuthy

**Date:** 09 December 2015

<b>ឯកសារដើម</b>	
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PUBLIC REDACTED

**DECISION ON [REDACTED] APPEAL AGAINST THE INTERNATIONAL CO-INVESTIGATING JUDGE'S DECISION ON [REDACTED] MOTION TO RECONSIDER AND VACATE [REDACTED] SUMMONS DATED 29 JULY 2014**

Co-Prosecutors

CHEA Leang  
Nicholas KOUMJIAN

Co-Lawyers for the Appellant

BIT Seanglim  
John R.W.D. JONES

Lawyers for the Civil Parties and Civil Party Applicants

CHET Vanly	Christine MARTINEAU
HONG Kimsuon	Barnabe NEKUI
KIM Mengkhy	Lyma NGUYEN
LOR Chunthy	Beini YE
SAM Sokong	Emmanuel JACOMY
TY Srinna	
VEN Pov	
SIN Soworn	
Laure DESFORGES	
Herve DIAKIESE	
Ferdinand DJAMMEN-NZEPA	
Nicole DUMAS	
Isabelle DURAND	
François GAUTRY	
Martine JACQUIN	



**THE PRE-TRIAL CHAMBER** of the Extraordinary Chambers in the Courts of Cambodia (the “ECCC”) is seised of [REDACTED] Appeal against the International Co-Investigating Judge’s Decision on [REDACTED] Motion to Reconsider and Vacate [REDACTED] Summons Dated 29 July 2014” filed by [REDACTED] Co-Lawyers on 23 March 2015 (the “Appeal”).<sup>1</sup>

**I. PROCEDURAL BACKGROUND**

[REDACTED]

[REDACTED]

<sup>1</sup> [REDACTED] Appeal Against the International Co-Investigating Judge's Decision on [REDACTED] Motion to Reconsider and Vacate [REDACTED] Summons Dated 29 July 2014, 23 March 2015, D236/1/1/2.

<sup>2</sup> Decision on [REDACTED] Motion to Reconsider and Vacate [REDACTED] Summons Dated 29 July 2014 (the “Impugned Decision”), 19 February 2015, D236/1, para. 1. See Summons of [REDACTED] for Initial Appearance, 29 July 2014, A150.

<sup>3</sup> [REDACTED]  
<sup>4</sup> [REDACTED]



*Decision on [REDACTED] Appeal against the International Co-Investigating Judge’s Decision on [REDACTED] Motion to Reconsider and Vacate [REDACTED] summons dated 29 July 2014* 1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

7 [REDACTED]



*Decision on [REDACTED] Appeal against the International Co-Investigating Judge's Decision on [REDACTED] Motion to Reconsider and Vacate [REDACTED] summons dated 29 July 2014*

[REDACTED]

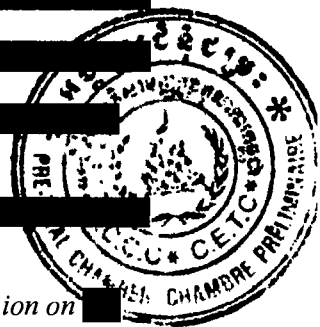
[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]



Decision on [REDACTED] Appeal against the International Co-Investigating Judge's Decision on [REDACTED] Motion to Reconsider and Vacate [REDACTED] summons dated 29 July 2014

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

19 [REDACTED]



Decision on [REDACTED] Appeal against the International Co-Investigating Judge's Decision on [REDACTED]  
Motion to Reconsider and Vacate [REDACTED] summons dated 29 July 2014

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

14. On 23 March 2015, the Co-Lawyers filed the Appeal in English only, with a preliminary Request for Authorisation to file in English first with the Khmer translation to follow. On 27 May 2015, the Pre-Trial Chamber granted the Co-Lawyers' preliminary Request and the Appeal was notified in English and Khmer on the same day. On 16 June 2015, as instructed by the Pre-Trial Chamber,<sup>30</sup> the International Co-Prosecutor filed their Response to the Appeal (the "OCP Response").<sup>31</sup> The Co-Lawyers filed their Reply on 29 June 2015 in English only and on 9 July 2015 in Khmer (the "Reply").<sup>32</sup>

## II. SUBMISSIONS

15. The Co-Lawyers request the Pre-Trial Chamber to: (a) admit the Defence's submission as an appeal under Internal Rules 21 and 74(3)(a); (b) to overturn the Impugned Decision, which errs in law; and (c) to vacate the Appellant's Summons dated 29 July 2014. The Co-Lawyers argue admissibility of the Appeal under Internal Rule 21,<sup>33</sup> to safeguard the Appellant's right to a competent tribunal, and under Internal Rule 74(3)(a),<sup>34</sup> since the right to a competent tribunal means that a tribunal must have jurisdiction over the particular matter.

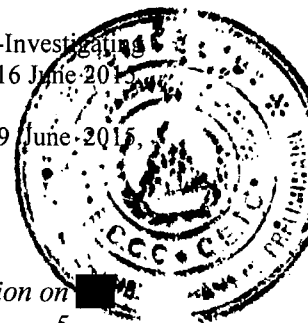
<sup>30</sup> Decision on International Co-Prosecutor's Request for Extension of Time to Respond to [REDACTED]'s Appeal and on Defence related Requests, 9 June 2015, D236/1/1/5.

<sup>31</sup> International Co-Prosecutor's Response to [REDACTED]'s Appeal against the International Co-Investigating Judge's Decision Denying her Motion to Reconsider and Vacate [REDACTED] Summons Dated 29 July 2014, 16 June 2015, D236/1/1/6.

<sup>32</sup> [REDACTED]'s Reply to the International Co-Prosecutor's Response to [REDACTED] Summons Appeal, 29 June 2015, D236/1/1/7.

<sup>33</sup> Appeal, paras 16-19.

<sup>34</sup> Appeal, paras 20-21.

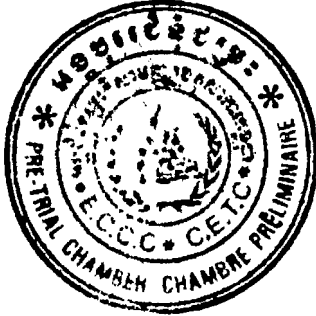


[REDACTED]

[REDACTED]

[REDACTED]

35 [REDACTED]



[REDACTED]

**III. ADMISSIBILITY**

19. The Defence requests that the Pre-Trial Chamber admit this Appeal under Rules 21 and 74(3)(a) of the Internal Rules.<sup>48</sup> The Pre-Trial Chamber will first examine whether the Appeal falls within its jurisdiction under Internal Rule 74(3)(a) before examining whether the circumstances of the case warrant its intervention under Internal Rule 21 to protect the Appellant’s fair trial rights.

**a) Admissibility under Internal Rule 74(3)(a)**

20. Pursuant to Internal Rule 74(3)(a), “[t]he Charged Person or the Accused may appeal against [...] orders or decisions of the Co-investigating Judges [...] confirming the jurisdiction of the ECCC.”<sup>49</sup> In interpreting Internal Rule 74(3)(a), the Pre-Trial Chamber has previously held that only jurisdictional challenges may be raised under this rule.<sup>50</sup> The first question to be resolved is whether the Impugned Decision is a decision confirming the jurisdiction of the ECCC.

[REDACTED]

<sup>46</sup> Reply, para. 13.

<sup>47</sup> *Ibid.*

<sup>48</sup> Appeal, para. 5.

<sup>49</sup> Decision on Ieng Sary’s Appeal against the Closing Order (the “Ieng Sary Appeal Decision”), 11 April 2010, D427/1/30, para. 44.

<sup>50</sup> Decision on the Appeals against the Co-Investigating Judges Order on Joint Criminal Enterprise, 20 May 2010, D97/14/15, para. 21; Ieng Sary Appeal Decision, paras 45, 47; Decision on Appeal by NUON Chea and IENG Thirith against the Closing Order, 15 February 2011, D427/2/15, para. 60.

<sup>51</sup> [REDACTED]

*Decision on [REDACTED] Appeal against the International Co-Investigating Judge’s Decision on [REDACTED] Motion to Reconsider and Vacate [REDACTED] summons dated 29 July 2014*





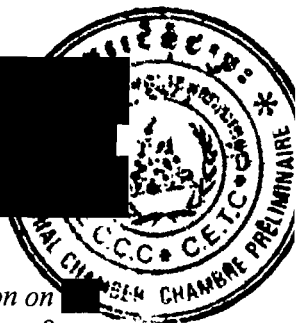
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Decision on [REDACTED] Appeal against the International Co-Investigating Judge's Decision on  
Motion to Reconsider and Vacate [REDACTED] summons dated 29 July 2014



[REDACTED]

25. In the light of the foregoing, the Pre-Trial Chamber is not convinced that the Impugned Decision, which rejected the Defence’s request to reconsider the Summons and vacate it, amounts to a decision confirming the jurisdiction of the ECCC.

26. As far as Internal Rule 74(3)(a) is concerned, the Appeal is therefore inadmissible.

**b) Admissibility under Internal Rule 21(1)**

[REDACTED] The Defence submits the Pre-Trial Chamber has jurisdiction to hear appeals based on Internal Rule 21(1) when its “intervention is necessary to prevent irremediable damage to the fairness of the proceedings or to the appellant’s fair trial rights.”<sup>60</sup> [REDACTED]

[REDACTED]

<sup>58</sup>

[REDACTED]

<sup>60</sup> Appeal, para. 17; *See also* Decision on TA An Appeal, para. 10.

<sup>61</sup> [REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

Therefore, the Pre-Trial Chamber agrees with the International Co-Investigating Judge that the present legal framework contains sufficient checks and balances to ensure that unilateral actions are taken in accordance with the law.<sup>73</sup> [REDACTED]

[REDACTED]

<sup>73</sup> [REDACTED]

<sup>74</sup> [REDACTED]



[REDACTED]

33. In light of the foregoing, the Pre-Trial Chamber considers that there are no exceptional circumstances in the present case that would justify the Pre-Trial Chamber's intervention under Internal Rule 21. As far as Internal Rule 21(1) is concerned, the present Appeal is therefore inadmissible.

34. The present appeal shall consequently be dismissed as inadmissible.

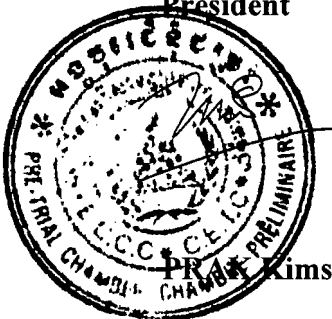
**THEREFORE, THE PRE-TRIAL CHAMBER HEREBY:**

DECIDES UNANIMOUSLY TO DISMISS the appeal as inadmissible.

Phnom Penh, 09 December 2015

President

Pre-Trial Chamber



[Handwritten signatures of the Pre-Trial Chamber members]

**Kimsan BEAUVALLET Olivier NEY Thol BWANA Steven James HUOT Vuthy**

[REDACTED]

Decision on [REDACTED] Appeal against the International Co-Investigating Judge's Decision on [REDACTED]  
Motion to Reconsider and Vacate [REDACTED] summons dated 29 July 2014