



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 Preliminaire

D338/1/13

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 (PTC48)

THE PRE-TRIAL CHAMBER

Before: Judge PRAK Kimsan, President
Judge Olivier BEAUVALLET
Judge NEY Thol
Judge Kang Jin BAIK
Judge HUOT Vuthy

Date: 11 August 2017

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PUBLIC REDACTED

DECISION ON INTERNATIONAL CO-PROSECUTOR'S APPEAL OF DECISION ON REQUEST FOR INVESTIGATIVE ACTION

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THE PRE-TRIAL CHAMBER of the Extraordinary Chambers in the Courts of Cambodia (the “ECCC”) is seised of the “International Co-Prosecutor’s Appeal of Decision on Request for Investigative Action” filed by the International Co-Prosecutor (the “ICP”) on 14 July 2017 (the “Appeal”).¹

I. PROCEDURAL HISTORY

1. On 7 September 2009, the Acting International Co-Prosecutor filed with the Office of the Co-Investigating Judges (the “OCIJ”) the Third Introductory Submission, alleging the involvement, *inter alia*, of ██████████ in criminal acts and proposing to press charges against him.² On 12 January 2017, the ICP filed a Request for Investigative Action asking the OCIJ to place on Case File 004 analytical reports prepared by Voeun Vuthy regarding Kraing Ta Chan and Wat Pratheath crime sites (the “Request”).³ On 1 May 2017 and 5 June 2017, the International Co-Investigating Judge (the “ICIJ”) issued the English and Khmer versions, respectively, of his Decision denying the Request (the “Impugned Decision”).⁴ The ICP filed his Notice of Appeal against the Impugned Decision on 14 June 2017 (the “Notice of Appeal”)⁵ and the Appeal on 14 July 2017. On 21 July 2017, the Co-Lawyers for ██████████ (the “Defence”) filed a Response to the Appeal (the “Response”).⁶ No Reply was filed by the ICP.

II. ADMISSIBILITY

A. Submissions

2. The ICP submits only that the Appeal is filed “[p]ursuant to [Internal] Rule 74(2)”.⁷ In Response, the Defence asks the Pre-Trial Chamber to find the Appeal inadmissible,⁸

¹ International Co-Prosecutor’s Appeal of Decision on Request for Investigative Action, 14 July 2017, D338/1/1/1.

² Case 004/07-09-2009-ECCC/OCIJ (“Case 004”), Co-Prosecutors’ Third Introductory Submission, 20 November 2008, D1. *See also* Case 004, Acting International Co-Prosecutor’s Notice of Filing of the Third Introductory Submission, 7 September 2009, D1/1.

³ International Co-Prosecutor’s Request for Investigative Action, 12 January 2017, D338, para. 1.

⁴ Decision on International Co-Prosecutor’s Request for Investigative Action, 1 May 2017, D338/1.

⁵ International Co-Prosecutor’s Notice of Appeal Against Decision on Request for Investigative Action, 14 June 2017, D338/1/1.

⁶ ██████████ Response to International Co-Prosecutor’s Appeal of Decision on Request for Investigative Action, 21 July 2017, D338/1/1/2.

⁷ Appeal, para. 1.

⁸ Response, p. 3.



because “it was filed nine days after the permitted [Internal] Rule 75(3) period, which expired on 5 July 2017”⁹ and “[t]he ICP did not seek an extension”.¹⁰

B. Discussion

3. Internal Rules 75(1) and (3) require that:

“1. Except as otherwise provided in these IRs, *any notice of appeal to the Chamber must be filed within 10 (ten) days from the date that notice of the decision or order was received.* [...]”

3. Submissions on *appeal shall be filed* by the appellant with the Greffier of the Chamber *within 30 (thirty) days from the date that notice of the decision or order was received.* Under *exceptional circumstances*, the time-limit may be *extended.*”

4. In addition, pursuant to Internal Rules 39(1) and (4):

“1. *All time limits set out in the applicable laws and these IRs, the applicable Practice Directions and, where appropriate, by decision of the judges, must be respected.* Subject to this Rule, *failure to do so shall lead to the invalidity of the action in question.* [...]”

4. The Co-Investigating Judges or the *Chambers may*, at the *request of the concerned party* or on their *own motion*:

a) *extend any time limits* set by them; or

b) *recognise the validity of any action executed after the expiration of a time limit* prescribed in these IRs on such terms, if any, *as they see fit.*”

5. In the instant case, the Pre-Trial Chamber notes that the Impugned Decision was notified to the parties in Khmer language on 5 June 2017,¹¹ therefore, the filing of the Notice of Appeal on 14 June 2017 is in compliance with the time limit set in Internal Rule 75(1). The filing of the Appeal on 14 July 2017, however, was done nine days after the expiration of the thirty days permitted by Internal Rule 75(3) which, pursuant to Internal Rule 39(1), leads to the invalidity of its filing.

6. The Pre-Trial Chamber considers that, in this case, no good cause has been shown to justify acceptance of the filing of the Appeal after the prescribed deadline. The ICP has not brought any request for extension of time, nor has he replied to the Defence’s Response. The

⁹ Response, para. 9.

¹⁰ *Ibid.*

¹¹ See Notice of Appeal.



Pre-Trial Chamber cannot thus possibly deduce any acceptable reason to derogate from the time limit set in Internal Rule 75(3).¹²

7. The Pre-Trial Chamber, therefore, finds the Appeal inadmissible.

FOR THESE REASONS, THE PRE-TRIAL CHAMBER UNANIMOUSLY HEREBY:

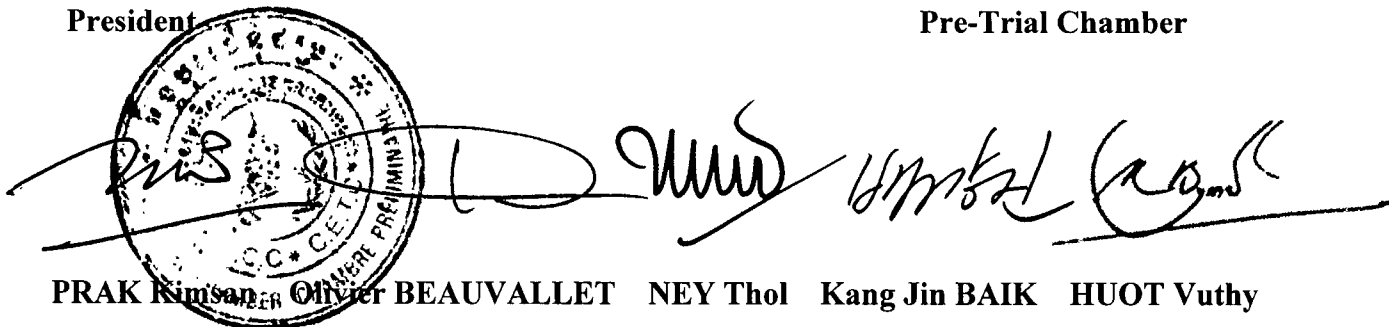
FINDS the Appeal inadmissible.

In accordance with Internal Rule 77(13), the present decision is not subject to appeal.

Phnom Penh, 11 August 2017

President

Pre-Trial Chamber



The signature block contains four handwritten signatures in black ink. The first signature is on the left, followed by three others to the right. A circular official seal of the Pre-Trial Chamber is partially visible behind the first signature.

PRAK Kim SAn Olivier BEAUVALLET NEY Thol Kang Jin BAIK HUOT Vuthy

¹² See also Case 003/07-09-2009-ECCC/OCIJ (PTC32), Decision on [REDACTED] Appeal Against the Notification on the Interpretation of 'Attack Against the Civilian Population' in the Context of Crimes Against Humanity with Regard to a State's or Regime's Own Armed Forces, 18 July 2017, D191/18/1/8, para. 14.