



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

~~case/No.~~ ០៤២៧/១/១១

អង្គបុរេជំនុំជម្រះ

Pre-Trial Chamber
Chambre Préliminaire

Criminal Case File No: 002/19-09-2007-ECCC/OCIJ (PTC75)

Before: Judge PRAK Kimsan, President
Judge Rowan DOWNING
Judge NEY Thol
Judge Catherine MARCHI-UHEL
Judge HUOT Vuthy

Date: 3 November 2010

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PUBLIC

DECISION ON CO-PROSECUTORS' PRELIMINARY OBSERVATIONS IN RESPECT OF IENG SARY'S SEPARATE APPEALS AGAINST THE CLOSING ORDER ON PROVISIONAL DETENTION AND JURISDICTION

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Charged Person

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THE PRE-TRIAL CHAMBER of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) is seized of the “Co-Prosecutor’s Observations in Respect of Ieng Sary’s Separate Appeals against the Closing Order on Provisional Detention and Jurisdiction” filed by the Co-Prosecutors on 28 October 2010 (the “Request”).¹

1. On 16 September 2010 the Co-Investigating Judges filed the Closing Order,² which was notified to the parties on the same day.
2. On 22 October 2010 the Co-Lawyers for Ieng Sary filed an Appeal against the Closing Order’s extension of Ieng Sary’s detention (the “detention Appeal”).³ This Appeal was notified to the parties in English and Khmer on 25 October 2010.
3. On 25 October 2010 the Co-Lawyers for Ieng Sary filed in English another Appeal against the Closing Order pursuant to the extension of time granted by the Pre-Trial Chamber (the “jurisdiction Appeal”).⁴
4. The Co-Prosecutors’ Request was notified to the parties on 28 October 2010. The Co-Lawyers for the Charged Person filed their Response to the Request on 3 November 2010 (the “Response”).⁵ In their Response the Co-Lawyers ask the Pre-Trial Chamber to dismiss the Request.
5. By the Request, the Co-Prosecutors requested that the Pre-Trial Chamber (1) accept the detention Appeal, filed first in time, as the only validly filed appeal against the Closing Order and reject the jurisdiction Appeal *in limine* as non-maintainable; or (2) direct Ieng Sary to comply with the Pre-Trial Chamber’s jurisprudence and practice and file one consolidated appeal brief; or (3) treat the two appeals as one filing, consider them together and, accordingly, permit the Co-Prosecutors to file a common response to the two appeals within the time period permissible to respond to the jurisdiction Appeal, filed later in time.⁶
6. The Co-Prosecutors submitted that the Pre-Trial Chamber must reject Ieng Sary’s attempt to file two appeals against one order because this is not envisaged in the ECCC Internal Rules.

¹ Co-Prosecutor’s Observations in Respect of Ieng Sary’s Separate Appeals against the Closing Order on Provisional Detention and Jurisdiction, 28 October 2010, D427/1/7 and D427/5/2.

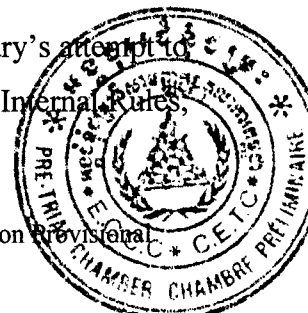
² Closing Order, 16 September 2010, D427.

³ Ieng Sary’s Appeal against the Closing Order’s extension of his provisional detention, 22 October 2010, D427/5/1.

⁴ Ieng Sary’s Appeal against the Closing Order, 25 October 2010, D427/1/6.

⁵ Ieng Sary’s Response to the Co-Prosecutors’ Preliminary Observations in Respect of Ieng Sary’s Separate Appeals Against the Closing Order on Provisional Detention and Jurisdiction, 3 November 2010, D427/1/10 and D427/5/3. The Pre-Trial Chamber, while noting that the Response was filed late and without an indication of the reasons for the delay, saw it fit to accept the filing of this document pursuant to Internal Rule 39(4)(b) and Article 9 of the Practice Directions.

⁶ The Request, para 3.



is not consistent with Pre-Trial Chamber's jurisprudence and practice and harms the judicial economy and discipline.⁷

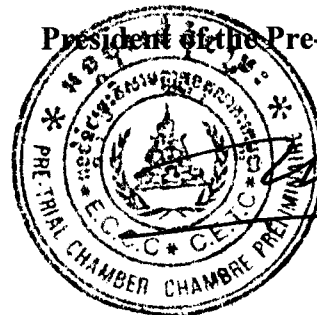
7. The Pre-Trial Chamber while recognizing that the Co-Prosecutor's mention of Internal Rules and Pre-Trial Chamber's jurisprudence and practice on this issue is correct, considers that in the instant case an exception to the general rule is justified given the very different subject matters of these Appeals and the fact that, consequently, where deemed necessary, different procedural steps may be applied in handling each of these appeals.

THEREFORE, THE PRE-TRIAL CHAMBER HEREBY:

1. **CONFIRMS ITS ACCEPTANCE OF THE FILING** for both the detention Appeal and the jurisdiction Appeal.
2. **DIRECTS** the Co-Prosecutors to file a separate Response to the detention Appeal within the deadline as provided for in Article 8.3 of the ECCC's Practice Directions.

Phnom Penh, 3 November 2010^{CR}

President of the Pre-Trial Chamber



PRAK KIMSAN

⁷ The Request, paras 1 and 2.