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Criminal Case File No. 002/14-08-2006-ECCC-OCF

EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA
BEFORE THE PRE-TRIAL CHAMBER

Criminal Case File No. : 002/14-08-2006-ECCC-OCF - 75-014

Investigation No. : 001/18-07-2007

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CO-PROSECUTORS' NOTIFICATION OF DELEGATION OF POWERS
PURSUANT TO RULES 13(1) AND 13(4) OF THE INTERNAL RULES

Filed by:

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Distributed to:

The Pre-Trial Chamber
Judges:

Mr PRAK Kimsan
Mr HUOT Vuthy
Mr Rowan DOWNING
Mr PEN Pichsaly
Ms Katinka LAHUIS

Defence Counsel:

Mr KAR Savuth
Mr François ROUX

International Co-Prosecutor's Notification of Delegation of Powers For Oral Hearings

<p>បានថតចម្លងត្រឹមត្រូវតាមច្បាប់ដើម</p> <p>Certified Copy/Copie Conforme</p> <p>ថ្ងៃទី(On/Le)...16...ខែ(Month/Mois)...Nov.</p> <p>ឆ្នាំ(Year/Année)...2007... Page 1 of 4</p> <p>ក្រឡាបញ្ជី/ Greffier NUP SOTH UN VICHET</p>

Procedural History

1. On 20 and 21 November 2007 a public hearing is due to take place before the Pre-Trial Chamber concerning the appeal of an order of provisional detention made by the Co-Investigating Judges against KANG Keck Iev ('the Charged Person'). A directions hearing is also scheduled for 15 November 2007, which shall take place *in camera*. The Co-Prosecutors have been summoned to attend all three dates, which will be the first public hearings before the Extraordinary Chambers in the Courts of Cambodia ('ECCC').
2. The Co-Prosecutors intend that oral advocacy in all hearings whether public or *in camera* will be conducted not only by themselves but also, from time to time as the needs of the Office of the Co-Prosecutor or the complexity of the case dictate, by one or more of the Deputy, Senior Assistant and Assistant Co-Prosecutors.

The Law

3. Article 22 (new) of the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia ("the Establishment Law")¹ states as follows:

"Each Co-Prosecutor shall have the right to choose one or more deputy prosecutors to assist him or her with prosecution before the chambers."
4. Rule 13 (1) of the Internal Rules of the ECCC² states as follows:

"The Office of the Co-Prosecutors shall operate as an independent office within the ECCC. It shall be comprised of the Co-Prosecutors and such other staff as necessary [...] For the purposes of Article 22 new of the ECCC Law, the Co-Prosecutors may choose deputy prosecutors from amongst their Deputy Co-Prosecutors and Assistant Co-Prosecutors."
5. Rule 13 (4) of the Internal Rules states as follows:

¹ The Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia – Court document.

² The Internal Rules of the ECCC – Court document.

“Except for actions that must be performed personally under the ECCC Law and these IRs, the Co-Prosecutors may delegate the exercise of their functions verbally or in writing, as follows: [...]

b) At all times: to their deputy prosecutors.”

Reasoning

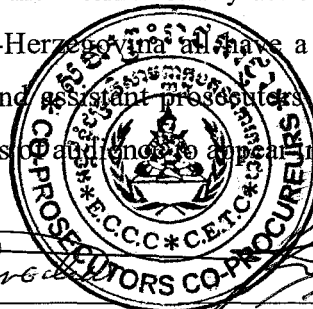
6. The Co-Prosecutors submit that the meaning of the law is plain.
7. In assisting him or her with prosecution before the ECCC (in French “*pour l’assister dans les poursuites devant les chambers*”), each Co-Prosecutor has the right to choose one or more deputy prosecutors (Article 22 of the Establishment Law). Conducting oral advocacy before the ECCC is not one of those functions specified under ECCC Law and the Internal Rules which must be performed personally by the Co-Prosecutors themselves.³ As such, the Co-Prosecutors’ right to conduct oral advocacy is a function which may be delegated (rule 13 (4) of the Internal Rules) to their deputy prosecutors. These deputy prosecutors may be selected both from the Deputy Co-Prosecutors and Assistant Co-Prosecutors (rule 13 (1) of the Internal Rules). Consequently, oral advocacy may be conducted both by the two Deputy Co-Prosecutors and by the Assistant Co-Prosecutors. As the Office of the Co-Prosecutors is an independent office within the ECCC, no permission or leave is required for the delegation of such powers.
8. The delegation of the powers of the Co-Prosecutors is a necessary requirement of the efficient functioning of the Office of the Co-Prosecutors. It was envisaged both by the Establishment Law and the Internal Rules that the Co-Prosecutors themselves could not possibly conduct every single task of prosecution personally. This is particularly so in the case of oral advocacy at court hearings. There will be many hearings before the ECCC. It will be logistically impossible for every oral hearing to be conducted solely by the two Co-Prosecutors and two Deputy Co-

³ Prosecutorial powers which must be exercised by the Co-Prosecutors personally: the ordering of coercive measures during a preliminary investigation (rule 13.4.a of the Internal Rules); and the filing of an Introductory Submission which requires the signature of both Co-Prosecutors (rule 53.1 of the Internal Rules).

Prosecutors, especially where there may be more than one hearing conducted concurrently in the different Chambers of the ECCC.

9. Deputy and Assistant Co-Prosecutors have appeared in the hearings before the Co-Investigating Judges, and are thus Counsel of record. As the authorised representatives of the Co-Prosecutors, both Deputy and Assistant Co-Prosecutors have participated fully in investigative hearings, including addressing the Co-Investigating Judges on matters of law, fact and procedure, and asking questions of the Charged Person.
10. The Office of the Co-Prosecutor at the ECCC operates as "an independent office within the ECCC" (rule 13(1) of the Internal rules). This echoes Article 19 of the Establishment Law which states that "The Co-Prosecutors shall be independent in the performance of their functions and shall not accept or seek instructions from any government or any other source". Therefore, unless otherwise limited by law, the Co-Prosecutors themselves have absolute discretion in the delegation of their duties. This absolute discretion extends to determining which of their Deputies and Assistant Co-Prosecutors shall have their authority to conduct oral advocacy in court.
11. It is recognised in all international and internationalised courts that the Prosecutor's functions will be delegated to their appropriately-qualified staff. The *ad hoc* Tribunals for the Former Yugoslavia and for Rwanda, the Special Court for Sierra Leone, the International Criminal Court in the Hague, the "hybrid" courts in Kosovo, East Timor and the internationally-assisted Special War Crimes Chamber in the Courts of Bosnia-Herzegovina all have a senior chief prosecutor, but also have numerous deputy and assistant prosecutors (Senior Trial Attorneys and Trial Attorneys) with full rights of attendance to appear in court hearings.

Respectfully submitted,



CHEA Leang

Robert PETIT

Signed this 15th day of November, 2007