BEFORE THE SUPREME COURT CHAMBER

EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

FILING DETAIL

Case no: 002/23-04-2012-ECCC/SC (02) ~~002/19-09-2007-ECCC-TC/SC (...)~~

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REQUEST TO ACCEPT LATE FILING OF APPEAL AGAINST TRIAL CHAMBER DECISION REGARDING INCONSISTENCIES BETWEEN AUDIO AND WRITTEN OCIJ WITNESS INTERVIEWS

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REQUEST

1. Pursuant to Rule 39(4) of the ECCC Internal Rules (the 'Rules')[1] and Article 9 of the Practice Direction on the Filing of Documents Before the ECCC (the 'Practice Direction'),[2] counsel for the Accused Nuon Chea (the 'Defence') hereby requests the Supreme Court Chamber (the 'SCC') to recognize the validity of the late filing of the Defence's submissions on appeal (the 'Appeal')[3] against the Trial Chamber's 'Decision on Nuon Chea's Request for a Rule 35 Investigation Regarding Inconsistencies in the Audio and Written Records of OCIJ Witness Interviews'.[4]

2. According to Rule 107(1),[5] the Appeal was due on 12 April 2012. However, on 10 April 2012, the Defence received permission from the SCC (through one of its legal officers) to file the English version of the Appeal on 18 April 2012 with the Khmer translation to follow two days later.[6] On 18 April 2012, the Defence circulated an English courtesy-copy of the Appeal to all parties and the greffiers of both the SCC and the Trial Chamber; however, this version was not officially filed through the tribunal's electronic filing system until 20 April 2012 (along with the finalized Khmer translation and table of authorities). While the Defence acknowledges that the circulation of courtesy-copies in the first instance is in no way a substitution for technical filing, the practice has been utilized in the past where strict conditions have been relaxed by the Trial Chamber; this accounts for the Defence's mistaken approach in the instant case. In any event, the parties and the Chambers were duly apprised of the *final* content of the English version by 18 April 2012. No changes have been made to that version.[7] It is readily conceded by the Defence that actual filing of both documents was not *perfected* until 20 April 2012.

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1 Rule 39(4) provides as follows: '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) recognize the validity of any action executed after the expiration of a time limit prescribed in these [Rules] on such terms, if any, as they see fit.'

2 Article 9 of the Practice Direction provides as follows: 'A document may be filed outside the time limits as set out in Rule 39 of the Internal Rules. […] The Judges or Chamber before which the document is filed shall decide whether to accept the document despite its later filing.'

3 *See* 'Immediate Appeal Against Trial Chamber Decision Regarding Inconsistencies in Audio and Written OCIJ Witness Interviews', dated 18 April 2012 and filed on 20 April 2012 (Document No not yet assigned).

4 Document No **E-142/3**, 13 March 2012, ERN 00788404–00788411.

5 Rule 107(1) provides as follows: 'In the case of a decision of the Trial Chamber, which is open to immediate appeal as provided for in Rule 104(4) paragraphs (a) and (d), the appeal shall be filed within 30 (thirty) days of the date of the decision or its notification.'

6 *See* email from Christopher Ryan to Andrew Ianuzzi, 10 April 2012, re 'Immediate Appeal Against E-142/3'.

7 *N.B.* This should assuage concerns raised by the Chambers regarding discrepancies between courtesy-copies and perfected filings.

3. In support of the instant request, the Defence submits that: (i) the original English version of the Appeal—which, again, remains unchanged from its courtesy-copy format—was clearly finalized on 18 April 2012; (ii) the spirit of the 10 April 2012 agreement was honored by circulation of the courtesy-copy; (iii) no party has been prejudiced by the current circumstances; (iv) the deadline for any responses to the Appeal should run from the date of any eventual perfected filing; and (v) perhaps most importantly, the Appeal raises significant legal issues which ultimately should be resolved by the SCC. Accordingly, the Defence requests this Chamber to accept the Appeal and regrets any inconvenience caused by the late filing.

CO-LAWYERS FOR NUON CHEA

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