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EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

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CO-PROSECUTORS' RESPONSE TO IENG SARY'S APPEAL AGAINST THE TRIAL CHAMBER'S ORAL DECISION CONCERNING MODE OF PARTICIPATION AND VIDEO-RECORDING OF THE HOLDING CELL

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I. INTRODUCTION

1. On 18 December 2012, the Defence for Ieng Sary (the "Defence") filed an immediate appeal ("Appeal") of an oral decision of the Trial Chamber denying their request that Ieng Sary (the "Accused") participate in proceedings from within the courtroom rather than from the holding cell, and declining a further Defence request to videotape the Accused while in the holding cell (the "Impugned Decision").[1] The Defence requests the Supreme Court Chamber ("Chamber") to: (a) Allow the Accused to be present in the courtroom; or, if it declines to do so, (b) Order the Trial Chamber to display Ieng Sary on the courtroom monitor or allow the Accused to be videotaped in the holding cell.[2]

2. The Defence purports to rely on Rules 104(4)(a), 104(4)(b) and 104(4)(d) as the grounds for admissibility of this Appeal. The Co-Prosecutors submit that the Appeal is manifestly inadmissible at this stage of the proceedings. On this basis, in the interests of judicial economy and without concession of the merits, the Co-Prosecutors will limit their written submissions to admissibility only.

II. PROCEDURAL HISTORY

3. The Accused is now 87 years old and was first medically examined at the instance of the ECCC on 20 December 2007. At the time, he was diagnosed with a number of physical symptoms, such as long suffering lower spine arthritis, urological disorders and a cardiovascular condition.[3] While his condition at the time was stable, it was noted that this could change at any time. As such, the Accused was placed under "strict monitoring,"[4] which has continued since.

4. Following a request by the Defence for the trial to be conducted in half day sessions due to the Accused's health,[5] the Trial Chamber appointed Professor John Campbell, an

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1 **E1/147.1** Transcript, 4 December 2012 at p. 27-28.
2 **E238/9/1/1** Ieng Sary's Appeal Against the Trial Chambers Oral Decision to Deny his Right to be Present in the Courtroom and to Prohibit him from being Video Recorded in the Holding Cell, 18 December 2012 at Section VI.
3 **A100/5** Medical Report, 18 January 2008 at pp. 1-3.
4 **B15/1** Medical Report of Accused, 9 October 2008, pp. 4-5.
5 **E20** Ieng Sary's Motion to Conduct the Trial through Half-Day Sessions, 19 January 2011.

international expert geriatrician, to examine Ieng Sary. After an examination conducted on 8 June 2011, Professor Campbell found that while the Accused suffered from congestive heart failure, degenerative back disease and urinary frequency secondary to prostatic obstruction, he was free of cognitive or memory impairment.[6] The Defence did not contest these findings.[7]

5. On 23 May 2012, Dr. Lim Sivutha, one of the Accused's treating physicians, was invited before the Chamber to report on the ability of the Accused to participate in the proceedings.[8] He recommended that the Accused participate in the proceedings by audiovisual means from the holding cell, where the treating doctors could monitor his health condition.[9]

6. Ieng Sary was examined again by Professor Campbell and two other experts in late August 2012. In their report dated 3 September 2012, the experts confirmed that the Accused remained physically and mentally fit to stand trial.[10]

7. On 7 September 2012, Ieng Sary was hospitalised, citing fatigue, weakness and shortness of breath.[11] He remained in hospital for approximately two months.

8. On 5 and 6 November 2012, the Accused was examined for a third time by Professor Campbell, and diagnosed with benign paroxysmal positional vertigo, a disorder involving the semicircular canals of the inner ear.[12] Professor Campbell recommended that hospitalisation was no longer necessary, but that the Accused should make full use of the facilities available in the holding cell – with recommended adaptations[13] – in order to participate in the proceedings.[14]

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6 **E62/3/5** Geriatric Expert Report of IENG Sary dated on 13 June 2011 in Response to Trial Chamber's Order Assigning Expert, 13 June 2011.
7 **E110** Scheduling Order for Preliminary Hearing on Fitness to Stand Trial, 12 August 2011, p. 2.
8 **E197** Letter, Subject: "Invitation for Dr. LIM Sivutha, Head of the Emergency Section, Khmer-Soviet Friendship Hospital, to explain before the courtroom in the morning of Wednesday 23 May 2012", 21 May 2012.
9 **E1/75.1** Transcript, 23 May 2012, at p. 9.
10 **E11/86/1** Medical Report on Mr. Ieng Sary, 3 September 2012, at para. 41-42.
11 **E1/125.1** Transcript, 21 September 2012 at p. 12.
12 **E238/4** Expert Report Relating to Mr. Ieng Sary Prepared in Response to Trial Chamber Request (E238), 6 November 2012 at para. 9.
13 **E1/142.1** Transcript, 8 November 2012 at pp. 16-17.
14 **E238/4** Expert Report Relating to Mr. Ieng Sary Prepared in Response to Trial Chamber Request (E238), 6 November 2012 at para. 21.

9. On 26 November 2012, the Trial Chamber issued a written decision finding Ieng Sary fit to stand trial.[15] It also noted that the Accused's frailty had directly resulted in the partial or total adjournment of 12 trial days,[16] and that the holding cell remained accessible at all times to the Defence and the ECCC Medical Unit,[17] and thus best suited Ieng Sary's current medical needs.[18]

10. In the Impugned Decision, dated 4 December 2012, the Trial Chamber directed Ieng Sary to participate in proceedings from his holding cell, and declined the Defence request to videotape Ieng Sary.[19] That decision was based on a medical report from the Accused's treating physician, who requested that the Accused "be permitted to follow proceedings from the holding cells which would enable the doctor to more readily monitor Ieng Sary's physical condition."[20] The Trial Chamber noted the consensus of the medical experts that the Accused was better able to participate from his holding cell due to his "physical circumstances," the "difficulties" including a risk of "substantial delay to the trial" associated with bringing Ieng Sary into the courtroom, and that the Accused's doctors could better monitor his condition in the holding cell.[21] The Defence was permitted to have a staff member of its team in the holding cell in order to draw any concerns about Ieng Sary's physical condition to the treating doctor.[22] The Defence subsequently exceeded the scope of that right and drew a warning for misconduct from the Trial Chamber.[23]

11. On 12 December 2012, the Trial Chamber invited further submissions on the issue of videotaping and audio-recording, in order to conclusively decide the issue ("Order for Further Submissions").[24] On 14 December 2012, the Defence filed their submission,[25] arguing that the right to make audio and/or video recordings of Ieng Sary is inherent in

15 **E238/9** Decision on Accused Ieng Sary's Fitness to Stand Trial, 26 November 2012.
16 *Ibid.* at para 35.
17 *Ibid.* at para 36.
18 *Ibid.*
19 **E1/147.1** Transcript, 4 December 2012, at pp. 17-20, 27-28.
20 *Ibid.*, p. 18.
21 *Ibid.*, p. 18-19, 27.
22 *Ibid.*, p, 27.
23 **E254** Memorandum entitled: Order for Submissions, 12 December 2012.
24 **E254** Order for Submissions, 12 December 2012.
25 **E254/1** Ieng Sary's Submissions on the law permitting him to be audio and/or video recorded in the holding cell, 14 December 2012.

his fundamental right to prepare a defence, which included a purported "right to make a record."[26]

12. On 21 December 2012,[27] the Co-Prosecutors filed their reply to this submission, arguing that the Defence had failed to substantiate any legal right to audio or video record Ieng Sary and that such practices are prohibited under the Internal Rules.[28] The decision of the Trial Chamber is pending.

III. THE APPEAL IS MANIFESTLY INADMISSIBLE.

a. The appeal is not admissible under Rule 104(4)(a).

13. Rule 104(4)(a) only allows immediate appeals of "decisions which have the effect of terminating the proceedings." The Defence asserts, at paragraph 23 of the Appeal, that directing Ieng Sary to participate in proceedings from his holding cell terminates proceedings because "to him [Ieng Sary] they have become meaningless."[29] The Co-Prosecutors submit that this argument is based upon a spurious interpretation of Rule 104(4)(a). The logic of this argument would admit any immediate appeal on the mere whim of the Accused, by substituting a purely subjective and unsubstantiated belief of the Defence for an objective legal threshold.

14. The issue of whether Ieng Sary is currently fit to stand trial has been comprehensively addressed by the Trial Chamber.[30] While the Appeal advances several claims regarding the Accused's medical condition that diverge markedly from the current assessments of both his treating physicians[31] and the expert appointed by the Chamber,[32] such assertions can be given no weight as medical evidence.[33] In view of the countervailing medical evidence, the mere subjective belief of the Co-Lawyers for the Defence that

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26 *Ibid.,* Introduction.
27 **E254/2** Co-Prosecutor's Response to "Ieng Sary's Submissions on the law permitting him to be audio and/or video recorded in the holding cell", 21 December 2012.
28 *Ibid.*, at para. 2.
29 **E238/9/1/1** Ieng Sary's Appeal Against the Trial Chambers Oral Decision to Deny his Right to be Present in the Courtroom and to Prohibit him from being Video Recorded in the Holding Cell, 18 December 2012 at para. 23.
30 **E238/9** Decision on accused Ieng Sary's Fitness to Stand Trial, 26 November 2012 at p. 15.
31 **E11/86/L** Report, 3 September 2012.
32 **E238/4** Expert Report Relating to Mr. Ieng Sary Prepared in Response to Trial Chamber Request (E238), 6 November 2012 at para. 21.
33 *Prosecutor v Strugar,* IT-01-42-A, Appeals Judgment, 17 July 2008 at para. 21.

Ieng Sary's participation from the holding cell is "meaningless" cannot possibly be relevant to an assessment of admissibility of the instant Appeal.

15. The prior jurisprudence of the Supreme Court Chamber establishes that Rule 104(4)(a) must be subject to a "reasonable reading" in light of its purpose, which is to ensure an avenue of appeal exists where the proceedings are "effectively terminat[ed]" and a Chamber will not be in a position to "arriv[e] at a judgment on the merits."[34] Here, there is no colorable argument that the Trial Chamber has effectively terminated proceedings. To the contrary, the Trial Chamber has determined that proceedings should continue against Ieng Sary with him participating from the holding cell.

16. In disposing of a previous appeal by the Ieng Sary Defence, the Supreme Court Chamber has rejected the argument that Rule 104(4)(a) allows appeals of decisions that *would have* terminated proceedings had the Trial Chamber ruled differently – in other words, where termination of the proceedings was only potentially at issue.[35] The present Appeal seeks to advance a similar contortion of Rule 104(4)(a) – that the proceedings should be terminated because, contrary to the Trial Chamber's decision, the Accused is unable to participate in the proceedings. The Co-Prosecutors submit this is not a lawful basis for immediate appeal under Rule 104(4)(a).

b. The Appeal is not admissible under Rule 104(4)(b)

17. The Defence submits, at paragraph 24 of the Appeal, that "[t]he decision that Ieng Sary must remain in the holding cell *is a decision on detention*,"[36] and thus recourse to immediate appeal is available under Rule 104(4)(b). This interpretation of Rule 104(4)(b) is wholly without basis in law. In allowing the immediate appeal of "decisions on detention and bail under Rule 82," this Rule refers to substantive decisions on whether to detain or release an Accused. A decision on the mode of

34 **E138/1/7** Decision on Immediate Appeal Against the Trial Chamber's Order to Release the Accused Ieng Thirith, 13 December 2011 at para. 15.

35 **E95/8/1/4** Decision on Ieng Sary's Appeal Against Trial Chamber's Decision on Co-Prosecutors' Request to Exclude Armed Conflict Nexus Requirement, 19 March 2012, at para. 8-9.

36 **E238/9/1/1** Ieng Sary's Appeal Against the Trial Chambers Oral Decision to Deny his Right to be Present in the Courtroom and to Prohibit him from being Video Recorded in the Holding Cell, 18 December 2012 at para. 24.

participation of an Accused at trial cannot be construed as a decision on their detention or provisional release.

18. Rule 82 solely relates to decisions on whether an Accused should be detained or released on bail, and makes no mention of modalities or conditions of detention. The Co-Prosecutors submit that the language of Rule 104(4)(b), in its ordinary meaning, clearly does not apply to decisions on the mode of participation at trial or the use of holding cells. Such decisions fall under Rule 81, not Rule 82, and thus are outside the scope of immediate appeal provided by Rule 104(4)(b).

19. The Defence's reliance on a Pre-Trial Chamber decision authorising the Defence to record meetings with their client during pre-trial detention is misplaced.[37] The appeal in that case fell under Internal Rule 74(3)(f), a different and broader provision authorising appeal at the pre-trial stage of orders or decisions "relating to provisional detention or bail." By contrast, Rule 104(4)(b) is more limited, only authorizing immediate appeals of "decisions on detention and bail under Rule 82."

20. The Co-Prosecutors further observe that the Pre-Trial Chamber decision cited by the Defence is limited to the issue of recording meetings with an Accused in detention, and thus would not support the admissibility of an appeal concerning the Accused's rights under Rule 81. In regards to the latter issue, the Supreme Court Chamber has previously rejected an appeal by Ieng Sary on the issue of whether the Accused's presence was required in the courtroom, on the basis that such appeal did not fall within the "limited jurisdiction for immediate appeals under Rule 104(4)."[38] The Co-Prosecutors submit that the current Appeal must be dismissed for those same reasons.

c. The Appeal is not admissible under Rule 104(4)(d)

21. The Defence further asserts that "through a series of interrelated decisions (including the Impugned Decision), the Trial Chamber has knowingly, wilfully and continuously

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37 *Ibid.* at para. 24.

38 **E130/4/3** Decision on Ieng Sary's Appeal Against Trial Chamber's Order Requiring His Presence in Court, 13 January 2012.

interfered with the administration of justice,"[39] and that such decisions are thus subject to immediate appeal under Rule 104(4)(d). The Defence thus asks the Supreme Court Chamber to apply Rule 35 to the *Trial Chamber itself* –in the exercise of its judicial functions – on the false basis that the Trial Chamber judges have interfered with the administration of justice merely by exercising their proper judicial function and issuing the Impugned Decision.

22. Rule 104(4)(d) authorizes immediate appeals to the Supreme Court Chamber of "decisions on interference with the administration of justice under Rule 35(6)." As this Chamber has previously ruled, such appeals are admissible "only if the [underlying] Request can be characterized at least in part as a request for investigation pursuant to Internal Rule 35."[40] Accordingly, the Supreme Court Chamber admitted an appeal of a decision rejecting a motion to disqualify Judge Silvia Cartwright, where "the Request before the Trial Chamber made limited reference to Internal Rule 35" and "sought an investigation under Internal Rule 35(2)" of alleged *ex parte* meetings.[41]

23. By contrast, in this instance, the Defence made no request to the Trial Chamber under Rule 35. The application made by Co-Lawyer Michael Karnavas on 4 December 2012 does not make reference, explicitly or implicitly, to Rule 35 or to the legal interests protected thereby.[42] Counsel rather highlighted the Co-Lawyers' "duty and responsibility to protect their client's rights."[43] On this basis, the Co-Prosecutors submit that the underlying request giving rise to the Impugned Decision was not a request under Rule 35.

24. Furthermore, the Supreme Court Chamber has held that an appeal brought under Rule 104(4)(d) should not present "allegations to which Internal Rule 35 is manifestly

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39 **E238/9/1/1** Ieng Sary's appeal against the trial chamber's oral decision to deny his right to be present in the courtroom and to prohibit him fro being video recorded in the holding cell, at para. 25.
40 **E137/5/1/3** Decision on Ieng Sary's appeal against the Trial Chamber decision on motions for disqualification of Judge Cartwright, 17 April 2012 at para. 11.
41 *Ibid.* at para. 12 & 16.
42 **E1/147.1** Transcript, 4 December 2012 at pp. 12-15.
43 *Ibid.* at p.13; also referred to in **E238/9/1/1** Ieng Sary's Appeal Against the Trial Chambers Oral Decision to Deny his Right to be Present in the Courtroom and to Prohibit him from being Video Recorded in the Holding Cell, at para. 16.

inapplicable".[44] As this Chamber ruled in dismissing as manifestly inadmissible a previous appeal by the Ieng Sary Defence concerning whether or not he should be required to be present in the courtroom:

> *neither an error of fact or law nor an abuse of discretion on the part of the Trial Chamber can, by itself, constitute a knowing and willful interference with the administration of justice within the meaning of Rule 35.*[45]

The Supreme Court Chamber has further held that "the applicability of Internal Rule 35 to judicial conduct is highly circumscribed,"[46] and therefore "an erroneous judicial holding is not, by itself, legally sufficient to satisfy the Internal Rule 35 standard."[47]

25. In her oral ruling on behalf of the Trial Chamber, Judge Cartwright made no reference to Internal Rule 35, to the concept of interference with the administration of justice or to any cognate matter.[48] The Co-Prosecutors therefore submit that there is no plausible legal basis to construe the Impugned Decision as a "decision on interference with the administration of justice under Rule 35(6)."[49]

d. The permissibility of video-taping the Accused in the holding cell remains pending before the Trial Chamber

26. The third ground of Appeal rests upon an alleged "abuse of discretion"[50] by the Trial Chamber in not allowing Ieng Sary to be video-recorded in the holding cell. The Co-Prosecutors submit that this ground of appeal, in addition to not falling under the permissible grounds for immediate appeal set forth in Rule 104(4), is wholly premature, as the Trial Chamber is currently reviewing the legality of audio and video-recording in such circumstances.

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44 **E137/5/1/3** Decision on Ieng Sary's appeal against the Trial Chamber decision on motions for disqualification of Judge Cartwright, 17 April 2012, at para. 12.

45 **E130/4/3** Decision on Ieng Sary's Appeal Against Trial Chamber's Order Requiring his Presence in Court, 13 January 2012 at p. 2.

46 **E137/5/1/3** Decision on Ieng Sary's appeal against the Trial Chamber decision on motions for disqualification of Judge Cartwright, 17 April 2012, at para. 13.

47 *Ibid.* at para. 13; quoting **E130/4/3** Decision on Ieng Sary's Appeal Against Trial Chamber's Order Requiring his Presence in Court, 13 January 2012.

48 **E1/147.1** Transcript, 4 December 2012, at p.17-19 and 27-28.

49 Rule 104(4)(d).

50 **E238/9/1/1** Ieng Sary's Appeal Against the Trial Chambers Oral Decision to Deny his Right to be Present in the Courtroom and to Prohibit him from being Video Recorded in the Holding Cell, 18 December 2012 at para. 25.

27. The Appeal omits any reference to the Order for Further Submissions, dated 12 December 2012, by which the Trial Chamber directed the Defence to make submissions on the legal justification for allowing audio or video recording of Ieng Sary.[51] By this Order, the Trial Chamber also directed that:

> *Any further such observations of Ieng Sary's condition, whether based on audio-recordings, video recordings, the observations of the Ieng Sary Defence team, or otherwise, are prohibited until the permissibility of these practices is resolved by the Trial Chamber.*[52]

Thus, the Trial Chamber has clearly indicated that any audio or video recording of the Accused in the holding cell is not determinatively prohibited, but simply barred as an interim measure until the Trial Chamber considers submissions from the Parties and renders a decision. The Ieng Sary Defence responded to the Order with a submission on the purported legal justification for audio and/or videotaping in the holding cell on 14 December 2012.[53] The Co-Prosecutors responded to the Order on 21 December 2012.[54] A final decision on the permissibility of audio and/or video recording of Ieng Sary in the holding cell has yet to be issued by the Trial Chamber following those submissions.

28. The Supreme Court Chamber has affirmed the importance of reasoned written decisions as a basis for appeal on several occasions. The Chamber has held that the time to appeal a decision is triggered following a reasoned written decision that fully disposes of a request, rather than by an oral ruling.[55] It follows, in the Co-Prosecutors' submission, that the instant Appeal, challenging an interim practice, would not be timely until a final written decision is made on the issue. This portion of the Appeal may also become moot once the Trial Chamber issues its final decision on the permissibility of the audio and/or video recording.[56] Considerations of judicial economy should require that the

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51 **E254** Order for Submissions, 12 December 2012.
52 *Ibid.*
53 **E254/1** Ieng Sary's Submissions on the Law Permitting Him to be Audio/and or Video Recorded in the Holding Cell, 14 December 2012.
54 **E254/2** Co-Prosecutors' response to "Ieng Sary submissions on the law permitting him to be audio and/or video recorded in the holding cell," 21 December 2012.
55 **E176/2/1/4** Decision on Nuon Chea's Appeal Against the Trial Chamber's Decision on Rule 35 Applications for Summary Action, 14 September 2012 at para 30.
56 **E189/2/3** Decision on Nuon Chea's "Appeal Against Constructive Dismissal of Application for Immediate Action Pursuant to Rule 35," 26 November 2012 at para. 5 (holding the appeal was dismissed since a written decision was issued, making the appeal moot).

Defence await that decision before appealing the permissibility of video-recording in the holding cell.

29. ICTR practice firmly supports the principle that appeals should not be entertained when brought prematurely to the Appeals Chamber.[57] For example, a Trial Chamber held in relation to a request on the admissibility of evidence that "the Motion is not yet ripe for adjudication and will only be ripe when the Prosecution seeks to use said custodial statements."[58] The ICTR Appeals Chamber has also applied a principle of ripeness of issues on appeal, stating in relation to a request for a report that "the Appeals Chamber considers that given that the Prosecution had not initiated any proceedings against these witnesses and had no intention to do so the Appellant's request for such a report was not yet ripe for adjudication at the time of the decision."[59]

30. Domestic jurisdictions including India, South Africa and the United States of America also have concepts of premature appeal incorporated into their constitutional law. These concepts are designed to protect against the premature and unnecessary determination of legal issues that are not before the Court. In the United States, the ripeness doctrine states that "a claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all."[60] South Africa has

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57 The ICTR frequently uses the term "ripe" or "ripeness" to refer to whether it is the appropriate time for the Chamber to make a decision on a motion or appeal. The ICTY followed a different path in regard to terminology, and in an early case rejected the import of the United States of America "ripeness doctrine," finding it was unsuitable to wholly import the specific American domestic concept into international criminal law. *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14, Judgment on the Request of the Republic of Croatia For Review of the Decision of the Trial Chamber II of 18 July 1997 (ICTY Appeals Chamber), 29 October 2007 at para. 22-24. However, the ICTY did not reject the basic concept of prematurity and avoiding rending a decision on an issue while the issue is still under review and a written decision on the matter has not been rendered.

58 *Prosecutor v. Prosper Mugiraneza et al.*, Case No. ICTR-99-50-I, Decision on Prosper Mugiraneza's Motion to Exclude Custodial Statement (ICTR Trial Chamber II), 1 October 2003 at para 14. See also *Prosecutor v. Théoneste Bagosora*, Case No. ICTR-96-7-T, Decision on the Amicus Curiae Application by the Government of Belgium (ICTR Trial Chamber II), 6 June 1998 at para. 3 ("At this juncture, the Trial Chamber is of the view that this question is not yet ripe for our consideration. This is because a discussion of penalties does not arise before a determination of guilt or innocence."); *Prosecutor v. Emannuel Bagambiki et al.*, Case No. ICTR-97-36(I), Decision on the Defence Motion on Defects in the Form of the Indictment (ICTR Trial Chamber II), 24 September 1998 at para. 5 ("As a preliminary matter, the Trial Chamber notes that at this stage of the proceedings, issues concerning the merits of the indictment are not yet ripe for consideration. Therefore, we will limit the scope of the analysis in this decision to the possible defects in the form of the indictment only.").

59 *Prosecutor v. Aloys Simba*, Case No. ICTR-01-76-A, Judgment (ICTR Appeals Chamber), 27 November 2007 at para. 30.

60 *United States v. Texas*, Case No. 97-29, Judgment, (United States Supreme Court, 523 U.S. 296), 31 March 1998 at 300 (internal quotations and citations omitted.).

adopted a similar concept; the Constitutional Court does not render decisions based on "anticipated" constitutional issue, and instead only decides the issue when necessary.[61] In India, the Supreme Court applies the concept of "premature appeal" to dismiss motions that are made before a final report or decision has been made by lower levels of authority.[62]

31. On this basis, the Co-Prosecutors submit that the third ground of appeal, which concerns an issue pending before the Trial Chamber, is premature and consequently inadmissible.

IV. CONCLUSION

32. For these reasons, the Co-Prosecutors respectfully request the Chamber to:

a. find the Appeal wholly inadmissible; and

b. dismiss the Co-Lawyers' request for a public, oral hearing.

Respectfully submitted,

Date	Name	Place	Signature
3 January 2013	CHEA Leang Co-Prosecutor	Phnom Penh	
	William SMITH Deputy Co-Prosecutor		

[61] *The State v. Walter Bequinot*, Case No. CCT/24/95, Judgment (Constitutional Court of South Africa), 18 November 1996 at paras. 12-13. See also *Zanomzi Peter Zantsi v. The Council of State et al.*, Case No. CCT/24/94, Judgment (Constitutional Court of South Africa), 22 September 1995 at paras. 2-5; *Clive Ferreira et al. v. Allan No Levin et al.*, Case No. CCT/5/95, Judgment (Constitutional Court of South Africa), 6 December 2005 at para. 199; *National Coalition for Gay and Lesbian Equality v. The Minister of Home Affairs et al.*, Case No CCT 10/99, Judgment (Constitutional Court of South Africa), 2 December 1999 at paras. 21-22.

[62] See *Srinivas Gundluri v. SEPCO Electric Power Construction*, Case No. Appeal 1377, Judgment (Supreme Court of India), 30 July 2010 at para 2; *S.K. JHA Commodre v. State of Kerala et al.*, Case No. Appeal No, 1017, Order (Supreme Court of India) 11 January 2011 in 1 *Supreme Court Reporter* 295, at p. 296.