BEFORE THE TRIAL CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

FILING DETAILS

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CO-PROSECUTORS' RESPONSE TO IENG SARY'S MOTION AGAINST THE USE OF TORTURE TAINTED EVIDENCE AT TRIAL

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RESPONSE

1. The Co-Prosecutors request that the Trial Chamber dismiss Ieng Sary's Motion Against the Use of Torture Tainted Evidence[1] (the "Defence") notified on 7 February 2011 on the basis that it is untimely.

2. Admissibility of evidence at the ECCC is governed by Internal Rule 87. All evidence is admissible unless provided otherwise by the Internal Rules (Rule 87-1). The Chamber may reject a request for evidence where it finds that it is: a) irrelevant or repetitious; b) impossible to obtain within a reasonable time; c) unsuitable to prove the facts it purports to prove; d) not allowed under the law; or e) intended to prolong proceedings or is frivolous. This decision can only be made *provided* the evidence has been put before the Trial Chamber by a party (Rule 87-3).

3. Consequently rulings as to whether evidence should be admitted or excluded can only usefully be made once the Trial Chamber has had an opportunity to examine the evidence and hear the parties. Such determinations are questions of law *and* fact. As identified by the Defence in their Motion, the practice of the Trial Chamber in the trial of "Duch" to admit or exclude evidence was done after the evidence was requested for admission by the parties, examined by the Trial Chamber and the parties heard.[2]

4. In this case, pursuant to Rule 80 (3), this Chamber has asked the parties to file a list of documents and exhibits they request to be admitted at trial by 13 April 2011. Following this, Rule 80 (4) then allows the Trial Chamber to order that any objections to the admissibility of these documents or exhibits be made in writing by the parties after the Initial Hearing within a prescribed time. This time period shall allow a reasonable opportunity for the parties to review the lists provided pursuant to Rule 80.

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1 "Ieng Sary's Motion Against the Use of Torture Tainted Evidence at Trial", 4 February 2011, Document No. E33, ERN 00640260.

2 *See Case of Kaing Guek Eav alias "Duch", 001/18-07-2007-ECCC/TC,* Decision on Parties Requests to Put Certain Materials Before the Chamber Pursuant to Internal Rule 87(2), 28 October 2009, E176, ERN: 00398394-00398401, para. 8.

5. Consequently, the Co-Prosecutors request that the Motion be dismissed on this basis that it is premature. It is also requested that this Chamber issue an order as envisaged by Rule 80 (4) to allow the parties to raise any objections to evidence proposed by other parties in a prescribed time period after the Initial Hearing.

Respectfully submitted,

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