



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

អង្គជំនុំជម្រះសាលាដំបូង

Trial Chamber
Chambre de première instance

សំណុំរឿងលេខ: ០០១/១៨ កក្កដា ២០០៧/អវតក/អជសដ

Case File/Dossier No. 001/18-07-2007/ECCC/TC

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Before: Judge NIL Nonn, President
Judge Silvia CARTWRIGHT
Judge YA Sokhan
Judge Jean-Marc LAVERGNE
Judge THOU Mony

Date: 10 March 2009

Classification: PUBLIC

ឯកសារចម្លងត្រឹមត្រូវតាមច្បាប់
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DECISION ON REQUEST TO EXTEND DEADLINE FOR THE FILING OF CIVIL PARTY APPLICATIONS

Co-Prosecutors

CHEA Leang
Robert PETIT

Accused

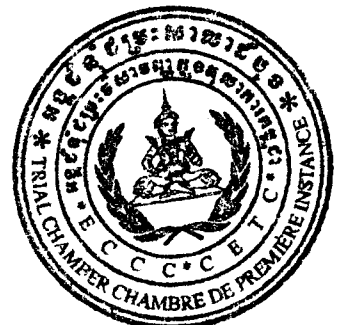
KAING Guek Eav alias "DUCH"

Lawyers for the Civil Parties

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KIM Mengkhy	Brianne McGONIGLE
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Philippe CANONNE	

Lawyers for the Defence

KAR Savuth
François ROUX



I, Judge NIL Nonn, President of the Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”)

BEING SEISED of Case File No. 001/18-07-2007-ECCC/TC pursuant to the “Decision on Appeal Against the Closing Order Indicting Kaing Guek Eav Alias Duch,” rendered orally by the Pre-Trial Chamber on 5 December 2008 and filed in Khmer on 9 December 2008 (“Decision”);

HAVING RECEIVED the “Group 1 – Civil Parties Lawyers Request to the President of the Trial Chamber to Extend the Deadline for the Filing of Civil Party Applications”, filed publicly in Khmer and English on 16 February 2009 by the Civil Party Co-Lawyers for Civil Party (Group 1) (“Motion”)¹, as well as the “Corrigendum” to this Motion, filed on 17 February 2009²;

CONSIDERING the submission made orally by the Parties during the Initial Hearing held on 17 and 18 February 2009;

PURSUANT to Rule 23(4) of the Internal Rules;

BACKGROUND AND FINDINGS:

A. BACKGROUND:

1. On 16 February 2009, the Civil Party Co-lawyers (Group 1) filed a Motion on behalf of Mr. Norng Chanphal before the President of the Trial Chamber requesting an extension of the deadline for the filing of civil party applications. This request was renewed orally during the Initial Hearing.
2. Mr. Norng Chanphal, who claims to be a child survivor of the S-21 Detention Center and thus a victim in Case No. 001, filed a civil party application on 4 February 2009. This application was rejected by the Victims Unit on grounds that it was filed two days after the deadline of 2 February 2009, which has been fixed by the Chamber in accordance with Rule 23(4) of the Internal Rules.³

¹ The Motion has been filed under document number E2/92

² Document E2/92/1

³ See Order Setting the Date of the Initial Hearing, 19 January 2009, Document E8.



3. According to his Lawyers, Mr. Norng Chanphal's admission as a Civil Party would contribute significantly to a fair trial as envisaged by the ECCC Law and the Internal Rules. Mr. Chanphal was unaware of the filing deadline, and made contact with the Victims' Unit immediately upon being informed of it. His application to become a Civil Party in Case No. 001 was filed two days after the deadline. Further, Rule 23(4) states that the President may, by special decision, extend or shorten this deadline. His Co-Lawyers request the President to exercise this discretion and permit the Trial Chamber to consider Mr. Chanphal's application, which is appended to the Motion.

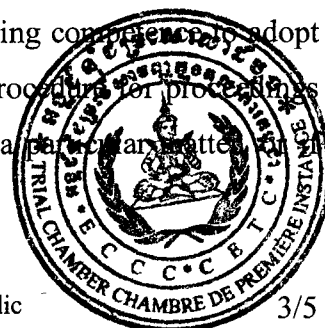
4. During the Initial Hearing, the other parties were invited to respond to these submissions. The Co-lawyers on behalf of Civil Party (Group 3) observed that the purpose of the Internal Rules is to consolidate applicable Cambodian procedure for proceedings before the ECCC. They note that under Cambodian law, civil parties may apply to join the proceedings at any stage until the Prosecutor's final observations.

5. The Co-Prosecutors concur that the information provided by the applicant would assist the Chamber in establishing the truth. In view of the applicant's particular character, they support his motion for late submission. In the alternative, the Co-Prosecutors submit that the applicant should be called as a witness in the trial due to the possible relevance of his testimony. His evidence would be in no way prejudicial to the Defence.

6. The Defence opposes both the request to hear Mr. Norng Chanphal as a witness and to accept his civil party application. They submit that the last-minute admission of new testimony and evidence must be strictly controlled in order to safeguard the efficient administration of justice and the rights of the Accused. Extending the filing deadline for civil party applications in this case may create a precedent for further late applications, with consequent prejudice for the Accused in terms of the expeditiousness of the trial.

B. FINDINGS:

7. The Chamber notes that Article 311 of the Cambodian Code of Criminal Procedure provides that victims may file a civil party application at any stage until the Prosecutor's final observations on the merits of the case. Rule 23(4) departs from this provision and instead stipulates that in order "to be admissible, civil party application must be filed within the Victims' Unit at least ten working days before the initial hearing". This reflects the ECCC's broad rule-making competence to adopt additional rules "where necessary to consolidate applicable Cambodian procedure for proceedings before the Court" or "where these existing procedures do not deal with a particular matter".



there is uncertainty regarding their interpretation or application, or if there is a question regarding their consistency with international standards".⁴

8. The Chamber notes that the scale of crimes within the ECCC's jurisdiction and the large number of victims are unprecedented before Cambodian courts. Rule 23(4) supplements existing Cambodian criminal procedure in order to facilitate the management of complex cases involving a large number of victims. The deadline envisaged in this rule reflects the *sui generis* character of the ECCC and the necessity to ensure a fair and expeditious trial in relation to cases of far greater size and complexity to those usually before national courts. The efficient organization of victims' participation before the ECCC is further necessary, *inter alia*, to enable the effective exercise by the parties of certain rights under the Internal Rules, such as the filing of additional witnesses pursuant to Rule 80 of the Internal Rules.

9. Although, pursuant to Rule 23(4), the President may alter deadlines for the filing of civil party applications, the exercise of this discretion must be supported by cogent reasons. Further, it must ensure equal treatment of all victims and avoid the appearance of individual dispensation. Consequently, an extension of this deadline for one Civil Party applicant shall either result in an extended deadline for all applicants or, where requested only in relation to a particular applicant, may be granted only in exceptional circumstances. The Chamber notes that the Civil Party Co-Lawyers representing Mr. Chanphal have not provided the Chamber with any information to suggest that exceptional circumstances prevented him from filing his application within the prescribed deadline. It further notes that considerable efforts were made by the ECCC to inform the public of the existing deadlines for the filing of civil party applications, as well as their rationale.⁵ Consequently, the Trial Chamber denies the Motion. The Chamber reserves the right to decide whether or not to call Mr. Norng Chanphal as a witness at a later date.

DECISION:

FOR THE FOREGOING REASONS

⁴ Fifth preambular paragraph, Internal Rules of the Extraordinary Chambers in the Courts of Cambodia, 12 September 2008.

⁵ See, *inter alia*, the ECCC Press Release of 12 December 2008, the Trial Chamber Public Order of 12 December 2008, the Initial Hearing of 19 January 2009 (Document E8), the Press Statement of the Victims Unit of 19 January 2009, and the Trial Chamber Press Statement of 23 January 2009.



REJECTS the Motion. *NWR*

Phnom Penh, 10 March 2009

President of the Trial Chamber



Handwritten signature

Nil Nonn