



**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

**អង្គបុរេជំនុំជម្រះ**  
Pre-Trial Chamber  
Chambre Préliminaire

No: D198/3/1/2

*In the name of the Cambodian people and the United Nations and pursuant to the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea*

Case File N° 004/07-09-2009-ECCC/OCIJ (PTC18)

**Before:** Judge PRAK Kimsan, President  
Judge Chang-ho CHUNG  
Judge NEY Thol  
Judge Steven BWANA  
Judge HUOT Vuthy

**Date:** 19 February 2015

<b>ឯកសារដើម</b>	
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**CONFIDENTIAL**

**DECISION OF THE PRE-TRIAL CHAMBER ON SON ARUN'S APPEAL AGAINST THE DECISION OF THE OFFICE OF THE CO-INVESTIGATING JUDGES RELATED TO THE RECOGNITION OF LAWYER**

**Distribution:**

**Lawyers for the Civil Parties**

**Appellant**  
Son Arun

CHET Vanly  
HONG Kimsuon  
KIM Mengkhy

Christine MARTINEAU  
Barnabe NEKUI  
Lyma NGUYEN  
Beini YE

**Co-Investigating Judges**  
YOU Bunleng  
Mark HARMON

LOR Chunthy  
SAM Sokong  
SIN Soworn  
TY Srinna

**Head of DSS**  
Isaac ENDELEY

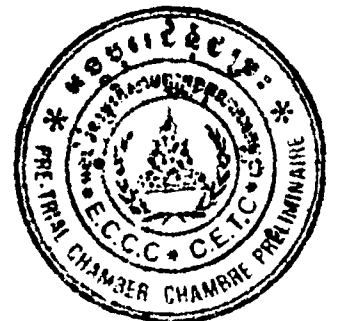
VEN Pov  
Laure DESFORGES  
Herve DIAKIESE

**To be copied to:**

Ferdinand DJAMMEN-NZEPA  
Nicole DUMAS

**Co-Lawyers for** [REDACTED]  
BIT Seanglim  
John R.W.D. JONES

Isabelle DURAND  
Françoise GAUTRY  
Martine JACQUIN  
Emmanuel JACOMY



**Co-Prosecutors**  
CHEA Leang  
Nicholas KOUMJIAN



**THE PRE-TRIAL CHAMBER** of the Extraordinary Chambers in the Courts of Cambodia (the "ECCC") is seized of Son Arun's (the "Appellant") "Appeal Against the Decision of the Office of Co-Investigating Judges Related to the recognition of lawyer" filed by the Appellant on 30 January 2015 (the "Appeal").<sup>1</sup>

## I. INTRODUCTION

This appellate proceeding involves a Decision issued by the International Co-Investigating Judge (the "ICIJ") Harmon rejecting an Appeal from the Appellant against a Decision of the Defence Support Section (the "DSS") relating to proceedings on assignment of lawyers for the purposes of representing suspects in the investigations in Case 004.

## II. PROCEDURAL BACKGROUND

1. On 17 November 2012, [REDACTED] (the "Suspect") signed a power of attorney letter selecting the Appellant and Mr. Bit Seanglim to represent her before the ECCC.<sup>2</sup>
2. On 30 September 2013, the Suspect signed a Form 7: Request for Engagement/Assignment of Co-Lawyers, in which she chose Mr. Bit Seanglim as her first choice and the Appellant as her second choice for Cambodian Co-Lawyer.<sup>3</sup>
3. On 20 December 2013, the Head of the Defence Support Section (the "DSS") informed the Co-Investigating Judges (the "CIJs") that he had permanently assigned Mr. Bit Seanglim as the National Co-Lawyer for the Suspect and requested the CIJs to recognise him as such.<sup>4</sup>
4. On 3 February 2014, the Appellant requested the CIJs to "consider and approve" his application to represent the Suspect after DSS had refused to do so (the "Recognition Request").<sup>5</sup>

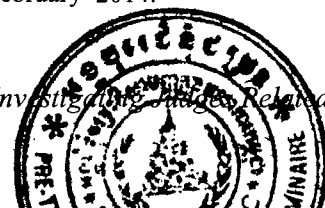
<sup>1</sup> Appeal Against the Decision of the Office of Co-Investigating Judges Related to the recognition of lawyer, 30 January 2015, D198/3/1/1.

<sup>2</sup> Case File No. 004-D198.1.1, Power of Attorney to Son Arun, 17 November 2012.

<sup>3</sup> Case File No. 004-D122/9.3, Form 7: Request for Engagement/Assignment of Co-Lawyers, 30 September 2013.

<sup>4</sup> Case File No. 004-D122/9, Letter from Chief of DSS to Co-Investigating Judges regarding the appointment of Cambodian Co-Lawyers in Case 004, 20 December 2013.

<sup>5</sup> Case File No. 004-D198.1, Son Arun's Request for Recognition of Lawyer, 3 February 2014.



5. On 24 February 2014, the International CIJ recognised the engagement of Mr. Bit Seanglim as National Co-Lawyer for the Suspect.<sup>6</sup>
6. On 30 March 2014, the Suspect signed another Form 7: Request for Engagement/Assignment of Co-Lawyers, listing Mr. Bit Seanglim as first choice for Cambodian Co-Lawyer and Mr. John R.W.D. Jones as first choice for Foreign Co-Lawyer.<sup>7</sup>
7. On 29 April 2014, the Head of DSS informed the CIJs that he had permanently assigned Mr. John R.W.D. Jones as the Foreign Co-Lawyer for the Suspect and requested them to recognise him as such.<sup>8</sup>
8. On 2 May 2014, the International CIJ recognised the engagement of Mr. John R.W.D. Jones as Foreign Co-Lawyer for the Suspect.<sup>9</sup>
9. On 3 June 2014, the Appellant filed an Appeal before the Office of the Co-Investigating Judges (the "First Appeal").<sup>10</sup> In the First Appeal, the Appellant submitted that by refusing to respond to his request to be designated as the Suspect's co-lawyer, DSS violated the Suspect's rights to choose her own lawyer and to a fair trial, protected by both national and international law.<sup>11</sup> The Appellant further submitted that DSS lacks any legal ground to refuse his request, given that he meets all the legal requirements contained *inter alia* in Internal Rules 11 and 38.<sup>12</sup> In particular, the Appellant argued that he has sufficient qualification, that there is no conflict of interest and that he has sufficient time to defend both his client in Case 002 and the Suspect.<sup>13</sup> The Appellant further stated that the previous assignment of Mr. Bit Seanglim as National Co-Lawyer to the Suspect does not hinder his appointment, given the accepted practice in Case 001 were two National Co-Lawyers

<sup>6</sup> Case File No. 004-D122/11, Decision on Recognition of Lawyer for ██████████, 24 February 2014.

<sup>7</sup> Case File No. 004-D198/2.6, Form 7: Request for Engagement/Assignment of Co-Lawyers, 30 March 2014.

<sup>8</sup> Case File No. 004-D122/13, Letter from Chief of DSS to Co-Investigating Judges regarding the Assignment of Foreign Co-Lawyer to Represent ██████████, a Suspect in Case 004, 29 April 2014.

<sup>9</sup> Case File No. 004-D122/13/1, Decision On The Recognition of International Co-Lawyers For ██████████, 2 May 2014.

<sup>10</sup> Case File No. 004-D198, Appeal against the Decision of the Defence Support Section Related to the recognition of lawyer, 03 June 2014.

<sup>11</sup> First Appeal, paras.12-13.

<sup>12</sup> First Appeal, paras. 12-14.

<sup>13</sup> First Appeal, paras. 12, 14-18, 20.



and no International Co-Lawyer were appointed to Duch's defence.<sup>14</sup> The Appellant argued that the First Appeal is admissible pursuant to Internal Rule 11(6).<sup>15</sup>

10. On 12 June 2014, the ICIJ requested the DSS to produce, within five working days, a report on the facts described in the First Appeal.<sup>16</sup>

11. On 13 June 2014, the Head of DSS submitted the requested report.<sup>17</sup>

12. On 14 November 2014, the ICIJ issued his Decision dismissing the First Appeal (the "Impugned Decision").<sup>18</sup> The ICIJ reached the Impugned Decision after: 1) having reviewed: the procedural history,<sup>19</sup> the submissions of the Appellant,<sup>20</sup> and the applicable law;<sup>21</sup> 2) having discussed the relevant facts and law;<sup>22</sup> and 3) having been "satisfied that DSS acted correctly and with full respect for the Suspect's right to counsel of her own choosing."<sup>23</sup>

13. The Appellant received notification of the Impugned Decision on 24 November 2014<sup>24</sup> and filed a Notice of Appeal on 29 December 2014.<sup>25</sup> The Appellant filed the Appeal before the Pre-Trial Chamber on 30 January 2015.

### III. SUBMISSIONS ON APPEAL

14. The Appellant asks the Pre-Trial Chamber to: 1) Admit the Appeal; 2) Dismiss the Impugned Decision; 3) Recognize the Appellant as Co-Lawyer for the Suspect.<sup>26</sup>

15. In respect of admissibility or jurisdiction by the Pre-Trial Chamber over this Appeal, the Appellant suggests that "the Pre-Trial Chamber has right and jurisdiction to accept my

<sup>14</sup> First Appeal, para. 19.

<sup>15</sup> First Appeal, para. 21.

<sup>16</sup> Case File No. 004-D198/1, ICIJ's request to DSS to produce a report on the handling of the appointment of lawyer for [REDACTED], 12 June 2014.

<sup>17</sup> Case File No. 004-D 198/2, Response of DSS pursuant to the request to produce a report on the handling of the appointment of lawyer of choice for [REDACTED], 13 June 2014 ("DSS Report").

<sup>18</sup> Decision on the appeal against the decision of the defense support section related to the recognition of lawyer, 14 November 2014, D198/3.

<sup>19</sup> Impugned Decision, paras. 1-14.

<sup>20</sup> Impugned Decision, paras. 15-17.

<sup>21</sup> Impugned Decision, paras. 18-22.

<sup>22</sup> Impugned Decision, paras. 23-25.

<sup>23</sup> Impugned Decision, para. 26.

<sup>24</sup> Appeal, para. 13.

<sup>25</sup> Appeal Register of Appeal Against ICIJ's Decision related to the recognition of lawyer, D198/3/1, 6 January 2015.

<sup>26</sup> Appeal, paras. 32-34.



Appeal and decide on dispute in relation with recognition of law in accordance with rule 11 paragraph 5 and 6 of the Internal Rules of ECCC.”<sup>27</sup> The Appellant also claims that this “appeal is submitted within 15 days from the date of notification as provided under ECCC Internal Rule.”<sup>28</sup>

16. The Appellant argues in the Appeal that the ICIJ did not provide any reasons in the Impugned Decision and that the Suspect “still requests [the Appellant] to be Co-Lawyer in her case.”<sup>29</sup>

#### IV. ADMISSIBILITY OF THE APPEAL

17. The Appellant argues that the Pre-Trial Chamber has jurisdiction over the Appeal on the grounds of Internal Rule 11, paragraphs (5) and (6) and claims that he has filed the Appeal within the 15 day deadline.

18. Internal Rule 11, paragraphs 5 and 6 read:

“5. Any lawyer or assistant whose request to be placed on the lists of lawyers for indigent persons referred to in sub-rules 2(d) and 2(i) above is refused or has not been examined within 30 (thirty) days of receipt by the Defence Support Section, or who is excluded from the list, may appeal to the Pre-Trial Chamber within 15 (fifteen) days of receiving notification of the decision of the Head of the Defence Support Section or the end of the 30 (thirty) day period, as appropriate. The decision of the Pre-Trial Chamber shall not be subject to appeal. If the required majority is not attained, the default decision of the Pre-Trial Chamber shall be that the decision of the Head of the Defence Support Section shall stand. However, in cases where the application was not examined within the 30 (thirty) day time period, the default decision shall be that inclusion in the list shall be deemed to have been granted.

6. The Head of the Defence Support Section shall make determinations on indigence and the assignment of lawyers to indigent persons based on the criteria set out in the Defence Support Section administrative regulations, subject to appeal to the Co-Investigating Judges or the Chamber before which the person is appearing at the time, within 15 (fifteen) days of receiving notification of the decision. No further appeal shall be allowed.”

#### **The time limit for filing:**

19. In respect of the Appellant’s claim that he has filed the Appeal within the legal deadline of 15 days of receiving notification of the Impugned Decision, having regard of: the provisions of Internal Rule 11, paragraphs (5) and (6); the Appellant’s statement that he received notice of the Impugned Decision on 24 November 2014; the fact that the Appellant filed the Notice of Appeal on 29 December 2014; and of the rest of the procedural history up to the filing of the Appeal on 30 January 2015, the Pre-Trial Chamber

<sup>27</sup> Appeal, para. 28.

<sup>28</sup> *Ibid.*

<sup>29</sup> Appeal, paras 29-30.



finds that the Appeal was filed outside the legally prescribed period. The Appellant's failure to respect the legally prescribed deadline for filing would lead, pursuant to Internal Rule 39(1), to the "invalidity of" the action of filing of the Appeal.

20. Having made these findings, the Pre-Trial Chamber takes note, however, of the more substantive allegation made by the Appellant that the Suspect's fundamental right to be defended by a lawyer of his own choosing may be at stake. Therefore, having noted this allegation and pursuant to Internal Rule 39(4)(b), despite its lateness, the Pre-Trial Chamber finds it fit to recognize the validity of the action of the filing of the Appeal and to undertake an examination of the admissibility of the Appeal under the Internal Rules and as argued by the Appellant.

#### **Admissibility of the Appeal under Internal Rule 11(5)**

21. Pursuant to Internal Rule 11(5), the Pre-Trial Chamber has jurisdiction over appeals against decisions of the DSS related to "requests to be placed on the lists of lawyers." Having reviewed the Recognition Request, noting the fact that Son Arun is a lawyer who is already representing clients before the ECCC<sup>30</sup> and pursuant to the provisions of the Internal Rules and DSS Administrative Regulations in respect of requests from lawyers for inclusion in the DSS list of lawyers, the Pre-Trial Chamber considers that the Recognition Request is not a request for random placement in the DSS list of lawyers. Therefore, the Recognition Request does not fall within the ambit of Internal Rule 11(5) and, consequently, decisions relating to it are not under the appellate jurisdiction of the Pre-Trial Chamber.
22. The Pre-Trial Chamber, therefore, finds that the Appeal is not admissible under Internal Rule 11(5).

#### **Admissibility of the Appeal under Internal Rule 11(6)**

23. Having reviewed the Recognition Request, the Pre-Trial Chamber considers that it may fall within the ambit of Internal Rule 11(6). Pursuant to Internal Rule 11(6), decisions of the DSS, in relation to matters similar to those as the subject of the Recognition Request, are appealable only before the Co-Investigating Judges and the Co-Investigating Judges' decisions on appeal are final and binding because Internal Rule 11(6) provides in explicit terms that "no further appeal shall be allowed." By appealing against the DSS decision

<sup>30</sup> Recognition Request, p. 2, second paragraph: "presently, I am representing Mr. Nuon Chea."



before the OCIJ, the Appellant has already exhausted the only legal remedy available. The applicable law, explicitly, does not allow for another appellate review of the final decision of the OCIJ by another judicial body. Therefore, the Appellant cannot bring another appeal before the Pre-Trial Chamber to impugn the ICIJ's final decision.

24. Further, based on the fact that the Suspect, as an indigent person, has not "appeared before this Chamber", and pursuant to Internal Rule 11(6), the Pre-Trial Chamber finds that the Appellant was correct to file his First Appeal before the OCIJ, rather than before this Chamber.
25. Therefore, the Pre-Trial Chamber finds that the Appeal is not admissible under Internal Rule 11(6).

#### IV. DISPOSITION

**THEREFORE, THE PRE-TRIAL CHAMBER HEREBY:**

UNANIMOUSLY DECIDES to dismiss the appeal as inadmissible.

In accordance with Internal Rule 77(13), there is no possibility to appeal this decision. <sup>or</sup>

Phnom Penh, 19 February 2015

President



Pre-Trial Chamber

PRAK Kimsan    Chang-ho CHUNG    NEY Thol    Steven BWANA    HUOT Vuthy