

**BEFORE THE SUPREME COURT CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

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**INTERNATIONAL CO-PROSECUTOR'S IMMEDIATE APPEAL OF THE TRIAL
CHAMBER'S EFFECTIVE TERMINATION OF CASE 004/2**

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ECCC LAW

Core Legal Documents

(In the ECCC Legal Compendium – not included)

1. Agreement between the United Nations and the Royal Government of Cambodia Concerning the Prosecution Under Cambodian Law of Crimes Committed During the Period of Democratic Kampuchea, 6 June 2003 (“ECCC Agreement”), arts 1, 4(1), 5(4), 6(4), 7(4), 12(1).
2. Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea, as amended on 27 October 2004 (“ECCC Law”), arts 1, 12, 20 new, 23 new, 33 new, 37 new.
3. Extraordinary Chambers in the Courts of Cambodia, Internal Rules (Rev. 9), as revised on 16 January 2015 (“Internal Rules” or “Rules”), Rules 1(2), 2, 21(1), 39(3-4), 72(4)(d), 77, 77(13), 77(14), 79(1), 80(1), 89(1)(b), 104(1), 104(4)(a), 106, 107(1), pp. 83-84.
4. Practice Direction on Filing of Documents before the ECCC, amended on 7 March 2012 (“Practice Direction”), ECCC/01/2007/Rev.8, arts 2.1, 2.4.

(Not in the ECCC Legal Compendium – included)

5. Code of Judicial Ethics adopted at the Plenary Session of the Extraordinary Chambers in the Courts of Cambodia on 31 January 2008 and amended on 5 September 2008, arts 2(1), 3(1), 5(1). **(Authority 1)**

Jurisprudence

Supreme Court Chamber (SCC)

6. Case 001-F28 Appeal Judgement, 3 February 2012, para. 65. *(Exceeds 10 pages – excerpt attached)* **(Authority 2)**
7. Case 002-E116/1/7 Decision on Immediate Appeal by Nuon Chea Against the Trial Chamber’s Decision on Fairness of Judicial Investigation, 27 April 2012 (“SCC Fairness Decision”), para. 30. *(Exceeds 10 pages – excerpt attached)* **(Authority 3)**
8. Case 002-E138/1/7 Decision on Immediate Appeal Against the Trial Chamber’s Order to Release the Accused Ieng Thirith, 13 December 2011, para. 15. *(Exceeds 10 pages – excerpt attached)* **(Authority 4)**
9. Case 002-E138/1/10/1/5/7 Decision on Immediate Appeal Against the Trial Chamber’s Order to Unconditionally Release the Accused Ieng Thirith, 14 December 2012, para. 38. *(Exceeds 10 pages – excerpt attached)* **(Authority 5)**

10. Case 002-E163/5/1/13 Decision on the Co-Prosecutors' Immediate Appeal of the Trial Chamber's Decision Concerning the Scope of Case 002/01, 8 February 2013 ("SCC Case 002/01 Scope Decision"), paras 22, 30. (*Exceeds 10 pages – excerpt attached*) (**Authority 6**)
11. Case 002-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 ("SCC Rule 35 Decision"), para. 25. (*Exceeds 10 pages – excerpt attached*) (**Authority 7**)
12. Case 002-E284/4/8 Decision on Immediate Appeals Against Trial Chamber's Second Decision on Severance of Case 002, 25 November 2013 ("SCC Second Severance Decision"), paras 21-26. (*Exceeds 10 pages – excerpt attached*) (**Authority 8**)
13. Case 002-E301/9/1/1/3 Decision on Khieu Samphan's Immediate Appeal Against the Trial Chamber's Decision on Additional Severance of Case 002 and Scope of Case 002/02, 29 July 2014, para. 17. (*Exceeds 10 pages – excerpt attached*) (**Authority 9**)
14. Case 002-E306/7/3/1/4 Decision on Civil Parties' Immediate Appeal Against the Trial Chamber's Decision on the Scope of Case 002/02 in Relation to Charges of Rape, 12 January 2017, para. 23. (*Exceeds 10 pages – excerpt attached*) (**Authority 10**)
15. Case 002-E463/1/3 Decision on Khieu Samphan's Urgent Appeal Against the Summary of Judgment Pronounced on 16 November 2018, 13 February 2019, para. 17. (**Authority 11**)

Trial Chamber (TC)

16. Case 002-E9 Order to File Material in Preparation for Trial, 17 January 2011 ("TC Preparation Order"), Introduction, para. 2. (**Authority 12**)
17. Case 002-E116 Decision on Nuon Chea Motions Regarding Fairness of Judicial Investigation (E51/3, E82, E88 and E92), 9 September 2011, paras 16-17. (**Authority 13**)
18. Case 002-E313 Case 002/01 Judgement, 7 August 2014, para. 23. (*Exceeds 10 pages – excerpt attached*) (**Authority 14**)
19. Case 002-E465 Case 002/02 Judgement, 16 November 2018, para. 33. (*Exceeds 10 pages – excerpt attached*) (**Authority 15**)
20. Statement of the Judges of the Trial Chamber of the ECCC Regarding Case 004/2 Involving Ao An, 3 April 2020 ("3 April Statement"). (**Authority 16A (English) & 16B (Khmer)**)

Pre-Trial Chamber (PTC)

21. Case 002-A189/I/8 Decision on Ieng Sary's Appeal Regarding the Appointment of a Psychiatric Expert, 21 October 2008, paras 22-24. (*Exceeds 10 pages – excerpt attached*) (**Authority 17**)
22. Case 002-D427/1/30 Decision on Ieng Sary's Appeal Against the Closing Order, 11 April 2011, para. 274. (*Exceeds 10 pages – excerpt attached*) (**Authority 18**)

23. Case 003-D174/1/4 Considerations on [Redacted] Appeal Against the International Co-Investigating Judge's Decision to Charge [Redacted] with Grave Breaches of the Geneva Conventions and National Crimes and to Apply JCE and Command Responsibility, 27 April 2016, Disposition at EN 01235531. (*Exceeds 10 pages – excerpt attached*) (**Authority 19**)
24. A117/2/2 Decision on Appeal Against Constructive Dismissal of Ta An's Fourth Request for Investigative Action, 22 October 2014, para. 8.
25. D239/1/8 Considerations on Im Chaem's Appeal Against the International Co-Investigating Judge's Decision to Charge Her *In Absentia*, 1 March 2016, Disposition at EN 01210634.
26. D257/1/8 Considerations on Ao An's Application to Seize the Pre-Trial Chamber with a View to Annulment of Investigative Action Concerning Forced Marriage, 17 May 2016, Disposition at EN 01241203.
27. D359/24 & D360/33 Considerations on Appeals Against Closing Orders, 19 December 2019 ("PTC's Considerations"), paras 106, 111-112, 122; International Judges' Opinion, para. 323.

Office of the Co-Investigating Judges (OCIJ)

28. D359 Order Dismissing the Case Against Ao An, 16 August 2018 ("Dismissal Order").
29. D360 Closing Order (Indictment), 16 August 2018 ("Indictment").

CAMBODIAN LAW

30. Code of Criminal Procedure of the Kingdom of Cambodia, 7 June 2007 ("CCCP"), art 7. (*Exceeds 10 pages – excerpt attached*) (**Authority 20**)

INTERNATIONAL LAW

Jurisprudence

International Criminal Court (ICC)

31. *The Prosecutor v. Lubanga Dyilo*, ICC-01/04-01/06-772, Judgment on the Appeal of Mr. Thomas Lubanga Dyilo against the Decision on the Defence Challenge to the Jurisdiction of the Court pursuant to article 19(2)(a) of the Statute of 3 October 2006, Appeals Chamber, 14 December 2006, para. 30. (*Exceeds 10 pages – excerpt attached*) (**Authority 21**)

International Criminal Tribunal for Rwanda (ICTR)

32. *Barayagwiza v. The Prosecutor*, ICTR-97-19-AR72, Decision, Appeals Chamber, 3 November 1999, para. 76. (*Exceeds 10 pages – excerpt attached*) (**Authority 22**)
33. *The Prosecutor v. Karemera et al.*, ICTR-98-44-PT, Decision on Severance of Andre Rwamakuba and Amendments of the Indictment, Trial Chamber, 7 December 2004, para. 22. (**Authority 23**)

International Criminal Tribunal for the Former Yugoslavia (ICTY)

34. *Prosecutor v. Beqaj*, IT-03-66-T-R77, Judgement on Contempt Allegations, Trial Chamber, 27 May 2005, paras 9-13. (*Exceeds 10 pages – excerpt attached*) (**Authority 24**)
35. *Prosecutor v. Blagojević & Jokić*, IT-02-60-T, Decision on Independent Counsel for Vidoje Blagojević's Motion to Instruct the Registrar to Appoint New Lead and Co-Counsel, Trial Chamber, 3 July 2003, paras 112, 114. (*Exceeds 10 pages – excerpt attached*) (**Authority 25**)
36. *Prosecutor v. Blaškić*, IT-95-14, Judgement on the Request of the Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997, Appeals Chamber, 29 October 1997, paras 33, 35. (*Exceeds 10 pages – excerpt attached*) (**Authority 26**)
37. *Prosecutor v. Karadžić*, IT-95-5/18-T, Decision on Motion for Stay of Proceedings, Trial Chamber, 8 April 2010, para. 4. (**Authority 27**)

Special Tribunal for Lebanon (STL)

38. *In the Matter of El Sayed*, CH/AC/2010/02, Decision on Appeal of Pre-Trial Judge's Order Regarding Jurisdiction and Standing, Appeals Chamber, 10 November 2010, paras 45-46, 48. (*Exceeds 10 pages – excerpt attached*) (**Authority 28**)

FOREIGN DOMESTIC LAW

Legislation

France

39. French Code of Criminal Procedure, 12 August 2011, art. 6. (*Exceeds 10 pages – excerpt attached*) (**Authority 29**)

OTHER DOCUMENTS

Books

40. **D359/3/1.1.43** David Scheffer in M. Cherif Bassiouni (ed), "The Extraordinary Chambers in the Courts of Cambodia", *International Criminal Law*, Third Edition, Vol. III, 2008, p. 246 (EN 01598756).

United Nations Documents

41. Basic Principles on the Independence of the Judiciary, endorsed by General Assembly Resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, Principles 2, 6. (*Not included – in the ECCC Legal Compendium*)
42. Report of the Secretary-General, 20 September 2019, UN Doc. A/74/359, p. 17, Annex I: Summary of follow-up action taken to implement relevant recommendations. (*Exceeds 10 pages – excerpt attached*) (**Authority 30**)

43. **D324.30** Letter from UN Secretary General to Prime Minister H.E. Hun Sen, 19 April 2000, Annexed Note from Hans Corell to Secretary General, Subject: Urgent call from Cambodia – Options to settle differences between investigating judges/prosecutors, 19 April 2000, EN 01326090.
44. **D324.36** Statement by Under Secretary General Hans Corell Upon Leaving Phnom Penh on 17 March 2003, 17 March 2003, EN 01326112.

Miscellaneous

45. Beijing Statement of Principles of the Independence of the Judiciary in the Lawasia Region, The Law Association for Asia and the Pacific, 28 August 1997 (“Beijing Principles”), art. 3. (**Authority 31**)