

ក្រុមបេធាវីការពារក្តី អៀង សារី
IENG SARY DEFENCE TEAM
EQUIPE DE DEFENSE DE IENG SARY

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12 September 2012

To: **MAO Sea**
 RPC and Plenary Secretariat

Copy: **Defence Teams**

Office of the Co-Prosecutors

Civil Party Lead Co-Lawyers

Defence Support Section

Re: Supplement to Proposed Rule Amendment of Rule 104 concerning Interlocutory Appeals

Dear Rules and Procedures Committee Secretariat,

As a supplement to the DSS proposal to amend Rule 104 of the ECCC Internal Rules, we submit the attached relevant rules concerning interlocutory appeals before all the international and internationalized tribunals. These rules clearly demonstrate that in light of the challenges faced by these tribunals in dealing with large scale war crimes and crimes against humanity cases the interlocutory appeals process is an essential component in ensuring fair trials. The interlocutory appeals process is a vital component of the international standards upheld and applied by these tribunals; standards the ECCC is mandated to respect and apply. A clear reading of these various rules demonstrates that the interlocutory appeals process operates on a discretionary basis and leave to appeal is only granted when certain criteria are met. The ICTY, ICTR and ICC rules are exemplary in this regard, particularly considering the long period of their implementation. It is also noteworthy that the Special Court for Lebanon is based on the Civil Law tradition, as opposed to hybrid, thus demonstrating that interlocutory appeals are not limited to Common Law or hybrid systems.

As for the OCP's position that "we are moving towards the end of the trial" and the costs of a rule amendment would outweigh the benefits at this stage of the proceedings, this is not a compelling justification for the ECCC to deviate from the international standards that other international and internationalized or hybrid courts such as the ECCC apply. Moreover, the OCP's argument seems to insinuate that there will be no other trials apart from Case 002/01. Aside from the presumptuousness of this argument, it is irrelevant whether Case 002/01 will

be the only case to be tried at the ECCC and / or that it is in the midst of being completed at the trial stage. The existence of the Rules and Procedures Committee and the meetings of the Plenary suggest that where the Internal Rules of the ECCC need to be modified and where lacunae may be revealed, necessary steps are taken by the Rules and Procedures Committee and the Plenary to reconcile the Rules so that they do in fact meet international standards.

We are gratified to have had the opportunity to address the Rules and Procedures Committee on this issue and we remain available to provide further comment on this or any other issues before the Committee. We are certainly prepared to make presentations before the Plenary, should an invitation be extended.

Respectfully,

ANG Udom



Michael G. KARNAVAS

Co-Lawyers for Mr. IENG Sary

**INTERLOCUTORY APPEAL PROCEDURE BEFORE OTHER INTERNATIONAL
AND INTERNATIONALIZED CRIMINAL TRIBUNALS**

1. International Criminal Tribunal for the former Yugoslavia / International Criminal Tribunal for Rwanda

Rule 72 (B): Preliminary Motions

Decisions on preliminary motions are without interlocutory appeal save

- (i) in the case of motions challenging jurisdiction;
- (ii) in other cases where certification has been granted by the Trial Chamber, which may grant such certification if the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.

Rule 73 (B): Other Motions

Decisions on all motions are without interlocutory appeal save with certification by the Trial Chamber, which may grant such certification if the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.

2. International Criminal Court

Article 82: Appeal against other decisions

1. Either party may appeal any of the following decisions in accordance with the Rules of Procedure and Evidence:
 - (a) A decision with respect to jurisdiction or admissibility;
 - (b) A decision granting or denying release of the person being investigated or prosecuted;
 - (c) A decision of the Pre-Trial Chamber to act on its own initiative under article 56, paragraph 3;
 - (d) A decision that involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which,

in the opinion of the Pre-Trial or Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.

3. Special Court for Sierra Leone

Rule 73 (B): Motions

Decisions rendered on such motions are without interlocutory appeal. However, in exceptional circumstances and to avoid irreparable prejudice to a party, the Trial Chamber may give leave to appeal. Such leave should be sought within 3 days of the decision and shall not operate as a stay of proceedings unless the Trial Chamber so orders.

4. United Nations Special Panel for Serious Crimes in East Timor

VI: Public Trial

Section 27: Motions

27.4 The Court of Appeal may grant leave to appeal from a decision on a motion where:

- (a) the decision from which appeal is sought would cause such prejudice to the case of the party seeking leave to appeal as could not be cured by the final decision of the trial;
- (b) the issue on which appeal is sought is of general importance to proceedings before the courts of East Timor; or,
- (c) upon other good cause being shown by the party seeking leave to appeal.

5. Special Tribunal for Lebanon

Rule 90 (B): Disposal of Preliminary Motions

Decisions on preliminary motions are without interlocutory appeal save:

- (i) in the case of motions challenging jurisdiction;
- (ii) in other cases where certification has been granted upon the basis that the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which an immediate resolution by the Appeals Chamber may materially advance the proceedings.

Rule 126 (C): Motions Requiring Certification

Decisions on all motions under this rule are without interlocutory appeal save with certification, if the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which an immediate resolution by the Appeals Chamber may materially advance the proceedings.