



**អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា**

Extraordinary Chambers in the Courts of Cambodia

Chambres Extraordinaires au sein des Tribunaux Cambodgiens

# **EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

## **INTERNAL RULES (REV.4)**

AS REVISED ON 11 SEPTEMBER 2009

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## **PREAMBLE**

**WHEREAS** the General Assembly of the United Nations, in its resolution 57/228 of 18 December 2002, recalled that the serious violations of Cambodian and international humanitarian law during the period of Democratic Kampuchea from 1975 to 1979 continue to be matters of vitally important concern to the international community as a whole;

**WHEREAS** in the same resolution the General Assembly recognized the legitimate concern of the Government and the people of Cambodia in the pursuit of justice and national reconciliation, stability, peace and security;

**WHEREAS** the Cambodian authorities have requested assistance from the United Nations in bringing to trial senior leaders of Democratic Kampuchea and those who were most responsible for the crimes and serious violations of Cambodian penal law, international humanitarian law and custom, and international conventions recognized by Cambodia, that were committed during the period from 17 April 1975 to 6 January 1979;

**WHEREAS** the Extraordinary Chambers in the Courts of Cambodia have been established under Cambodian law, and the Royal Government of Cambodia and United Nations have signed an Agreement, which has been approved by the General Assembly and ratified in Cambodia;

**NOW THEREFORE** the ECCC have adopted the following Internal Rules, the purpose of which is to consolidate applicable Cambodian procedure for proceedings before the ECCC and, pursuant to Articles 20 new, 23 new, and 33 new of the ECCC Law and Article 12(1) of the Agreement, to adopt additional rules where these existing procedures do not deal with a particular matter, or if there is uncertainty regarding their interpretation or application, or if there is a question regarding their consistency with international standards.

# **I – PROVISIONS RELATING TO THESE INTERNAL RULES (“IRs”)**

## **Rule 1. Entry into Force and Interpretation**

1. These IRs shall enter into force upon official publication by the Office of Administration and no later than 10 (ten) days after adoption by the Plenary of identical versions in Khmer, English and French.
2. In the present document, the masculine shall include the feminine and the singular the plural, and vice-versa. In particular, unless otherwise specified, a reference in these IRs to the Co-Investigating Judges includes both of them acting jointly and each of them acting individually, whether directly or through delegation; and a reference in these IRs to the Co-Prosecutors includes both of them acting jointly and each of them acting individually, whether directly or through delegation, as specified in these IRs. This provision does not have any grammatical impact on the document in Khmer.

## **Rule 2. Procedure Applicable in Case of *lacunae* in these IRs**

Where in the course of ECCC proceedings, a question arises which is not addressed by these IRs, the Co-Prosecutors, Co-Investigating Judges or the Chambers shall decide in accordance with Article 12(1) of the Agreement and Articles 20 new, 23 new, 33 new or 37 new of the ECCC Law as applicable, having particular attention to the fundamental principles set out in Rule 21 and the applicable criminal procedural laws. In such a case, a proposal for amendment of these IRs shall be submitted to the Rules and Procedure Committee as soon as possible.

## **Rule 3. Amendments**

1. Requests for amendment of these IRs may be made to the Rules and Procedure Committee by a Judge, a Co-Investigating Judge, a Co-Prosecutor, the Head of the Defence Support Section, the Head of the Victims Unit and the Director or Deputy Director of the Office of Administration.
2. Proposals for amendment received from the Rules and Procedure Committee shall be submitted to the Plenary Session for adoption in accordance with the procedure for adopting these IRs.
3. An amendment shall, unless otherwise indicated, enter into force upon official publication by the Office of Administration and no later than 10 (ten) days after adoption by the Plenary of identical versions in Khmer, English and French.

## **II – ORGANISATION OF THE COURT**

### **A – General Provisions**

#### **Rule 4. Administrative Regulations**

After these IRs come into force, the Office of the Co-Prosecutors, the Office of Co-Investigating judges, the Chambers, the Office of Administration, the Defence Support Section and Victims Unit shall develop their own respective administrative regulations, which shall comply with these IRs. The Rules and Procedure Committee, on its own motion or at the request of any of the abovementioned bodies, may review the administrative regulations of any other body where there is doubt concerning their consistency with these IRs.

#### **Rule 5. International Judicial Cooperation and Financial Assistance**

1. The ECCC may invite States not party to the Agreement to provide judicial assistance on the basis of *ad hoc* agreements or any other appropriate means.
2. Where any State fails to provide such assistance, the Co-Prosecutors, the Co-Investigating Judges or the Chambers seised of the matter may take appropriate action, through the Office of Administration, including a request for assistance from the Secretary-General of the United Nations and/or the Royal Government of Cambodia.
3. Pursuant to Article 44(4) new of the ECCC Law, the ECCC may receive additional assistance for their expenses from other voluntary funds contributed by foreign governments, international institutions, non-governmental organizations, and other persons wishing to assist the proceedings.

#### **Rule 6. Staff Duties and Discipline**

1. All ECCC personnel shall enjoy the right to fully perform their duties as provided in the ECCC Law and Agreement without any interference from any external institutions or persons.
2. The national Judges, Co-Investigating Judge and Co-Prosecutor, including their reserves, the Director of the Office of Administration and all national personnel shall enjoy the immunities as provided in Article 42(1) new of the ECCC Law and Article 20(1) of the Agreement. Specifically, they shall be accorded immunity from legal process in respect of words spoken or written, and all acts performed by them in their official capacity.
3. The international Judges, Co-Investigating Judge and Co-Prosecutor, including their reserves, as well as the Deputy Director of the Office of Administration shall enjoy the privileges and immunities as provided in Article 41 of the ECCC Law and Article 19 of the Agreement. Other international personnel shall enjoy the privileges and immunities as provided in Article 42(2) new of the ECCC Law and Article 20(2) of the Agreement. For all such persons, this includes immunity from legal process in respect of words spoken or written, and all acts performed by them in their official capacity.
4. The UN Staff Regulations and Rules shall exclusively govern any proceedings for misconduct or negligence of all international personnel in the conduct of their duties.

International personnel shall not be subject to any other administrative or disciplinary proceedings for any such actions.

5. The appropriate national authorities shall conduct any proceedings for misconduct or negligence of national staff members in the conduct of their duties in accordance with applicable Cambodian Law.

### **Rule 7. Resignation**

1. Any ECCC Judge or Prosecutor may resign from his or her functions.
2. The resignation of a national Judge or Co-Prosecutor shall be submitted to the Supreme Council of the Magistracy of the Kingdom of Cambodia. Notice shall be given by such Judge or Prosecutor in writing to the Plenary, through its President.
3. The resignation of an international Judge or Co-Prosecutor shall be submitted in writing to the Secretary-General of the United Nations, who shall transmit the resignation to the Supreme Council of the Magistracy of the Kingdom of Cambodia. Notice shall be given by such Judge or Prosecutor in writing to the Plenary, through its President.
4. Articles 11 new, 18 new, 26, and 46 new of the ECCC Law and Articles 3, 5 and 6 of the Agreement, relating to vacancies for judicial officers, shall be applied.

## **B – The Office of Administration**

### **Rule 8. The Director and Deputy Director of the Office of Administration**

The Director and Deputy Director of the Office of Administration shall be appointed according to the ECCC Law and the Agreement. They shall direct the Office of Administration and appoint such staff as necessary.

### **Rule 9. Functions of the Office of Administration**

(Amended on 6 March 2009)

1. The Office of Administration shall support the Chambers, the Office of the Co-Prosecutors, the Office of the Co-Investigating Judges and Plenary Sessions in the performance of their functions and shall be responsible for their administration and servicing. In this respect, the above-mentioned judicial officers may make suggestions to the Office of Administration, through the Judicial Administration Committee, including the taking of appropriate disciplinary measures against staff under their authority, where warranted.
2. The Office of Administration shall be responsible for the security of the ECCC in accordance with the Supplementary Agreement regarding Safety and Security between the United Nations and the Royal Government of Cambodia.
3. The Office of Administration shall be responsible for provision of the equipment, facilities management, information technology, supplies, vehicles, transportation, and other physical and administrative requirements of the ECCC in accordance with the Supplementary Agreement regarding utilities, facilities and services between the United Nations and the Royal Government of Cambodia.

4. Without prejudice to the authority of the Office of the Co-Prosecutors, the Office of Co-Investigating Judges or the Chambers to receive, obtain and provide information and to establish channels of communication in the conduct of their Judicial functions, the Office of Administration shall serve as the official channel for both internal and external communication of the ECCC. The Office of Administration shall establish a Public Affairs Section which shall have the duty of disseminating information to the public regarding the ECCC. Except as otherwise provided in these IRs, the Public Affairs Section, upon instruction from the Office of the Co-Prosecutors, the Office of the Co-Investigating Judges or the Chambers, shall also be responsible for correcting any false or misleading information presented to the public.

5. The Office of Administration shall keep a database containing copies of all case files of Preliminary Investigations, Judicial Investigations, and cases before the Chambers, the originals of which shall be kept with the Office of the Co-Prosecutors, the Office of the Co-Investigating Judges or the Chambers, as appropriate. The Greffiers of each Office and Chamber shall ensure that the Office of Administration receives a copy of all documents in the case file forthwith. The Office of the Administration will ensure that such copies are only made available to the parties, experts or other authorized persons, in accordance with these IRs and as directed by the Office of the Co-Prosecutors, the Office of the Co-investigating Judges or the Chambers, as appropriate. Information in the database shall only be made available to the public subject to the terms of the ECCC Practice Direction on the matter. The Office of Administration shall assist the Greffiers, at their request, in serving summonses and giving notice of orders.

6. At the direction of the Co-Prosecutors, the Co-Investigating Judges or the Chambers, as appropriate, the Office of Administration shall be responsible for the preservation, storage and security of evidence including exhibits, statements and documents obtained in the course of preliminary investigations, judicial investigations, trials, and appeals.

7. The Office of Administration shall be responsible for coordinating the training of ECCC personnel and supporting training of the ECCC judicial bodies, as needed.

#### **Rule 10. Operation of the Office of Administration**

1. When preparing or amending its administrative regulations, the Office of Administration shall consult with the Chambers, the Co-Prosecutors and Co-Investigating Judges on any matters which may affect the operation of such Chambers or Offices. The administrative regulations shall be approved by the Director and Deputy Director of the Office of Administration.

2. The Director and Deputy Director of the Office of Administration, in the execution of their functions, may make oral or written representations to the Co-Prosecutors, the Co-Investigating Judges or the Chambers on any issue arising in the context of a specific case which affects or may affect the discharge of such functions, including that of implementing judicial decisions, with notice to the parties where necessary.

3. The Director and Deputy Director of the Office of Administration, mindful of the need to ensure respect for human rights and fundamental freedoms, shall, in consultation with the Head of the Defence Support Section, the Co-Prosecutors, the Co-Investigating Judges and the Chambers, work with the appropriate authorities to adopt mechanisms that will ensure that the Office of Administration be properly informed about the conditions of detention, which, in accordance with the Agreement, should respect Cambodian Law, the Standard Minimum

Rules for the Treatment of Detainees and the Basic Principles for the Treatment of Prisoners of the United Nations.

### **Rule 11. The Defence Support Section**

1. The Office of Administration shall establish a Defence Support Section, which shall only be autonomous with regard to the substantive defence matters set out in this Rule. The Defence Support Section shall be directed by the Head of the Defence Support Section, with a national and an international Deputy, and such other staff as necessary.

2. The Defence Support Section shall:

a) After consultations between the Defence Support Section and the BAKC, adopt administrative regulations, in accordance with Rule 4 of these IRs, which shall include:

- i) the criteria and procedures for the inclusion of lawyers and other personnel in the lists referred to in paragraphs d) and i) below, in accordance with sub-rule 4;
- ii) the procedure for assignment of defence lawyers; and
- iii) the criteria for determining indigence and the remuneration of defence lawyers.

b) Receive, verify and translate applications by foreign lawyers to defend persons before the ECCC, and forward completed applications to the BAKC for registration in accordance with the procedure determined by the BAKC after consultation with the Defence Support Section.

c) Maintain a list of:

- i) national lawyers registered by the BAKC; and
- ii) foreign lawyers admitted to the bar in a United Nations Member State who have been registered by the BAKC for the purposes of defending persons before the ECCC, as set out in paragraph (b) above.

d) After consultations between the Defence Support Section and the BAKC, compile and maintain a sub-list of:

- i) national lawyers registered by the BAKC who meet Defence Support Section criteria, as set out in its administrative regulations, for defending indigent persons before the ECCC; and
- ii) foreign lawyers admitted to the bar in a United Nations Member State who have been registered by the BAKC and who meet Defence Support Section criteria, as set out in its administrative regulations, for defending indigent persons before the ECCC.

e) Under the supervision of the Co-Prosecutors, Co-Investigating Judges or the Chambers, as appropriate, present the lists of lawyers as provided in sub-rules 2(c) and 2(d) to persons entitled to a defence lawyer under these IRs;

f) Upon request for supplementary information, provide persons entitled to a defence lawyer under these IRs with information on lawyers as referred to in sub-rules 2(c) and 2(d);

g) Enter into contracts with defence lawyers for any indigent Suspects, Charged Persons, Accused or other persons entitled to a defence lawyer under these IRs;

h) Monitor and assess the fulfilment of all contracts referred to in paragraph (g)

above, and authorize corresponding remuneration in accordance with Defence Support Section administrative regulations;

i) Provide lawyers with a list of national and foreign personnel eligible to assist defence teams for indigent persons;

j) Provide basic legal assistance and support including legal research and document research and retrieval for defence lawyers appearing before the ECCC; and

k) Organize training for defence lawyers in consultation and cooperation with the BAKC.

3. The procedure for registration of foreign lawyers with the BAKC for the purpose of defending persons before the ECCC shall be fair, transparent and expeditious.

4. The criteria for inclusion in the Defence Support Section list for defending indigent persons before the ECCC, referred to in sub-rule 2(d) above, shall comply with the following principles:

a) The procedure for inclusion in such lists shall be fair, transparent and expeditious;

b) An applicant shall not have been convicted of a serious criminal or disciplinary offence considered by their professional association to be incompatible with acting as a defence lawyer;

c) A foreign applicant shall only be required to:

i) be a current member in good standing of a recognised association of lawyers in a United Nations Member State;

ii) have a degree in law or an equivalent legal or professional qualification;

iii) have at least 10 (ten) years working experience in criminal proceedings, as a lawyer, judge or prosecutor, or in some other capacity;

iv) have established competence in criminal law and procedure at the international or national level; and

v) be fluent in Khmer, French or English.

d) A national applicant shall only be required to:

i) be a member of the BAKC; and

ii) have established competence in criminal law and procedure at the national or international level.

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. Any foreign lawyer whose application for registration with the BAKC for the purposes of defending persons before the ECCC is refused, or has not been examined within 30 (thirty) days of receipt by the BAKC from the Defence Support Section, may appeal to the Pre-Trial Chamber within 15 (fifteen) days of receiving notification of the decision of the BAKC, 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 BAKC shall stand. However, in cases where the application was not examined within the 30 (thirty) day time period, the default decision shall be that registration is deemed to have been granted.

7. 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.

## **Rule 12. The Victims Unit**

1. The Office of Administration shall establish a Victims Unit, which shall be directed by the Head of the Victims Unit, together with such staff as necessary.

2. The Victims Unit shall:

- a) Maintain a list of foreign and national lawyers registered with the BAKC in accordance with Rule 11, who wish to represent Victims or Victims Associations before the ECCC;
- b) Administer applications for admission to the list of Victims' Associations approved to act on behalf of Civil Parties before the ECCC, pursuant to the criteria set out in Rule 23, and maintain a list of Victims' Associations so approved;
- c) Under the supervision of the Co-Prosecutors, assist Victims in lodging complaints;
- d) Under the supervision of the Co-Investigating Judges or the Trial Chamber, as appropriate, assist Victims in submitting Civil Party applications;
- e) Under the supervision of the Co-Investigating Judges or the Chambers, as appropriate, present the above mentioned lists of lawyers and Victims Associations to Victims or Civil Parties;
- f) Upon request for supplementary information, provide Victims and Civil Parties with information on such lawyers and Victims Associations, or any other information necessary to facilitate effective participation;
- g) Facilitate the participation of Victims and the common representation of Civil Parties;
- h) Assist the Public Affairs Section in outreach activities related to victims; and
- i) Adopt such administrative regulations as required to give effect to this Rule.

## **C – The Office of the Co-Prosecutors**

### **Rule 13. Operation of the Office of the Co-Prosecutors**

(Amended on 5 September 2008)

1. The Office of the Co-Prosecutors shall operate as an independent office within the ECCC. It shall be comprised of the Co-Prosecutors and such other staff as necessary, including at

least one Greffier. For the purposes of Article 22 new of the ECCC Law, the Co-Prosecutors may choose deputy prosecutors from amongst their Deputy Co-Prosecutors and Assistant Co-Prosecutors. The Greffier shall keep a record of the investigation and undertake such other activities as required by the Co-Prosecutors under these IRs. The Greffier shall liaise with the Office of Administration to ensure that copies of all case files are made and kept by the Office of Administration. The Greffier shall certify that copied records are the same as the original. All original case files shall be kept in the Greffier's office, in a Co-Prosecutor's office, or in any room of the ECCC with sufficient security conditions.

2. In preparing or amending the administrative regulations of their office, the Co-Prosecutors shall consult with the Chambers, the Co-Investigating Judges and the Director and Deputy Director of the Office of Administration on any matters that may affect their respective Chambers or Offices. These administrative regulations shall be approved by the Co-Prosecutors.

3. Except for action that must be taken jointly under the ECCC Law and these IRs, the Co-Prosecutors may delegate power to one of them, by a joint written decision, to accomplish such action individually.

4. Except for actions that must be performed personally under the ECCC Law and these IRs, the Co-Prosecutors may delegate the exercise of their functions verbally or in writing, as follows:

a) During the preliminary investigation: to any of their Investigators, except where coercive measures are required, or to the Judicial Police;

b) At all times: to their deputy prosecutors: and

c) In case of a verbal delegation of their functions, the Co-Prosecutors shall provide a written confirmation within 48 (forty-eight) hours after the initial delegation.

5. In the event of disagreement between the Co-Prosecutors, the procedure in Rule 71 shall apply.

6. Decisions of the Co-Prosecutors are not subject to appeal.

## **D – The Office of the Co-Investigating Judges**

### **Rule 14. Operation of the Office of the Co-Investigating Judges**

1. The Office of the Co-Investigating Judges shall be established as an independent office within the ECCC. It shall be comprised of the Co-Investigating Judges and such other staff as necessary.

2. Each Co-Investigating Judge shall have a Greffier. The Greffiers shall keep a record of the investigation and undertake such other activities as required by the Co-Investigating Judges under these IRs. The Greffiers shall liaise with the Office of Administration to ensure that copies of all case files are made and kept by the Office of Administration. The Greffiers shall certify that copied records are the same as the original. All original case files shall be kept in the Greffiers' office, in an Investigating Judge's office, or in any room of the ECCC with sufficient security conditions.

3. In preparing or amending their administrative regulations, the Co-Investigating Judges

shall consult with the Chambers, the Co-Prosecutors and the Director and Deputy Director of the Office of Administration on any matters that may affect the operation of their Chambers or Offices. These administrative regulations shall be approved by the Co-Investigating Judges.

4. Except for action that must be taken jointly under the ECCC Law and these IRs, the Co-Investigating Judges may delegate power to one of them, by a joint written decision, to accomplish such action individually.

5. Except for actions that must be performed personally under the ECCC Law and these IRs, the Co-Investigating Judges may delegate the exercise of their functions by Rogatory Letter to their Investigators, except where coercive measures are required, or to the Judicial Police.

6. In the absence of a Co-Investigating Judge, actions that must be performed personally under these IRs may be accomplished by remote means.

7. In the event of disagreement between the Co-Investigating Judges, the procedure in Rule 72 shall apply.

## **E – Judicial Police, Investigators and Greffiers**

### **Rule 15. The Judicial Police**

1. The Judicial Police are auxiliary officers of the ECCC. They carry out inquiries under the sole instructions of the Co-Prosecutors and Co-Investigating Judges, and where appropriate, the Chambers, throughout the territory of Cambodia, as set out in these IRs. The Judicial Police shall neither seek nor take orders from any other person in carrying out their functions.

2. The Co-Prosecutors shall direct and coordinate the action of the Judicial Police until a judicial investigation has been initiated. Once such a judicial investigation has been initiated, the Judicial Police shall carry out their duties as instructed by the Co-Investigating Judges.

3. During any supplementary investigation ordered by the Chambers, the Judicial Police shall perform their duties as instructed by the Chambers.

4. The Co-Prosecutors shall have the authority to forward cases of Judicial Police misconduct to the competent Cambodian authorities.

### **Rule 16. Investigators**

(Amended on 6 March 2009)

In order to exercise their functions within the ECCC as provided in these IRs, ECCC officers who have been designated by the Office of the Co-Prosecutors or the Office of the Co-Investigating Judges as Investigators shall be accredited by the Ministry of Justice. To that end, the Office of the Administration shall immediately forward the list of Investigators to the Ministry of Justice for accreditation. Duly accredited Investigators shall swear an oath before a Chamber of the ECCC.

### **Rule 16 bis. Greffiers**

(Adopted on 1 February 2008)

In order to exercise their functions within the ECCC as provided in these IRs, ECCC Greffiers shall be accredited by the Ministry of Justice. The Office of the Administration shall forward the list of Greffiers immediately to the Ministry of Justice for accreditation.

## **F – The Chambers**

### **Rule 17. General Provisions**

1. The Chambers shall be established as independent bodies within the ECCC. They shall be composed of their respective sitting Judges, reserve Judges, Greffiers and such other staff as necessary.
2. If a Judge is unable to continue during a pre-trial hearing, trial or appeal, the provisions in Rules 77, 79 and 108 shall apply, as appropriate.
3. The Chambers shall be assisted by Greffiers, who shall keep a record of the proceedings and undertake such other activities as directed by the Chambers under these IRs. The Greffiers shall liaise with the Office of Administration to ensure that copies of all records of proceedings are made and kept by the Office of Administration. The Greffiers shall certify that copied records are the same as the original.
4. In preparing or amending their administrative regulations, the Chambers shall consult with the Co-Prosecutors, the Co-Investigating Judges and the Director and Deputy Director of the Office of Administration on any matters that may affect the operation of their Offices. These administrative regulations shall be approved by super majority of the judges in their respective Chamber.

## **G – Judicial Organisation**

### **Rule 18. Plenary Sessions**

(Amended on 5 September 2008 and 6 March 2009)

1. The Co-Investigating Judges and Judges of the Chambers, as well as the reserve judges, Co-Prosecutors and their reserves, the Head of the Defence Support Section, the Head of the Victims Unit and the Director and Deputy Director of the Office of Administration, may all participate in Plenary Sessions.
2. The President of the Supreme Court Chamber shall preside over Plenary Sessions, or his nominee where the President is unavailable.
3. All voting relating to these IRs shall be conducted as follows:
  - a) In recognition of their special status as judicial officers, by virtue of Cambodian Law, the Co-Prosecutors shall be entitled to vote on Rules concerning the administration of the ECCC, set out in Chapters I and II of the IRs. Such decisions shall be made by a super majority of at least 15 (fifteen) out of the 21 (twenty-one) judges and prosecutors entitled to vote;
  - b) Only the Co-Investigating Judges and Judges of the Chambers shall vote on the Rules contained in Chapter III of the IRs. Such decisions shall be made by a super

majority of at least 14 (fourteen) out of the 19 (nineteen) judges entitled to vote.

c) The abovementioned super majorities shall be recalculated should the total number of judges entitled to vote at Plenary Session change.

d) All other participants at Plenary, including reserve judges and reserve prosecutors shall only participate in a consultative capacity.

4. Only the Co-Investigating Judges and Judges of the Chambers may vote on any other decisions required to be made at Plenary Sessions. Such decisions shall be made by the super majority referred to in sub-rule 3(b) and 3(c).

5. Judges not able to attend may cast their votes by a proxy, who shall be appointed in writing from amongst the other judges and reserve judges. Prosecutors not able to attend may cast their votes by a proxy, who shall be appointed in writing from amongst the other prosecutors, reserve prosecutors and judges. No such officer may act as a proxy for more than one person.

6. An ordinary Plenary Session shall be convened at least every 6 (six) months, in order to exercise the following functions:

a) Review and amend, as necessary, these IRs;

b) Review and amend, as necessary, any Practice Directions adopted by the Rules and Procedure Committee,

c) Adopt an Annual Report to the Supreme Council of the Magistracy of the Kingdom of Cambodia and to the Secretary-General of the United Nations proposed by the Director and the Deputy Director of the Office of Administration;

d) Decide upon matters relating to the internal functioning of the ECCC, upon proposals from the Judicial Administration Committee;

e) Exercise any other functions provided for in the ECCC Law, the Agreement or in these IRs.

7. Ordinary Plenary Sessions shall be convened by the President of the Plenary through the Office of the Administration. In case of urgency, and subject to budgetary considerations, an extraordinary Plenary Session may be convened by the President of the Plenary, on his or her own motion or at the request of a super majority of all the Judges entitled to vote.

8. The quorum for a Plenary Session shall be a super majority of all the Judges entitled to vote referred to in sub-rule 3(b) and 3(c), whether participating in person, by proxy or by remote means.

9. Written records of the proceedings and decisions made in Plenary Sessions shall be kept in Khmer, English and French by a secretariat. At the request of the President of the Plenary Session, the Chambers and/or the Office of the Co-Prosecutors and/or the Office of the Co-Investigating Judges shall assign the members of the secretariat, as necessary and appropriate. The Office of the Administration shall provide support staff as needed.

10. Plenary Sessions shall be confidential unless the Plenary decides otherwise. The Plenary may authorize outside experts to participate in all or part of their sessions.

#### **Rule 19. Judicial Administration Committee**

(Amended on 1 February 2008 , on 5 September 2008 and on 6 March 2009)

1. The Judicial Administration Committee shall be comprised of three national Judges, one of

whom shall be the President, and two international Judges, all elected in Plenary Session. A national and an international substitute member shall be elected at the Plenary Session to replace an absent member as needed. The Committee shall also include, in a consultative capacity, the Co-Prosecutors and the Director and Deputy Director of the Office of Administration. Where a member or a substitute member of the Committee notifies the Plenary that he or she cannot, or no longer wishes to, sit on the Committee, a replacement member shall be elected at Plenary Session.

2. The Committee shall advise and guide the Office of Administration concerning all activities relating to the administrative and judicial support provided to, the Office of the Co-Prosecutors, the Office of the Co-Investigating Judges and the Chambers, including the preparation and implementation of the budget.

3. The Committee shall meet once a month, or at the initiative of the President. Committee meetings shall be confidential. Remote participation may be organized, as necessary.

4. The Committee shall do such other tasks provided for in these IRs.

5. The Committee shall be serviced by a secretariat. At the request of the President of the Plenary Session, the Chambers and/or the Office of the Co-Prosecutors and/or the Office of the Co-Investigating Judges shall assign the members of the secretariat, as necessary and appropriate. The Office of the Administration shall provide support staff as needed. In accomplishing its tasks, the Committee may take expert advice at the expense of the ECCC.

#### **Rule 20. Rules and Procedure Committee**

(Amended on 5 September 2008 and 6 March 2009)

1. The Rules and Procedure Committee shall be comprised of 5 (five) national Judges, one of whom shall be the President, and 4 (four) international Judges, all elected in Plenary Session. A national and an international substitute member shall be elected at the Plenary Session to replace an absent member as needed. Where a member or substitute member of the Committee notifies the Plenary that he or she cannot, or no longer wishes to, sit on the Committee, a replacement member shall be elected at Plenary Session.

2. The Committee shall receive and consider requests for amendments to these IRs, and draft proposals for discussion at Plenary Sessions. For this purpose, it shall meet as required at the initiative of the President. Committee meetings shall be confidential.

3. The Committee shall adopt Practice Directions relating to the functioning of the ECCC, subject to subsequent review in Plenary Session. For this purpose, the Committee shall meet as required at the initiative of the President, or at the request of a Judge, a Co-Investigating Judge, a Co-Prosecutor, the Head of the Defence Support Section, the Head of the Victims Unit and the Director or Deputy Director of the Office of Administration.

4. The Committee shall do such other tasks provided for in these IRs.

5. Remote participation may be organized, as necessary.

6. The Committee shall be serviced by a secretariat. At the request of the President of the Plenary Session, the Chambers and/or the Office of the Co-Prosecutors and/or the Office of the Co-Investigating Judges shall assign the members of the secretariat, as necessary and appropriate. The Office of the Administration shall provide support staff as needed. In accomplishing its tasks, the Committee may take expert advice at the expense of the ECCC.

## **III – PROCEDURE**

### **A – General Provisions**

#### **Rule 21. Fundamental Principles**

1. The applicable ECCC Law, Internal Rules, Practice Directions and Administrative Regulations shall be interpreted so as to always safeguard the interests of Suspects, Charged Persons, Accused and Victims and so as to ensure legal certainty and transparency of proceedings, in light of the inherent specificity of the ECCC, as set out in the ECCC Law and the Agreement. In this respect:

- a) ECCC proceedings shall be fair and adversarial and preserve a balance between the rights of the parties. They shall guarantee separation between those authorities responsible for prosecuting and those responsible for adjudication;
- b) Persons who find themselves in a similar situation and prosecuted for the same offences shall be treated according to the same rules;
- c) The ECCC shall ensure that victims are kept informed and that their rights are respected throughout the proceedings; and
- d) Every person suspected or prosecuted shall be presumed innocent as long as his/her guilt has not been established. Any such person has the right to be informed of any charges brought against him/her, to be defended by a lawyer of his/her choice, and at every stage of the proceedings shall be informed of his/her right to remain silent.

2. Any coercive measures to which such a person may be subjected shall be taken by or under the effective control of the competent ECCC judicial authorities. Such measures shall be strictly limited to the needs of the proceedings, proportionate to the gravity of the offence charged and fully respect human dignity.

3. No form of inducement, physical coercion or threats thereof, whether directed against the interviewee or others, may be used in any interview. If such inducements, coercion or threats are used, the statements recorded shall not be admissible as evidence before the Chambers, and the person responsible shall be appropriately disciplined in accordance with Rules 35 to 38.

4. Proceedings before the ECCC shall be brought to a conclusion within a reasonable time.

#### **Rule 22. Lawyers**

1. In accordance with Articles 13 and 21 of the Agreement and Articles 24 new and 35 new of the ECCC Law, all Suspects, Charged Persons, Accused or any other persons entitled to a defence lawyer under these IRs, shall have the right to the assistance of a national lawyer, or a foreign lawyer in collaboration with a national lawyer, of their own choosing, as follows:

- a) Persons who are able to provide for their own defence shall have the right freely to choose from amongst national lawyers and foreign lawyers who are registered with the BAKC. In order to facilitate this choice, such persons shall be provided with the list of lawyers referred to in Rule 11(2)(c);

- b) Indigent persons shall have the right freely to choose from amongst national lawyers and foreign lawyers included in the list provided for in Rule 11(2)(d);
- c) A foreign lawyer listed with the Defence Support Section shall work in conjunction with a national lawyer in the defence of their client before the ECCC;
- d) Inclusion of a lawyer in such lists does not authorise a foreign lawyer to undertake any other legal professional activities in Cambodia;
- e) Where a person wishes to retain a foreign lawyer who is not on the list of lawyers referred to in Rule 11(2)(c), that lawyer must first complete the formalities for appearing before the ECCC as provided in Rule 11(2).

2. During proceedings before the ECCC, the following provisions shall apply:

- a) The national lawyer shall request recognition of any foreign lawyer, the first time such lawyer appears before each judicial body of the ECCC. Once recognized, such foreign lawyer shall enjoy the same rights and privileges before the ECCC as a national lawyer;
- b) However, at all stages of the proceedings, the national lawyer has the right to speak first.

3. Lawyers of a person in detention recognized pursuant to sub-rule 2 above may freely communicate with their client, subject to the necessary constraints of administration of the detention facility. All communications between such lawyers and a person in detention shall be confidential and shall not be listened to, recorded or copied by others. Such lawyers may obtain a copy of the case file, or record of proceedings, and bring this, together with any other relevant document to discuss with their client.

4. In the performance of their duties, lawyers shall be subject to the relevant provisions of the Agreement, the ECCC Law, these IRs, ECCC Practice Directions and administrative regulations, as well as the Cambodian Law on the Statutes of the Bar and recognised standards and ethics of the legal profession.

5. National and foreign lawyers authorised to defend cases before the ECCC have the right to recruit legal teams to assist in their work. However, lawyers for indigent persons must choose from among persons included in the list referred to in Rule 11(2)(i). Where a lawyer for an indigent person wishes to recruit a person who is not on the list referred to in Rule 11(2)(i), that person must first complete the formalities for inclusion in that list.

### **Rule 23. Civil Party Action by Victims**

(Amended on 5 September 2008, 6 March 2009 and 11 September 2009)

1. The purpose of Civil Party action before the ECCC is to:

- a) Participate in criminal proceedings against those responsible for crimes within the jurisdiction of the ECCC by supporting the prosecution; and
- b) Allow Victims to seek collective and moral reparations, as provided in this Rule.

2. The right to take civil action may be exercised by Victims of a crime coming within the jurisdiction of the ECCC, without any distinction based on criteria such as current residence or nationality. In order for Civil Party action to be admissible, the injury must be:

- a) physical, material or psychological; and

b) the direct consequence of the offence, personal and have actually come into being.

3. A Victim who wishes to be joined as a Civil Party shall submit such application in writing no later than fifteen (15) days after the Co-Investigating Judges notify the parties of the conclusion of the judicial investigation pursuant to Internal Rule 66(1). Subject to the provisions in these IRs relating to the protection of Victims, the Co-Investigating Judges must notify the Co-Prosecutors and the Charged Person. The Co-Investigating Judges may reject Civil Party applications at any time until the date of the Closing Order. Such orders shall be open to expedited appeal by the Civil Party applicant as prescribed by Practice Direction.

4. When issuing the Closing Order, the Co-Investigating Judges shall decide on the admissibility of all remaining Civil Party applications by a separate order. This order shall be open to expedited appeal by the parties or the Civil Party applicants as prescribed by Practice Direction. Such appeal shall not stay the proceedings.

5. All Civil Party applications must contain sufficient information to allow verification of their compliance with these IRs. In particular, the application must provide details of the status as a Victim, specify the alleged crime and attach any evidence of the injury suffered, or tending to show the guilt of the alleged perpetrator. With a view to service and notifications, the domicile of the Victim, the registered office of the Victims' Association of which he or she is a member, or the address of the lawyer, as appropriate, must also be stated. Where this address is outside of Cambodia, an address in Cambodia shall be provided.

6. Being joined as a Civil Party shall have the following effects:

a) When joined as a Civil Party, the Victim becomes a party to the criminal proceedings. The Civil Party can no longer be questioned as a simple witness in the same case and, subject to Rule 62 relating to Rogatory Letters, may only be interviewed under the same conditions as a Charged Person or Accused;

b) The Chambers shall not hand down judgment on a Civil Party action that is in contradiction with their judgment on public prosecution of the same case; and

c) The Co-Investigating Judges and the Chambers may afford to Civil Parties the protection measures set out in Rule 29.

7. Any Victim participating in proceedings before the ECCC as a Civil Party has the right to be represented by a national lawyer, or a foreign lawyer in collaboration with a national lawyer, as follows:

a) Victims shall have the right freely to choose from amongst national lawyers and foreign lawyers who are registered with the BAKC. In order to facilitate this choice, such persons shall be provided with the list of lawyers referred to in Rule 12(2)(a);

b) A foreign lawyer listed with the Victims Unit shall work in conjunction with a national lawyer before the ECCC;

c) Inclusion of a lawyer in such list does not authorise a foreign lawyer to undertake any other legal professional activities in Cambodia;

d) Where a person wishes to retain a lawyer who is not on the list of lawyers referred to in Rule 12(2)(a), that lawyer must first complete the formalities for appearing before the ECCC as provided in Rule 12(2);

e) During proceedings before the ECCC, the following provisions shall apply:

- i) The national lawyer shall request recognition of any foreign lawyer, the first time such lawyer appears before each judicial body of the ECCC. Once recognized, such foreign lawyer shall enjoy the same rights and privileges before the ECCC as a national lawyer;
- ii) However, at all stages of the proceedings, the national lawyer has the right to speak first;

f) In the performance of their duties, lawyers shall be subject to the relevant provisions of the Agreement, the ECCC Law, these IRs, ECCC Practice Directions and administrative regulations, as well as the Cambodian Law on the Statutes of the Bar and recognized standards and ethics of the legal profession;

g) Any foreign lawyer whose application for registration with the BAKC for the purposes of representing Victims or Victims' Associations before the ECCC is refused, or has not been examined within 30 (thirty) days of receipt by the BAKC from the Victims Unit, may appeal to the Pre-Trial Chamber within 15 (fifteen) days of receiving notification of the decision of the BAKC, 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 BAKC shall stand. However, in cases where the application was not examined within the 30 (thirty) day time period, the default decision shall be that registration is deemed to have been granted;

h) National and foreign lawyers for Victims and Victims Associations have the right to recruit legal teams to assist in their work; and

i) When the Civil Party is represented by a lawyer, his or her rights are exercised through the lawyer. This sub-rule does not apply where the Civil Party is interviewed under Rule 59 and Rule 91(1).

8. A group of Civil Parties may choose to be represented by a common lawyer drawn from the list held by the Victims Unit. In addition, the Co-Investigating Judges or the Chambers may organize such common representation, as follows:

a) The Co-Investigating Judges or the Chambers may require Civil Parties to form a group and to choose a common lawyer within a set time limit;

b) Where a group of Civil Parties is unable to choose a common lawyer within such time limit, the Civil Parties may request the Victims Unit to choose one or more common lawyers for them. In that case the Unit shall take into account the wishes of the Civil Parties concerned and the particular circumstances of the case, and any conflicting interests within the group, as well as the need to respect local traditions and to assist vulnerable groups;

c) Where the interests of Justice so require, the Co-Investigating Judges or the Chambers may, after consulting the Victims Unit, designate a common lawyer for such a group of Civil Parties;

d) The Co-Investigating judges or the Chambers and the Victims Unit shall take all reasonable steps to ensure that in the selection of common lawyers, the distinct interests of each of the Civil Parties are represented and that any conflict of interest is avoided;

e) At any time, the Civil Parties may, by reasoned application, request the Co-

Investigating judges or the Chambers to reconsider the Victims Unit's choice of common lawyers, or their designation by the Co-Investigating judges or the Chambers; and

f) Civil parties who lack the necessary means to pay for a common lawyer designated by the Co-Investigating Judges or the Chambers may seek assistance from the Victims Unit.

9. A group of Victims may also choose to organise their Civil Party action by becoming members of a Victims' Association, as follows:

a) In order to facilitate such collective organisation of Civil Party action, the Victims Unit may provide Victims with a list of approved Victims' Associations drawn up under the supervision of the Co-Investigating Judges and the Trial Chamber;

b) In order to be included in the list, such Victims' Association shall provide the Victims Unit with documentation showing that it is validly registered or established in the country in which it is carrying on its activities, and that it is authorised to act on behalf of its members as provided in the relevant Practice Direction. The fact that a Victims' Association represents foreign resident Victims before the ECCC shall not be construed as carrying on activities in Cambodia for approval under this sub-rule;

c) Civil parties who are members of a Victims' Association shall be represented by the association's lawyers, and summonses and notifications concerning its members shall be served via the association;

d) The fact that certain Victims choose to take action through a Victims' Association shall not affect the right of other Victims to be joined as Civil Parties in the same case; and

e) Any Victims' Association whose application for admission to the above list is refused or has not been examined within 30 (thirty) days of receipt by the Victims Unit, or which 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 Victims Unit 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 Victims Unit 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.

10. At any time, a Civil Party may expressly waive the right to request reparation, or abandon a Civil Party action. The waiver of the right or abandonment of the action shall not stop or suspend the criminal prosecution.

11. Subject to Article 39 of the ECCC Law, the Chambers may award only collective and moral reparations to Civil Parties. These shall be awarded against, and be borne by convicted persons.

12. Such awards may take the following forms:

a) An order to publish the judgment in any appropriate news or other media at the convicted person's expense;

b) An order to fund any non-profit activity or service that is intended for the

benefit of Victims; or

c) Other appropriate and comparable forms of reparation.

13. Civil Party proceedings before the ECCC against a Charged Person or an Accused shall end on the death of that person.

#### **Rule 24. Witnesses**

(Amended on 6 March 2009)

1. Before being interviewed by the Co-Investigating Judges or testifying before the Chambers, witnesses shall take an oath or affirmation in accordance with their religion or beliefs to state the truth.

2. The following witness shall make a statement without having taken an oath:

a) The father, mother and ascendants of the Charged Person, Accused or Civil Party;

b) The sons, daughters and descendants of the Charged Person, Accused or Civil Party;

c) The brothers and sisters of the Charged Person, Accused or Civil Party;

d) The brother-in-laws and sister-in-laws of the Charged Person, Accused or Civil Party;

e) The husband or wife of the Charged Person, Accused or Civil Party, even if they have been divorced; and

f) Any child who is less than 14 (fourteen) years old.

3. The Co-Investigating Judges or the President of the Trial Chamber shall question every witness in order to establish whether he or she is in a relationship with the Charged Person or Accused or a Civil Party, as provided in sub-rule 2 above.

4. The Co-Investigating Judges and the Chambers shall not call as a witness any person against whom there is evidence of criminal responsibility, except as provided in Rule 28.

#### **Rule 25. Recording Interviews**

(Amended on 1 February 2008)

1. Whenever possible, when the Co-Prosecutors or Co-Investigating Judges question a Suspect or Charged Person, in addition to the written record of the interview, it shall be audio or video-recorded, in accordance with the following procedure:

a) The person questioned shall be informed, in a language he or she fully understands and speaks, that the questioning is to be audio or video-recorded, any objection by the person concerned shall be noted on the case file;

b) Any waiver by the person of the right to be questioned in the presence of a lawyer shall be audio or video-recorded;

c) In the event of an interruption in the course of questioning, the fact and the time of the interruption shall be recorded before the audio or video-recording ends as well as the time of resumption of the questioning;

d) At the conclusion of the questioning, the person questioned shall be offered the opportunity to clarify anything he or she has said and to add anything he or she

may wish. The time of conclusion of the questioning shall be noted;

e) A copy of the recording or, if multiple recording apparatus was used, one of the original recordings, shall be provided to the person questioned;

f) The original recording or one of the original recordings shall be sealed in the presence of the person questioned and his or her lawyer, if present, under the signature of the Co-Prosecutors or Co-Investigating Judges and the person questioned and the lawyer, if present;

g) Such recordings may be referred to in case of contestation of the veracity of the written record of interview;

h) a copy of the audio or video recording shall be made available upon request to the Co-Prosecutors and to other parties through their lawyers.

2. A person may be questioned without being audio or video-recorded where the circumstances prevent such recording taking place. In this case, the reasons for not recording the questioning shall be stated in writing and the person questioned shall be provided with a copy of his or her statement. Such a statement shall be set out in a written record of interview and shall be signed or finger-printed by the person being interviewed.

3. Where the person refuses to sign a written record of the interview, such refusal shall be noted on the case file, along with any reasons for the refusal, if known.

4. The Co-Prosecutors or Co-Investigating Judges may choose to follow the procedure in this Rule when questioning other persons than those mentioned above, in particular where the use of such procedures could assist in reducing any subsequent traumatising of a victim of sexual or gender violence, a child, an elderly person or a person with disabilities in providing their evidence.

5. The Chambers may also order that the procedure in this Rule be applied to the questioning of any person appearing before them.

#### **Rule 26. Live Testimony by means of Audio or Video-link Technology**

1. The testimony of a witness or expert during a judicial investigation or at trial shall be given in person, whenever possible. However, the Co-Investigating Judges and the Chambers may allow a witness to give testimony by means of audio or video technology, provided that such technology permits the witness to be interviewed by the Co-Investigating Judges or the Chambers, and the parties, at the time the witness so testifies. Such technologies shall not be used if they would be seriously prejudicial to, or inconsistent with defence rights.

2. The interview of a witness under this Rule shall otherwise be conducted in accordance with these IRs.

#### **Rule 27. Deaf/Mute Persons**

When questioning a deaf/mute person, the Greffier of the Co-Investigating Judges or the Chambers shall write down the questions and ask the person being questioned to read them, and answer in writing. If the person is illiterate, the Greffier may call on a person able to properly communicate with the deaf/mute person. That person shall make an oath or affirmation in accordance with these IRs.

## **Rule 28. Right Against Self-Incrimination of Witnesses**

1. A witness may object to making any statement that might tend to incriminate him or her. The right against self-incrimination applies to all stages of the proceedings, including preliminary investigations by the Co-Prosecutor, investigations by the Co-Investigating Judges, and proceedings before the Chambers.
2. If a witness has not been notified of his or her right against self-incrimination, the Co-Prosecutors, the Co-Investigating Judges, or the Chambers shall notify a witness of this right before his or her interview or testimony.
3. Where the Co-Investigating Judges or the Chambers determine that a witness should be required to answer a question or questions, they may assure such witness, if possible in advance, that the evidence provided in response to the questions:
  - a) will be kept confidential and will not be disclosed to the public; and/or
  - b) will not be used either directly or indirectly against that person in any subsequent prosecution by the ECCC.
4. Before giving such an assurance, the Co-Investigating Judges or the Chambers shall seek the views of the Co-Prosecutors to determine whether the assurance should be given to this particular witness.
5. In determining whether to require the witness to answer, the Co-Investigating Judges or the Chambers shall consider:
  - a) The importance of the anticipated evidence;
  - b) Whether the witness would be providing unique evidence;
  - c) The nature of the possible incrimination, if known, of the person in question; and
  - d) The sufficiency of any protection available for the witness, in the particular circumstances.
6. If the Co-Investigating Judges or the Chambers determine that it would not be appropriate to provide an assurance to the witness, they shall not require the witness to answer the question but may still continue the questioning of the witness on other matters.
7. In order to give effect to the assurance, the Co-Investigating Judges or the Chambers may, as appropriate:
  - a) Order that the evidence of the witness be given *in camera*;
  - b) Order that the identity of the witness and the content of the evidence given shall not be disclosed, in any manner, and provide that the breach of any such order will be subject to sanctions under Rules 35 to 38;
  - c) Specifically advise the parties present and their legal representative of the consequences of a breach of an order under this Rule;
  - d) Order the sealing of any record of the proceedings; and
  - e) Use protective measures, as foreseen in Rule 29 to ensure that the identity of the witness and the content of the evidence given are not disclosed.

8. Where a party is aware that the testimony of any witness may raise issues with respect to self-incrimination, or where the witness him or herself raises the matter, he or she shall request an *in camera* hearing and advise the Co-Investigating Judges or the Chambers of this, in advance of the testimony of the witness. The Co-Investigating Judges or the Chambers may impose the measures outlined in sub-rule 7 for all or a part of the testimony of that witness.

9. If an issue of self-incrimination arises in the course of the proceedings, the Co-Investigating Judges or the Chambers shall, unless the witness waives that right, suspend the taking of the testimony and provide the witness with a lawyer. Such waiver shall be recorded in accordance with Rule 25.

### **Rule 29. Protective Measures**

(Amended on 1 February 2008, on 5 September 2008, on 6 March 2009 and 11 September 2009)

1. The ECCC shall ensure the protection of Victims who participate in the proceedings, whether as complainants or Civil Parties, and witnesses, as provided in the supplementary agreement on security and safety and the relevant Practice Directions.

2. When the Co-Investigating Judges or the Chambers issue an order or when other offices within the ECCC fulfil their duties, they shall take account of the needs of victims and witnesses. In particular, whenever such offices must communicate with victims, witnesses, complainants or Civil Parties, they may communicate with their lawyers or Victims' Association, as appropriate, where direct communication could place the life or well being of that person in danger.

3. The Co-Investigating Judges and the Chambers may, on their own motion or on request, and after having consulted with the Victims Unit or the Witnesses/Experts Support Unit, order appropriate measures to protect victims and witnesses whose appearance before them is liable to place their life or health or that of their family members or close relatives in serious danger. The Co-Investigating Judges or the Chambers may issue such an order on their own motion where there are indications in the case file of such risk. Protective measures for victims shall be requested no later than 15 days after the indictment becomes final. Protective measures for witnesses shall be requested no later than the date for the filing of the witness list referred to in Rule 80. On an exceptional basis, later applications may be considered by the Chamber.

4. In this respect, the Co-Investigating Judges and the Chambers may make a reasoned order adopting measures to protect the identity of such persons, including:

- a) declaring their contact address to be that of their lawyers or their Victims' Association, as appropriate, or of the ECCC;
- b) using a pseudonym when referring to the protected person;
- c) authorising recording of the person's statements without his or her identity appearing in the case file;
- d) where a Charged Person or Accused requests to be confronted with such a person, technical means may be used that allow remote participation or distortion of the person's voice and or physical features;
- e) as an exception to the principle of public hearings, that the Chambers may conduct any part of the proceedings *in camera* or allow the presentation of evidence by electronic or other special means.

5. In such cases, the person's request and identity shall be recorded in a classified register separate from the case file. Disclosure of the identity or the address of a person who has benefited from the provisions of this Rule may be punished in accordance with Cambodian

Law.

6. No conviction may be pronounced against the Accused on the sole basis of statements taken under the conditions set out in sub-rule 29(4)(c) above.

7. Where necessary, the Co-Investigating Judges and the Chambers may order appropriate judicial guarantees as provided in these Internal Rules and/or the physical protection of a Victim or witness in safe residence in Cambodia or abroad.

8. Decisions issued by the Co-Investigating Judges under sub-rule 4 of this Rule shall be subject to appeal to the Pre-Trial Chamber as provided in Rule 74. Decisions issued by the Trial Chamber shall be subject to appeal to the Supreme Court Chamber, as provided in Rule 104(4).

9. Appeals against decisions relating to protective measures provided for in this Rule do not have suspensive effect, except on decisions lifting such measures.

### **Rule 30. Interpreters**

In case of need, the Co-Prosecutors, Co-Investigating Judges and Chambers shall use interpreters. Any witness or party may also request the use of an interpreter where needed. Each interpreter shall take an oath or affirmation in accordance with his or her religion or beliefs to interpret honestly, confidentially and to the best of his or her ability. Interpreters may not be selected from among ECCC Judges, Co-Prosecutors, Judicial Police, Investigators, parties or witnesses.

### **Rule 31. Experts**

1. Expert opinion may be sought by the Co-Investigating Judges or the Chambers, on any subject deemed necessary to their investigations or proceedings before the ECCC.

2. An expert who agrees to be appointed shall take an oath or affirmation in accordance with his or her religion or beliefs to assist the Co-Investigating Judge or the Chambers honestly, confidentially and to the best of his or her ability.

3. An expert shall be appointed by order of the Co-Investigating Judges or the Chambers. The order shall set out the exact assignment of the expert and the duration of the assignment. If necessary to perform his or her assignment, the Co-Investigating Judges or the Chambers shall make some or all of the evidence in the case file available to the expert, except when such access would pose a danger to victims or witnesses or be contrary to protective measures ordered under Rule 29. Where such access is granted, the expert shall be allowed to break the seal on the evidence, if any. If the expert needs to alter or damage any evidence in order to fulfil his or her assignment, the expert shall inform the Co-Investigating Judges or the Chambers, and request permission to proceed.

4. An expert shall perform his or her assignment under the supervision of the Co-Investigating Judges or the Chambers, as appropriate. The expert shall keep the Co-Investigating Judges or the Chambers informed of the progress of the assignment, in particular of any difficulties that arise.

5. If the expert does not abide by any time limits set by the Co-Investigating Judges or the Chambers, they may appoint a new expert to replace him or her, or extend the time limit, as appropriate.

6. If necessary for the completion of the assignment, the expert may participate in the interview of a witness, or of the Charged Person, Accused or Civil Party, by the Co-investigating judges or the Chambers. If appropriate, the Co-Investigating-Judges or the Chambers may allow the expert to interview a witness, Charged Person, Accused or Civil Party directly, in the presence of his or her lawyer. Where the expert in question is a medical doctor assigned to examine the Charged Person, Accused or Civil Party, this examination may, however, take place in the absence of his or her lawyer.
7. On completion of his or her assignment, the expert shall make a report. This report shall clearly describe the activities and the conclusions of the expert, and shall be dated and signed by him or her. Where the expert has broken the seal on the evidence in order to complete his or her assignment, he or she shall also state this fact in the report.
8. The expert shall submit the report and return all evidence that he or she received for the purposes of the assignment to the Co-Investigating Judges or the Chambers. They shall place the report on the case file or the record of proceedings. If the seal on the evidence was broken, the Co-Investigating Judges or the Chambers shall re-seal the evidence and make a note of this on the case file. If the activities of the expert altered or damaged the evidence in any way, the expert shall describe the alteration or damage in the report.
9. If the circumstances so require, the Co-Investigating Judges or the Chambers may appoint a reasonable number of experts to complete an assignment. In such cases, if the experts have differing opinions in respect of the assignment, each expert shall write his or her own opinion in a separate report, stating the reasons for their disagreement with the other opinions.
10. The Co-Prosecutors, the Charged Person or Accused, the Civil Party, or their lawyers may request the Co-Investigating Judges or the Chambers to appoint additional experts to conduct new examinations or to re-examine a matter already the subject of an expert report. The request must be in writing and give reasons. The request shall be ruled upon by the Co-Investigating Judges or the Chambers as soon as possible and in any event before the end of the investigation or proceedings. Where the Co-Investigating Judges reject such a request, the ruling may be appealed to the Pre-Trial Chamber.
11. The ECCC shall provide monetary compensation to any experts appointed by the Co-Investigating Judges or the Chambers. Such compensation shall be at rates set by the Office of Administration.

### **Rule 32. Medical Examination of the Charged Person or Accused**

The Co-Investigating Judges or the Chambers may, for the purpose of determining whether a Charged Person or Accused is physically and mentally fit to stand trial, or for any other reasons, or at the request of a party, order that they undergo a medical, psychiatric or psychological examination by an expert. The reasons for such order, and the report of the expert, shall be recorded in the case file.

### **Rule 32 bis. Inquiry into the cause of death of a person in custody**

(Adopted on 1 February 2008 and amended on 6 March 2009)

1. In the event of death of a Suspect, Charged Person or Accused in ECCC custody, either inside or outside the ECCC Detention Facility including in a hospital, the Co-Prosecutors shall determine the cause of death. In order to reach a determination they shall order an

autopsy of the deceased and a toxicology report in addition to enquiries the Co-Prosecutors deem necessary to determine the cause of death. If it is determined that the death is not the result of natural causes, the Co-Prosecutors shall refer the case to the appropriate local prosecutor from the ordinary Cambodian Court system.

2. The family of the deceased may, at its own expense, appoint a medical expert to observe the autopsy.

### **Rule 33. *Amicus curiae* Briefs**

1. At any stage of the proceedings, the Co-Investigating Judges or the Chambers may, if they consider it desirable for the proper adjudication of the case, invite or grant leave to an organization or person to submit an *amicus curiae* brief in writing concerning any issue. The Co-Investigating Judges and the Chambers concerned shall determine what time limits, if any, shall apply to the filing of such briefs.

2. Briefs under this Rule shall be filed with the Greffier of the Co-Investigating Judges or Chamber concerned, who shall provide copies to the Co-Prosecutors and the lawyers for the other parties, who shall be afforded the opportunity to respond.

### **Rule 34. Recusal and Disqualification of Judges**

1. A judge may recuse him/herself in any case in which he or she has, or has had, a personal or financial interest, or concerning which the Judge has, or has had, an association which objectively might affect his or her impartiality, or objectively give rise to the appearance of bias. A Co-Investigating Judge who recuses him or herself shall notify the President of the Pre-Trial Chamber. In any other case the judge in question shall notify the Chamber in which he or she is sitting. The Judge in question shall immediately cease to participate in the judicial proceedings.

2. Any party may file an application for disqualification of a judge in any case in which the Judge has a personal or financial interest or concerning which the Judge has, or has had, any association which objectively might affect his or her impartiality, or objectively give rise to the appearance of bias.

3. A party who files an application for disqualification of a judge shall clearly indicate the grounds and shall provide supporting evidence. The application shall be filed as soon as the party becomes aware of the grounds in question.

4. To be admissible an application must be submitted:

- a) against a Co-Investigating Judge, before the Closing Order;
- b) against a Pre-Trial Chamber Judge, before its final decision in a particular case;
- c) against a Trial Chamber Judge, concerning matters arising before the trial, at the initial hearing; or concerning matters arising during trial or of which the parties were unaware before the trial, before the final judgment in the case; or
- d) against a Supreme Court Chamber Judge, concerning matters arising before the appeal, at the beginning of the appellate proceedings; or concerning matters arising during the appellate proceedings or of which the parties were unaware before the

start of the appeal, before the final decision on the appeal.

5. An application for disqualification of a Co-Investigating judge shall be submitted to the Pre-Trial Chamber. In any other case it shall be submitted to the Chamber in which the judge in question is sitting. The Judge in question may continue to participate in the judicial proceedings pending a decision. However, he or she may decide to step down voluntarily at any point in the following proceedings.

6. A sitting Judge shall be replaced in the Chamber by a reserve judge for the purposes of the application only. If, due to multiple disqualification applications, it is impossible to convene a Chamber to hear the applications, the Judicial Administration Committee shall choose additional judges from amongst the ECCC judges.

7. The Judge shall be entitled to present written submissions to the Chamber within 10 (ten) days of his or her receipt of the application, through its President. The application for disqualification of the Judge, along with the submissions by the Judge, shall be considered by the Chamber Judges, who shall vote on the matter, and hand down a written decision in the absence of the judge in question and the applicant.

8. Such applications may be heard by remote means where necessary. The order of the Chamber shall be notified to the parties and the judge in question by the Greffier of the Chamber, and shall be not open to appeal.

9. Any act done before the determination of an application for disqualification shall be deemed to be valid.

10. If the Chamber decides to disqualify a Judge, a reserve Judge shall be appointed to sit in his or her place. Where, due to multiple disqualifications, there are insufficient reserve judges to convene a Chamber, new judges may be appointed as provided in Articles 10 new and 11 new of the ECCC Law and Article 3 of the Agreement. Where an application is rejected, no further application shall be filed on the same grounds unless such ground reoccurs after the first decision was made.

11. If the required majority is not achieved by the Chamber, the default decision shall be that the application is rejected.

### **Rule 35. Interference with the Administration of Justice**

(Amended on 6 March 2009)

1. The ECCC may sanction or refer to the appropriate authorities, any person who knowingly and wilfully interferes with the administration of justice, including any person who:

- a) discloses confidential information in violation of an order of the Co-Investigating Judges or the Chambers;
- b) without just excuse, fails to comply with an order to attend, or produce documents or other evidence before the Co-Investigating Judges or the Chambers;
- c) destroys or otherwise tampers in any way with any documents, exhibits or other evidence in a case before the ECCC;
- d) threatens, intimidates, causes any injury or offers a bribe to, or otherwise interferes with a witness, or potential witness, who is giving, has given, or may give evidence in proceedings before the Co-Investigating Judges or a Chamber;
- e) threatens, intimidates, offers a bribe to, or otherwise seeks to coerce any other person, with the intention of preventing that other person from complying with an

order of the Co-Investigating Judges or the Chambers;

f) knowingly assists a Charged Person or Accused to evade the jurisdiction of the ECCC; or

g) incites or attempts to commit any of the acts set out above.

2. When the Co-Investigating Judges or the Chambers have reason to believe that a person may have committed any of the acts set out in sub-rule 1 above, they may:

a) deal with the matter summarily;

b) conduct further investigations to ascertain whether there are sufficient grounds for instigating proceedings; or

c) refer the matter to the appropriate authorities of the Kingdom of Cambodia or the United Nations.

3. Any person subject to proceedings under this Rule shall be entitled to legal assistance as provided in Rule 11 and the Defence Support Section administrative regulations.

4. Cambodian Law shall apply in respect of sanctions imposed on a person found to have committed any act set out in sub-rule 1.

5. If a lawyer is found to have committed any act set out in sub-rule 1, the Co-Investigating Judges or the Chambers making such finding may also determine that such conduct amounts to misconduct of a lawyer pursuant to Rule 38.

6. Any decision under this Rule shall be subject to appeal before the Pre-Trial Chamber or the Supreme Court Chamber as appropriate. A notice of appeal to the Pre-Trial Chamber shall be filed within 15 (fifteen) days of the date of decision or of its notification, as appropriate. An appeal to the Supreme Court Chamber shall be filed in compliance with Rules 105(2) and 107(1).

### **Rule 36. False Testimony under Solemn Declaration**

1. The Co-Investigating Judges or the Chambers may, on their own initiative or at the request of a party, remind a witness of their duty to tell the truth and the consequences that may result from failure to do so.

2. If the Co-Investigating Judges or the Chambers have grounds for believing that a witness may have knowingly and wilfully given false testimony, they may follow the procedure, as applicable, in Rule 35(2).

3. Cambodian Law shall apply in respect of sanctions imposed for false testimony under solemn declaration.

### **Rule 37. Disruption of Proceedings**

1. Where, in the view of the Chambers, any person is disrupting the proceedings, they shall first issue a warning. In cases of continued disruption, the Chambers may order the person disrupting the proceedings to leave or be removed from the courtroom or the premises of the ECCC and, in case of repeated misconduct, may order the exclusion of that person from attending the proceedings.

2. If an Accused disrupts proceedings before the Chambers, they may order that the Accused be removed from the courtroom, and where possible, observe the trial over closed-circuit television. In such cases, the Accused may, at all times, remain in telephone contact with his or her lawyer. The Chambers may also order suspension of public broadcasts of the trial and any other measures that they consider necessary for the conduct of fair and expeditious proceedings.
3. When the disruption consists of deliberate refusal to comply with an oral or written direction of a Chamber, and that direction is accompanied by a warning of sanctions in case of breach, the Chamber dealing with the matter may order the exclusion of that person from the proceedings for such period as it deems appropriate or, if the disruption is of a more serious nature, take appropriate action as provided in sub-rule 5.
4. If the person disrupting the proceedings is a staff member of the ECCC, the Chamber dealing with the matter may also order the exclusion of that person from exercising his or her functions within the ECCC for such period as it deems appropriate. Such decision shall be immediately notified to the Director and Deputy Director of the Office of Administration.
5. Cambodian Law shall apply in respect of sanctions imposed in case of disruption of proceedings.
6. The person concerned shall be given an opportunity to be heard before the above sanctions are imposed.

### **Rule 38. Misconduct of a Lawyer**

1. The Co-Investigating Judges or the Chambers may, after a warning, impose sanctions against or refuse audience to a lawyer if, in their opinion, his or her conduct is considered offensive or abusive, obstructs the proceedings, amounts to abuse of process, or is otherwise contrary to Article 21(3) of the Agreement.
2. The Co-Investigating Judges or the Chambers may also refer such misconduct to the appropriate professional body.
3. Any foreign lawyer practising before the ECCC who is subject to disciplinary action by the BAKC may appeal to the Pre-Trial Chamber within 15 (fifteen) days of receiving notification of the decision of the BAKC. Such appeal shall suspend enforcement of the decision unless the Pre-Trial Chamber decides otherwise. The decision of the Pre-Trial Chamber shall not be subject to appeal.
4. Where, as a result of any such disciplinary action, a person is struck off the list of lawyers approved to appear before the ECCC, the lawyer shall transmit all related material to the appropriate unit within the Office of Administration, so that it may ensure continuity of representation.

### **Rule 39. Time Limits and Conditions for Filing Documents**

(Amended on 11 September 2009)

1. All time limits set out in the applicable laws and these IRs, the applicable Practice Directions and, where appropriate, by decision of the judges, must be respected. Subject to this Rule, failure to do so shall lead to the invalidity of the action in question.
2. Unless these IRs provide otherwise and in compliance with the applicable Practice Directions, the judges may set time limits for the filing of pleadings, written submissions and documents relating to a request or appeal, taking into account the circumstances of the case, especially whether a Charged Person or Accused is in detention.
3. Except as otherwise provided, all of the time limits set out in these IRs expire on the last day at midnight Cambodian time. Should the time limit expire on a Saturday, Sunday or Cambodian public holiday, the time limit shall automatically be extended to the subsequent working day.
4. The Co-Investigating Judges or the Chambers may, at the request of the concerned party or on their own motion:
  - a) extend any time limits set by them; or
  - b) recognise the validity of any action executed after the expiration of a time limit prescribed in these IRs on such terms, if any, as they see fit.
5. Where a disagreement between the Co-Prosecutors or the Co-Investigating Judges has been recorded in accordance with Rule 71 or 72, any applicable time limit shall be suspended until either consensus is achieved, the 30 (thirty) day period has ended, or the Pre-Trial Chamber has been seised and has completed its consideration of the dispute, as appropriate.
6. Documents filed before the ECCC, such as complaints, requests and pleadings, shall be submitted to the Greffier of the Office of the Co-Prosecutors, the Office of the Co-Investigating Judges or the Chambers, as the case may be, in accordance with the applicable laws, these IRs, the applicable Practice Directions and, where appropriate, any decision by the judges.

### **Rule 40. Signatures**

In all cases where the signature of a person is required by these IRs, the signature may be replaced by a fingerprint where the person is not able to sign.

### **Rule 41. Summonses**

(Amended on 1 February 2008 and on 6 March 2009)

1. A summons is an order to any person to appear before the ECCC. It may be issued to a Suspect, Charged Person or Accused, Civil Party or witness and shall set out the capacity in which the person is being summoned.
2. Unless otherwise provided in these IRs, the minimum period between service of the summons and the date of the appearance before the ECCC shall be 5 (five) days. However, where the summons concerns a detained person, or where the Investigator(s) or the Co-Investigating Judges(s) conduct witness interviews in the field, or in exceptional circumstances, such period shall not apply.

3. All summonses shall be served at the last known address by the Greffier, the Judicial Police or any other authorised officer of the ECCC, by any appropriate means. A person in detention shall be summoned through the head of the detention facility. Service of a summons shall be recorded in a written report of service setting out the means used, time, date and place of service, as well as any other relevant circumstances, which shall be signed by the officer and placed on the case file.

4. Any persons requested to serve a summons shall comply with the request and use their best endeavours to obtain acknowledgement of receipt. Such acknowledgement shall be appended to the report of service.

#### **Rule 42. Arrest Warrants**

An Arrest Warrant may be issued against a Suspect, Charged Person or Accused, whether he or she is within or outside the territory of the Kingdom of Cambodia. If necessary, the Arrest Warrant may be issued internationally with the support of any effective mechanism.

#### **Rule 43. Detention Orders**

The Co-Investigating Judges or the Chambers may only issue a Detention Order to the head of the ECCC detention facility where a provisional Detention Order has been issued relating to the same person.

#### **Rule 44. Arrest and Detention Orders**

1. An Arrest and Detention Order may be issued against a Charged Person or Accused who flees, resides in an unknown place or is outside the territory of the Kingdom of Cambodia. If necessary, the order may be issued internationally with the support of any effective mechanism. The Co-Prosecutors shall ensure dissemination of the Arrest and Detention Order.

2. Before issuing an Arrest and Detention Order, the Co-Investigating Judges or the Chambers shall seek the opinion of the Co-Prosecutors. Such order shall be reasoned.

#### **Rule 45. Formalities Relating to Summonses and Orders for Arrest and Detention**

1. All summonses, Arrest Warrants, Detention Orders and Arrest and Detention Orders shall be dated, signed and sealed by the issuing authority and contain the following information:

- a) the name and, where known, the date and place of birth and the address of the person, and any other information allowing identification;
- b) a reference to any associated order and/or charge;
- c) the ECCC issuing authority;
- d) where appropriate, the location, date, and time of hearing; and
- e) an indication whether the person has the right to legal assistance and any other defence rights under these IRs.

2. All Arrest Warrants, Detention Orders and Arrest and Detention Orders shall be executed by the Judicial Police. The original warrant or order shall be given immediately to a Judicial Police officer who shall be under the duty to execute it. In case of emergency, the warrant or order may be notified by all available means to the Judicial Police, who must be provided with the original within 48 (forty-eight) hours.
3. Judicial Police officers may not enter into the residence of any such person before 6 (six) o'clock in the morning or after 6 (six) o'clock in the evening. The Judicial Police shall notify the Co-Investigating Judges or the Chambers of any difficulty in performing their mission.
4. Where, due to the circumstances, the person cannot be brought before the issuing authority immediately after arrest, that person shall be placed in detention and presented to the Co-Investigating Judges or the Chambers as soon as possible. In such cases, the provisions of Rule 51 shall apply as if the reference therein to the Co-Prosecutors was a reference to the Co-Investigating Judges or the Chambers. The Co-Investigating Judges shall decide on Provisional Detention of the person in question as provided in Rule 63.
5. When a person who has been arrested under an Arrest and Detention Order is incarcerated, the duration of the incarceration shall be counted in the duration of any provisional detention.
6. The head of the ECCC detention facility shall keep a certified copy of all Detention Orders and Arrest and Detention Orders.

#### **Rule 46. Notice of Orders**

1. All orders of the Co-Investigating Judges or the Chambers shall be notified to the parties and their lawyers, if any, either orally or at their last known address, by the Greffier, the Judicial Police or any authorised officer of the ECCC, using any appropriate means. A person in detention shall be notified either orally or through the head of the detention facility.
2. When notice is verbal, the Greffier shall record the date in the margin of the order and the notified person shall sign the order. In all other cases, notification shall be recorded in a written report setting out the means of notification used, the time, date and place of service, as well as any other relevant circumstances, which shall be signed by the officer and placed on the case file.
3. Persons requested to notify an order shall comply with the request and use their best endeavours to obtain acknowledgement of receipt. Such acknowledgement shall be appended to the report of notification.

#### **Rule 47. Form of Notice of Orders**

Notice of an order shall contain at least the following information:

- a) the name, date and place of birth and address of the person being given notice;
- b) the reference of the associated order; and
- c) the ECCC issuing authority.

## **Rule 48. Procedural Defects**

Investigative or judicial action may be annulled for procedural defect only where the defect infringes the rights of the party making the application.

## **B – Prosecution**

### **Rule 49. Exercising Public Action**

1. Prosecution of crimes within the jurisdiction of the ECCC may be initiated only by the Co-Prosecutors, whether at their own discretion or on the basis of a complaint.
2. The Co-Prosecutors shall receive and consider all written complaints or information alleging commission of crimes within the jurisdiction of the ECCC. Such complaints or information may be lodged with the Co-Prosecutors by any person, organisation or other source who witnessed or was a victim of such alleged crimes, or who has knowledge of such alleged crimes.
3. A complaint referred to in this Rule may also be prepared and/or lodged on behalf of a Victim by a lawyer or Victims' Association. Copies of all such written complaints shall be kept with the Office of Administration and may be translated into the working languages of the ECCC, as needed.
4. Such complaints shall not automatically initiate criminal prosecution, and the Co-Prosecutors shall decide, at their discretion, whether to reject the complaint, include the complaint in an ongoing preliminary investigation, conduct a new preliminary investigation or forward the complaint directly to the Co-Investigating Judges. The Co-Prosecutors shall inform the complainant of the decision as soon as possible and in any case not more than 60 (sixty) days after registration of the complaint.
5. A decision not to pursue a complaint shall not have the effect of *res judicata*. The Co-Prosecutors may change their decision at any time in which case the complainant shall be so informed as soon as possible and in any case not more than 30 (thirty) days from the decision.

### **Rule 50. Preliminary Investigations**

1. The Co-Prosecutors may conduct preliminary investigations to determine whether evidence indicates that crimes within the jurisdiction of the ECCC have been committed and to identify Suspects and potential witnesses.
2. Preliminary investigations may be carried out by Judicial Police officers or by Investigators of the ECCC only at the request of the Co-Prosecutors. The Judicial Police and Investigators may search for and gather relevant evidence including documents only between 6 (six) o'clock in the morning and 6 (six) o'clock in the evening, and after obtaining a written order from the Co-Prosecutors and approval from the owner or occupier of the premises. Such approval shall be hand-written, or if the owner or occupier cannot write, a Judicial Police officer or Investigator shall record this fact in his or her report.
3. Should the owner or occupant of the premises be absent, or refuse access, the Co-

Prosecutors may apply to the President of the Pre-Trial Chamber for authorization to conduct the search. The President's reasoned decision shall be in writing and placed in the case file. In case of emergency and the absolute impossibility to immediately provide a written authorization, the latter may be given verbally and confirmed in writing within 48 (forty-eight) hours. The search shall be conducted in the presence of the owner or occupant of the premises or, if this is not possible, in the presence of two witnesses selected by the Co-Prosecutors. The witnesses shall not be Investigators or Judicial Police officers involved in the search.

4. At the Co-Prosecutors' request, Judicial Police officers or Investigators may summon and interview any person who may provide relevant information on the case under investigation.

5. The Co-Prosecutors shall draw up an inventory of all items seized during the preliminary investigation, including documents, books, papers, and other objects, and shall provide one copy of such inventory to the person from whom such items were seized. Items that are of no evidentiary value shall be returned without delay at the end of the preliminary investigation.

### **Rule 51. Police Custody**

1. For the needs of the inquiry, the Co-Prosecutors may order the Judicial Police to take into police custody a person suspected of having participated in a crime within the jurisdiction of the ECCC as a perpetrator or accomplice. Such a person shall be informed of the reasons for the custody and of his or her rights under Rule 21(1)(d). Wherever possible, the person shall be held in the premises of the detention unit of the ECCC.

2. An order for police custody shall be made in writing, signed by the Co-Prosecutors and served on the Suspect, whenever possible. If due to the urgency of the situation, this is not possible, the order may be issued verbally by the Co-Prosecutors, but shall be put in writing as soon as possible thereafter.

3. Police custody may be ordered by the Co-Prosecutors for a period not exceeding 48 (forty-eight) hours from the time of the arrest of the Suspect. At the end of this period, the Co-Prosecutors may order an extension for an additional period of 24 (twenty-four) hours, setting out the reasons in writing.

4. The Suspect shall be brought before the Co-Prosecutors as soon as possible. Where transportation difficulties or the distance between the place of arrest and the ECCC make this impracticable, the Co-Prosecutors may provide an additional time period to transport the Suspect. The cause of the delay shall be recorded in the final report.

5. The Suspect may request to see a lawyer of his or her choice, who shall be informed of the request immediately, by all means available. The Suspect may meet with such lawyer or, if this is not possible, a lawyer provided by the Defence Support Section, for a maximum of 30 (thirty) minutes before the Suspect is presented to the Co-Prosecutors. Such lawyer shall have the right to be present during the period of police custody, subject to the administrative requirements of the detention facility.

6. The Co-Prosecutors may ask a doctor to examine a Suspect at any time. The doctor shall verify whether the Suspect has any health conditions that make him or her unsuitable for further custody, and shall certify any such findings.

7. At the end of the period of police custody, the Suspect shall be either released or brought before the Co-Investigating Judges in accordance with Rule 57.

8. The Co-Prosecutors shall make a final report for every arrest, which shall include the following information:

- a) The full name and position of the Judicial Police officer who executed the order for police custody;
- b) The identity of the Suspect;
- c) The reason for the police custody;
- d) The date and time of the commencement of the police custody;
- e) The full name of the doctor who examined the Suspect, if applicable;
- f) The identity of any lawyer who visited the Suspect;
- g) The duration of any interview and the duration of any breaks between interview periods;
- h) The date and time of the termination of police custody;
- i) Any incidents that occurred during the period of police custody; and
- j) The decision made by the Co-Prosecutors at the expiry of the police custody period.

9. The final report of police custody shall be attached to the case file, and a register of the Police Custody shall be maintained by the Office of Administration.

#### **Rule 52. Prohibition of Interception of Communications**

The Co-Prosecutors shall not have the authority to eavesdrop conversations or to intercept or record any telephone or electronic correspondence, such as facsimiles or email messages.

#### **Rule 53. Introductory Submissions**

1. If the Co-Prosecutors have reason to believe that crimes within the jurisdiction of the ECCC have been committed, they shall open a judicial investigation by sending an Introductory Submission to the Co-Investigating Judges, either against one or more named persons or against unknown persons. The submission shall contain the following information:

- a) a summary of the facts;
- b) the type of offence(s) alleged;
- c) the relevant provisions of the law that defines and punishes the crimes;
- d) the name of any person to be investigated, if applicable; and
- e) the date and signature of both Co-Prosecutors.

2. The submission shall be accompanied by the case file and any other material of evidentiary value in the possession of the Co-Prosecutors, including any evidence that in the actual knowledge of the Co-Prosecutors may be exculpatory.

3. The absence of any of the formalities provided in sub rule 1 shall render the submission void.

4. The Co-Prosecutors shall, as soon as practicable, disclose to the Co-Investigating Judges any material that in the actual knowledge of the Co-Prosecutors may suggest the innocence or mitigate the guilt of the Suspect or the Charged Person or affect the credibility of the

prosecution evidence.

5. The Office of Administration shall organize and index a copy of this information using a computerized case file management system.

6. Where it is decided not to pursue a complaint at the end of a preliminary investigation, all associated complainants shall be notified of the decision within 30 (thirty) days thereof.

#### **Rule 54. Public Information by the Co-Prosecutors**

Introductory, Supplementary and Final Submissions filed by the Co-Prosecutors shall be confidential documents. However, mindful of the need to ensure that the public is duly informed of ongoing ECCC proceedings, the Co-Prosecutors may provide the public with an objective summary of the information contained in such submissions, taking into account the rights of the defence and the interests of Victims, witnesses and any other persons mentioned therein, and the requirements of the investigation. In addition, the Co-Prosecutors may jointly, either personally or through the Public Affairs Section, correct any false or misleading information, provided that the case is still under preliminary investigation.

### **C – Judicial Investigations**

#### **Rule 55. General Provisions Concerning Investigations**

(Amended on 6 March 2009)

1. A judicial investigation is compulsory for crimes within the jurisdiction of the ECCC.
2. The Co-Investigating Judges shall only investigate the facts set out in an Introductory Submission or a Supplementary Submission.
3. If, during an investigation, new facts come to the knowledge of the Co-Investigating Judges, they shall inform the Co-Prosecutors, unless the new facts are limited to aggravating circumstances relating to an existing submission. Where such new facts have been referred to the Co-Prosecutors, the Co-Investigating Judges shall not investigate them unless they receive a Supplementary Submission.
4. The Co-Investigating Judges have the power to charge any Suspects named in the Introductory Submission. They may also charge any other persons against whom there is clear and consistent evidence indicating that such person may be criminally responsible for the commission of a crime referred to in an Introductory Submission or a Supplementary Submission, even where such persons were not named in the submission. In the latter case, they must seek the advice of the Co-Prosecutors before charging such persons.
5. In the conduct of judicial investigations, the Co-Investigating Judges may take any investigative action conducive to ascertaining the truth. In all cases, they shall conduct their investigation impartially, whether the evidence is inculpatory or exculpatory. To that end, the Co-Investigating Judges may:
  - a) Summon and question Suspects and Charged Persons, interview Victims and witnesses and record their statements, seize exhibits, seek expert opinions and conduct on-site investigations;
  - b) Take any appropriate measures to provide for the safety and support of potential witnesses and other sources;

- c) Seek information and assistance from any State, the United Nations or any other intergovernmental or non-governmental organization, or other sources that they deem appropriate; and
- d) Issue such orders as may be necessary to conduct the investigation, including summonses, Arrest Warrants, Detention Orders and Arrest and Detention Orders.

6. The Greffier of the Co-Investigating Judges shall keep a case file, including a written record of the investigation. At all times, the Co-Prosecutors and the lawyers for the other parties shall have the right to examine and make copies of the case file under the supervision of the Greffier of the Co-Investigating Judges, during working days and subject to the requirements of the proper functioning of the ECCC.

7. A written record shall be made of every interview. Each page of the written record shall be signed or fingerprinted after the interviewee reads it. If necessary, the Greffier of the Co-Investigating Judges, with the assistance of the interpreter, shall read the record back. If the interviewee refuses to sign or fingerprint the record, the Greffier of the Co-Investigating Judges shall note this on the record.

8. The Co-Investigating Judges may make on-site visits to conduct any investigation they consider useful. They shall be accompanied by their Greffiers, who shall make a written record for the case file. The Co-Investigating Judges may inform the parties of such visits, where their presence may be necessary. In such cases, the parties may request the Co-Investigating Judges to allow them to attend.

9. The Co-Investigating Judges may issue Rogatory Letters requesting the Judicial Police or ECCC Investigators to undertake such action as necessary for the conduct of their investigations, as provided in these IRs.

10. At any time during an investigation, the Co-Prosecutors, a Charged Person or a Civil Party may request the Co-Investigating Judges to make such orders or undertake such investigative action as they consider necessary for the conduct of the investigation. If the Co-Investigating Judges do not agree with the request, they shall issue a rejection order as soon as possible and, in any event, before the end of the judicial investigation. The order, which shall set out the reasons for the rejection, shall be notified to the parties and shall be subject to appeal.

11. The Co-Prosecutors and the lawyers for the other parties shall have the right to consult the original case file, subject to reasonable limitations to ensure the continuity of the proceedings.

#### **Rule 56. Public Information by the Co-Investigating Judges**

1. In order to preserve the rights and interests of the parties, judicial investigations shall not be conducted in public. All persons participating in the judicial investigation shall maintain confidentiality.

2. However, the Co-Investigating Judges, may:

- a) jointly through the Public Affairs Section, issue such information regarding a case under judicial investigation as they deem essential to keep the public informed of the proceedings, or to rectify any false or misleading information; and
- b) jointly grant limited access to the judicial investigation to the media or other non-parties in exceptional circumstances, under their strict control and after seeking observations from the parties to the proceedings. The non-respect of any

conditions that the Co-Investigating Judges may impose shall be dealt with in accordance with Rules 35 to 38.

3. Disagreements between the Co-Investigating Judges regarding matters referred to in sub-rule 2 above shall not be submitted to the procedure for settlement of disagreements set out in Rule 72.

#### **Rule 57. Notification of Charges**

1. At the time of the initial appearance the Co-Investigating Judges shall record the identity of the Charged Person and inform him or her of the charges, the right to a lawyer and the right to remain silent. The Charged Person has the right to consult with a lawyer prior to being interviewed and to have a lawyer present while the statement is taken. If the Charged Person agrees, the Co-Investigating Judge shall take the statement immediately. A written record of the statement shall be placed in the case file.

2. Where the Charged Person is in detention he or she shall have the right to raise any issues relating to the execution or procedural regularity of the provisional detention.

3. Where the Charged Person is not detained after the initial appearance, he or she shall inform the Co-Investigating Judge of his or her address. The Charged Person shall be informed that:

- a) He or she must notify the Co-Investigating Judge of any change of address;
- b) All service or notification at the last address provided will be deemed to be valid.

4. This information shall be recorded in the case file.

#### **Rule 58. Interview of a Charged Person**

1. When a Charged Person has a lawyer, the Co-Investigating Judges shall summon the lawyer at least 5 (five) days before the interview takes place. During that period, the lawyer may consult the case file.

2. A Charged Person shall only be questioned in the presence of his or her lawyer, unless the Charged Person waives the right to the presence of a lawyer, in a separate written record signed by the Charged Person, included in the case file. The waiver shall be recorded pursuant to Rule 25. However, if the lawyer was validly summoned, but fails to appear on the date and time set, the Co-Investigating Judges may request that the Defence Support Section designate a lawyer temporarily, from the lists provided for in Rule 11. Once the designated lawyer has had the opportunity to review the case file for a reasonable period, the Co-Investigating Judges may question the Charged Person in the presence of the designated lawyer. The presence of the designated lawyer shall be noted in the record of the interview, along with the reason for the absence of the Charged Person's chosen lawyer, if known.

3. In an emergency, and with the consent of the Charged Person the Co-Investigating Judges may question the Charged Person in the absence of his or her lawyer. An emergency situation arises when there is a high probability of irretrievable loss of evidence while awaiting the arrival of a lawyer, such as the impending death of the Charged Person. The reason for the emergency shall be clearly stated in the written record of the interview.

4. When the Charged Person is to be interviewed, the Co-Investigating Judges shall notify the Co-Prosecutors of the interview in a timely manner. The Co-Prosecutors may attend the interview, and may request that questions be put to the Charged Person with authorisation by the Co-Investigating Judges. A refusal by the Co-Investigating Judges to allow a question shall be noted in the written record. The other parties shall not be present, unless the Co-Investigating Judges decide to confront the Charged Person directly with any other party or witness. Subject to any protection orders, sub-rules 1 to 3 of this Rule shall also apply to the confrontation.

5. In the case of a confrontation, the Co-Prosecutors and the lawyers for the other parties may ask questions, with the permission of the Co-Investigating Judges. If the Co-Investigating Judges refuse to permit a question, the refusal shall be noted in the written record of the interview.

6. At any time during an investigation, the Charged Person may request the Co-Investigating Judges to interview him or her, question witnesses, go to a site, order expertise or collect other evidence on his or her behalf. The request shall be made in writing with a statement of factual reasons for the request. If the Co-Investigating Judges do not grant the request, they shall issue a rejection order as soon as possible, and in any event, before the end of investigation. The rejection order shall state the factual reasons for rejection. The Charged Person shall immediately be notified of the rejection order. The Charged Person may appeal the rejection order to the Pre-Trial Chamber.

#### **Rule 59. Interview of a Civil Party**

(Amended on 1 February 2008)

1. The Co-Investigating Judges may interview a Civil Party. When a Civil Party has a lawyer, the Co-Investigating Judges shall summon the lawyer at least 5 (five) days before the interview takes place. During that period, the lawyer may consult the case file.

2. A Civil Party shall be questioned by the Co-Investigating Judges only in the presence of his or her lawyer, unless the Civil Party waives the right to the presence of a lawyer, in a separate written record signed by the Civil Party, included in the case file and recorded pursuant to Rule 25. However, if the lawyer was validly summoned, but fails to appear on the date and time set, the interview may proceed. The absence shall be noted in the written record.

3. When the Civil Party is being interviewed, the other parties shall not be present, unless the Co-Investigating Judges decide to confront the Civil Party directly with any other party or witness. Subject to any protection orders, sub-rules 1 and 2 of this Rule shall also apply to such confrontation.

4. In the case of a confrontation, the Co-Prosecutors and the lawyers for the other parties may ask questions, with the permission of the Co-Investigating Judges. If the Co-Investigating Judges refuse to permit a question, the refusal shall be noted in the written record of the interview.

5. At any time during an investigation, the Civil Party may request the Co-Investigating Judges to interview him or her, question witnesses, go to a site, order expertise or collect other evidence on his or her behalf. The request shall be made in writing with a statement of factual reasons for the request. If the Co-Investigating Judges do not grant the request, they shall issue a rejection order as soon as possible, and in any event, before the end of investigation. The rejection order shall state the factual reasons for rejection. The Civil Party shall immediately be notified of the rejection order, and may appeal to the Pre-Trial Chamber.

6. A Civil Party may also be interviewed by the ECCC Investigators, upon issuance of a Rogatory Letter, in the following conditions:

- a) He or she must expressly agree thereto, such agreement being mentioned in the written record of interview;
- b) When the Civil Party has a lawyer, he or she must waive the lawyer's presence in a separate written record, as provided in sub-rule 2 above;
- c) He or she must be questioned in the absence of any other parties.

#### **Rule 60. Interview of Witnesses**

1. The Co-Investigating Judges may take statements from any person whom they consider conducive to ascertaining the truth, subject only to the provisions of Rule 28.
2. Except where a confrontation is organised, the Co-Investigating Judges or their delegates shall interview witnesses in the absence of the Charged Person, any other party, or their lawyers, in a place and manner that protects confidentiality.
3. Any person who has been summoned by the Co-Investigating Judges as a witness must appear. In the case of refusal to appear, the Co-Investigating Judges may issue an order requesting the Judicial Police to compel the witness to appear. Such order must include the identity of the witness and shall be dated and signed by the Co-Investigating Judges.

#### **Rule 61. Search and Seizure**

1. The Co-Investigating Judges or their delegates shall endeavour to conduct any search of premises in the presence of its occupant, if any, failing which they may search in the presence of 2 (two) witnesses, to be selected by the Co-Investigating Judges or their delegates. Such witnesses may not be police officers.
2. A written record of every search shall be made, which shall identify the premises, and any occupant or witnesses, as appropriate. The Co-Investigating Judges or their delegates, and any occupant or witnesses, shall sign the written record.
3. The Co-Investigating Judges or their delegates shall show any evidence seized to the occupant or witnesses, before sealing it. A written record of the evidence seized shall be made, attaching a detailed inventory thereof.
4. At any time, and after consulting the parties, the Co-Investigating Judges may order the return of any items to the person from whom it was seized, where this does not prejudice the proceedings. The order shall be immediately notified to the person.

#### **Rule 62. Rogatory Letters**

(Amended on 1 February 2008)

1. The Co-Investigating Judges may issue a Rogatory Letter requiring any Investigator from their Office, or the Judicial Police, to conduct investigative action. However, only the Judicial Police shall have the power to undertake any coercive action.
2. A Rogatory Letter shall not be issued in a general form, and shall clearly specify the nature of investigative work to be done, which must relate directly to the crime or crimes under

investigation. The Co-Investigating Judges shall set the time limit for compliance with a Rogatory Letter. The Rogatory Letter must be signed and dated by the Co-Investigating Judges. They may withdraw a Rogatory Letter at any time.

3. The delegates shall act under the supervision of the Co-Investigating Judges and shall report only to them concerning the enforcement of the Rogatory Letter. When a Rogatory Letter has been issued to an ECCC Investigator or the Judicial Police, that person shall proceed as follows:

a) The Judicial Police or Investigator shall draw up a written record of his or her investigations and findings, which shall comply with the provisions of Rule 51(8) as appropriate;

b) The Judicial Police or Investigators shall not question the Charged Person. Investigators may interview Civil Parties as provided in Rule 59(6);

c) The Judicial Police may search for and seize evidence, as authorised by the Co-Investigating Judges.

4. The provisions of Rule 51 relating to Police Custody shall apply to the execution of a Rogatory Letter. In this case, the powers of the Co-Prosecutors shall be exercised by the Co-Investigating Judges.

### **Rule 63. Provisional Detention**

(Amended on 1 February 2008)

1. a) The Co-Investigating Judges may order the Provisional Detention of a Charged Person after an adversarial hearing. If the Charged Person does not yet have the assistance of a lawyer, he or she shall be advised of the right to a lawyer as provided by Rule 21(1)(d). The Charged Person has the right to a reasonable period in order to prepare his or her defence. During the hearing, the Co-Investigating Judges shall hear the Co-Prosecutors, the Charged Person and his or her lawyer. At the end of the hearing the Co-Investigating Judges shall decide on Provisional Detention. If Provisional Detention is not ordered, the Charged Person shall be released. If the Co-Investigating Judges decide to order Provisional Detention they shall issue a Detention Order.

b) However, where the Charged Person or his/her lawyer requests a period to prepare his/ her defence, the Co-Investigating Judges shall not order immediate provisional detention. In that case, the Co-Investigating Judges may, by reasoned order, decide to detain the Charged Person for a limited period of time, which shall in no case exceed 7 (seven) days. Within that time period, the Charged Person shall be brought before the Co-Investigating Judges again, who shall proceed as provided above, whether or not the Charged Person has the assistance of a lawyer. Any temporary period of detention ordered under this sub-rule shall be taken into account for the length of provisional detention under sub-rules 6, 7 and 8 of this Rule.

c) Where the lawyer of the Charged Person is not available or if he or she is absent at the scheduled date and time, the Co-Investigating Judges shall, where the Charged Person asks for the assistance of a lawyer, request the Defence Support Section to temporarily assign him or her a lawyer, from the lists mentioned at Rule 11.

2. An order for Provisional Detention shall:
  - a) set out the legal grounds and factual basis for detention, based on sub-rule 3 below;
  - b) specify the maximum initial period of provisional detention possible; and
  - c) when served on the Charged Person, shall be accompanied by a statement of his or her rights.
3. The Co-Investigating Judges may order the Provisional Detention of the Charged Person only where the following conditions are met:
  - a) there is well founded reason to believe that the person may have committed the crime or crimes specified in the Introductory or Supplementary Submission; and
  - b) The Co-Investigating Judges consider Provisional Detention to be a necessary measure to:
    - i) prevent the Charged Person from exerting pressure on any witnesses or Victims, or prevent any collusion between the Charged Person and accomplices of crimes falling within the jurisdiction of the ECCC;
    - ii) preserve evidence or prevent the destruction of any evidence;
    - iii) ensure the presence of the Charged Person during the proceedings;
    - iv) protect the security of the Charged Person; or
    - v) preserve public order.
4. The Charged Person may appeal against an order for Provisional Detention to the Pre-Trial Chamber.
5. The Greffier of the Co-Investigating Judges shall immediately serve copies of an order for Provisional Detention on the Charged Person and his or her lawyer, and to the Co-Prosecutors and the Office of Administration.
6. Provisional Detention may be ordered as follows:
  - a) for genocide, war crimes and crimes against humanity, for a period not exceeding 1 (one) year. However, the Co-Investigating Judges may extend the Provisional Detention for further 1 (one) year periods; and
  - b) for all other crimes coming within ECCC jurisdiction, for a period not exceeding 6 (six) months. However, the Co-Investigating Judges may extend the Provisional Detention for further 6 (six) month periods.
7. Any decision by the Co-Investigating Judges concerning extension of Provisional Detention shall be in writing and shall set out the reasons for such extension. An extension shall be made only after the Co-Investigating Judges notify the Charged Person and his or her lawyer and give them 15 (fifteen) days to submit objections to the Co-Investigating Judges. No more than 2 (two) such extensions may be ordered. All such orders are open to appeal.
8. In all cases, a Charged Person in Provisional Detention shall be personally brought before the Co-Investigating Judges at least every 4 (four) months. The Co-Investigating Judges shall offer the Suspect an opportunity to discuss his or her treatment and conditions during Provisional Detention. Where any action is required, the Co-Investigating Judges may issue appropriate orders. A written record of the interview shall be placed on the case file.

#### **Rule 64. Release of a Charged Person**

1. At any time during a Charged Person's detention, either on their own motion or at the request of the Co-Prosecutors, the Co-Investigating Judges shall order a Charged Person's release where the requirements of Provisional Detention set out in Rule 63 above are no longer satisfied. Where the Co-Investigating Judges are considering the matter on their own motion, they shall seek the Co-Prosecutors opinion before making the order. Any such order is subject to appeal.
2. At any moment during the period of the Provisional Detention, the Charged Person or his or her lawyer may submit an application for release to the Co-Investigating Judges. As soon as possible after receiving the application, the Co-Investigating Judges shall forward it to the Co-Prosecutors, who shall provide their opinion within 5 (five) days. Subject to the provisions of Rule 72(2), the Co-Investigating Judges shall issue a reasoned decision within 5 (five) days from receipt of the Co-Prosecutors' opinion. All such orders are open to appeal.
3. If his or her circumstances have changed since his or her last application, the Charged Person may file a further application not less than 3 (three) months after the final determination of the previous application for release.
4. The Co-Prosecutors and the Charged Person shall be notified immediately of an order to release a Charged Person from detention. The Co-Prosecutors and the Charged Person shall also be notified immediately of an order not to release the Charged Person from detention. The Office of Administration and the head of the detention facility shall be notified as soon as an order to release from detention becomes enforceable.

#### **Rule 65. Bail Orders**

1. On their own motion, or at the request of the Co-Prosecutors, the Co-Investigating Judges may order that a Charged Person remain at liberty or be released from detention. They may order release from detention on bail. The order by the Co-Investigating Judges shall specify whether a bail bond is payable, and impose such conditions as are necessary to ensure the presence of the person during the proceedings and the protection of others. Any such order is subject to appeal.
2. A Charged Person shall receive a receipt from the Greffier of the Co-Investigating Judges in return for any property or monies handed over.
3. The Charged Person and the Co-Prosecutors shall be immediately notified of a bail order.
4. At any time, on their own motion or at the request of the Co-Prosecutors, the Co-Investigating Judges may change, suspend, add new conditions to or terminate the bail order. The Charged Person and the Co-Prosecutors shall be immediately notified of any such orders, which shall be open to appeal.
5. A Charged Person may, at any time, file an application to change or suspend any conditions of the bail order, or to terminate it. The Co-Investigating Judges shall immediately send that request to the Co-Prosecutors for their opinion, who shall provide it within 5 (five) days. Subject to the provisions of Rule 72(2), the Co-Investigating Judges shall issue an order within 10 (ten) days from the date of receipt of the Co-Prosecutors' opinion. The Charged Person and the Co-Prosecutors shall be immediately notified of the order.
6. If the Charged Person violates any of the bail conditions in such an order, the Co-

Investigating Judges may issue a warning or issue a Provisional Detention Order in respect of the Charged Person. Any such order is subject to appeal.

**Rule 66. Final Submissions by the Co-Prosecutors**

(Amended on 11 September 2009)

1. Where the Co-Investigating Judges consider that an investigation has been concluded, they shall notify all the parties and their lawyers. This decision shall be made public. The parties shall have 15 (fifteen) days to request further investigative action. They may waive such period.
2. Where the Co-Investigating Judges decide to reject such requests, they shall issue a reasoned order. Such order shall also reject any remaining requests, filed earlier in the investigation, which had not yet been ruled upon by the Co-Investigating Judges.
3. All the parties may, within 30 (thirty) days from notice of such order, file appeals to the Pre-Trial Chamber. The parties may, in the presence of their lawyer, or where the lawyer has been summoned in due form, waive their right to appeal.
4. Once this period has expired, been waived, or the abovementioned appeals heard, as the case may be, the Co-Investigating Judges shall immediately forward the case file to the Co-Prosecutors.
5. Where the Co-Prosecutors consider, like the Co-Investigating Judges, that the investigation has been concluded, they shall issue a written, reasoned final submission and return the case file to the Co-Investigating Judges, within 45 (forty-five) days if a Charged Person is detained, and within 3 (three) months in other cases, from the date the Co-Prosecutors received the case file. The Co-Prosecutors may request the Co-Investigating Judges to either indict the Charged Person and send him or her for trial, or to dismiss the case.

**Rule 67. Closing Orders by the Co-Investigating Judges**

(Amended on 1 February 2008)

1. The Co-Investigating Judges shall conclude the investigation by issuing a Closing Order, either indicting a Charged Person and sending him or her to trial, or dismissing the case. The Co-Investigating Judges are not bound by the Co-Prosecutors' submissions.
2. The Indictment shall be void for procedural defect unless it sets out the identity of the Accused, a description of the material facts and their legal characterisation by the Co-Investigating Judges, including the relevant criminal provisions and the nature of the criminal responsibility.
3. The Co-Investigating Judges shall issue a Dismissal Order in the following circumstances:
  - a) The acts in question do not amount to crimes within the jurisdiction of the ECCC;
  - b) The perpetrators of the acts have not been identified; or
  - c) There is not sufficient evidence against the Charged Person or persons of the charges.
4. The Closing Order shall state the reasons for the decision. A Closing Order may both send the case to trial for certain acts or against certain persons and dismiss the case for others.
5. The Co-Prosecutors, the Accused and Civil Parties must be immediately notified upon

issue of a Closing Order, and receive a copy thereof. The order is subject to appeal as provided in Rule 74.

6. In the Closing Order, the Co-Investigating Judges shall make any necessary decisions concerning sealed items and, for this purpose, may grant leave or invite the submission of *amicus curiae* briefs.

### **Rule 68. Effects on Provisional Detention and Bail Orders**

(Amended on 1 February 2008)

1. The issuance of a Closing Order puts an end to Provisional Detention and Bail Orders once any time limit for appeals against the Closing Order have expired. However, where the Co-Investigating Judges consider that the conditions for ordering Provisional Detention or bail under Rules 63 and 65 are still met, they may, in a specific, reasoned decision included in the Closing Order, decide to maintain the Accused in Provisional Detention, or maintain the bail conditions of the Accused, until he or she is brought before the Trial Chamber.

2. Where an appeal is lodged against the Indictment, the effect of the detention or bail order of the Co-Investigating Judges shall continue until there is a decision from the Pre-Trial Chamber. The Pre-Trial Chamber shall decide within 4 months.

3. In any case, the decision of the Co-Investigating Judges or the Pre-Trial Chamber to continue to hold the Accused in Provisional Detention, or to maintain bail conditions, shall cease to have any effect after 4 (four) months unless the Accused is brought before the Trial Chamber within that time.

4. If the Accused cannot appear in person before the Chamber due to exceptional circumstances such as his or her ill-health, the Chamber shall decide on provisional detention provided that the Chamber shall first hear the Accused using appropriate audio-visual means or by visiting him or her at the place of detention.

### **Rule 69. Forwarding the Case File following a Closing Order**

(Amended on 11 September 2009)

1. Where an appeal is filed against a Closing Order, the Greffier of the Co-Investigating Judges shall forward the case file to the Greffier of the Pre-Trial Chamber as provided in Rule 77.

2. Where no appeal is filed against a Closing Order, the Co-Investigating Judges shall seal the case file, and:

a) If an Indictment is issued, the Greffier of the Co-Investigating Judges shall forward the case file to the Greffier of the Trial Chamber to allow a date for trial to be set; or

b) If a Dismissal Order is issued, the Greffier of the Co-Investigating Judges shall forward the case file to the Office of Administration for archiving after the expiry of the time limit for appeal.

3. The filing of an appeal against a Closing Order does not prevent access by the Trial Chamber to the case file for the purposes of advance preparation for trial.

### **Rule 70. Re-opening Investigations**

When new evidence becomes available after a Dismissal Order by the Co-Investigating Judges comes into force, the judicial investigation may be re-opened by the Co-Investigating Judges at the initiative of the Co-Prosecutors.

## **D – Pre-Trial Chamber Proceedings**

### **Rule 71. Settlement of Disagreements between the Co-Prosecutors**

1. In the event of disagreement between the Co-Prosecutors, either or both of them may record the exact nature of their disagreement in a signed, dated document which shall be placed in a register of disagreements kept by the Greffier of the Co-Prosecutors.
2. Within 30 (thirty) days, either Co-Prosecutor may bring the disagreement before the Pre-Trial Chamber by submitting a written statement of the facts and reasons for the disagreement to the Office of Administration, which shall immediately convene the Chamber and communicate the statements to its judges, with a copy to the other Co-Prosecutor. In such cases, the other Co-Prosecutor may submit a response within 10 (ten) days. The written statement of the facts and reasons for the disagreement shall not be placed on the case file. The Greffier of the Co-Prosecutors shall forward a copy of the case file to the Chamber immediately.
3. Throughout this dispute settlement period, the Co-Prosecutors shall continue to seek consensus. However, the action or decision which is the subject of the disagreement shall be executed except for disagreements concerning:
  - a) an Introductory Submission;
  - b) a Supplementary Submission relating to new crimes;
  - c) a Final Submission; or
  - d) a decision relating to an appeal,

in which case, no action shall be taken with respect to the subject of the disagreement until either consensus is achieved, the 30 (thirty) day period has ended, or the Chamber has been seised and the dispute settlement procedure has been completed, as appropriate.

4. The Chamber shall settle the disagreement forthwith, as follows:
  - a) The hearing shall be held and the judgment handed down *in camera*. Remote participation may be organized, as necessary.
  - b) The Chamber may order the personal appearance of the Co-Prosecutors at its discretion, as well as the production of exhibits.
  - c) A decision of the Chamber requires the affirmative vote of at least four judges. This decision is not subject to appeal. If the required majority is not achieved before the Chamber, in accordance with Article 20 new of the ECCC Law, the default decision shall be that the action or decision done by one Co-Prosecutor shall stand, or that the action or decision proposed to be done by one Co-Prosecutor shall be executed.
  - d) All decisions under this Rule, including any dissenting opinions, shall be reasoned and signed by their authors. The Greffier of the Chamber shall forward

such decisions to the Director of the Office of Administration, who shall notify the Co-Prosecutors. The Co-Prosecutors shall immediately proceed in accordance with the decision of the Chamber.

## **Rule 72. Settlement of Disagreements between the Co-Investigating Judges**

1. In the event of disagreement between the Co-Investigating Judges, either or both of them may record the exact nature of their disagreement in a signed, dated document which shall be placed in a register of disagreements kept by the Greffier of the Co-Investigating Judges.

2. Within 30 (thirty) days, either Co-Investigating Judge may bring the disagreement before the Chamber by submitting a written statement of the facts and reasons for the disagreement to the Office of Administration, which shall immediately convene the Chamber and communicate the statements to its judges, with a copy to the other Co-Investigating Judge. If the disagreement relates to the Provisional Detention of a Charged Person, this period shall be reduced to 5 (five) days. The other Co-Investigating Judge may submit a response within 10 (ten) days. The written statement of the facts and reasons for the disagreement shall not be placed on the case file, except in cases referred to in sub-rule 4(b) below. The Greffier of the Co-Investigating Judges shall forward a copy of the case file to the Chamber immediately.

3. Throughout this dispute settlement period, the Co-Investigating Judges shall continue to seek consensus. However the action or decision which is the subject of the disagreement shall be executed, except for disagreements concerning:

- a) any decision that would be open to appeal by the Charged Person or a Civil Party under these IRs;
- b) notification of charges; or
- c) an Arrest and Detention Order,

in which case, no action shall be taken with respect to the subject of the disagreement until either consensus is achieved, the 30 (thirty) day period has ended, or the Chamber has been seised and the dispute settlement procedure has been completed, as appropriate.

4. The Chamber shall settle the disagreement forthwith, as follows:

- a) The hearing shall be held and the judgment handed down *in camera*.
- b) Where the disagreement relates to a decision against which a party to the proceedings would have the right to appeal to the Chamber under these IRs:
  - i) The Greffier of the Chamber shall immediately inform the parties in question and their lawyers of the date of the hearing;
  - ii) The Co-Prosecutors and the lawyers for the other parties involved may consult the case file up until the date of the hearing;
  - iii) The Co-Prosecutors and the lawyers for the other parties involved may file pleadings as provided in the Practice Direction on filing of documents. Such pleadings shall immediately be placed on the case file by the Greffier of the Chamber;
  - iv) The Chamber may, on the motion of any judge or party, decide that all or part of a hearing be held in public, in particular where the case may be brought to an end by its decision, including appeals or requests concerning jurisdiction or bars to jurisdiction, if the Chamber considers that it is in the interests of justice and it does not affect public order or any protective measures

authorized by the court;

v) During the hearing, the Co-Prosecutors and the lawyers of the other parties involved may present brief observations.

c) In all cases, the Chamber may, at its discretion, order the personal appearance of any parties or experts, as well as the production of any exhibits.

d) A decision of the Chamber shall require the affirmative vote of at least four judges. This decision is not subject to appeal. If the required majority is not achieved before the Chamber, in accordance with Article 23 new of the ECCC Law, the default decision shall be that the order or investigative act done by one Co-Investigating Judge shall stand, or that the order or investigative act proposed to be done by one Co-Investigating Judge shall be executed. However, where the disagreement concerns provisional detention, there shall be a presumption of freedom.

e) All decisions under this Rule, including any dissenting opinions, shall be reasoned and signed by their authors. The Greffier of the Chamber shall forward such decisions to the Director of the Office of Administration, who shall notify the Co-Investigating Judges. In addition, decisions concerning matters referred to in sub-rule 4(b) shall be notified to the parties. The Co-Investigating Judges shall place the decision of the Chamber on the case file and immediately proceed in accordance with such decision.

### **Rule 73. Additional Jurisdiction of the Pre-Trial Chamber**

In addition to its power to adjudicate disputes between the Co-Prosecutors or the Co-Investigating Judges, as set out in the Agreement and the ECCC Law, the Chamber shall have sole jurisdiction over:

a) appeals against decisions of the Co-Investigating Judges, as provided in Rule 74;

b) applications to annul investigative action, as provided in Rule 76; and

c) the appeals provided for in Rules 11(5) and (6); 23(7) and (9); 35(6) and 38(3) of these IRs.

### **Rule 74. Grounds for Pre-Trial Appeals**

(Amended on 1 February 2008)

1. No appeal shall lie against decisions of the Co-Investigating Judges where the matter has already been heard by the Chamber pursuant to the dispute settlement provisions in Rule 72.

2. The Co-Prosecutors may appeal against all orders by the Co-Investigating Judges.

3. The Charged Person may appeal against the following orders of the Co-Investigating Judges:

a) confirming the jurisdiction of the ECCC;

b) refusing requests for investigative action allowed under these IRs;

c) refusing requests for the restitution of seized items;

- d) refusing requests for expert reports allowed under these IRs;
- e) refusing requests for additional expert investigation allowed under these IRs;
- f) relating to provisional detention or bail;
- g) refusing an application to seize the Chamber for annulment of investigative action; or
- h) relating to protective measures.

4. Civil Parties may appeal against the following orders by the Co-Investigating Judges:

- a) refusing requests for investigative action allowed under these Rules;
- b) declaring the Civil Party application inadmissible;
- c) refusing requests for the restitution of seized property;
- d) refusing requests for expert reports allowed under these IRs;
- e) refusing requests for further expert investigation allowed under these IRs;
- f) a Dismissal Order where the Co-Prosecutors have appealed;
- g) refusing an application to seize the Chamber for annulment of investigative action; or
- h) relating to protective measures.

5. Any non-party to the investigation proceedings who has requested the return of seized items shall be entitled to appeal against any order of the Co-Investigating Judges denying such request.

#### **Rule 75. Notice of Appeal and Submissions on Appeal before the Pre-Trial Chamber**

(Amended on 1 February 2008)

1. Except as otherwise provided in these IRs, any notice of appeal to the Chamber must be filed within 10 (ten) days from the date that notice of the decision or order was received. The lawyers for the Charged Person and Civil Parties may file a notice of appeal on their behalf.
2. Notice of appeal shall be made in writing to the Greffier of the Co-Investigating Judges, who shall immediately inform the Co-Investigating Judges and keep a record of all pre-trial appeals. As soon as a notice of appeal is received, the Greffier of the Chamber shall be informed immediately.
3. Submissions on appeal shall be filed by the appellant with the Greffier of the Chamber within 30 (thirty) days from the date that notice of the decision or order was received. Under exceptional circumstances, the time-limit may be extended. The Greffier shall record the date of receipt of submissions on appeal and immediately place them on the case file. The Greffier shall immediately notify the other parties and transmit a copy of the submissions.
4. The submissions on appeal shall contain the reasons of fact and law upon which the appeal is based together with all supporting documents. The appellant may not raise any matters of fact or law during the hearing which are not already set out in the submissions on appeal.

#### **Rule 76. Applications Concerning Procedural Defects**

1. Where the Co-Investigating Judges, at any time during the judicial investigation, consider

that any part of the proceedings is null and void, they shall notify the parties of the matter. Subject to sub-rule 6 below, the Co-Investigating Judges shall then submit a reasoned application to the Chamber requesting annulment. The judicial investigation may continue during this period.

2. Where, at any time during the judicial investigation, the parties consider that any part of the proceedings is null and void, they may submit a reasoned application to the Co-Investigating Judges requesting them to seize the Chamber with a view to annulment. The Co-Investigating Judges shall issue an order accepting or refusing the request as soon as possible and, in any case, before the Closing Order. Such orders shall be subject to appeal in accordance with these IRs.

3. The Greffier of the Co-Investigating Judges shall register the application immediately. Where the Co-Investigating Judges decide to accept the application, they shall forward the case file to the Chamber.

4. The Chamber may declare an application for annulment inadmissible where the application: does not set out sufficient reasons; relates to an order that is open to appeal; or is manifestly unfounded. The decision of the Chamber is not open to appeal. When the decision is made not to admit an application, the case file shall immediately be returned to the Co-Investigating Judges.

5. Where the Chamber decides to annul an investigative action, it shall decide whether the annulment affects other actions or orders. Where actions or orders are annulled in part, such part shall be cancelled after making a certified copy of the original. All such annulled actions or orders, and certified copies, shall be removed from the case file and archived by the Greffier of the Chamber. After any such annulment or cancellation, the Chamber shall return the case file to the Co-Investigating Judges. It is prohibited to draw any inference against the parties from such annulled actions or orders or from the cancelled parts thereof. Any Judge, Co-Prosecutor or lawyer who engages in such activities shall be subject to disciplinary proceedings as provided in Rules 6 and 35 of these IRs.

6. A party whose interests have been affected by an invalid investigative action may waive the right to request annulment, and thus regularise the proceedings. The Co-Investigating Judges shall record such renunciation in the case file. Where the requesting party has a lawyer, the Co-Investigating Judges shall summon such lawyer at least 5 (five) days before the date of recording the renunciation, so that the lawyer may examine the case file.

7. Subject to any appeal, the Closing Order shall cure any procedural defects in the judicial investigation. No issues concerning such procedural defects may be raised before the Trial Chamber or the Supreme Court Chamber.

### **Rule 77. Procedure for Pre-Trial Appeals and Applications**

(Amended on 5 September 2008)

1. The Greffier of the Co-Investigating Judges shall keep a register of all appeals and applications referred to in sub-rules 73(a) and (b). Appeals referred to in sub-rule 73(c) shall be filed with the Greffier of the Chamber, who shall keep a register, inform the authority that made the decision and, if necessary, request it to provide any relevant documents.

2. Upon receipt of notice of appeal or a decision provided for in Rule 76(3), the Greffier of the Co-Investigating Judges shall inform the Co-Investigating Judges and forward the case-file, or a safeguard copy, to the Chamber, within 5 (five) days. Where a safeguard copy of the

case file has been made for forwarding to the Chamber, the Co-Investigating Judges shall keep the original case file.

3. (a) The President of the Chamber shall verify that the case file is up to date and set a hearing date.

(b) The Pre-Trial Chamber may, after considering the views of the parties, decide to determine an appeal or application on the basis of the written submissions of the parties only.

(c) The Greffier of the Chamber shall notify the Co-Investigating Judges, the parties and their lawyers of the hearing date or the decision to proceed on the basis of written submissions only.

4. The Co-Prosecutors and the lawyers for the parties may consult the case file up until the date of the hearing. They must file their pleadings with the Greffier of the Chamber as provided in the Practice Direction on filing of documents. The Greffier shall record the date of receipt on pleadings and immediately place them in the case file.

5. Hearings of the Chamber shall be conducted *in camera*, except as otherwise provided in sub-rule 6. Remote participation of the judges may be organized, as necessary.

6. The Chamber may, at the request of any judge or party, decide that all or part of a hearing be held in public, in particular where the case may be brought to an end by its decision, including appeals or applications concerning jurisdiction or bars to jurisdiction, if the Chamber considers that it is in the interests of justice and it does not affect public order or any protective measures authorized by the court.

7. Reserve Judges of the Chamber shall be present at all stages of any hearings that the President of the Chamber considers may require a substantial length of time to hear, in particular an appeal against a Closing Order by the Co-Investigating Judges. Such Reserve Judges shall not have the right to express any opinion or to make any decision unless and until appointed to replace a sitting judge.

8. In the absence of a sitting Judge, the President of the Chamber may, after consultation with the remaining judges, decide to adjourn the proceedings or designate a Reserve Judge to sit in place of the absent Judge to ensure that the proceedings can continue. Where, however, the replaced sitting Judge is able to attend, the Chamber may, after taking into consideration all factors relevant to the case and being satisfied that the sitting Judge has been fully informed of the evolution of the case during his/her absence, decide to replace the Reserve Judge by that sitting Judge.

9. In the absence of the President of the Chamber, and in a situation where the hearing is otherwise able to continue, the oldest national judge shall automatically preside over the hearing. In such case, a national reserve judge shall fill the vacant position until the end of the proceedings in question, subject to sub-rule 8 above.

10. The President of the Chamber shall appoint one international and one national judge to be co-rapporteurs. The co-rapporteurs shall prepare a written report which shall set out the facts at issue and the details of the decision being appealed, which shall be placed on the case file. After the co-rapporteurs have read their report, the Co-Prosecutors and the lawyers for the parties may present brief observations. The Chamber may order the personal appearance of any person, as well as the production of exhibits.

11. Pending the outcome of proceedings before the Chamber under this Rule, and unless the Chamber orders otherwise, the Co-Investigating Judges may continue their investigation, where applicable.

12. When the hearing has ended, the Chamber shall deliberate *in camera* to reach its decision. An interpreter may be called upon to facilitate the deliberations.

13. A decision of the Chamber requires the affirmative vote of at least 4 (four) judges. This decision is not subject to appeal. If the required majority is not attained, the default decision of the Chamber shall be as follows:

a) As regards an appeal against or an application for annulment of an order or investigative action other than an indictment, that such order or investigative action shall stand.

b) As regards appeals against indictments issued by the Co-Investigating Judges, that the Trial Chamber be seised on the basis of the Closing Order of the Co-Investigating Judges.

14. All decisions under this Rule, including any dissenting opinions, shall be reasoned and signed by their authors. Such decisions shall be notified to the Co-Investigating Judges, the Co-Prosecutors and the other parties by the Greffier of the Chamber. The Co-Investigating Judges shall immediately proceed in accordance with the decision of the Chamber.

15. Where the Co-Investigating Judges order the release of a Charged Person in provisional detention, or decide to dismiss a case, the person shall be released unless the President of the Chamber, on the request of the Co-Prosecutors, decides otherwise. A request to stay such release or dismissal order must be lodged with the President of the Chamber by the Co-Prosecutors within 24 (twenty-four) hours of their notification, together with a copy of the notice of appeal against such order filed with the Greffier of the Co-Investigating Judges. The Co-Prosecutors shall forward a copy of the request to the Greffier of the Co-Investigating Judges. The President of the Chamber shall decide within 48 (forty-eight) hours of the request, during which the effects of such order shall be suspended. If the President of the Chamber refuses to grant a stay of the Co-Investigating Judges' order or fails to decide on such request within this time limit, the Charged Person shall be released immediately. Where the President of the Chamber grants a stay of the Co-Investigating Judges' order, the person shall remain in detention until the Chamber has handed down its decision on the appeal. Such appeals shall be decided within 15 (fifteen) days of receipt of the case file by the Greffier of the Chamber. Beyond that period, excepting unavoidable circumstances, the Charged Person shall be released.

#### **Rule 78. Publication of Pre-Trial Chamber Decisions**

All decisions and default decisions of the Chamber, including any dissenting opinions, shall be published in full, except where the Chamber decides that it would be contrary to the integrity of the Preliminary Investigation or to the Judicial Investigation.

### **E – Proceedings Before the Trial Chamber**

#### **Rule 79. General Provisions**

(Amended on 1 February 2008, on 5 September 2008 and on 6 March 2009)

1. The Trial Chamber shall be seised by an Indictment from the Co-Investigating Judges or the Pre-Trial Chamber.

2. When the Chamber is seised of a number of related Indictments, it may issue an order consolidating all such Indictments.
3. Reserve Judges of the Chamber shall be present at all stages of proceedings. Such Reserve Judges shall not have the right to express any opinion or to make any decision unless and until appointed to replace a sitting judge. If a Reserve Judge, for reasons of illness or any other urgent personal reasons, is unable to attend part of the proceedings, including part of the hearings, the Chamber may proceed.
4. In case of absence of a sitting Judge, the President of the Chamber may, after consultation with the remaining judges, decide to adjourn the proceedings or designate a Reserve Judge to sit in place of the absent Judge for the remainder of the proceedings in question. Where, however, the replaced sitting Judge is able to return, the Chamber may, after taking into consideration all factors relevant to the case and being satisfied that the returning Judge has been fully informed of the evolution of the case during his/her absence, decide to replace the Reserve Judge by that sitting Judge.
5. In case of absence of the President of the Chamber, and in a situation where the proceedings are otherwise able to continue, the oldest national judge shall automatically preside over the trial. In such case, a national Reserve Judge shall fill the vacant position until the end of the trial in question, subject to replacement under sub-rule 4 above.
6. Hearings of the Chamber shall be conducted in public.
  - a) The Office of Administration shall ensure a public broadcast of the trial hearings, subject to any protective measures adopted under these IRs.
  - b) Where the Chamber considers that a public hearing would be prejudicial to public order, or to give effect to protective measures ordered under these IRs, it may, by reasoned decision, order that all or part of the hearing be held *in camera*. This decision is not open to appeal.
  - c) In any case, the Chamber shall announce its judgments at a public hearing.
7. In order to facilitate the fair and expeditious conduct of the proceedings, the Chamber may confer with the parties or their representatives, as applicable, by holding a trial management meeting. Such meeting shall be held *in camera*, unless the Trial Chamber decides otherwise. The purpose of this meeting will *inter alia* be to allow exchanges between the parties to facilitate the setting of the date of the initial or of the substantive hearings and to review the status of the case by allowing the Accused to raise issues in relation thereto, including his or her mental and physical condition.
8. If necessary, the meeting may be conducted with the participation of counsel via tele-conference or video-conference. The Chamber may also invite *inter alia* representatives of the Office of the Administration, including representatives of the different sections or units of the Court, to attend the meeting.
9. The Chamber may order the parties, within a prescribed time limit prior to the Initial hearing, to file documents including the following:
  - a). In addition to the list of witnesses referred to in Rule 80 of the Rules:
    - i) A summary of the facts on which each witness is expected to testify. Subject to any protective measures that might have been ordered, the summary should be sufficiently detailed to allow the Chamber and the other parties to understand fully the nature and content of the proposed testimony;

- ii) The points of the Indictment to which each witness is expected to testify, including the exact paragraph/s and the specific count/s; and
  - iii) The estimated length of time required for each witness to testify.
- b). A list of exhibits they intend to offer in the case, containing a brief description of their nature and contents.
  - c). An indication of the legal issues, if any, they intend to raise at the initial hearing.
  - d). A list of new documents they intend to offer in the case, containing a brief description of their contents, and
  - e). A list of uncontested facts, together with a reference to the relevant evidence.

### **Rule 80. Preparation of the trial**

(Amended on 1 February 2008 and on 5 September 2008)

1. The Co-Prosecutors shall submit to the Greffier of the Chamber a list of the witnesses and experts they intend to summon 15 (fifteen) days from the date the Indictment becomes final. The Greffier shall place the list on the case file and, subject to any protective measures, forward a copy of the list to the parties.
2. Where the Accused and/or any Civil Party wishes to summon any witnesses who are not on the list provided by the Co-Prosecutors, they shall submit an additional list to the Greffier of the Chamber within 15 (fifteen) days from notification of the list. The Greffier shall place such list on the case file and, subject to any protective measures, forward a copy of the list to the other parties.
3. The date of the trial shall be determined by the President of the Chamber, taking into account the time limits for notification and summons set out in these IRs.
4. The parties shall be notified in writing of the trial date by the Greffier of the Chamber, as soon as possible. Such notification shall be deemed valid summons.

### **Rule 80 bis. Initial Hearing**

(Adopted on 1 February 2008 and amended on 5 September 2008)

1. The trial begins with an initial hearing. The President shall declare the initial hearing open.
2. At this hearing, the Chamber shall consider the lists of potential witnesses and experts submitted by the parties in accordance with these IRs. Where the Chamber considers that the hearing of a proposed witness or expert would not be conducive to the good administration of justice, it shall reject the request that such person be summoned.
3. The Chamber shall consider matters dealt with in Rule 83 and Rule 89.

### **Rule 81. Presence of the Accused and defence lawyers**

(Amended on 1 February 2008 and on 5 September 2008)

1. The Accused shall be tried in his or her presence, except as provided in this Rule.
2. If the Accused, when not in detention, does not attend a hearing set by the Chamber, the Chamber may issue an order to adjourn the hearing temporarily and issue an Arrest Warrant or an Arrest and Detention Order, as appropriate, in accordance with these IRs. The Chamber shall set a new date for the hearing. The Accused shall be brought to the ECCC detention

facility until he or she is brought before the Chamber, which will decide on detention in accordance with Rule 63.

3. Where the Accused refuses to attend the proceedings, he or she shall be brought before the Chamber, by public force if necessary, where he or she shall be notified of the inalienable right to be assisted by a lawyer of choice, to have one assigned as provided in these IRs or to represent him or herself.

4. If the Accused, following an initial appearance and having been duly summoned to the subsequent hearing, continues to refuse or fails to attend the proceedings, or is expelled from them in accordance with these IRs, the proceedings may continue in his or her absence. In such cases, the Accused may be defended during the proceedings by his or her lawyer. Where the Accused refuses to choose a lawyer, the Chamber shall order that the accused be represented by a lawyer and request the Defence Support Section to assign him or her a lawyer, from the lists mentioned at Rule 11.

5. If, due to health reasons or other serious concerns, the Accused cannot be present before the Chamber, it may, with the consent of the Accused, continue the proceedings in his or her absence. In such cases, the Accused may be defended during the proceedings by his or her lawyer. Where the Accused refuses to choose a lawyer, the Chamber shall order that the accused be represented by a lawyer and request the Defence Support Section to assign him or her a lawyer, from the lists mentioned at Rule 11. The Accused may also request to follow the proceedings by appropriate audiovisual means. If questioning of the Accused is necessary, the Chamber may order that the Accused be questioned from his or her current place of abode, if necessary, by appropriate audiovisual means. The Chamber shall set the date for the questioning, which shall be heard by the Chamber in the presence of the Co-Prosecutors, the Greffier, and the lawyer of the Accused, unless the Accused has expressly waived his or her right to a lawyer. The interview shall be placed on the record of the proceedings.

6. Where no lawyer of the Accused is present without justification during the hearing, the Chamber may either adjourn the hearing or, if the Accused requests assistance of a lawyer, request the Defence Support Section to temporarily assign him or her a lawyer, from the lists mentioned at Rule 11. As soon as the assigned lawyer has had sufficient time to acquaint him or herself with the file, the Chamber continues its hearing.

### **Rule 82 Provisional Detention of an Accused and Bail**

(Amended on 1 February 2008 on 5 September 2008 and on 6 March 2009)

1. The Accused shall remain at liberty whilst appearing before the Chamber unless Provisional Detention has been ordered in accordance with these IRs. Where the Accused is in detention at the initial appearance before the Chamber, he or she shall remain in detention until the Chamber's judgment is handed down, subject to sub-rule 2.

2. The Chamber may, at any time during the proceedings, order the release of an Accused, or where necessary release on bail, or detain an Accused in accordance with these IRs. The Chamber shall so decide after hearing the Co-Prosecutors, the Accused and his or her lawyers.

3. The Accused, or his or her lawyers, may request the Chamber to release him or her either orally during a hearing, or by written application submitted to the Greffier of the Chamber. If the request for release is made orally, the Greffier of the Chamber shall note it on the record of the proceedings. If the request is made in writing, the Greffier shall note the date of receipt on the application, and forward it immediately to the President of the Chamber. The Chamber shall decide after hearing the Co-Prosecutors, the Accused and his or her lawyers. It shall

decide as soon as possible and in any event no later than 30 (thirty) days after receiving the oral request or application, unless circumstances justify a greater period.

4. After a decision refusing the release of the Accused, he or she may only file a further application where his or her circumstances have changed since the last application was finally rejected.

5. All decisions of the Chamber concerning provisional detention are open to appeal by the Accused or the Co-Prosecutors, as appropriate.

6. If the Chamber orders the release of the Accused, he or she shall be released unless the President of the Supreme Court Chamber, on the request of the Co-Prosecutors, decides otherwise. Any request to stay such release order must be lodged with the President of the Supreme Court Chamber by the Co-Prosecutors within 24 (twenty-four) hours of their notification, together with a copy of the appeal against such release order filed with the Greffier of the Chamber. The Co-Prosecutors shall file a copy of the request with the Greffier of the Chamber. The President of the Supreme Court Chamber shall decide within 48 (forty-eight) hours of the request, during which the effects of such order shall be suspended. If the President of the Supreme Court Chamber refuses to grant a stay of the Chamber's order or fails to decide on such request within this time limit, the Accused shall be released immediately. Where the President of the Supreme Court Chamber grants a stay of the Chamber's order, the Accused shall remain in detention until the Supreme Court Chamber has handed down its decision on such appeal. Except in exceptional circumstances, such appeal shall be decided by the Supreme Court Chamber within 15 (fifteen) days of receipt of the case file by the Greffier of the Supreme Court Chamber. Remote participation of the judges may be organized, as necessary.

### **Rule 83. Appearance by the Civil Parties**

(Amended on 1 February 2008)

1. At the initial hearing, the Chamber shall consider any applications submitted by Victims to be joined as Civil Parties, as provided in Rule 23(4). Civil Parties have the right to be represented by a lawyer, in accordance with these IRs.

2. Any Civil Party who does not appear personally or is not validly represented at any time during the trial shall be deemed to have abandoned his or her action, unless he or she has already claimed reparation before the start of the trial.

### **Rule 84. Appearance of Witnesses and Experts**

(Amended on 1 February 2008 and on 6 March 2009)

1. The Accused shall have the absolute right to summon witnesses against him or her whom the Accused had no opportunity to examine during the pre-trial stage.

2. After the schedule is decided, the Greffier of the Chamber shall summon all the approved witnesses and experts, who shall respond to such summons and appear during the proceedings before the Chamber in accordance with these IRs.

3. During the trial, each party may request the Chamber to hear any witnesses present in the courtroom who were not properly summoned to testify. Where the Chamber consents, the Greffier of the Chamber shall record the identity of the witnesses and instruct them to stay in the waiting room.

4. All decisions of the Chamber concerning the summoning of witnesses shall be open to appeal only at the same time as the Judgment of the Chamber on the merits.

### **Rule 85. Conduct of Hearings**

1. The President of the Chamber shall preside over the proceedings, and facilitate interventions by the other judges. He or she shall guarantee the free exercise of defence rights. In consultation with the other judges, the President may exclude any proceedings that unnecessarily delay the trial, and are not conducive to ascertaining the truth.

2. In consultation with the other judges, the President shall maintain good order during the trial, in accordance with these IRs.

### **Rule 86. Access to Case Files**

At all times, the Co-Prosecutors and the lawyers for the other parties shall have the right to examine and obtain copies of the case file, under supervision of the Greffier of the Chamber, during working days and subject to the requirements of the proper functioning of the ECCC.

### **Rule 87. Rules of Evidence**

(Amended on 1 February 2008, on 6 March 2009 and on 11 September 2009)

1. Unless provided otherwise in these IRs, all evidence is admissible. The onus is on the Co-Prosecutors to prove the guilt of the accused. In order to convict the accused, the Chamber must be convinced of the guilt of the accused beyond reasonable doubt.

2. Any decision of the Chamber shall be based only on evidence that has been put before the Chamber and subjected to examination.

3. The Chamber bases its decision on evidence from the case file provided it has been put before it by a party or if the Chamber itself has put it before the parties. —Evidence from the case file is considered put before the Chamber or the parties if its content has been summarised, read out, or appropriately identified in court. 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.

4. During the trial, either on its own initiative or at the request of a party, the Chamber may summon or hear any person as a witness or admit any new evidence which it deems conducive to ascertaining the truth. Any party making such request shall do so by a reasoned submission. The Chamber will determine the merit of any such request in accordance with the criteria set out in Rule 87(3) above. The requesting party must also satisfy the Chamber that the requested testimony or evidence was not available before the opening of the trial.

5. The Chamber shall give the same consideration to confessions as to other forms of

evidence.

6. Where the Co-Prosecutors and the Accused agree that alleged facts contained in the Indictment are not contested, the Chamber may consider such facts as proven.

7. Any communications between the Accused and their lawyers are privileged and shall not be admissible as evidence.

8. The President of the Chamber may order that exhibits be brought before the Chamber.

### **Rule 88. Appearance Before the Trial Chamber**

(Amended on 5 September 2008 and on 11 September 2009)

1. The Greffier of the Chamber shall call the Accused, Civil Parties, witnesses and experts and verify their identity. Each party shall sit at their designated place in the courtroom.

2. The Accused shall not communicate with each other. Whenever possible, experts and witnesses shall stay in a separate room from which they cannot see or hear the proceedings. While in such room, the witnesses shall not communicate with each other.

3. Any objection against the procedural regularity of a summons as set out in these IRs shall be raised before questioning the Accused on the merits of the case. The objection shall otherwise be declared inadmissible.

### **Rule 89. Preliminary Objections**

(Amended on 1 February 2008 and on 11 September 2009)

1. A preliminary objection concerning:

- a) the jurisdiction of the Chamber,
- b) any issue which requires the termination of prosecution;
- c) nullity of procedural acts made after the indictment is filed

shall be raised no later than 30 (thirty) days after the Closing Order becomes final, failing which it shall be inadmissible.

2. The Chamber shall afford the other parties the opportunity to respond to the application.

3. The Chamber shall, as appropriate, issue its reasoned decision either immediately or at the same time as the judgment on the merits. In the latter case, the proceedings shall continue.

### **Rule 89 bis. Substantive hearing**

(Adopted on 5 September 2008)

1. The President shall declare the substantive hearing open. The President shall order the Greffiers to read the counts against the Accused and may order the Greffier to read the factual analysis in the Indictment.

2. Before any Accused is called for questioning, the Co-Prosecutors may make a brief opening statement of the charges against the Accused. The Accused or his/her lawyers may respond briefly.

### **Rule 90. Questioning of the Accused**

1. The President of the Chamber shall inform the Accused of his or her rights under Rule 21(1)(d) and shall conduct the hearing. All the judges may ask any questions which they consider to be conducive to ascertaining the truth. In this respect, they have a duty to raise all pertinent questions, whether these would tend to prove or disprove the guilt of the Accused.
2. After questioning by the judges, the Co-Prosecutors and all the other parties and their lawyers shall have the right to question the Accused. All questions shall be asked with the permission of the President. Except for questions asked by the Co-Prosecutors and the lawyers, all questions shall be asked through the President of the Chamber.

### **Rule 91. Hearing of other Parties and Witnesses**

1. The Chamber shall hear the Civil Parties, witnesses and experts in the order it considers useful.
2. The Co-Prosecutors and all the other parties and their lawyers shall be allowed to ask questions with the permission of the President. Except for questions asked by the Co-Prosecutors and the lawyers, all questions shall be asked through the President of the Chamber.
3. The Co-Prosecutors and all the other parties and their lawyers may object to the continued hearing of the testimony of any witnesses, if they consider that such testimony is not conducive to ascertaining the truth. In such cases, the President shall decide whether to take the testimony.
4. After being questioned, each witness shall remain at the disposal of the Chamber until the Chamber decides that his or her presence is no longer needed.

### **Rule 92. Written Submissions**

(Amended on 6 March 2009)

The parties may, up until the closing statements, make written submissions as provided in the Practice Direction on filing of documents. The Greffier of the Chamber shall sign such written submissions and indicate the date of receipt, and place them on the case file.

### **Rule 93. Additional Investigations by the Trial Chamber**

1. Where the Chamber considers that a new investigation is necessary it may, at any time, order additional investigations. Such order shall indicate which judge or judges shall conduct the new investigation.
2. Such judge(s) may, under the same conditions as the Co-Investigating Judges:
  - a) go anywhere within the territorial jurisdiction of the ECCC;
  - b) interview witnesses;
  - c) conduct searches;
  - d) seize any evidence; or
  - e) order expert opinions.

3. For the purposes of such additional investigations, the judge(s) may issue Rogatory Letters to the Judicial Police.

#### **Rule 94. Closing Statements**

(Amended on 6 March 2009)

1. After examining all the evidence, the President of the Chamber shall call successively upon the following persons to make their closing statements:

- a) The Civil Parties;
- b) the Co-Prosecutors, for such oral submissions as they consider necessary for justice to be done;
- c) the lawyers for the Accused; and
- d) the Accused.

2. Civil parties and the Co-Prosecutors may make rebuttal statements.

3. In all cases, the Accused and his or her lawyers shall always be entitled to make the final statement.

#### **Rule 95. Adjournment of Proceedings**

Where the proceedings are not concluded during a hearing, the President of the Chamber shall adjourn the proceedings to another fixed date.

#### **Rule 96. Deliberation of the Trial Chamber**

(Amended on 1 February 2008)

1. The judges shall deliberate *in camera* to reach their verdict. An interpreter may be called upon to facilitate the deliberations.

2. At this stage, no further applications may be submitted to the Chamber, and no further submissions may be made. During the course of the deliberations, the judges may reopen the proceedings.

#### **Rule 97. Record of the Proceedings**

(Amended on 1 February 2008 and on 5 September 2008)

1. During the hearings, the Greffier of the Chamber shall take all due care in making a daily written record of the proceedings. The Greffier of the Chamber shall sign the daily written record of proceedings within 10 (ten) days. The Chamber may in exceptional circumstances extend that period.

2. Trial proceedings shall be fully transcribed and recorded using appropriate audiovisual means, under the supervision of the Greffier.

3. The daily written record of the proceedings prepared by the Greffier shall be deemed to represent faithfully the conduct of the hearings. However, at any time, recourse to the transcripts and where necessary to the audiovisual recordings may be made in order to supplement or to correct the daily written record.

4. An application to correct the transcript may be made in writing to the Trial Chamber. The Trial Chamber will determine the application at any time after the expiration of 3 working days.

### **Rule 98. The Judgment**

(Amended on 1 February 2008 and on 6 March 2009)

1. Where the judgment is not pronounced during the final hearing, the President of the Chamber shall notify the parties of the date for pronouncement of the judgment.
2. The judgment shall be limited to the facts set out in the Indictment. The Chamber may, however, change the legal characterisation of the crime as set out in the Indictment, as long as no new constitutive elements are introduced. The Chamber shall only pass judgment on the Accused. If another person, appearing as a witness during the trial is suspected of committing a crime or conspiring with someone to commit a crime, the Chamber shall only try such person after he or she has been charged and indicted in accordance with these IRs.
3. The Chamber shall examine whether the acts amount to a crime falling within the jurisdiction of the ECCC, and whether the Accused has committed those acts.
4. Pursuant to the ECCC Law, the Chamber shall attempt to achieve unanimity. If this is not possible, a conviction shall require the affirmative vote of at least 4 (four) judges. If the required majority is not attained, the default decision shall be that the Accused is acquitted.
5. If the Accused is found guilty, the Chamber shall sentence him or her in accordance with the Agreement, the ECCC Law and these IRs.
6. Where the Chamber considers that the acts set out in the Indictment have not been proved, or that the Accused is not guilty of those acts, he or she shall be acquitted.
7. Where the Chamber considers that the crimes set out in the Indictment do not fall within the jurisdiction of the ECCC, it shall decide that it does not have jurisdiction in the case.

### **Rule 99. Effect of the Judgment**

(Amended on 1 February 2008)

1. In case of acquittal, or where a sentence handed down is less than, or equal to, that of any Provisional Detention already served, the Accused shall be immediately released, unless he or she is in detention in relation to other charges.
2. Where the detained Accused is found guilty, the Chamber shall decide on continued detention. Where the Accused is present at judgment but not detained, the Chamber may issue a reasoned Detention Order. Where the Accused is absent, it may issue an Arrest and Detention Order. These orders shall have immediate effect.
3. When the judgment is pronounced, any bail order shall come to an end. The Chamber shall make any necessary decisions concerning sealed items and, for this purpose, may grant leave or invite the submission of *amicus curiae* briefs.

### **Rule 100. Judgment on Civil Party Claims**

(Amended on 1 February 2008)

1. The Chamber shall make a decision on any Civil Party claims in the judgment. It shall rule on the admissibility and the substance of such claims against the Accused. Where appropriate,

the Chamber may adjourn its decision on Civil Party claims to a new hearing.

2. Where a Civil Party has claimed reparation pursuant to Rule 23 before the start of the trial but he or she does not appear personally or is not validly represented at any time during the trial, and where the Accused was found guilty, the Chamber shall make its decision concerning reparation based on the case file.

### **Rule 101. Form of the Judgment**

1. The judgment shall be divided into two parts:

- a) the findings, setting out the factual and legal reasons supporting the Chamber's decision; and
- b) the disposition by the Chamber.

2. Where there is no unanimity, a judge may write a separate or dissenting opinion, in which case, it shall be attached to the judgment.

3. The Chamber shall examine all counts in the Indictment and consider all arguments raised during the trial.

4. The findings in the judgment shall respond to the written submissions filed by all of the parties.

5. The disposition by the Chamber shall set out each crime committed by an Accused, the applicable law, the sentence and any reparations.

6. The judgment shall be signed by all the judges of Chamber, as well as the Greffier. A dissenting judge shall, however, only sign his or her dissenting opinion. The judgment shall include:

- a) the date of the hearing(s);
- b) the date of issuance of the judgment;
- c) the full name of the judges who conducted the trial;
- d) the full name of the Co-Prosecutors;
- e) the full name of the Greffiers;
- f) the full name, place of residence, birth date, birthplace, and occupation of the Accused and the Civil Parties;
- g) the full names of the lawyers; and
- h) the appellate rights of the parties and the conditions and time limits for appeals.

7. The original judgment shall be signed, as set out above, on the day the judgment is issued, at the latest.

### **Rule 102. Announcement of the Judgment at a Public Hearing**

(Amended on 1 February 2008)

1. All judgments shall be issued and announced during a public hearing. A summary of the findings and the disposition shall be read aloud by the President or any other judge of the Chamber. Any dissenting judge may also read aloud a summary of their dissenting opinion.

The Greffier shall provide a copy of the judgment to the parties and ensure that the judgment is published by the Office of Administration by appropriate means.

2. If the Accused is absent when the judgment is announced, the Accused will be notified through his or her lawyer or through the lawyer appointed by the Chamber. The period of appeal will start with notification.

### **Rule 103. Judgment Concerning the Civil Parties**

1. Where a Civil Party appears or is validly represented at the judgment hearing, the judgment shall not be notified to such party. If neither the Civil Party nor his or her lawyer were present, the Civil Party shall be notified of the judgment.

2. In any case, such a judgment is open to appeal. The time limits for appeal shall commence from the date of the judgment, or notification, as appropriate.

## **F – Appeals from the Trial Chamber**

### **Rule 104. Jurisdiction of the Supreme Court Chamber**

(Amended on 5 September 2008 and on 6 March 2009)

1. The Supreme Court Chamber shall decide an appeal against a judgment or a decision of the Trial Chamber on the following grounds:

- a) an error on a question of law invalidating the judgment or decision; or
- b) an error of fact which has occasioned a miscarriage of justice.

Additionally, an immediate appeal against a decision of the Trial Chamber may be based on a discernible error in the exercise of the Trial Chamber's discretion which resulted in prejudice to the appellant.

For these purposes, the Supreme Court Chamber may itself examine evidence and call new evidence to determine the issue.

2. The Supreme Court Chamber may either confirm, annul or amend decisions in whole or in part, as provided in Rule 110.

3. Decisions of the Chamber are final, and shall not be sent back to the Trial Chamber.

4. The following decisions of the Trial Chamber are subject to immediate appeal:

- a) decisions which have the effect of terminating the proceedings;
- b) decisions on detention and bail under Rule 82;
- c) decisions on protective measures under Rule 29(4)(c);
- d) decisions on interference with the administration of justice under Rule 35(6); and
- e) decisions declaring the application of a civil party inadmissible under Rule 23(4).

Other decisions may be appealed only at the same time as an appeal against the judgment on the merits.

Unless otherwise provided in the Internal Rules or decided by the Trial Chamber, an immediate appeal does not stay the proceedings before the Trial Chamber.

**Rule 104bis. Rules applicable before the Supreme Court Chamber**

(Adopted on 6 March 2009)

In the absence of any specific provision, the rules that apply to the Trial Chamber shall, *mutatis mutandis*, also apply to the Supreme Court Chamber.

**Rule 105. Admissibility**

(Amended on 6 March 2009)

1. An appeal may be filed by:
  - a) The Co-Prosecutors;
  - b) The Accused;
  - c) Victims, in respect of their rights under Rule 23(4); and
  - c) The Civil Parties in respect of their other civil interests, but only where the Co-Prosecutors have appealed.
2. A party wishing to appeal a decision of the Trial Chamber where immediate appeal is available under Rule 104(4) shall file an appeal setting out the grounds of appeal and arguments in support thereof. In respect of each ground of appeal it shall:
  - a) specify an alleged error on a question of law and demonstrate how it invalidates the decision; or
  - b) specify a discernible error in the exercise of the Trial Chamber's discretion which results in prejudice to the appellant; or
  - c) specify an alleged error of fact and demonstrate how it occasioned a miscarriage of justice.
3. A party wishing to appeal a judgment shall file a notice of appeal setting forth the grounds. The notice shall, in respect of each ground of appeal, specify the alleged errors of law invalidating the decision and alleged errors of fact which occasioned a miscarriage of justice. The appellant shall subsequently file an appeal brief setting out the arguments and authorities in support of each of the grounds, in accordance with the requirements of paragraphs 2(a) and (c) of this Rule.
4. Appeals shall identify the finding or ruling challenged, with specific reference to the page and paragraph numbers of the decision of the Trial Chamber.

**Rule 106. Notices of Appeal and Briefs**

(Amended on 6 March 2009)

1. The Greffier of the Trial Chamber shall immediately notify all other parties and their lawyers in the case of the filing of an appeal.
2. Notices of appeal and immediate appeals shall be filed with the Greffier of the Trial Chamber, and shall be noted in the appeal register of the Trial Chamber.
3. The Accused and the Civil Parties may be represented by their lawyers, who shall have a written authorization from their clients to file an appeal.

4. The notice of appeal or the immediate appeal shall be signed by the appellant or appellant's lawyers, and initialled by the Greffier of the Trial Chamber. The written authorization shall be attached to the appeal.

5. Appeal briefs in respect of judgments and any subsequent related documents shall be filed with the Greffier of the Supreme Court Chamber.

6. Where the Accused is in detention, he or she shall file the notice of appeal or the immediate appeal with the head of the ECCC detention facility, who shall immediately submit it to the Greffier of the Trial Chamber. The Greffier shall note it on the appeal register.

### **Rule 107. Time Limits for Appeal**

(Amended on 6 March 2009)

1. In the case of a decision of the Trial Chamber, which is open to immediate appeal as provided for in Rule 104(4) paragraphs (a), (d) and (e), the appeal shall be filed within 30 (thirty) days of the date of the decision or its notification.

2. In the case of a decision of the Trial Chamber relating to detention, bail or protective measures, which is subject to immediate appeal as provided for in Rule 104(4) paragraphs (b) and (c), and except as provided in sub-rule 3 below, the appeal shall be filed within 15 (fifteen) days of the date of decision or its notification, as appropriate.

3. In the case of a decision of the Trial Chamber ordering release from provisional detention, which is open to immediate appeal as provided for in Rule 104(4)(b), the appeal shall be filed according to the procedure provided in Rule 82(6) and within 24 hours of the notification of the decision to release.

4. Notice of appeal against a judgment of the Trial Chamber, as provided in Rule 105(3), shall be filed within 30 (thirty) days of the date of pronouncement of the judgment or its notification, as appropriate. The appeal brief shall be filed within 60 (sixty) days of the date of filing the notice of appeal. Where a party appeals, other parties have an additional 15 (fifteen) days to file their notice of appeal. The additional time begins from the expiration of the initial time limit for filing the notice of appeal.

### **Rule 108. Procedure for Appeal before the Supreme Court Chamber**

(Amended on 5 September 2008 and on 6 March 2009)

1. Where an appeal is filed against a judgment of the Trial Chamber, the Greffier of the Trial Chamber shall forward the case file to the Greffier of the Chamber together with certified copies of the judgment and each notice of appeal.

2. Where there is an immediate appeal against a decision of the Trial Chamber, the above-mentioned documents shall be forwarded to the Supreme Court Chamber within 10 (ten) days of the filing of the appeal, unless there are extenuating circumstance. Any such circumstances shall be specified at the time of forwarding.

3. The date of the appeal hearing shall be determined by the President of the Chamber, after having verified that the case file is complete. The Greffier of the Chamber shall notify all parties of the hearing date. Reserve Judges shall be present, and the procedure set out in Rule 80 shall apply.

4. The Chamber shall issue its decision within a reasonable period. Where there is an appeal against a decision on detention, the Chamber shall decide as soon as possible and in any event

no more than three months after receipt of the notice of appeal by the Greffier of the Supreme Court Chamber.

5. The President of the Chamber shall appoint one international and one national judge to be co-rapporteurs for the appeal. The co-rapporteurs shall prepare a written report which shall set out the facts of the case, and the details of the decision being appealed. The report must be in sufficient detail to give the Chamber full information on the appeal. Such report will be attached to the case file.

6. The Co-Prosecutors and the lawyers for the other parties may examine the case file at any time before the hearing. They may submit any pleadings for the appeal to the Greffier of the Chamber as provided in the Practice Direction on filing of documents. The Greffier shall date such pleadings and attach them to the case file forthwith.

7. Subject to Rule 87(3), the parties may submit a request to the Chamber for additional evidence provided it was unavailable at trial and could have been a decisive factor in reaching the decision at trial. The request shall clearly identify the specific findings of fact made by the Trial Chamber to which the additional evidence is directed. The other parties affected by the request may respond within 15 (fifteen) days of the receipt of notification of the request.

### **Rule 109. Appeal Hearings**

(Amended on 6 March 2009)

1. Hearings of the Chamber shall be conducted in public. The Chamber may decide to determine immediate appeals on the basis of written submissions only.

2. The Office of Administration shall ensure a public broadcast of the appeal hearings, subject to any protective measures ordered under these IRs.

3. Where the Chamber considers that a public hearing would be prejudicial to public order, or to give effect to protective measures ordered under these IRs it may, by reasoned decision, order that all or part of the hearing be held *in camera*. This decision is not open to appeal.

4. The co-rapporteurs shall read their report to the Chamber. The President shall then inform the Accused of his or her rights under Rule 21(1)(d) and conduct the hearing. The appellant may make a brief statement of the grounds of appeal. The other parties may make a brief reply. All the judges may ask any questions which they consider to be conducive to the determination of the appeal.

5. In all cases the Accused speaks last. The lawyers for the Accused shall be allowed to make a brief rebuttal presentation.

6. The parties may not raise any matters of fact or law during a hearing that were not previously set out in their submissions on appeal.

### **Rule 110. Effects of the Appeal**

1. The scope of the appeal shall be limited to the issues raised in the notice, and the status of the appellant.

2. In all cases, the Chamber may change the legal characterisation of the crime adopted by the Trial Chamber. However, it shall not introduce new constitutive elements that were not submitted to the Trial Chamber.

3. Where the only appeal filed is by the Accused, the Chamber shall not increase the

sentence. It may only amend the judgment for the benefit of the Accused. In such cases, the Chamber shall not increase any reparations in favour of the Civil Parties.

4. In case of appeal by the Co-Prosecutors, the Chamber may acquit the Accused, or amend the sentence handed down at first instance. It may also impose any compulsory incidental sentence that the Trial Chamber failed to order. However, in case of appeal by the Co-Prosecutors against an acquittal judgment at first instance, the Chamber may only modify the findings of the Trial Chamber's decision if it considers the judgment erroneous, but cannot modify the disposition of the Trial Chamber judgment.

5. An appeal by the Civil Parties shall only relate to their civil interests. The Civil Parties may not introduce new claims that were not already submitted to the Trial Chamber.

### **Rule 111. The Appeal Judgment**

1. The rules relating to the form and signature of the judgments of the Trial Chamber shall also apply to the judgments of the Supreme Court Chamber.

2. Where the Chamber finds that an appeal was filed late, or was otherwise procedurally defective, it may declare the appeal inadmissible.

3. Subject to Rule 110(4), where the Supreme Court Chamber finds that the trial judgment is void for procedural defects, it may hear the case as if it were the Trial Chamber and decide it on the merits.

4. In case of acquittal on appeal, the Accused shall be immediately released, unless he or she is in detention in relation to other charges.

5. Where, on appeal, a detained Accused either has a prison sentence confirmed, or is sentenced to prison, the Chamber shall rule on detention matters. Where the Accused is present at judgment but not detained, the Chamber may issue a reasoned Detention Order. Where the Accused is absent, it may issue an Arrest and Detention Order. These orders shall have immediate effect.

6. Pursuant to the ECCC Law, the Chamber shall attempt to achieve unanimity. If this is not possible, a decision shall require the affirmative vote of at least five judges. Where an appeal is rejected, the trial judgment shall become final and no further appeal against such decision shall be allowed.

### **Rule 112. Revision of Final Judgment**

1. The convicted person or, after his or her death, the spouse, children, parents, or any person alive at the time of the person's death who has been given express written instructions from the convicted person to bring such a claim, or the Co-Prosecutors on the person's behalf, may apply to the Chamber to revise the final judgment on the grounds that:

a) new evidence has been discovered that:

i) was not available at the time of trial, and such unavailability was not wholly or partially attributable to the party making the application; and

ii) is sufficiently important that had it been proved at trial it would have been likely to have resulted in a different verdict;

b) it has been newly discovered that decisive evidence, taken into account at trial

and upon which the conviction depends, was false, forged or falsified; or

c) one or more of the judges who participated in a judicial investigation or a conviction, committed, in that case, an act of serious misconduct or serious breach of duty of sufficient gravity to justify the removal of that judge or those judges from office under these IRs.

2. The applicant shall submit the request for revision to the Greffier of the Chamber, clearly setting out the factual and legal basis for such request. Thereafter, the procedure for appeals before the Chamber as set out in these IRs will apply.

3. Pursuant to the ECCC Law, the Chamber shall attempt to achieve unanimity. If this is not possible, a revision decision shall require the affirmative vote of at least five judges. The Chamber shall reject the application if it considers it to be unfounded. If it determines that the application is meritorious, it shall retain jurisdiction over the matter, with a view to, after following the procedure set out for appeals from the Trial Chamber in these IRs, arriving at a determination on whether the judgment should be revised.

### **Rule 113. Enforcement of Sentences and Civil Reparation**

1. The enforcement of a sentence shall be made at the initiative of The Co-Prosecutors. The enforcement of reparations shall be made at the initiative of a Civil Party.

2. The Co-Prosecutors shall implement the sentence as soon as a decision of the Chambers becomes final, subject to the provisions of these IRs relating to provisional detention.

3. The Co-Prosecutors may seek the assistance of the law enforcement authorities to ensure the execution of sentences.

4. A request for concurrent sentences shall be raised before the last Chamber that has made a decision concerning the Accused, immediately after that decision. The Chamber may be seised by a request from the Co-Prosecutors or the party involved. After having heard the Co-Prosecutors, the parties involved, and their lawyers, the Chamber shall issue its decision in public.

### **Rule 114. Transitional Provision**

1. Without prejudice to the provisions of Rules 48 and 76, any procedural action done or order made by the ECCC pursuant to applicable Cambodian criminal law and procedure before the entry into force of these IRs shall be deemed to have been validly done.

2. The entry into force of any amendment to these IRs shall have no effect on the validity of any procedural action done or order made by the ECCC in compliance with these IRs before the amendment comes into force.

*Adopted at the Plenary Session of the Extraordinary Chambers in the Courts of Cambodia on 12 June 2007, and signed into force by the President and Deputy President of the Plenary on 19 June 2007. Revised at the Plenary Sessions of the Extraordinary Chambers in the Courts of Cambodia on 1 February 2008, 5 September 2008, 6 March 2009 and 11 September 2009.*



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**Judge Kong Srim**  
**President of the Plenary**



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**Judge Silvia Cartwright**  
**Deputy President of the Plenary**

# GLOSSARY

**In the present document:**

“**Accused**” (*accusé* - ជនជាប់ចោទ) refers to any person who has been indicted by the Co-Investigating Judges or the Pre-Trial Chamber.

“**Agreement**” (*Accord* – កិច្ចព្រមព្រៀង ) refers to the “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”, signed on 06 June 2003, and promulgated on 19 October 2004.

“**Arrest and Detention Order**” (*mandat d’arrêt* - ដីកាបង្គាប់ចុះយថាប៉ុន្តែ) refers to an order to the Judicial Police to search for, arrest and bring any person to the ECCC detention facility; and to the head of the ECCC detention facility to receive and detain that person pending an appearance before the Co-Investigating Judges or a Chamber.

“**Arrest Warrant**” (*mandat d’amener* - ដីកាបង្គាប់ចុះយនាំខ្លួន ) refers to an order to the Judicial Police to arrest any person and bring him or her before the Co-Investigating Judges or the Chambers.

“**Bail Order**” (*ordonnance de mise sous contrôle judiciaire* - ដីកាសម្រេចចុះយស្ថិតនៅក្រោមការត្រួតត្រា

ពិនិត្យរបស់តុលាការ) refers to a judicial order that a Charged Person or Accused remain at liberty or be released from detention, pending the trial judgment, on condition that he or she pay a bail bond and/or respect specific conditions set out in the order.

“**BAKC**” (*OARC* - គណៈមេតារីនៃព្រះរាជណាមកម្ពុជា) refers to the Bar Association of the Kingdom of Cambodia.

“**Case File**” (*dossier* - សំណុំរឿង) refers to all the written records (*procés verbaux*) of investigative action undertaken in the course of a Preliminary Investigation or a Judicial Investigation, together with all applications by parties, written decisions and any attachments thereto at all stages of the proceedings, including the record of proceedings before the Chambers.

“**Chambers**” (*les Chambres* - អង្គជំនុំជម្រះ) refers to the Pre-Trial Chamber, the Trial Chamber and the Supreme Court Chamber of the ECCC.

“**Charged Person**” (*personne mise en examen* - ជនត្រូវចោទ) refers to any person who is subject to prosecution in a particular case, during the period between the Introductory

Submission and Indictment or dismissal of the case.

“**Civil Party**” (*Partie civile* - ដើមបណ្តឹងរដ្ឋប្បវេណី) refers to a victim whose application to become a Civil Party has been accepted by the Co-Investigating Judges or the Trial Chamber in accordance with these IRs.

“**Closing Order**” (*décision de clôture* - ដីកាដំណោះស្រាយ) refers to the final order made by the Co-Investigating Judges or the Pre-Trial Chamber at the end of the judicial investigation, whether Indictment or Dismissal Order.

“**Count**” (*chef d’inculpation* - បទល្មើស) refers to a specific crime with which the Charged Person is charged or the Accused indicted.

“**Detention Order**” (*mandat de dépôt* - ដីកាបង្គាប់ចុះឃ្លប់ខ្លួន) refers to an order to the head of the ECCC detention facility to receive and detain a Charged Person or Accused.

“**Dismissal Order**” (*décision de non lieu* - ដីកាលើកលែងការចោទប្រកាន់) refers to a Closing Order by the Co-Investigating Judges or the Pre-Trial Chamber, dismissing the charges against a Charged Person.

“**ECCC**” (*CETC* - អ.វ.ត.ក) refers to the Extraordinary Chambers within the Courts of Cambodia, established by 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, as amended in accordance with the Agreement, promulgated by Royal Decree, No. NS/RKM/1004/006, dated 27 October 2004.

“**The ECCC Law**” (*la Loi sur les CETC* - ច្បាប់ អ.វ.ត.ក) refers 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, as amended in accordance with the Agreement, promulgated by Royal Decree, No. NS/RKM/1004/006, dated 27 October 2004.

“**Exhibit**” (*Pièce à conviction, វត្ថុតាង*) refers to a tangible object used as evidence in the proceedings before the ECCC.

“**Final Submission**” (*réquisitoire définitif* - ដីកាសុំផ្តិតស្តុក) refers to a written submission by the Co-Prosecutors requesting the Co-Investigating Judges to make a specific Closing Order in a particular case.

“**Greffier**” (*greffier* - ក្រុមប្រឹក្សាបញ្ជី) refers to the clerks of the Co-Prosecutors, Co-Investigating Judges and Chambers responsible, in particular, for keeping an official record of all proceedings, receiving all original documents from the parties and ensuring

notification of decisions.

**“Indictment”** (*décision de renvoi* - ដីកាបញ្ជូនរឿងទៅជំនុំជម្រះ) refers to a Closing Order by the Co-Investigating Judges, or the Pre-Trial Chamber, committing a Charged Person for trial.

**“Initial appearance”** (*première comparution* - ការបង្ហាញខ្លួនលើកដំបូង ) refers to the hearing during which a Charged Person appears for the first time before the Co-Investigating Judges, and is notified of the charges.

**“Introductory Submission”** (*réquisitoire introductif* - ដីកាសន្និដ្ឋានបញ្ជូនរឿងថ្មីយល់ស៊ើបសួរ ) refers to the written submission by the Co-Prosecutors requesting the Co-Investigating Judges to open an investigation into a crime and proposing charges.

**“Investigator”** (*enquêteur* - អ្នកកែស៊ើបអង្កេត) refers to any officer of the Office of the Co-Prosecutors or the Office of the Co-Investigating Judges, whether national or international, who has been duly designated by his or her respective office as an investigator and accredited as set out in Rule 16.

**“Judicial Police”** (*Police judiciaire* - នគរបាលប្រតិបត្តិកិច្ច) refers to Judicial Police and/or Gendarmerie officers of the Kingdom of Cambodia assigned to the ECCC.

**“Lawyer”** (*avocat* - ឯកស៊ី) refers to any person who is admitted to the practice of law by the BAKC, or who is admitted to the practice of law by the relevant authority in another United Nations Member State and registered by the BAKC in accordance with these IRs, to practise before the ECCC.

**“Notification”** (*signification* - ការជូនដំណឹង) refers to the action through which, in the cases laid down in these IRs, a judicial decision is brought to the knowledge of a party to the proceedings.

**“Party”** (*partie* - ភាគី) refers to the Co-Prosecutors, the Charged Person/Accused and Civil Parties.

**“Plenary Session”** (*Assemblée plénière* - កិច្ចប្រជុំពេញអង្គ) refers to a meeting in which all Judges of the Pre-Trial Chamber, Trial Chamber and Supreme Court Chamber, the Co-Investigating Judges and the Co-Prosecutors, participate and vote as provided in Rule 18.

**“Police Custody”** (*garde à vue* - ការឃាំងដំបូង) refers to the holding of a Suspect by the Judicial Police pursuant to the instructions of the Co-Prosecutors or the Co-Investigating Judges.

**“Practice Direction”** (*directives pratiques* -សេចក្តីណែនាំអនុវត្ត) refers to regulations covering detailed aspects of the conduct of the work of the ECCC, adopted by the Rules and Procedure Committee, in accordance with the ECCC Law, the Agreement, and these IRs.

**“Provisional Detention”** (*détention provisoire* -ការឃុំខ្លួនបណ្តោះអាសន្ន) refers to the detention of the Charged Person ordered by the Co-Investigating Judges or the Pre-Trial Chamber, or the detention of the Accused ordered by the Chambers, pending final judgment.

**“Rogatory Letter”** (*commission rogatoire* -ដីកាចាត់ឱ្យស៊ើបសួរជំនួស) refers to a written order by the Co-Investigating Judges or the Chambers to an Investigator or Judicial Police Officer, as provided in these IRs, requiring that person to undertake specific investigative action.

**“Supplementary Submission”** (*réquisitoire supplétif* -ដីកាសុំផ្តន្ទាបញ្ជូនរឿងឱ្យស៊ើបសួរបន្ថែម) refers to a written submission by the Co-Prosecutors requesting the Co-Investigating Judges to issue an order or undertake further action in an ongoing investigation.

**“Suspect”** (*suspect* -ជនសង្ស័យ) refers to a person whom the Co-Prosecutors or the Co-Investigating Judges consider may have committed a crime within the jurisdiction of the ECCC, but has not yet been charged.

**“Victim”** (*victime* -ជនរងគ្រោះ) refers to a natural person or legal entity that has suffered harm as a result of the commission of any crime within the jurisdiction of the ECCC.

**“Victims’ Association”** (*association de victimes* -សមាគមជនរងគ្រោះ) refers to an association made up solely of victims of crimes coming within the jurisdiction of the ECCC, which is validly registered in the country in which it is carrying on activities at the time of its intervention before the ECCC, and has been validly authorised to take action on behalf of its members.