



**PLENARY SESSION OF JUDGES OF THE ECCC
1-5 SEPTEMBER 2008**

Defence Support Section: Press Statement

1. The Defence Support Section (DSS) would like to congratulate the judges for adopting a number of important amendments at this week's Plenary. The judges have applied their collective judicial wisdom to a multitude of complex legal issues, including the role of civil parties and the use of witness protection measures at trial. In doing so, they have demonstrated a real determination to improve the functioning of the court.
2. However, the DSS is disappointed that the judges have adopted an amendment to Rule 104 of the Internal Rules that severely narrows the scope of appeal available to the accused in the event of conviction. Prior to this amendment, the Internal Rules reflected the Cambodian Criminal Procedure Code, whereby an accused convicted by a trial chamber was entitled to appeal the judgment on *any issues of fact and law*. The amendment to Rule 104 limits the appeal at the ECCC to (1) an error of law invalidating the decision or (2) an error of fact, which has occasioned a miscarriage of justice. This means that, at the ECCC, an accused now has a more limited right of appeal than at any other trial court in Cambodia.
3. During the Plenary, the DSS urged the judges to reject the proposed amendment to Rule 104. Our position was that the judges did not have the legal authority to depart from the Cambodian procedural law to the extent required to adopt the amendment. Whilst the Law establishing the ECCC empowers the judges to supplement the Cambodian procedural law with additional rules, this may only be done in certain - expressly limited - circumstances. The DSS submitted that the circumstances do not exist to justify the proposed amendment.
4. The judges, however, considered that the amendment was justified due to the extraordinary nature of the cases before the ECCC and the practice at the other international criminal tribunals.

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5 September 2008

