



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

Request for Correction

Case : 002/19-09-2007-ECCC/SC (09)

ឯកសារដើម
ORIGINAL/ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ (Date): 23-Nov-2011, 10:58
Sann Rada
CMS/CFO:.....

To Document No(s):	ERN(s):	Request Date:	Correction Type:
E138/1/1	00753907-00753913	23-11-2011	<input checked="" type="checkbox"/> Change to Original <input type="checkbox"/> Change to Translation <input type="checkbox"/> Reclassification

Reason for changes:

We errored writing date and one phrase in the document.

Details:

E138/1/1 ERN 00753908, footnote 2 (17-11-2010) have to be changed to 17-11-2011 and
E138/1/1 ERN0075913 (the lack of disagreement) to be changed to (the lack of agreement)

Filed by: OCP

Signature:

Approved by Greffier (for originals):

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PAOLO LOBBA

Approved by ITU (for translations):

Signature:

I. INTRODUCTION

1. Pursuant to Rules 82(6), 104, 105, 106(2) and 107 of the Internal Rules¹, the Co-Prosecutors submit this immediate appeal ("Appeal") against the Trial Chamber's *Decision on Ieng Thirith's Fitness to Stand Trial* ("Impugned Decision").²
2. For the reasons stated below, the Co-Prosecutors submit that (1) the Appeal is admissible; (2) the Impugned Decision meets the standard for appellate review in that it contains errors of law, errors of fact and discernible errors in the exercise of the Trial Chamber's discretion; (3) the Impugned Decision should be annulled insofar as it orders the release of the Accused; (4) the Impugned Decision should be amended to require the Accused to remain in detention and undergo medical and other remedial treatment, subject to a review in six months; and (5) leave should be granted to the Co-Prosecutors to file supplementary written submissions in support of this Appeal.

II. ARGUMENT

A. The Appeal is admissible

3. The Appeal satisfies the requirements for admissibility as set out in Rules 104, 105 and 107. Specifically:
 - (a) Rule 104(4)(a) provides for a right of immediate appeal against decisions which have the effect of terminating the proceedings. As argued below, the Impugned Decision effectively terminates the proceedings against the Accused Ieng Thirith ("the Accused").
 - (b) Rule 104(4)(b) provides for a right of immediate appeal against decisions on detention and bail under Rule 82. The Impugned Decision orders the Accused's release from the ECCC detention facility and, as such, is a decision under Rule 82.
 - (c) Rule 105(2) requires that an immediate appeal filed set out the grounds and arguments in support thereof. It provides that each ground of appeal 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. The grounds of appeal set out below identify errors of law which invalidate the Impugned Decision, errors in the exercise of the Trial Chamber's discretion resulting in

¹ Extraordinary Chambers of the Courts of Cambodia, Internal Rules (Rev. 8), as revised on 3 August 2011 ("Rules").

² E138 Decision on Ieng Thirith's Fitness to Stand Trial, 17 November 2011.

international standards” in order to assist it to resolve the substantive question. In doing so, it has arrived at a wholly contradictory and untenable position whereby the minority position of the international judges on the substantive question has prevailed over the majority position. This amounts to an error of law and / or exercise of discretion.

18. A review of the rules relating on appeals before the Pre Trial Chamber and the Supreme Court Chamber demonstrates that the usual course in cases of a lack of supermajority is for the lower decision to stand. In other words, the usual course is for the *status quo* to prevail and in this case would have favoured the maintenance in detention. In order to minimise any period of legal uncertainty for the Accused arising from the lack of agreement, the Trial Chamber could have exercised its discretion to call for written submissions on the parties on both the substantive and procedural questions on which it disagreed.

Deleted: disagreement

II. REQUEST

19. In light of the foregoing, the Co-Prosecutors request the Supreme Court Chamber to:
- (a) annul the Impugned Decision insofar as it orders the unconditional release of the Accused; and
 - (b) amend the Impugned Decision by ordering the Accused to remain in detention and to undergo medical and other remedial treatment as recommended by the medical experts, subject to review in six months.
20. The Co-Prosecutors further request leave to file supplementary written submissions in support of this Appeal within seven (7) days. Given the extremely short timeframe applicable under the Rules for the filing of this Appeal, not all the supporting arguments and evidence could be sufficiently addressed in this Appeal.

Date	Name	Place	Signature
18 November 2011	CHEA Leang Co-Prosecutor	Phnom Penh	
	Andrew CAYLEY Co-Prosecutor		