

PRESS RELEASE

28 October 2011

On Wednesday, 26 October 2011 at approximately 16h00, the Nuon Chea Defence Team filed the English version of its 'Request for Adjournment of Opening Statements and Substantive Hearing' (Document No E-131/2). The Khmer version of the request was slated for completion on 4 November 2011. At approximately 14h00 today, the Trial Chamber distributed an advance copy of its decision rejecting the request. For the following reasons, we take the position that such action amounts to a violation of one of Nuon Chea's fair-trial rights:

- The Cambodian judges of the Trial Chamber are not fully fluent in the English language and, therefore, could not have meaningfully understood the contents of the request as filed—let alone come to a considered decision on the relief requested therein.
- Despite the fact that the ECCC procedural framework contemplates responses by the other parties and, in certain cases, a reply by the filing party, no opportunity for such full briefing of the issue raised by the request was provided.
- In rejecting the request, the Trial Chamber held that 'Internal Rule 104 clearly states that an immediate appeal does not stay the proceedings before the Trial Chamber'. This is disingenuous. While that rule does not provide for an *automatic* stay of the proceedings, it—without question—gives the Trial Chamber the *discretionary* authority to stay the proceedings pending the outcome of an immediate appeal. Eight of the nine paragraphs in the argument section of the request dealt with the question of why the Trial Chamber *should exercise such discretion*. Yet not a single word of the half-page memorandum decision—which, according to the Trial Chamber, 'constitutes [its] official response' to the request—addresses that central issue.
- The advance decision indicates that the request sought 'the same relief as' the Defence previously requested in its Consolidated Preliminary Objections (Document No E-51/3). However, the Trial Chamber fails to address any of the several new facts that have come to light since the filing of the objection and were clearly listed in the factual section of the request.

According to international standards, the *entire* Trial Chamber is obliged to provide reasoned decisions. A truly reasoned decision is one that sets out all relevant facts and addresses all legal arguments. Unfortunately, in its rush to begin the substantive proceedings in Case 002, the Trial Chamber has chosen to sacrifice this fundamental right.

A copy of the request and the advance decision are attached.

Michiel Pestman & Andrew Ianuzzi