



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia

Chambres Extraordinaires au sein des Tribunaux Cambodgiens

A104/II/4

អង្គបុរេជំនុំជម្រះ

PRE-TRIAL CHAMBER
CHAMBRE PRELIMINAIRE

In the name of the Cambodian people and the United Nations and pursuant 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.

Criminal Case File N° 002/19-09-2007-ECCC/OCIJ (PTC05)

Before: Judge PRAK Kimsan, President
Judge Rowan DOWNING
Judge NEY Thol
Judge Katinka LAHUIS
Judge HUOT Vuthy

Date: 21 March 2008

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ORIGINAL DOCUMENT/DOCUMENT ORIGINAL
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PUBLIC

DECISION ON THE ADMISSIBILITY OF THE APPEAL LODGED BY IENG SARY ON VISITATION RIGHTS

Co-Prosecutors

CHEA Leang
Robert PETIT
YET Chakriya
William SMITH
TAN Senarong
Anees AHMED

ឯកសារច្បាប់តាមប្រការច្បាប់ដើម
CERTIFIED COPY/COPIE CERTIFIÉE CONFORME
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Charged Person

IENG Sary

Lawyers for the Civil Parties

Mr. HONG Kim Suon
Mr. LOR Chunthy
Mr. NY Chandy

Co-Lawyers for the Defence

ANG Udom
Michael G. KARNA

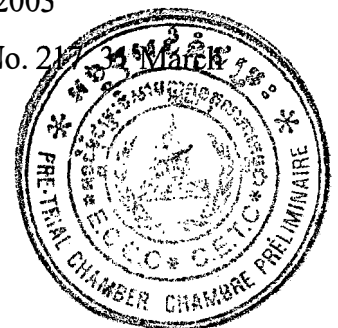


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1. **THE PRE-TRIAL CHAMBER** of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) is seized of an appeal lodged on 29 January 2008 by the Co-Lawyers for the Charged Person against a letter of the Co-Investigating Judges dated 22 January 2008.
2. By this letter, the Co-Investigating Judges responded to a letter from the Co-Lawyers dated 20 December 2007 requesting permission for the Charged Person to meet with his wife, detainee Ieng Thirith.
3. On 19 February 2008, the Pre-Trial Chamber ordered the Co-Lawyers to file written submissions on the question of the admissibility of the appeal and allowed the Co-Prosecutors to respond.
4. The Co-Lawyers filed their submissions on 25 February 2008 and the Co-Prosecutors filed their response on 13 March 2008.
5. In the letter dated 22 January 2008 against which the Charged Person has lodged an appeal, the Co-Investigating Judges stated:

In response to your letter dated 20 December 2007 regarding the authorization of visits to IENG Thirith by IENG Sary, we would like to inform you that given the ongoing judicial investigation in Case File N.002/19-09-2007-ECCC/OCIJ, we are not planning any change in the conditions that currently apply for visits. Therefore, no meeting between IENG Thirith and your client is possible for the time being.

6. Based on the submissions of both the Co-Lawyers and the Co-Prosecutors, the Pre-Trial Chamber finds that the decision contained in this letter appears to be, in its effect, a segregation order by the Co-Investigating Judges.
7. The Pre-Trial Chamber has taken notice of the provisions given in:
 - Rule 3 of the draft Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Extraordinary Chambers in the Courts of Cambodia or Otherwise Detained on the Authority of the Extraordinary Chambers in the Courts of Cambodia;
 - Prison Procedure No. 3 – Separation of Prisoners, issued on 20 May 2003
 - Articles 3 and 7 of the Proclamation on Administration of Prisons - No. 217/1998;

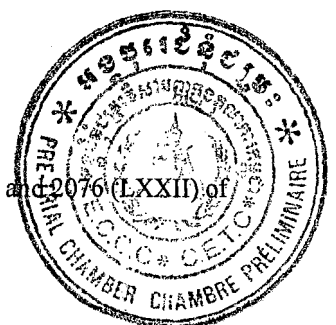


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- Rule 57 of the Standard Minimum Rules for the Treatment of Prisoners¹;
 - Article 7 of the Basic Principles for the Treatment of Prisoners²; and
 - the procedures on segregation and isolation in force at other international tribunals.
8. The Pre-Trial Chamber also notes that Rule 21(2) of the ECCC Internal Rules provides that:
- 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.
9. The Pre-Trial Chamber finds that the assertions made by the Co-Lawyers can be seen as a complaint against a coercive measure taken by the Co-Investigating Judges that, in its effects, may not fully respect the human dignity of the Charged Person.
10. As a matter involving the right to respect human dignity and taking into account its duty as prescribed in Rule 21(1) of the Internal Rules, the Pre-Trial Chamber finds that this appeal falls within the scope of Rule 74(3)(f) of the Internal Rules.
11. Considering the health condition of the Charged Person as asserted by the Co-Lawyers and confirmed by the Co-Prosecutors, the time limit to file submissions is set to five (5) days, although a longer period was requested. The parties are urged to file their submissions in Khmer and one other official language of the Court.

¹ Approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXXII) of 13 May 1977.

² GA Res A/RES45/111, 20 December 1990.



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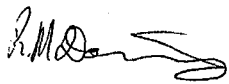
THEREFORE, THE PRE-TRIAL CHAMBER HEREBY DECIDES UNANIMOUSLY AND DIRECTS:

- 1) The appeal is admissible.
- 2) The Co-Lawyers for the Charged Person to file any written submissions they may want to submit on the merits of the appeal within five (5) days.
- 3) The Co-Prosecutors and the lawyers for the Civil Parties to file any response they may want to submit within five (5) days of notification, in the ECCC official language which the parties have elected under Article 2.2. of the Practice Direction on filing of documents before the ECCC, of the Co-Lawyers' submissions.

Phnom Penh, 21 March 2008

Pre-Trial Chamber

President



Rowan DOWNING



NEY Thol



Katinka LAHUIS



HUOT Vuthy

