



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia

Chambres Extraordinaires au sein des Tribunaux Cambodgiens

A190/II/16

អង្គបុរេជំនុំជម្រះ

PRE-TRIAL CHAMBER
CHAMBRE PRELIMINAIRE

Criminal Case File N° 002/19-09-2007-ECCC/OCIJ (PTC12)

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

Date: 10 September 2008

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SAMN RADA	

PUBLIC

DECISION ON REQUEST FOR LEAVE TO FILE AMICUS CURIAE BRIEF

Co-Prosecutors

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Robert PETIT
YET Chakriya
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ឯកសារច្បាប់តាមប្រព័ន្ធគ្រប់គ្រងឯកសារ	
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Charged Person

IENG Sary

Lawyers for the Civil Parties

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Co-Lawyers for the Defence

ANG Udom
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1. **THE PRE-TRIAL CHAMBER** of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) has received a letter dated 25 July 2008 (attached) from Sadie Blanchard and Annie Gell, Legal Associates at the Documentation Center of Cambodia (DC-Cam), requesting leave to file an *amicus curiae* brief regarding the “translation of documents”. This relates to Ieng Sary’s Appeal against the OCIJ’s Order on Translation Rights and Obligations of the Parties (“Appeal”).

2. Rule 33(1) of the Internal Rules provides:

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 a written *amicus curiae* brief 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.

3. The Pre-Trial Chamber finds that through the submissions of the Parties, the Chamber is sufficiently informed in order to determine the appeal. In these circumstances it would be undesirable to risk delaying the proceedings by receiving an *amicus curiae* brief and responses thereto by the Parties.

4. The Pre-Trial Chamber appreciates the interest shown by Sadie Blanchard and Annie Gell in the current proceedings, but does not consider it desirable to grant leave to file an *amicus curiae* brief in this case.

THEREFORE, THE PRE-TRIAL CHAMBER HEREBY:

Denies the request for leave to file an *amicus curiae* brief in the Appeal. mt

Phnom Penh, 10 September 2008

President of the Pre-Trial Chamber



PRAK KIMSAN

Pre-Trial Chamber,
Extraordinary Chambers in the Courts of Cambodia,
National Road 4,
Chaom Chau Commune,
Dangkao District,
Phnom Penh.

Friday, 25 July, 2008

To the Judges of the Pre-Trial Chamber:

We are Sadie Blanchard and Annie Gell, Legal Associates at the Documentation Center of Cambodia (DC-Cam). DC-Cam has been actively monitoring the proceedings of the ECCC since the inception of the Court. We have a strong interest in ensuring the ECCC maintains its legitimacy and esteem in the international legal community so the Court can effectively fulfill its mission of providing justice for the crimes of the Democratic Kampuchea regime.

We are writing to request that the Chamber grant us leave, pursuant to Internal Rule 33, to submit two written *amici curiae* briefs: the first regarding the *de facto* segregation of the provisional detainees, and the second regarding document translation into the language of the Charged Persons and the languages of their attorneys.

De Facto Segregation of Detainees

On 14 July 2008, the Co-Lawyers for Nuon Chea filed an appeal against the *de facto* segregation regime as it affects their client. The Pre-Trial Chamber has previously considered this issue in the context of the separation of the married couple, Ieng Sary and Ieng Thirith. Although the Court has thus far considered the issue of *de facto* segregation on an *ad hoc* basis, the rights involved affect all five of the provisional detainees and should therefore be thoroughly examined and definitively decided by the Pre-Trial Chamber. This issue is of particular importance because the conditions of confinement of the provisional detainees must fully respect international human rights standards if the Court is to preserve its legitimacy. Moreover, the segregation regime could have negative consequences for the health of the detainees, thereby putting the work of the Court at fundamental risk.

Translation of Documents

Several defense teams have indicated their intention to file appeals against the Co-Investigating Judges' (OCIJ) Order on Translation Rights and Obligations of the Parties. The translation issue raises three vitally important concerns before the ECCC. First, the ability of a charged person to understand the case against him or her is a fundamental fair trial right. Second, the ECCC must protect the Charged Persons' right to be tried without undue delay, being mindful that the more documents that must be translated, the slower the proceedings will progress. Third, translation of thousands of pages of documents will require substantial court resources. Therefore, it is crucial that the Pre-Trial Chamber's decision on these appeals protects defendants' rights while not wasting court resources by providing translation beyond what fairness requires.

The foreign Co-Lawyer for Khieu Samphan has made statements publicly deriding the ECCC because the Court has declined to provide translations of all the documents in Mr. Khieu's case file. Because the translation issue has attracted media attention and been used as a tool to challenge the Court's legitimacy, it is critical that the Pre-Trial Chamber's decision on these appeals clearly demonstrates that the Chamber has carefully considered and is committed to adhering to international standards.

We believe that the Court could send a strong signal of such a commitment by accepting from neutral parties outside the Court *amici curiae* briefs that thoroughly examine the findings of other international courts and human rights bodies and assess the practices and decisions of the ECCC in light of these findings. Such briefs could supplement the Chamber's own analysis of the issues, providing additional

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support in the search for the appropriate balance between protecting defendants' rights and serving other vital court interests.

For these reasons, we respectfully request that the Pre-Trial Chamber accept *amici curiae* briefs regarding the above two issues. Thank you very much, and we look forward to hearing from you.

Sincerely,

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Legal Associates, Documentation Center of Cambodia