



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia

Chambres Extraordinaires au sein des Tribunaux Cambodgiens

C26/1/29

អង្គបុរេជំនុំជម្រះ

PRE-TRIAL CHAMBER
CHAMBRE PRELIMINAIRE

Criminal Case File N° 002/19-09-2007-ECCC/OCIJ (PTC04)

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

Date: 2 October 2008

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PUBLIC

DIRECTIONS ON CONTINUATION OF PROCEEDINGS RELATED TO APPEAL AGAINST PROVISIONAL DETENTION

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1. **THE PRE-TRIAL CHAMBER** of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) notes the “Appeal Brief against the Provisional Detention Order of 19 November 2007”, filed on 21 December 2007 by the Co-Lawyers for the Charged Person (“Appeal”).
2. On 23 April 2008, a hearing on the Appeal commenced. However, on the basis of an application by the Charged Person, the Pre-Trial Chamber adjourned the hearing “to a date to be advised”.¹
3. No information was provided to the Pre-Trial Chamber by the Charged Person or his defence lawyers (“the Defence”) in the period following the adjournment. The Pre-Trial Chamber therefore issued directions to the Defence on 15 August 2008 to state their position concerning the Appeal.
4. On 21 August 2008, the Co-Lawyers filed their “Notification of the Pre-Trial Chamber of the Defence’s Position Concerning KHIEU Samphan’s Appeal against Provisional Detention Order” (“Notification”).
5. In this Notification, the Co-Lawyers informed the Pre-Trial Chamber that they “demand translation of the KHIEU Samphan criminal file. As long as the translation is not done, the Co-Lawyers for the Defence are unable to cooperate with the Court. Therefore, the Co-Lawyers for the Defence and the Charged Person pray the Pre-Trial Chamber to consider the possibility of ordering that translation be done as a matter of priority, if not KHIEU Samphan’s detention is without legal basis since his foreign lawyer is yet to be put on notice as to the charges underpinning Khieu Samphan’s provisional detention”.²
6. The Pre-Trial Chamber notes that in their Appeal the Co-Lawyers ask the Pre-Trial Chamber “[t]o declare and rule that Mr Khieu Samphan is no longer a Charged Person, because it has been recognised that Mr Khieu Samphan had no real power of command over any person whatsoever or any unit in the hierarchy and that he was simply a Head of State in name only”³ and “[t]o dismiss the Provisional Detention Order of 19 November 2007 because Mr Khieu Samphan is not guilty”.⁴

¹ Decision on Application to Adjourn Hearing on Provisional Detention Appeal, 23 April 2008, C26/I/29, p. 4.

² Notification of the Pre-Trial Chamber of the Defence’s Position Concerning Khieu Samphan’s Appeal against Provisional Detention Order, 21 August 2008, C26/I/8, paras. 9 and 10.

³ Appeal Brief Against the Provisional Detention Order of 19 November 2007, 21 December 2007, C26/I/3 (the “Appeal Brief”), p. 12.

⁴ Appeal Brief, p. 12.



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7. The Appeal raises no issue as to translation or the inability to effectively challenge the 'charges underpinning the Charged Person's provisional detention'.
8. Internal Rule 75(4) provides:

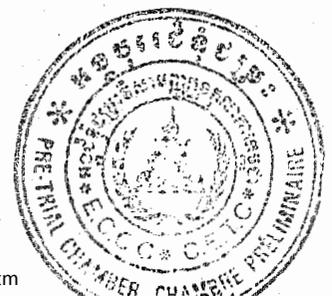
The submissions on appeal shall contain the reasons of fact and law upon which the appeal is based together with all supporting documents. The appellant may not raise any matter of fact or law during the hearing which are not already set out in the submissions on appeal.

9. The Pre-Trial Chamber finds that the Defence is barred by Internal Rule 75(4) from raising additional matters of fact or law at this stage of the proceedings which are not already set out in the submissions on appeal.
10. Having considered the information contained in the Notification, the Pre-Trial Chamber finds that there is no reason to delay its decision on the Appeal further.
11. The statements of the Co-Lawyers of the Charged Person regarding the oral submissions on the Appeal must be seen as a refusal to participate further in an oral hearing.

12. Internal Rule 77 (3)(b) provides:

The Pre-Trial Chamber may, after considering the views of the parties, decide to determine an appeal or application on the basis of the written submissions of the parties only.

13. Considering the circumstances that oral submissions of the other Parties can only be made after oral submissions of the Co-Lawyers and that this is impossible due to the attitude of the Defense, the Pre-Trial Chamber finds that the Appeal must be decided on the basis of the written submissions without seeking the views of the Parties.
14. In accordance with Article 8.4 of the Practice Direction on Filing of Documents before the ECCC, the Defence is permitted to file a reply in relation to the substantive Appeal.



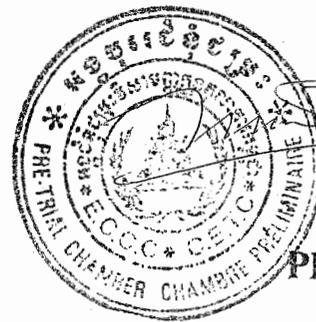
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THEREFORE, THE PRE-TRIAL CHAMBER HEREBY:

- (1) **DECIDES** to determine the appeal on the basis of the written submissions only;
- (2) **DIRECTS** the Defence to file a Reply, if any, within **seven (7) days** of notification of these directions.

Phnom Penh, 2 October 2008

President of the Pre-Trial Chamber



PRAK KIMSAN