



អង្គបុរេជំនុំជម្រះ

PRE-TRIAL CHAMBER
CHAMBRE PRELIMINAIRE

Criminal Case File N° 002/19-09-2007-ECCC/OCIJ (PTC 11)

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

Date: 4 December 2008

PUBLIC

WRITTEN VERSION OF ORAL DECISION ON APPLICATION BY THE CO-LAWYER FOR THE CIVIL PARTIES CONCERNING ORAL SUBMISSIONS

Co-Prosecutors

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

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..... K. K. Ratanak	

Charged Person

KHIEU Samphan

Lawyers for the Civil Parties

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LOR Chunthy
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ឯកសារច្បាប់តាមប្រយោជន៍	
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..... K. K. Ratanak	

Co-Lawyers for the Defence

SA Sovan
Jacques VERGÈS



1. **THE PRE-TRIAL CHAMBER** of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) notes the oral application by the Co-Lawyer for the Civil Parties to make submissions during the hearing of the Defence Appeal against the Decision to Deny the Request for Translation of Khieu Samphan’s Case File on 4 December 2008 and the Chamber’s oral decision.
2. The first issue raised by the Co-Lawyer for the Civil Parties in the hearing is that the Internal Rules cannot be applied. The Pre-Trial Chamber decided on 26 August 2008 in the annulment case of the Charged Person Nuon Chea,¹ which was extensively reasoned, that the Internal Rules are applicable before the ECCC. This decision has not been reconsidered by the Pre-Trial Chamber. The oral submissions made today by the Co-Lawyer for the Civil parties do not give a reason for the Pre-Trial Chamber to reconsider. The Pre-Trial Chamber therefore finds that the Internal Rules are applicable.
3. The Pre-Trial Chamber notes that the Co-Lawyers for the Charged Person filed their “Defence Appeal against the Decision to Deny the Request for Translation of Khieu Samphan’s Case File” on 22 July 2008 (“Appeal Brief”). The Co-Prosecutors responded on 28 August 2008. The Lawyers for the Civil Parties did not file a response to the Appeal Brief.
4. On 4 November 2008, the Pre-Trial Chamber rendered its “Decision on Khieu Samphan’s Request for the Public Hearing”, allowing the request and scheduling the hearing.
5. In its “Decision on Civil Party Participation in Provisional Detention Appeals” of 20 March 2008, the Pre-Trial Chamber highlighted the importance of giving prior notice to the Charged Person of the arguments to be made orally during a hearing. Referring to fair trial principles, the Pre-Trial Chamber decided that Civil Parties should file submissions in order to make it possible for the Charged Person to respond to the issues to be raised.² This was also the basis for the Pre-Trial Chambers “Directions on Unrepresented Civil Parties’ Right to Address the Pre-Trial Chamber in Person” of 29 August 2008, in which the Chamber directed that “Any unrepresented Civil Party claiming the right to address the Pre-Trial Chamber in person at a scheduled hearing shall make a written request explaining the content and the relevance of his or her proposed submissions at least ten (10) days prior to the hearing.”³

¹ Decision on Nuon Chea’ Appeal against order refusing request for annulment 26 August 2008, D55/1/8

² Decision on Civil Party Participation in Provisional Detention Appeals, 20 March 2008, C11/531 para. 43

³ Directions on Unrepresented Civil Parties’ Right to Address the Pre-Trial Chamber in Person, 29 August 2008, C22/I/69, page. 4, para. 2



6. The Pre-Trial Chamber finds that the Lawyers for the Civil Parties have had sufficient time to express formally their intention to present oral arguments at the hearing and to provide adequate notice of the nature of their submissions. As this has not been done, the Pre-Trial Chamber will not hear oral arguments from the Lawyers for the Civil Parties during the hearing on the substance of the Appeal Brief.

THEREFORE, THE PRE-TRIAL CHAMBER HEREBY:

Refuses the application.. AK

Phnom Penh, 4 December 2008

President of the Pre-Trial Chamber



PRAK KIMSAN