



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

C22/5/10

អង្គបុរេជំនុំជម្រះ

PRE-TRIAL CHAMBER
CHAMBRE PRELIMINAIRE

Criminal Case File N° 002/19-09-2007-ECCC/OCIJ (PTC17)

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

Date: 29 January 2009

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PUBLIC

DECISION ON CO-PROSECUTORS' REQUEST TO DETERMINE THE APPEAL ON THE BASIS OF WRITTEN SUBMISSIONS AND SCHEDULING ORDER

Co-Prosecutors

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

ឯកសារបានចម្លងត្រឹមត្រូវតាមច្បាប់ដើម
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Charged Person

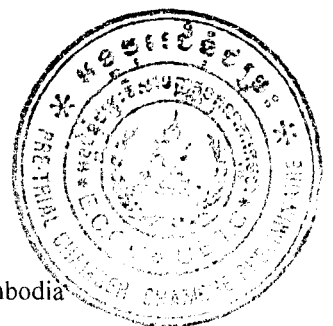
IENG Sary

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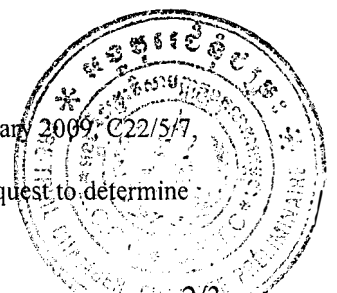
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1. **THE PRE-TRIAL CHAMBER** of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) notes the “Co-Prosecutors’ Response to IENG Sary’s Appeal on Extension of Provisional Detention” (“Response”), filed on 9 January 2009, in which they request the Pre-Trial Chamber to determine the Appeal on the basis of written submissions alone (“Request”).
2. In their Request, the Co-Prosecutors submit that “[w]hile hearings determinative of detention should be heard orally, the current Appeal concerns only an extension of a recently confirmed detention and, as such, raises no new factual or legal arguments that need to be addressed in an oral hearing.”¹
3. In Directions issued on 14 January 2009, the Pre-Trial Chamber invited the Parties involved in the case to file responses by 19 January 2009.
4. On 19 January 2009, the Co-Lawyers filed “IENG Sary’s Response to the Pre-Trial Chambers’ Directions concerning the Co-Prosecutors’ Request to determine the Appeal on Written Submissions Alone” in which they ask the Pre-Trial Chamber to deny the Co-Prosecutors’ request and to schedule an oral hearing. They submit that the presumption is in favour of oral hearings on appeals concerning provisional detention and that “[a]n appeal against a judicial order extending Mr. IENG Sary’s detention for another year is of fundamental importance”. They allege that a hearing is notably required to allow the Defence to (i) raise the issue of the Charged Person’s chronic health problems, which has required that he be admitted to the hospital since the filing of the Appeal Brief, and (ii) respond publicly to the arguments raised by the Civil Parties in their Joint Response to the Appeal “regarding the threat to public order occasioned by the Civil Parties themselves”.²
5. Rule 77 of the Internal Rules (Rev.2) as revised on 5 September 2008, provides in relevant part:

“3. (b) 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.”

¹ Co-Prosecutors’ Response to IENG Sary’s Appeal on Extension of Provisional Detention, 9 January 2009, C22/5/7, para. 3.

² IENG Sary’s Response to the Pre-Trial Chamber’s Directions concerning the Co-Prosecutors’ Request to determine the Appeal on Written Submissions Alone, 19 January 2009, C/22/5/9, paras 1, 6 and 10.



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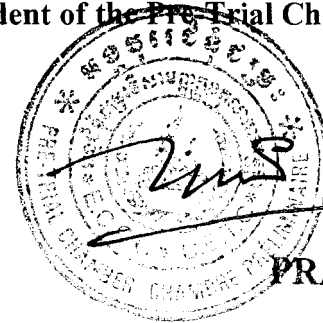
6. Recognising the importance of the Appeal, which relates to the liberty of the Charged Person, and considering that the Defence has requested to be heard orally, the Pre-Trial Chamber considers it appropriate to hold a hearing before deciding on the Appeal.
7. The hearing in this case shall be held primarily in public.

THEREFORE, THE PRE-TRIAL CHAMBER HEREBY:

- (1) **REJECTS** the Request to determine the Appeal on the basis of written submissions alone;
- (2) **SCHEDULES** the hearing for **26 February 2009** at **9:00 a.m.**; and
- (3) **INVITES** all Parties involved in the proceedings to participate in the hearing as scheduled. vt

Phnom Penh, 29 January 2009

President of the Pre-Trial Chamber



PRAK KIMSAN