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

A190/I/8

អង្គបុរេជំនុំជម្រះ
PRE-TRIAL CHAMBER
CHAMBRE PRELIMINAIRE

Criminal Case File N° **002/19-09-2007-ECCC/OCIJ (PTC11)**

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

ឯកសារដើម
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Date: **04 November 2008**

PUBLIC

DECISION ON KHIEU SAMPHAN'S REQUEST FOR A PUBLIC HEARING

ឯកសារបានថតចម្លងត្រឹមត្រូវតាមច្បាប់ដើម
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Charged Person

KHIEU Samphan

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1. **THE PRE-TRIAL CHAMBER** of the Extraordinary Chambers in the Courts of Cambodia ("ECCC") is seized of a "Request for a Public Hearing on the Appeal against the Decision to Deny the Request for Translation of KHIEU Samphan's Case File ("Appeal")", filed on 11 August 2008 ("Request").

I. PROCEDURAL BACKGROUND

2. In their Request, the Co-Lawyers submit that "the decision to deny the request for translation of KHIEU Samphan's case file has resulted in very serious violations of the Defence's rights. The hearing may therefore culminate in a decision bringing an end to the case and an order for the release of KHIEU Samphan. According to Rule 77(6), conducting a public hearing would thus be particularly in order. For these reasons and in the interest of KHIEU Samphan's right to a fair and public trial under Article 14(1) of the International Covenant for Civil and Political Rights, the Co-Lawyers for the Defence consider that it is in the interests of the proper adjudication of the case for the hearing to be conducted in public".[1]

3. On 28 August 2008, the Co-Prosecutors filed a Response to the Appeal ("Response"). In paragraphs 4 and 5 of their Response the Co-Prosecutors submit that an oral hearing is not required and request that the case be decided on the basis of written submissions.[2]

4. In Directions filed on 16 September 2008, the Pre-Trial Chamber invited the Co-Lawyers for the Charged Person to file a reply to paragraphs 4 and 5 of the Response within seven days.

5. On 22 September 2008, the Co-Lawyers filed their "Defence Reply on the Need for a Public Hearing" ("Reply"). In their Reply the Co-Lawyers submit that "[t]he Chamber is squarely at the centre of the debate on the right to a fair trial, a critical debate in terms of the ECCC's legitimacy and credibility. This is why the Defence filed a request for a public hearing. [...][3] In fact, there [is] no valid reason for the Appeal to be decided without oral pleadings. [...] Moreover, KHIEU Samphan's situation is unique, and his Appeal may bring an end to the case. To the extent that this Appeal – more than any other – calls into question the ECCC's legitimacy, it requires a public hearing".[4]

[1] Request for a Public Hearing of the Appeal against the Decision to Deny the Request for Translation of KHIEU Samphan's Case File, 22 July 2008, A190/I/2, paras. 19 and 20.
[2] Co-Prosecutors' Response to KHIEU Samphan's Appeal on Translation Rights and Obligations of the Parties, 28 August 2008, A190/I/4, para. 4.
[3] Defence Reply on the Need for a Public Hearing, 22 September 2008, A190/I/7, para. 3.
[4] Defence Reply on the Need for a Public Hearing, 22 September 2008, A190/I/7, para. 5.

II. CONSIDERATIONS

6. Rule 77 of the Internal Rules (Rev.2) as revised on 5 September 2008, provides in relevant part:

> "3. (a) The President of the Chamber shall verify that the case file is up to date and set a hearing date.
> (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.
> [...]
> 5. Hearings of the Chamber shall be conducted *in camera*, except as otherwise provided in sub-rule 6. [...]
> 6. The Chamber may, at the request of any judge or party, decide that all or part of a hearing be held in public, in particular where the case may be brought to an end by its decision, including appeals or applications concerning jurisdiction or bars to jurisdiction, if the Chamber considers that it is in the interests of justice and it does not affect public order or any protective measures authorized by the court."

7. In accordance with Rule 77(6), a *public* hearing is particularly appropriate where the case may be brought to an end by the Pre-Trial Chamber's decision. While this Rule is framed around the assumption that a hearing date has been set, it may also be used as guidance in determining which matters in principle require oral argument. The Co-Lawyers argue in their Appeal, Request and Reply that a decision on the Appeal could bring an end to the case. They rely upon the abuse of process doctrine and argue that the Charged Person should be released as a remedy for the violation of his rights.

8. The Pre-Trial Chamber recognises that one of the primary bases for holding a public hearing is to allow public scrutiny of the fairness of the proceedings. Both the Appeal and the Response of the Co-Prosecutors have been published on the ECCC website as it is in the interests of justice for the proceedings in the Appeal to be made public. The Co-Lawyers for the Charged Person raise the argument that as a consequence of the Pre-Trial Chamber's analysis of the merits of the Appeal, the case should end and the Charged Person should be released. The public therefore has an interest in the oral arguments as well. The Pre-Trial Chamber considers further that it is not likely that the confidentiality of the judicial investigation would be compromised by holding a public hearing.

THEREFORE, THE PRE-TRIAL CHAMBER HEREBY:

(1) ALLOWS the Request for a Public Hearing;

(2) SCHEDULES the hearing for **8 December 2008** at **9.00a.m.**; and

(3) INVITES all parties involved in the proceedings to participate in the hearing as scheduled.

Phnom Penh, 04 November 2008

President of the Pre-Trial Chamber

PRAK KIMSAN