



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

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

អង្គបុរេជំនុំជម្រះ

PRE-TRIAL CHAMBER
CHAMBRE PRELIMINAIRE

**Declassified to Public
06 September 2012**

Criminal Case File N° 001/18-07-2007-ECCC-OCIJ (PTC01)

PRE-TRIAL CHAMBER

Before: Judge PRAK Kimsan, President
Judge Rowan DOWNING
Judge PEN Pichsaly
Judge Katinka LAHUIS
Judge HUOT Vuthy

Date: 20 November 2007

បានថតចម្លងត្រឹមត្រូវតាមច្បាប់ដើម
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ក្រឡាបញ្ជី/ Greffier NUP SOTHUN VLEHET

**RULING CONCERNING CO-PROSECUTORS' NOTIFICATION OF DELEGATION OF POWERS
IN APPEAL BY CHARGED PERSON AGAINST PROVISIONAL DETENTION ORDER**

Office of the Co-Prosecutors

CHEA Leang
Robert PETIT
YET Chakriya
William SMITH

Charged Person

KAING Guek Eav alias DUCH

Defence Counsel

KAR Savuth
François ROUX

ORIGINAL DOCUMENT
RECEIVED ON 20/11/2007
AT 9:40' BY
NUP SOTHUNVLEHET
ACTING CASE FILE OFFICER

THE PRE-TRIAL CHAMBER of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”);

NOTING the “Co-Prosecutors’ Notification of Delegation of Powers pursuant to Rules 13(1) and 13(4) of the Internal Rules” filed on 15 November 2007;

HEREBY RULES as follows:

1. During the *in camera* hearing on the 15th of November 2007 in the appeal by the Charged Person against his provisional detention, the Co-Prosecutors handed to the Pre-Trial Chamber (“PTC”) a public “notification” in which was expressed their intention to have their deputy prosecutors, senior assistant and assistant prosecutors conduct oral advocacy in all hearings.
2. During the hearing the PTC allowed the lawyers of the Charged Person time to respond until 12.00 on the 19th of November 2007. No response was received.
3. Reading the “notification” of the Co-Prosecutors, the PTC notices that the Co-Prosecutors do not request any specific declarations or orders from the PTC related specifically to the hearing which will be continued on the 20th of November 2007. The Co-Prosecutors only notify the PTC of their intention to delegate their right to address the court in all hearings to their deputy, senior and assistant prosecutors.
4. According to Rules 2 and 3 of the Internal Rules, the Plenary of judges has the exclusive jurisdiction to make general rules for the ECCC. The PTC has therefore no jurisdiction to make any general declarative ruling or order. Its only task is to deal with matters related to a specific case in its jurisdiction as prescribed in the Internal Rules. Therefore the PTC shall not give declarative rulings or orders of a general kind as requested in the “notification” of the Co-Prosecutors.
5. In so far as the “notification” is intended to be a request to allow a deputy prosecutor, a senior assistant or assistant prosecutor rights of audience in this appeal against provisional detention, the PTC notices that the hearing dates were notified well in advance of the hearing. Before or since the setting of these dates the PTC has not been informed of any inability of the Co-Prosecutors to appear before the PTC. Even while arguing their “notification”, the Co-Prosecutors did not make any assertion of their inability to appear before the PTC. The PTC considers it to be important that the Co-Prosecutors appear before the PTC in person in this appeal as this is the first appeal before the the PTC which is dealt with in a public hearing.
6. The PTC further observes that article 22 (new) of the ECCC law is selectively quoted by the Co-Prosecutors in paragraph 3 of their “notification”. Article 22 (new) ECCC law provides:

Article 22 new

Each Co-Prosecutor shall have the right to choose one or more deputy prosecutors to assist him or her with prosecution before the chambers. Deputy foreign prosecutors shall be appointed by the foreign Co-Prosecutor from a list provided by the Secretary-General.

The Co-prosecutors shall be assisted by Cambodian and international staff as needed in their offices. In choosing staff to serve as assistants, the Director of the Office of Administration shall interview, if necessary, and with the approval of the Cambodian Co-Prosecutor, hire staff who shall be appointed by the Royal Government of Cambodia. The Deputy Director of the Office of Administration shall be responsible for the recruitment and administration of all foreign staff. The number of assistants shall be chosen in proportion to the Cambodian prosecutors and foreign prosecutors.

Cambodian staff shall be selected from Cambodian civil servants and, if necessary, other qualified nationals of Cambodia.

7. It is therefore noted that it is only the deputy prosecutors who are able to assist a Co-Prosecutor with the prosecution before the Chambers of the ECCC.
8. Further, it is noted that those appointed as deputy prosecutors must fulfill certain qualifications. The PTC is not notified in any form of the fulfillment of these conditions by the Co-Prosecutors.
9. The PTC noticed during the hearing on the 15th of November that the response to the appeal against provisional detention of the Co-Prosecutors was submitted by their deputy prosecutors. Parties are allowed to make their submissions until the hearing of the PTC. To avoid any problems of a technical nature, the PTC suggests in relation to the above-mentioned observations that the Co-Prosecutors confirm that they adopt and would themselves like to make the submissions described in the response brief.
10. Other international tribunals have their own conditions to be met in order to delegate power and they are very specific in nature. The fact that delegation is practised elsewhere does not in itself give any power to delegate in the ECCC when the conditions of the ECCC Internal Rules are not fulfilled.

GIVEN BY the Pre-Trial Chamber,

Signed, Phnom Penh, 20 November 2007

President, Pre-Trial Chamber



ANG Guek Eav case