



**អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា**

Extraordinary Chambers in the Courts of Cambodia  
Chambres extraordinaires au sein des tribunaux cambodgiens

**អង្គបុរេជំនុំជម្រះ**

Pre-Trial Chamber  
Chambre Préliminaire

០២៦/៥/២៨  
ព្រះរាជាណាចក្រកម្ពុជា

**ជាតិ សាសនា ព្រះមហាក្សត្រ**

Kingdom of Cambodia  
Nation Religion King

Royaume du Cambodge  
Nation Religion Roi

<b>ឯកសារដើម</b>
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/date de reception): ..... 30 / 09 / 2009 .....
ម៉ោង (Time/Heure) : 15:00
មន្ត្រីទទួលបន្ទុកសំណុំរឿង / Case File Officer/L'agent chargé du dossier: ..... C.A. Huy .....

Criminal Case file No. 002/19-09-2007-ECCC (PTC14 and 15)

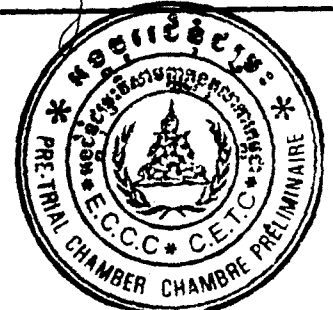
**WRITTEN RECORD OF HEARING**

On 3 April 2009, at 09:00, the Pre-Trial Chamber commences the hearing of the Appeal against the Co-Investigating Judges' Order Refusing the Request for Release ("Release Appeal") and the Appeal against the Co-Investigating Judges' Order on Extension of Provisional Detention ("Detention Appeal") lodged by the Charged Person **KHIEU Samphan**, alias **Hem**, male, born on 27 July 1931, at Commune of Rom Chek, District of Rom Duol, Province of Svay Rieng, Cambodia, residing before his arrest in the village of KonKhlong Sangkat Otavao, Khan Pailin, Pailin City, father's name KHIEU Long (deceased), mother's name POR Kong (deceased), spouse's name SO Socheat, with four children. The Charged Person is charged with crimes against humanity and grave breaches of the Geneva Conventions of 12 August 1949, being crimes set out and punishable under Articles 5, 6, 29 (new) and 39 (new) of the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia dated 27 October 2004.

**The composition of the Court:**

1. Judge PRAK Kimsan, President
2. Judge Rowan DOWNING
3. Judge NEY Thol
4. Judge Katinka LAHUIS
5. Judge HUOT Vuthy

<b>ឯកសារនាមថតបង្កង់ត្រឹមត្រូវតាមច្បាប់ដើម</b>
CERTIFIED COPY/COPIE CERTIFIÉE CONFORME
ថ្ងៃ ខែ ឆ្នាំ នៃការបញ្ជាក់ (Certified Date /Date de certification): ..... 01 / OCT / 2009 .....
មន្ត្រីទទួលបន្ទុកសំណុំរឿង / Case File Officer/L'agent chargé du dossier: ..... C.A. Huy .....



In accordance with Internal Rule 77(7), **Judge PEN Pichsaly** is present in his capacity as Reserve Judge.

**Deputy Co-Prosecutors:**

**YET Chakriya**

**Vincent De WILDE D'ESTMAEL**

**Greffiers:**

**SAR Chanrath**

**Anne-Marie BURNS**

The Charged Person is present and represented by his Co-Lawyers, **SA Sovan** and **Jacques VERGÈS**.

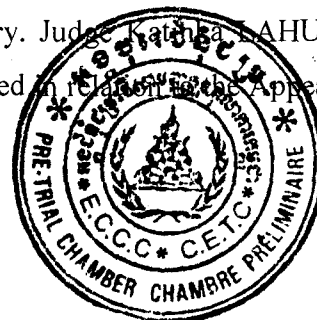
The Civil Parties are represented by **HONG Kimsuon, Lor Chunthy, NY Chandy, MOCH Sovannary, KIM Mengkhy, KONG Pisey** and **Silke STUDZINSKY**.

The President identifies the Charged Person and reads the charges against him, as stated above. The President informs the Charged Person of his rights, as set out in Internal Rule 21(d).

Judge HUOT Vuthy reads out the Report of Examination.

The President asks the Charged Person whether he would like to make a statement in relation to his Release Appeal or if he would like his Co-Lawyer to speak on his behalf. The Charged Person declares that he would like to delegate his right to speak to his Co-Lawyers.

At 09:29, Silke STUDZINSKY requests to make oral observations, despite not having made written submissions. She submits that the Civil Parties are permitted to raise the applicability of the Internal Rules whenever they deem it necessary. Judge **Katanga SAHUIS** asks questions in order to clarify how the submissions are to be viewed in relation to the Appeals



and notes that notice of any oral submissions should be made to the parties. The Bench deliberates.

At 09:34, Judge Rowan DOWNING asks Silke STUDZINSKY what notice has been given to the parties concerning the application she just made. Silke STUDZINSKY replies that no notice was given and requests that the other parties be allowed to make submissions on the application. The Bench deliberates.

At 09:36, Judge Rowan DOWNING announces that the Pre-Trial Chamber denies the application. He states that notice of oral submissions must be given to the other parties in order to allow them to be prepared to deal with the issue raised.

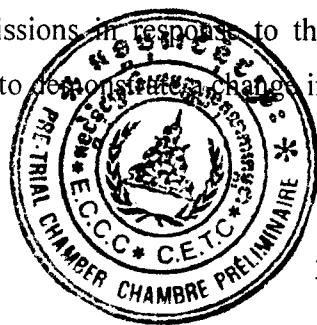
At 09:40, SA Sovan requests that the Release Appeal and the Detention Appeal be heard together. YET Chakriya opposes the request, stating that the Prosecution has prepared for the Appeals to be heard separately.

At 09:42, the Bench deliberates. At 09:45, the President announces that the Appeals will be heard separately as announced in the Conduct of Criminal Proceedings and allows the Co-Lawyers to repeat their arguments, if necessary.

From 09:48 to 10:00, SA Sovan makes his oral submissions on the Release Appeal. He requests the release of the Charged Person under judicial supervision. He presents legal arguments in relation to the grounds for detention as set out in paragraph (b) of Internal Rule 63(3).

At 10:00, Jacques VERGÈS declares that the Defence has a unique position and he has nothing to add to the submissions of the National Co-Lawyer.

From 10:00 to 10:40, YET Chakriya makes his oral submissions in response to the request for release on bail, asserting that the burden is on the Defence to demonstrate a change in



circumstances or in the conditions of detention and that due diligence was shown by the Co-Investigating Judges in the conduct of the proceedings.

The Hearing is adjourned from 10:24 to 10:40.

From 10:40 to 11:04, Vincent De WILDE D'ESTMAEL makes his oral submissions on the Release Appeal. He asserts that the Pre-Trial Chamber's Decision on the Translation Appeal of 20 February 2009 has rendered most of the arguments raised by the Defence in the Release Appeal mute. He submits that the discretionary power of the Co-Investigating Judges to refuse a request for release was correctly exercised and discusses Internal Rule 63(3)(b), in particular subsections (i), (iv) and (v).

From 11:04 to 11:09, SA Sovan presents his reply, referring to the grounds for detention as set out in Internal Rule 63(3)(b).

At 11:09, Jacques VERGÈS states that he has requested from the Co-Investigating Judges information about alleged corruption within the ECCC.

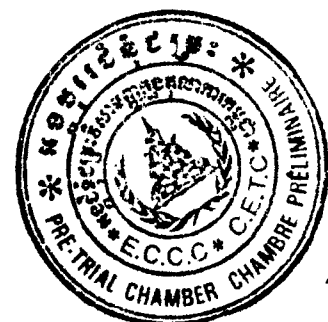
Judge Rowan DOWNING states that the International Co-Lawyer appears to be raising new issues, not by way of a reply to what was said by the Co-Prosecutors.

Jacques VERGÈS makes further comments about the alleged corruption.

At 11:13, the President invites the Charged Person to make a statement. The Charged Person replies that he would like his Co-Lawyers to speak on his behalf. SA Sovan briefly responded to submissions made by the Co-Prosecutors on the grounds for detention.

At 11:16, the President announces that the Pre-Trial Chamber will now hear the Detention Appeal.

Judge HUOT Vuthy reads out the report of examination.



At 11:34, the President informs the Charged Person of his rights, as set out in Internal Rule 21(d). The President asks the Charged Person whether he would like to make a statement in relation to his Appeals or if he would like his Co-Lawyer to speak on his behalf. The Charged Person declares that he would like to delegate his right to speak to his Co-Lawyers.

SA Sovan makes his oral submissions on the Detention Appeal, referring to the procedural history and a connection between the translation issue and the present appeal.

At 11:41, Jacques VERGÈS declares that his national colleague has stated what he thinks.

From 11:41 to 11:51, YET Chakriya makes his oral submissions in response to the Detention Appeal, arguing that the Co-Investigating Judges did not have to defer their decision on extension of provisional detention pending a decision by the Pre-Trial Chamber on the Charged Person's Appeal Against the Order on Translation Rights and Obligations of the Parties. He further submits that the Defence's submissions on the lack of impartiality of the Co-Investigating Judges are outside the scope of an appeal on provisional detention and shall not be considered by the Pre-Trial Chamber.

The Hearing is adjourned from 11:51 to 13:29.

From 13:29 to 13:49, Vincent De WILDE D'ESTMAEL makes his oral submissions in response to the Detention Appeal. He argues that the length of the proceedings related to the Appeal against the Provisional Detention Order dated 19 November 2007 was attributable to the Defence. He questions whether the Co-Lawyers can effectively and diligently defend the rights of the Charged Person. He makes submissions in relation to Internal Rules 63(6) and (7) and states that the onus is on the Defence to identify changes in circumstances justifying release from provisional detention. He discusses the fulfilment of the condition set out in Internal Rule 63(3)(a) for ordering provisional detention, with reference to evidence in the case file, and refers to the arguments raised in the Release Appeal relating to Internal Rule 63(3)(a).



From 13:50 to 13:55, SA Sovan presents his reply. He denies any strategy to prolong proceedings, stating that it would not be in the interest of his client.

At 13:55, Jacques VERGÈS makes a short statement in reply to the submissions of the Co-Prosecutors where, he says, the International Co-Prosecutor has challenged him.

At 13:55, the President invites the Charged Person to make a final statement. The Charged Person replies that he has no further comments. He states that he would never want to fire his Co-Lawyers. Judge Rowan DOWNING clarifies that the Court has never suggested that the Charged Person fire his Co-Lawyers and reminds the Charged Person of his right to choose his own lawyers. Jacques VERGÈS replies that this is what he recalls to have seen in a previous decision of the Pre-Trial Chamber.

At 13:58, the President announces that the date of the delivery of the decision on the Appeal will be announced three days in advance and declares the hearing of the two appeals closed.


The transcripts of the hearing are attached to this Written Record of Hearing and form part of it.

Phnom Penh, 25 September 2009

President

Greffiers

  
  
 PRAK Kim

  
 SAR Chanrath

  
 Anne Marie BURNS