



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

D164/4/3
ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ
Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

អង្គបុរេជំនុំជម្រះ
Pre-Trial Chamber
Chambre Préliminaire

Criminal Case File N° 002/19-09-2007-ECCC/OCIJ (PTC 24 and 25)

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

Date: 20 August 2009

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du dossier:..... C.A. វុឌ្ឍ

PUBLIC
DECISION ON "REQUEST FOR AN ORAL HEARING" ON THE APPEALS
PTC 24 AND 25

Co-Prosecutors

CHEA Leang
Robert PETIT

Charged Persons

IENG Sary
Nuon Chea
Ieng Thirith
Khieu Samphan

Lawyers for the Civil Parties

HONG Kim Suon
LOR Chunthy
NY Chandy
KONG Pisey
YONG Phanith
KIM Mengkhy
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David BLACKMAN
Annie DELAHAIE

Co-Lawyers for the Defence

Defence for Ieng Sary:
Mr. ANG Udom
Mr. Michael G. KARNAVAS

Defence for Nuon Chea:
Mr. SON Arun
Mr. Victor KOPPE
Mr. Michiel PESTMAN

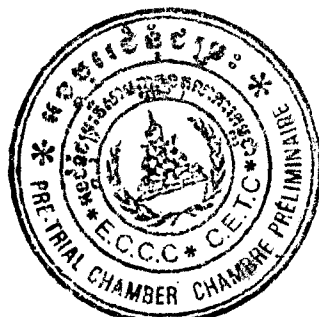
Defence for Ieng Thirith:
PHAT POUV Seang
Diana ELLIS

Defence for Khieu Samphan:
Mr. Sa Sovan
Mr. Jacques Verges

ឯកសារបានថតចម្លងត្រឹមត្រូវតាមច្បាប់ដើម
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ថ្ងៃ ទទួល ឆ្នាំ (Certified Date /Date de certification):
..... 20 / 08 / 2009

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du dossier:..... C.A. វុឌ្ឍ

Unrepresented Civil Parties



Co-Investigating Judges

You Bun Leng
Marcel Lemonde

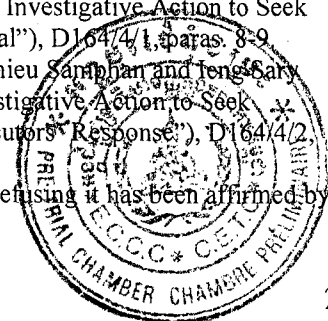
1. **THE PRE-TRIAL CHAMBER** of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) notes the Request of the Co-Lawyers for Ieng Thirith, Nuon Chea and Khieu Samphan for an Oral Hearing (the Request) for the “Joint Defence Appeal against the Co-Investigating Judges Order on the Request for Investigative Action to Seek Exculpatory Evidence in the SMD of 19 June 2009” filed on 24 July 2009 (the “Appeal”).¹
2. In their Request, the Co-Lawyers submit that a hearing should be scheduled in order to allow all relevant parties to “shed light on the issue”.
3. In their Combined Response to the Appeals the Co-Prosecutors submit that the Appeals do not raise complex or important legal issues but rather “simple and largely technical” ones and therefore should be decided on the basis of written submissions which would be in the interests of judicial economy.²
4. Rule 77 of the Internal Rules (Rev.3), 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.”
5. The Pre-Trial Chamber notes that, as a general rule, it would consider this particular category of appeals against Co-Investigating Judges’ Orders refusing requests for investigative actions on the basis of written submissions alone. This approach derives from the confidential nature of the investigation as provided for in Internal Rule 56. The Pre-Trial Chamber observes that unless a request for investigative action has been finally rejected,³ the potential for such investigative action to be undertaken by the Co-Investigating Judges remains effective. In deciding on the appeal the order can be quashed by the Pre-Trial Chamber, and sent back for reconsideration or with an order to undertake the requested investigative action. This action then forms part of the investigations, which are, as a general rule, confidential. The Pre-Trial Chamber, therefore, rejects the request for a hearing.
6. The Pre-Trial Chamber allows the Co-Lawyers for the Charged Persons to file written replies as provided for in Article 8.4 of the Practice Direction ECCC/01/2007/Rev. 4.

¹ “Joint Defence Appeal against the Co-Investigating Judges Order on the Request for Investigative Action to Seek Exculpatory Evidence in the SMD of 19 June 2009” filed on 24 July 2009 (the “Appeal”), D164/4/1, paras. 8-9.

² Co-Prosecutors’ Combined Response to the Appeals by Ieng Thirith, Nuon Chea, Khieu Samphan and Ieng Sary against the Co-Investigating Judges’ Order Denying a Joint Defence Request for Investigative Action to Seek Exculpatory Evidence in the Shared Materials Drive, 10 August 2009 (the “Co-Prosecutors’ Response”), D164/4/2, paras. 12-16.

³ A request for investive action is considered as finally rejected when an OCIJ Order refusing it has been affirmed by the Pre-Trial Chamber.



7. The Pre-Trial Chamber further notes the Co-Prosecutors submission against the admissibility of Khieu Samphan's appeal.⁴ The Pre-Trial Chamber finds it appropriate to request the views of the Co-Lawyers for Khieu Samphan on these specific submissions.

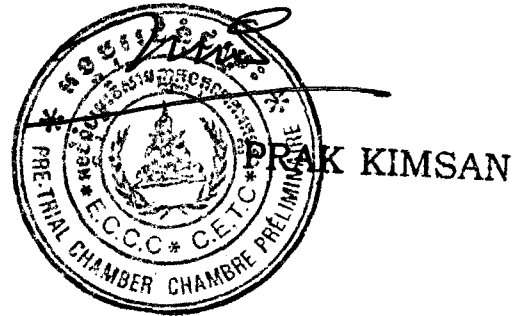
THEREFORE, THE PRE-TRIAL CHAMBER HEREBY:

(1) REJECTS the Request to determine the Appeal on the basis of a hearing;

(2) DIRECTS the Co-Lawyers for the Charged Persons to Reply within the deadline provided for in Article 8.4 of the Practice Direction ECCC/01/2007/Rev. 4.

Phnom Penh, 20 August 2009

President of the Pre-Trial Chamber



⁴ The Co-Prosecutors' Response, paras. 8-11.