



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

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

ព្រះរាជាណាចក្រកម្ពុជា

ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia
Nation Religion King

Royaume du Cambodge
Nation Religion Roi

D427/4/14

អង្គបុរេជំនុំជម្រះ

Pre-Trial Chamber
Chambre Préliminaire

In the name of the Cambodian people and the United Nations and pursuant to the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea.

Criminal Case File No: 002/19-09-2007-ECCC/OCIJ (PTC104)

Before: Judge PRAK Kimsan, President
Judge Rowan DOWNING
Judge NEY Thol
Judge Catherine MARCHI-UHEL
Judge HUOT Vuthy

Date: 13 January 2011

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PUBLIC

DECISION ON KHIEU SAMPHAN'S APPEAL AGAINST THE CLOSING ORDER

Co-Prosecutors

CHEA Leang
Andrew CAYLEY

Accused

KHIEU Samphan

The Co-Investigating Judges

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Co-Lawyers for the Accused

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Emmanuel ALTIT
Emmanuel JACOMY
Julien RIVET
Barnabe NEKUIE
Nicole DUMAS
Daniel LOSQ



THE PRE-TRIAL CHAMBER of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) is seized of the “Appeal against the Closing Order” filed by KHIEU Samphan on 18 October 2010 (“Appeal”)¹.

1. The Appellant requests the Pre-Trial Chamber to find that the Indictment infringes the rules governing judicial investigations and prematurely concludes an investigation that is incomplete and was limited to inculpatory circumstances.² He alleges generally that the Indictment was not preceded by any adversarial debate, that it does not address the scope of any potential link between him and the facts under investigation, that it did not make it possible to ascertain the truth and that further investigations must be conducted in order to ensure a genuine trial.³
2. He raises two grounds of appeal. The first argues that there was no adversarial debate⁴ on account of (1) the denial of the right to respond to the Co-Prosecutors’ Final Submission,⁵ (2) that evidence is not available in French and Khmer⁶ and (3) that the conduct of the investigation by the Co-Investigating Judges lacked transparency. The second ground of appeal alleges that the investigation is incomplete, biased, and even *dangerous*.
3. The Pre-Trial Chamber has determined the final disposition of the Appeal, which it hereby pronounces. The reasons for this decision shall follow in due course.

THE PRE-TRIAL CHAMBER HEREBY DECIDES UNANIMOUSLY:

1. The Appeal is inadmissible;
2. The Accused is indicted and ordered to be sent for trial as provided in the Closing Order which shall be read in conjunction with the Decision on IENG Thirith’s and NUON Chea’s Appeals against the Closing Order⁷ and the

¹ Appeal against the Closing Order, 18 October 2010, D427/4/3 (“Appeal”).

² Appeal, para. 1.

³ Appeal, para. 2.

⁴ Appeal, paras. 62-84.

⁵ Appeal, paras. 63-68.

⁶ Appeal, paras. 69-73.

⁷ Decision on IENG Thirith’s and NUON Chea’s Appeals against the Closing Order, 13 January 2011 (PTC 145 and 146).



Decision on IENG Sary's against the Closing Order⁸ issued on this day by the Pre-Trial Chamber and applying to all accused in this case, whereby the Closing Order has been amended as follows:

1. The "existence of a nexus between the underlying acts and the armed conflict" is added to the "Chapeau" requirements in Chapter IV(A) of Part III of the Closing Order.
2. The Pre-Trial Chamber decides to strike rape out of paragraph 1613 (Crimes Against Humanity, paragraph (g)) of the Closing Order and to uphold the Co-Investigating Judges finding in paragraph 1433 of the Closing Order that "the facts characterized as crimes against humanity in the form of rape can be categorized as crimes against humanity of other inhumane acts."
3. The provisional detention of the Accused is ordered to continue until he is brought before the Trial Chamber.

In accordance with Internal Rule 77(13), this decision is not subject to appeal.

Phnom Penh, 13 January 2011^{ch}.

Pre-Trial Chamber

Rowan DOWNING NEY Thol Catherine MARCHI-UHEL HUOT Vuthy PRAK Kimsan



⁸ Decision on IENG Sary's against the Closing Order, 13 January 2011 (PTC 75).
Decision on KHIEU Samphan's Appeal against the Closing Order