

C20/5/9

**BEFORE THE PRE-TRIAL CHAMBER OF THE  
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

Case No.: 002/19-09-2007-ECCC/OCIJ (PTC 16)  
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**DEFENCE RESPONSE TO OCP REQUEST TO DETERMINE APPEAL AGAINST  
ORDER ON EXTENSION OF PROVISIONAL DETENTION  
ON THE BASIS OF WRITTEN SUBMISSIONS ALONE**

Filed by:

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PHAT Pouv Seang  
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<b>ឯកសារចម្លងត្រូវបានបញ្ជាក់ថាត្រឹមត្រូវ</b>	
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## I INTRODUCTION

1. On 9 December 2008, the Defence filed its “Ieng Thirith Defence Appeal against ‘Order on Extension of Provisional Detention’ of 10 November 2008” (“**Appeal**”).<sup>1</sup>
2. In the “Co-Prosecutors’ Response to Ieng Thirith Defence Appeal against the ‘Order on Extension of Provisional Detention of 10 November 2008’”<sup>2</sup> the Office of the Co-Prosecutors (“**OCP**”) requests that the Pre-Trial Chamber (“**PTC**”) determine the underlying appeal on the basis of written submissions alone (“**OCP Request**”).<sup>3</sup>
3. On 14 January 2009, the PTC issued “Directions to the Parties Concerning Co-Prosecutors’ Request to Determine the Appeal on Written Submissions Alone” (“**Directions**”),<sup>4</sup> in which it requests the parties to respond to this request by Monday 19 January 2009. The Defence herewith files its response to the Directions.

## II THE LAW

4. Rule 77(3)(b) of the Internal Rules provides:

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. It is on this basis that the OCP requests the PTC to determine the current appeal on the basis of written submissions instead of an oral hearing, and the PTC has discretion in deciding upon such request.

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<sup>1</sup> Ieng Thirith Defence Appeal against ‘Order on Extension of Provisional Detention’ of 10 November 2008, 9 December 2008, Doc. No. C20/5/1.

<sup>2</sup> Co-Prosecutors’ Response to Ieng Thirith Defence Appeal against the ‘Order on Extension of Provisional Detention of 10 November 2008’, 9 January 2009, Doc. No. C20/5/7.

<sup>3</sup> OCP Request, para. 4.

<sup>4</sup> Directions to the Parties Concerning Co-Prosecutors’ Request to Determine the Appeal on Written Submissions Alone, 14 January 2009, Doc. No. C20/5/8.

C20/5/9

002/19-09-2007-ECCC/OCIJ (PTC 16)

### III ARGUMENTS

6. The OCP Request seems to conclude that the defence has no objections to written submissions only by stating that “[t]he Appellant has not asked for an oral hearing of this Appeal.”<sup>5</sup> However, the assumption of Rule 77(3)(b) is an oral hearing. By refraining from dealing with this matter, the defence thus supported an oral hearing. The defence thus does object to the OCP Request, and respectfully requests the PTC to decide the underlying matter on the basis of an oral hearing.
7. The OCP Request acknowledges that “hearings determinative of detention should be heard orally”. However, it holds that the current Appeal should be determined on the basis of written submissions only, because the Appeal only deals with an extension of a confirmed detention, “and, as such, raises no new material factual or legal arguments that need to be addressed in an oral hearing”.<sup>6</sup>
8. The defence contests such allegation. The OCP Request needed 27 pages to respond to the defence Appeal, and obviously relates to new material factual and legal arguments.
9. The provisional detention of the Charged Person has been extended for another year, and the defence contends that the basis for this extension, the Office of the Co-Investigating Judges’ “Order on Extension of Provisional Detention”,<sup>7</sup> was insufficiently reasoned and erroneous, and should thus be quashed.
10. The ordered extension is thus an important matter to the Charged Person, and should be dealt with appropriately. The parties should be allowed to present their arguments orally, so as to be able to fully explain the arguments underlying the Appeal. Especially given the many different interpretations of law and fact in the

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<sup>5</sup> OCP Request, para. 4.

<sup>6</sup> OCP Request, para. 4.

<sup>7</sup> Order on Extension of Provisional Detention, 10 November 2008, Doc. No. C20/4.

C20/5/9

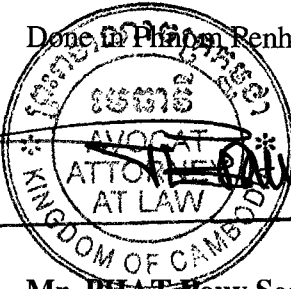
002/19-09-2007-ECCC/OCIJ (PTC 16)

defence and OCP documents, these issues should be further argued and clarified in court.

#### IV PRAYER

11. For these reasons, the defence respectfully requests the Pre-Trial Chamber to decide the Appeal on the basis of oral arguments.

Done in Phnom Penh, this 19<sup>th</sup> day of January, 2009



**Mr. PHAT Pouv Seang**  
Co-Lawyer

**Ms. Diana ELLIS, QC**  
Co-Lawyer