



អង្គបុរេជំនុំជម្រះ

PRE-TRIAL CHAMBER
CHAMBRE PRELIMINAIRE

Criminal Case File N° 002/19-09-2007-ECCC/OCIJ (PTC15)

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

Date: 6 February 2009

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ORIGINAL DOCUMENT/DOCUMENT ORIGINAL	
ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/Date de reception):	
06, FEB, 2009	
ម៉ោង (Time/Heure):	
14:00	
មន្ត្រីទទួលបន្ទុកឯកសារ (Case File Officer/L'agent chargé du dossier):	
C.A. Ay	

PUBLIC

DECISION ON CO-PROSECUTORS' REQUEST TO DETERMINE THE APPEAL ON THE BASIS OF WRITTEN SUBMISSIONS AND SCHEDULING ORDER

Co-Prosecutors

CHEA Leang
Robert PETIT
YET Chakriya
William SMITH
PICH Sambath
Vincent de WILDE d'ESTMAEL

Charged Person

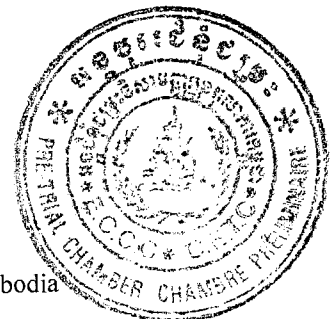
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Co-Lawyers for the Charged Person

SA Sovan
Jacques VERGÈS



1. **THE PRE-TRIAL CHAMBER** of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) notes the “Co-Prosecutors’ Response to Khieu Samphan’s Appeal against the Order on Extension of Provisional Detention dated 18 November 2008” (“Response”), filed on 9 January 2009, in which they request the Pre-Trial Chamber to determine the Appeal on the basis of written submissions alone (“Request”).
2. In their Request, the Co-Prosecutors submit that “[w]hile the Co-Prosecutors generally support oral hearings for appeals, the current Appeal concerns only an extension of detention and the appeal does not raise any new factual or legal arguments necessitating an oral hearing.”¹
3. In Directions issued on 27 January 2009, the Pre-Trial Chamber invited the Parties involved in the case to file responses by 30 January 2009.
4. On 30 January 2009, the Co-Lawyers filed their Response to the Co-Prosecutors’ Request in which they ask the Pre-Trial Chamber to schedule a public hearing of this Appeal as it raises novel legal issues and concerns the Charged Person’s fundamental right to liberty.² The Co-Lawyers further request that their “Appeal Brief Against the Order of 28 October 2008 Refusing Release”, filed on 27 November 2008, be heard during the same hearing as both Appeals concern the illegality of the Charged Person’s provisional detention and are thus connected.
5. The Pre-Trial Chamber notes that the Co-Prosecutors have also requested that the Appeal against Order Refusing Release be decided on the basis of written submissions alone.³
6. Rule 77 of the Internal Rules (Rev.2), 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.”

¹ Co-Prosecutors’ Response to Khieu Samphan’s Appeal against the Order on Extension of Provisional Detention dated 18 November 2008, 9 January 2009, C26/5/10, para. 4.

² *Réponse de la défense à la requête formulée par les co-procureurs visant à ce que l’appel soit tranché sur la seule base des conclusions écrites*, 30 January 2009, C/26/5/12, para. 2.

³ Case no. 002/19-09-2007-ECCC/OCIJ (PTC14), Co-Prosecutors’ Response to Khieu Samphan’s Appeal Brief Against the Order Refusing Request for Release dated 28 October 2008, 22 January 2009, C40/5/2, para. 6.



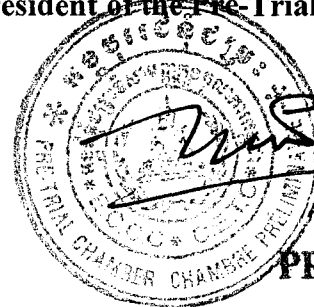
7. Recognising the importance of the two Appeals, which both relate to the liberty of the Charged Person, and considering that the Defence has requested to be heard orally, the Pre-Trial Chamber considers it appropriate to hold a hearing before deciding on these Appeals.
8. Considering that the Appeal against Order Refusing Release will be ready to be heard shortly and that it raises issues closely linked to the Appeal against Order on Extension of Provisional Detention, the Pre-Trial Chamber will hear the two Appeals together.
9. The hearing of these Appeals shall be held in public.

THEREFORE, THE PRE-TRIAL CHAMBER HEREBY:

- (1) **REJECTS** the Requests to determine the Appeals on the basis of written submissions alone filed in cases 002/19-09-2007-ECCC/OCIJ (PTC14) and 002/19-09-2007-ECCC/OCIJ (PTC15);
- (2) **SCHEDULES** the hearing of the Appeal against Order on Extension of Provisional Detention and the Appeal against Order Refusing Request for Release for **27 February 2009** at **9:00 a.m.**; and
- (3) **INVITES** all Parties involved in the proceedings to participate in the hearing as scheduled. ort

Phnom Penh, 6 February 2009

President of the Pre-Trial Chamber



PRAK KIMSAN