



អង្គបុរេជំនុំជម្រះ

PRE-TRIAL CHAMBER
CHAMBRE PRELIMINAIRE

Criminal Case File N° 002/19-09-2007-ECCC/OCIJ (PTC03)

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

Date: 1 July 2008

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DECISION ON PRELIMINARY MATTERS RAISED BY THE LAWYERS FOR THE CIVIL PARTIES
IN IENG SARY'S APPEAL AGAINST PROVISIONAL DETENTION ORDER

Co-Prosecutors

CHEA Leang
Robert PETIT
YET Chakriya
William SMITH

ឯកសារព្រមព្រៀងត្រឹមត្រូវតាមច្បាប់ដើម
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Charged Person

IENG Sary

Lawyers for the Civil Parties

HONG Kim Suon
LOR Chunthy
NY Chandy
KONG Pisey
YONG Phanith
Silke STUDZINSKY

Co-Lawyers for the Defence

ANG Udom
Michael G. KARNAVAS



C22/I/46

1. On 30 June 2008, the Lawyers for the Civil Parties raised two separate preliminary issues during the hearing on the appeal against the provisional detention order in the case of the Charged Person Ieng Sary.
2. First, the Lawyers for the Civil Parties object to a previous ruling of the Pre-Trial Chamber that the Lawyers for the Civil Parties are not allocated the same time for oral submissions as the Co-Prosecutors and the Co-Lawyers on the issue of provisional detention. They welcomed the decision of the Pre-Trial Chamber to grant the Lawyers for the Civil Parties the same amount of time as the other Parties on other issues. They submit that all Parties should be treated in the same way.
3. The Pre-Trial Chamber notes that the Parties have different positions in the criminal proceedings and these positions even vary in the different stages of the proceedings. The Internal Rules contain certain rules which reflect those different positions. The Pre-Trial Chamber has previously decided in general on the position of the Civil Parties during provisional detention appeals and gave directions of a general nature in a previous case.¹
4. The Lawyers for the Civil Parties raised 'general observations' in writing before the Pre-Trial Chamber on 16 June 2008 in respect of which the Chamber issued a reasoned decision.² During the hearing no new arguments have been raised except for a reference to a principle that all Parties should be treated in the same way. The Pre-Trial Chamber finds that no such general principle exists with respect to the length of oral submissions. Even if it did, such a principle would simply mean that as far as their position is equal, Civil Parties should be treated in the same way. This is not the case.
5. Related to the jurisdictional issues, the Pre-Trial Chamber considers that the Civil Parties have a direct interest which is separate from that of the Prosecution.³ If the Pre-Trial Chamber were to determine that there is no right to commence a criminal action against the Charged Person, the result might be that the Civil Parties have no possibility left to claim their damages as civil parties.. This is different from the right of the Civil Parties to be heard in respect of the appeal against the detention order, as a decision by the Pre-Trial Chamber

¹ Decision on Civil Party Participation in Provisional Detention Appeals, 20 March 2008; Directions on Civil Party Oral Submissions During the Hearing of the Appeal against Provisional Detention Order, 20 May 2008.

² Decision on Admissibility of Civil Party General Observations, 24 June 2008.

³ See Internal Rule 23(1)(a) and (b).



to grant the appeal would still enable civil parties to claim damages in the main trial.

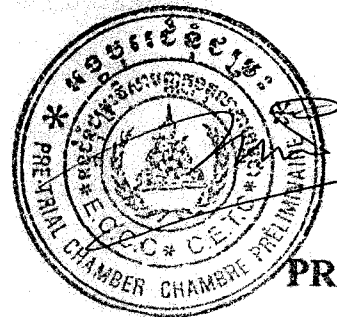
6. The Pre-Trial Chamber notes that no specific arguments have been raised as to why in this particular case the Lawyers for the Civil Parties should have been granted more time. The reasons to decide as the Pre-Trial Chamber did have not changed. Under these circumstances the Pre-Trial Chamber refuses the request of the Lawyers for the Civil Parties to allow more time on the provisional detention issue.
7. The Lawyers for the Civil Parties have raised a second matter in which they request that the Civil Parties should be allowed to speak in person although represented by a lawyer.
8. Previously, the Pre-Trial Chamber directed that a Civil Party is not permitted to speak in person and reasoned this by reference to Internal Rule 77(10). No new arguments have been raised which would lead to other findings of a general nature.

THEREFORE, THE PRE-TRIAL CHAMBER HEREBY DECIDES:

That the requests of the Lawyers for the Civil Parties are denied. PK

Phnom Penh, 1 July 2008

President of Pre-Trial Chamber



PRAK KIMSA!