



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

C 11/36

Extraordinary Chambers in the Courts of Cambodia
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

អង្គបុរេជំនុំជម្រះ

PRE-TRIAL CHAMBER
CHAMBRE PRELIMINAIRE

Criminal Case File N° 002/19-09-2007-ECCC/OCIJ (PTC01)

PRE-TRIAL CHAMBER

Before:

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

Date:

12 February 2008

ឯកសារបានផ្តល់ជូនតាមច្បាប់ដើម
CERTIFIED COPY/COPIE CERTIFIEE CONFORME
ថ្ងៃ ខែ ឆ្នាំ ការបញ្ជាក់ (Certified Date/Date de certification):
..... 12 FEB 2008
មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé
du dossier: ... N.U.P. S.O.THUN.VICHET ...

**PUBLIC ORDER ON THE FILING OF SUBMISSIONS ON THE ISSUE OF
CIVIL PARTY PARTICIPATION IN APPEALS AGAINST PROVISIONAL
DETENTION ORDER AND AN INVITATION TO AMICUS CURIAE**

Co-Prosecutors

CHEA Leang
Robert PETIT

Lawyers for the Civil Parties

HONG Kim Suon
LOR Chunthy
NY Chandy

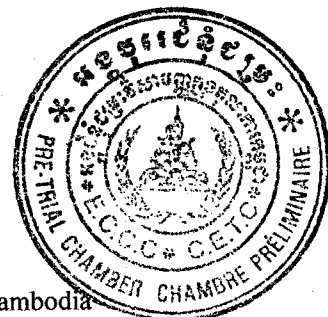
Charged Person

NUON Chea

Co-Lawyers

SON Arun
Michiel PESTMAN
Victor KOPPE

ឯកសារដើម
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/Date de reception):
..... 12 FEB 2008
ម៉ោង (Time/Heure): 16 : 00'
មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé
du dossier: N.U.P. S.O.THUN.VICHET...



1. The Pre-Trial Chamber held a hearing on the appeal by the Co-Lawyers for the Charged Person Nuon Chea against the provisional detention order of the Co-Investigating Judges on 7-8 February 2008.
2. At the date of the hearing, four civil party applications had been assessed by the Co-Investigating Judges, resulting in the participation of four Civil Parties in case file no. 002/19-09-07-ECCC/OCIJ. On 31 January 2008, the Pre-Trial Chamber was informed of the appointment of lawyers for all four Civil Parties and of their intention to appear at the hearing (originally scheduled for 4 February 2008). Prior to the hearing, notification was given of the presence of Civil Parties and their lawyers at the hearing and of the time allocated for submissions by the Civil Parties.
3. At the hearing, the Co-Lawyers argued that permitting the Civil Parties to participate in the proceedings would violate the right of the Charged Person to a fair trial. According to the Co-Lawyers, the views and concerns of Civil Parties must be presented in a way which is not prejudicial to the Charged Person. It was noted that the Civil Parties had not filed written pleadings nor had they made their interests known to the other Parties or to the Pre-Trial Chamber. Furthermore, the Co-Lawyers argued that Internal Rule 23 did not provide for participation of the Civil Parties in proceedings dealing with appeals against detention orders. They referred to the judgement of the Appeals Chamber of the International Criminal Court ("ICC") dated 13 February 2007 (No. 01/04-01/06 (OA7)) in the case of the *Prosecutor v. Thomas Lubanga Dyilo*.
4. The Pre-Trial Chamber, on the basis of the submissions of the Parties and the unanimous desire to proceed with the hearing, decided to reserve the rights of the defence and issue a ruling on the civil party matter prior to its decision on the provisional detention appeal. The hearing proceeded on the basis that any submissions by the Civil Parties and/or their lawyers could be admitted or excluded prior to determining the provisional detention appeal. This would depend on the outcome of the Pre-Trial Chamber's ruling on the question of principle.
5. This issue has arisen in the Nuon Chea appeal against the order for provisional detention. It may affect the position or harm the interests of Charged Persons in other cases.



appeals relating to provisional detention that are pending before the Pre-Trial Chamber. The Pre-Trial Chamber therefore joins the pending appeals in relation to this matter and invites the Co-Lawyers for the other Charged Persons to file submissions.

6. Furthermore, considering the fundamental character of the issue, the Pre-Trial Chamber considers it to be of importance to obtain the opinions of *amici curiae*. The Pre-Trial Chamber seeks focused submissions from *amici curiae* addressing the issue of the balance between the rights of the Charged Person to a fair trial and the rights of the Civil Parties in the context of the ECCC Internal Rules.

Therefore, the Pre-Trial Chamber Orders as follows:

- 1) That the Co-Lawyers in case files 002/19-09-07-ECCC/OCIJ(PTC01), 002/19-09-07-ECCC/OCIJ(PTC02), 002/19-09-07-ECCC/OCIJ(PTC03) and 002/19-09-07-ECCC/OCIJ(PTC04) may file written submissions in respect of the issues raised by 15.30 on 22 February 2008.
- 2) That the Co-Prosecutors may file written submissions in respect of the issues raised by 15.30 on 22 February 2008.
- 3) That the Civil Parties in case file 002/19-09-07-ECCC/OCIJ may file written submissions in respect of the issues raised by 15.30 on 22 February 2008.
- 4) That *amicus curiae* briefs will be received until 15.30 on 22 February 2008.
- 5) That the Parties may respond to the submissions made by any other Party or to any *amicus curiae* briefs by 15.30 on 6 March 2008.
- 6) That the page limit for submissions is 10 pages in English and French, and 15 pages in Khmer.
- 7) That the Parties and *amici curiae* shall, as far as possible, submit their submissions in Khmer, English and French.

Phnom Penh, 12 February 2008
 President of the Pre-Trial Chamber



PRAK KIMSAN