



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: 29 August 2008

PUBLIC

DIRECTIONS ON UNREPRESENTED CIVIL PARTIES' RIGHT TO ADDRESS THE PRE-TRIAL CHAMBER IN PERSON

Co-Prosecutors

CHEA Leang
Robert PETIT
YET Chakriya
William SMITH
TAN Senarong
Ancs AHMED

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Charged Persons

IENG Sary

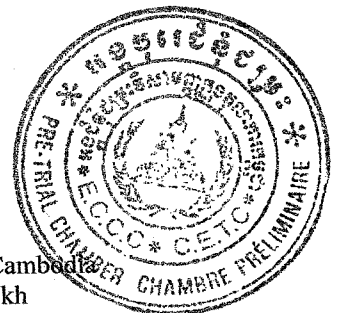
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Co-Lawyers for the Defence

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Michael G. KARNAVAS



C22/I/69

1. **THE PRE-TRIAL CHAMBER** of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) refers to its “Decision on Application for Reconsideration of Civil party’s Right to Address Pre-Trial Chamber in Person” of 28 August 2008 (the “Decision on Application for Reconsideration”)¹ in which it has stated that a ruling will be issued in relation to the right of unrepresented civil parties to address the Pre-Trial Chamber in person.
2. The Pre-Trial Chamber recalls that following the “Application of Reconsideration on Civil Party’s Right to Address Pre-Trial Chamber” filed by the Civil Party Theary Chan Seng and after having received a letter on behalf of three unrepresented Civil Parties in the Co-Investigating Judges’ Case File 001, the Pre-Trial Chamber has recognized the potential impact of its decision on the Application for Reconsideration on as yet unrepresented Civil Parties. The Pre-Trial Chamber has therefore opened the opportunity to file submissions to those Civil Parties (or potential Civil Parties) as well as to the other Charged Persons.²
3. A response was received jointly by three unrepresented Civil Parties in Case File 001.³ No submissions were received on behalf of the Charged Person Ieng Sary or any other Charged Person. The submissions of the Civil Parties are summarized in the Decision on Application for Reconsideration.⁴
4. The Pre-Trial Chamber considers it necessary to address the concerns raised by the unrepresented Civil Parties in relation to their right to address the Pre-Trial Chamber in person by issuing further directions.
5. The Pre-Trial Chamber has stated previously that Parties have different positions and interests at different stages of the criminal proceedings.⁵ For the Civil Parties, this is reflected in Internal Rule 23(1) which states the purpose of civil party action before the ECCC as being (a) to participate in the proceedings to support the Prosecution and (b) to seek reparations. Civil Parties have the possibility to act in person when they support the Prosecution by providing evidence, whether or not represented by a lawyer. The nature of appeals before the Pre-Trial Chamber is such that they will generally involve legal issues and reference to factual material from the case file.

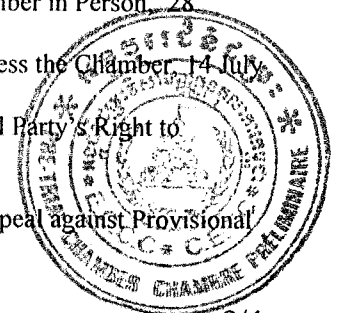
¹ Decision on Application for Reconsideration of Civil party’s Right to Address Pre-Trial Chamber in Person, 28 August 2008, C/22/I/68.

² Further Directions concerning Application for Reconsideration of Civil Party’s Right to Address the Chamber, 14 July 2008, C22/I/59.

³ Response of Three Unrepresented Civil Parties to the Application for Reconsideration of Civil Party’s Right to Address the Chamber, 20 July 2008, C22/I/63.

⁴ Decision on Application for Reconsideration, para. 22.

⁵ Decision on Preliminary Matters raised by the Lawyers for the Civil Parties in Ieng Sary’s Appeal against Provisional Detention Order, 1 July 2008, C22/I/46 (“Decision on Preliminary Matters”), para. 3.



6. Internal Rule 77(4) provides that “[t]he Co-Prosecutors and the lawyers for the parties may consult the case file up until the date of the hearing.” Similarly, Article 259 of the Cambodian Criminal Procedure Code provides that “[t]he general prosecutor of the Court of Appeal and lawyers may examine the case file until the time of trial.”
7. Since only the lawyers for the parties may access the factual material in the case file, and Civil Parties will in most cases not have legal training, the lawyers who filed the submissions are those in a position to provide relevant assistance to the court in such matters. Referring to fair trial principles, the Pre-Trial Chamber has previously decided in its Decision on Civil Party Participation in Provisional Detention Appeals of 20 March 2008 (the “Decision on Civil Party Participation”) that Civil Parties should file submissions in order to make it possible for the Charged Person to respond on the issues to be raised.⁶
8. Recent jurisprudence supports the Pre-Trial Chamber’s reasoning in the Decision on Civil Party Participation and suggests that a victim’s interest in participating in pre-trial proceedings stems from two core rights – the right to truth and the right to justice.⁷ These are key concerns that are relevant to the Chamber’s exercise of its discretion. Procedural rights can be limited if this is necessary to safeguard other competing interests, applying a principle of proportionality.⁸ It is noted that the International Criminal Court has in certain circumstances granted broader rights to the legal representatives of victims, such as access to the confidential record and closed session hearings, than to the victims themselves.⁹
9. The Pre-Trial Chamber recognises that unrepresented Civil Parties are in a special position and may be unrepresented not through choice, but for financial reasons.
10. The Pre-Trial Chamber has already recognised that where the possible effect of a decision might be that the Civil Parties have no possibility left to claim damages in the trial, the interests of the Civil Parties are different from those of the Prosecution.¹⁰ Recognising the right of the victims to truth and justice, in such circumstances, a legitimately unrepresented Civil Party may be permitted to address the court in person.
11. The Pre-Trial Chamber finds that in order to balance the rights of all parties, a legitimately unrepresented Civil Party claiming a right to address the court at a scheduled hearing should

⁶ Decision on Civil Party Participation in Provisional Detention Appeals, 20 March 2008, C11/53, para. 43.

⁷ *Prosecutor v. Katanga*, “Decision on the Set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case”, ICC-01/04-01/07-474, 13 May 2008 (“13 May 2008 Decision”).

⁸ 13 May 2008 Decision, para. 148.

⁹ *Prosecutor v. Katanga*, “Decision on Limitations of Set of Procedural Rights for Non-Anonymous Victims”, ICC-01/04-01/07-537, 30 May 2008. (“30 May 2008 Decision”).

¹⁰ Decision on Preliminary Matters, para. 5.



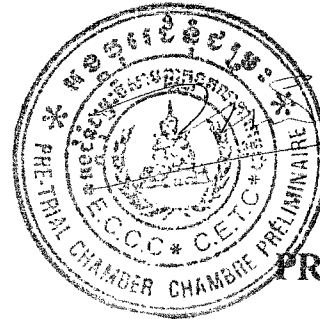
make a written request to do so, explaining the content and relevance of his or her proposed submissions.

THEREFORE, THE PRE-TRIAL CHAMBER HEREBY DIRECTS

- (1) Legitimately unrepresented Civil Parties may be granted leave to address the Pre-Trial Chamber in person when their interests are different from those of the Prosecution.
- (2) Any unrepresented Civil Party claiming the right to address the Pre-Trial Chamber in person at a scheduled hearing shall make a written request explaining the content and the relevance of his or her proposed submissions at least ten (10) days prior to the hearing. mt

Phnom Penh, 29 August 2008

President of the Pre-Trial Chamber



PRAK KIMSAN