

EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

BEFORE THE PRE-TRIAL CHAMBER

Case No: 002/19-09-2007-ECCC-OCIJ (PTC02)

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APPLICATION TO POSTPONE THE HEARING OF THE APPEAL AGAINST THE PROVISIONAL DETENTION ORDER

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I INTRODUCTION AND RELEVANT FACTS

1. On 19 March 2008, the Pre-Trial Chamber ordered that the hearing of the appeal against the Detention Order be scheduled for 21 April 2008 ("Scheduling Order")¹
2. Before the Scheduling Order was made, the Head of the Defence Support Section had informed the Pre-Trial Chamber on several occasions that Ms. Diana Ellis, international co-lawyer, would be unable to attend an appeal hearing in Phnom Penh in April due to a long-standing professional commitment in England of which the Defence Support Section had been made aware prior to her assignment.
3. If the Hearing were to take place on 21 April 2008, international counsel for Madame Ieng could not attend. This situation would be contrary to the wishes of Madame Ieng. In the circumstances, it would constitute a violation of the Charged Person's fair trial rights. The defence, therefore, requests that the Pre-Trial Chamber defers the Hearing.

II THE LAW

4. Rule 21 of the Internal Rules provides for the accused's right "to be defended by a lawyer of his/her choice." This right is also laid down in Article 13 of the Agreement between the UN and Cambodia,² and various international human rights instruments.³
5. The fundamental principle of equality of arms in the context of the ECCC implies that the defence, like the prosecution, is represented by two co-lawyers.

¹ Scheduling Order, Pre-Trial Chamber, 18 March 2008, No. C20/I/8.

² Agreement between the UN and the Royal Government of Cambodia Concerning the Prosecution under Cambodian Law of Crimes Committed During the Period of Democratic Kampuchea.

³ See Article 14(3)(b) of the International Covenant on Civil and Political Rights and Article 6(3)(c) of the European Convention on Human Rights.

III ARGUMENT

6. In order to protect the right to counsel of choice, the defence submits that the Pre-Trial Chamber is under an obligation to consider the availability of counsel in determining a hearing. In informally discussing availability of all relevant parties, the Pre-Trial Chamber was duly informed about international co-lawyer's schedule. The defence notes that the same happened in the case of M. Khieu Samphan. The defence submits that the Charged Person's right to be represented by national and international co-lawyers should be taken seriously, failure of which would lead to a violation of her fair trial rights as set out above.
7. Also the principle of equality of arms requests that the Charged Person be represented by two co-lawyers, just as the prosecution is represented by two Co-Prosecutors.
8. In the case against co-accused Nuon Chea, the Pre-Trial Chamber created a precedent in a similar situation, by postponing the detention appeal hearing because the international co-lawyer could not represent his client in court as he had not yet been sworn in with the Cambodian Bar Association.
9. The Charged Person's right to be defended by a lawyer of her choice includes her right to have both national and international co-lawyers present during the Hearing. The defence submits that it is both in the interests of justice, and forms part of the Charged Person's fair trial rights, to have international counsel present at the Hearing.
10. It is submitted that where, as in this case, the proposed period of deferment is not for very long and where it is in accordance with the wishes of Madame Ieng, the Pre-Trial Chamber should look upon it sympathetically.

IV CONCLUSION

11. For the reasons set out above, the defence respectfully requests the Pre-Trial Chamber to defer the planned Hearing until 21 or 22 May 2008.

Signed in Phnom Penh, this 21st day of March 2008

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