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

C20/5/10

អង្គបុរេជំនុំជម្រះ
PRE-TRIAL CHAMBER
CHAMBRE PRELIMINAIRE

Criminal Case File N° 002/19-09-2007-ECCC/OCIJ (PTC16)

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

Date: **29 January 2009**

PUBLIC

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

Co-Prosecutors

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Anees AHMED

Charged Person

IENG Thirith

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Mr. PHAT Pouv Seang
Ms. Diana ELLIS

1. **THE PRE-TRIAL CHAMBER** of the Extraordinary Chambers in the Courts of Cambodia ("ECCC") notes the "Co-Prosecutors' Response to IENG Thirith Defence Appeal against the 'Order on Extension of Provisional Detention of 10 November 2008'", filed on 9 January 2009 ("Response") in which they request the Pre-Trial Chamber to determine the Appeal on the basis of written submissions alone ("Request").

I. PROCEDURAL BACKGROUND

2. In their Request, the Co-Prosecutors submit that "[w]hile hearings determinative of detention should be heard orally, the current Appeal concerns only an extension of a confirmed detention and, as such, raises no new factual or legal arguments that need to be addressed in an oral hearing."[1]

3. In Directions issued on 14 January 2009, the Pre-Trial Chamber invited the Parties to the case to file any response to the Request by 19 January 2009.

4. On 19 January 2009, the Co-Lawyers filed their "Defence Response to OCP Request to determine Appeal against Order on Extension of Provisional Detention on the Basis of Written Submissions Alone" in which they object to the Request and ask the Pre-Trial Chamber to decide on the Appeal on the basis of oral arguments. They submit that "the assumption of Rule 77(3)(b) is an oral hearing".[2] They further argue that the Order on Extension of Provisional detention against which the Appeal has been lodged has extended the provisional detention of the Charged Person for another year and is thus "an important matter to the Charged Person, and should be dealt with appropriately".[3] They argue that the parties should be allowed to fully present and explain their arguments in Court and clarify "the many different interpretations of law and fact in the defence and OCP documents".[4]

5. Rule 77 of the Internal Rules (Rev.2) as revised on 5 September 2008, 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."

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[1] Co-Prosecutors' Response to IENG Tirith Defence Appeal against the "Order on Extension of Provisional Detention of 10 November 2008", 9 Janurary 2009, C20/5/7, para. 4.
[2] Defence Response to OCP Request to determine Appeal against Order on Extension of Provisional Detention on the Basis of written Submissions alone, 19 January 2009, C20/5/9 ("Defence Response"), para. 6.
[3] Defence Response, paras 9 and 10.
[4] Defence Response, , para. 10.

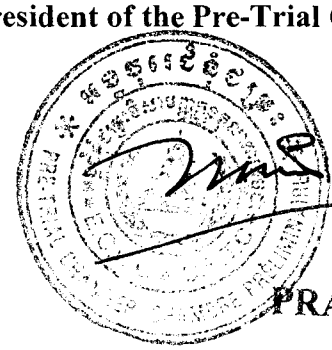
6. Recognizing the importance of the Appeal, which relates to the liberty of the Charged Person, and considering that the Defence has requested to be heard orally, the Pre-Trial Chamber considers it appropriate to hold a hearing before deciding on the Appeal.

7. The hearing in this case shall be held primarily in public.

THEREFORE, THE PRE-TRIAL CHAMBER HEREBY:

(1) REJECTS the Request to determine the Appeal on the basis of written submissions alone;
(2) SCHEDULES the hearing primarily held in public for **24 February 2009** at **9:00 a.m.**; and
(3) INVITES all parties involved in the proceedings to participate in the hearing as scheduled.

Phnom Penh, 29 January 2009
President of the Pre-Trial Chamber



PRAK KIMSAN