



**អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា**

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

C22/I/49

**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:** 02 July 2008

<b>ឯកសារដើម</b>
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**WRITTEN VERSION OF ORAL DECISION OF 30 JUNE 2008 ON CO-LAWYERS' REQUEST TO  
ADJOURN THE HEARING ON THE JURISDICTIONAL ISSUES**

**Co-Prosecutors**

CHEA Leang  
Robert PETIT  
YET Chakriya  
William SMITH

**Lawyers for the Civil Parties**

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

<b>ឯកសារច្បាប់សម្រាប់ប្រើប្រាស់តាមច្បាប់ដើម</b>
CERTIFIED COPY/COPIE CERTIFIÉE CONFORME
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មន្ត្រីទទួលបន្ទុកករណីរឿង/Case File Officer/L'agent chargé du dossier: ..... C.A.FRY .....

**Charged Person**

IENG Sary

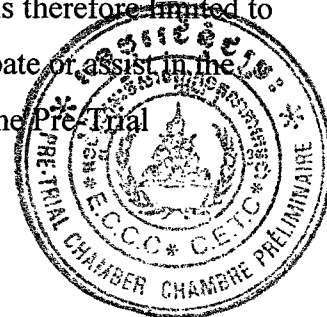
**Co-Lawyers for the Defence**

ANG Udom  
Michael G. KARNAVAS



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1. On 30 June 2008, the Pre-Trial Chamber commenced the hearing of the Charged Person's Appeal against the Provisional Detention Order of the Co-Investigating Judges.
2. As a preliminary matter, the Co-Lawyers submitted that since the Charged Person has not been examined by a psychiatric expert on his fitness to stand trial, the proceedings in relation to the jurisdictional issues raised in the Appeal should be adjourned.
3. The Co-Lawyers submitted that it is the fair trial right of the Charged Person to participate and assist in the preparation of his defence. They argued that the Charged Person might not be capable of doing so, since he might lack the mental capacity. In this regard the Co-Lawyers submitted that based on their interaction with the Charged Person and the fact that the Charged Person did not appear to understand fully the jurisdictional issues, they are not sure that the Charged Person is able to participate and assist in the preparation of his defence.
4. The Co-Lawyers pointed out that, at an early stage of the proceedings, they submitted a request to the Co-Investigating Judges for the appointment of an expert to examine the Charged Person's fitness to stand trial. However, as asserted by the Co-Lawyers, this request has not yet been decided upon. According to the Co-Lawyers, the Co-Investigating Judges have informed them that a decision will be taken before the closing order. The Co-Lawyers submitted that they have tried to appeal this failure to determine the request, however, that this was not accepted by the Co-Investigating Judges.
5. The Pre-Trial Chamber notes that there is no appeal before it against any decision of the Co-Investigating Judges. However, the Pre-Trial Chamber considers that it may be possible to appeal against the failure of the Co-Investigating Judges to determine a request, since the conduct of the Co-Investigating Judges may be interpreted to amount to a constructive refusal of an application.
6. In this light, the Pre-Trial Chamber, at this moment, is not in a position to judge on the asserted behavior of the Co-Investigating Judges. The matter before it is therefore limited to the assertion of the Co-Lawyers that the Charged person cannot participate or assist in the preparation of his defence on the jurisdictional issues currently before the Pre-Trial Chamber.



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7. The Pre-Trial Chamber notes in this regard that the Co-Lawyers have not mentioned any facts or incidents on the basis of which they draw their above-mentioned conclusions. The mere fact that they noticed that the Charged Person was not able to fully understand the very complicated jurisdictional issues, is not sufficient to lead to the conclusion at this stage that the Pre-Trial Chamber should appoint an expert to examine his mental capacity in respect of these proceedings.

**THEREFORE, THE PRE-TRIAL CHAMBER HEREBY DECIDES:**

That the request for an adjournment is denied.

**Given orally during the hearing on 30 June 2008,** 

Phnom Penh, 02 July 2008

**President of Pre-Trial Chamber**



**PRAK KIMSAN**