



អង្គបុរេជំនុំជម្រះ

PRE-TRIAL CHAMBER  
CHAMBRE PRELIMINAIRE

Criminal Case File N° 02/19-09-2007-ECCC-OCIJ(PTC04)

PRE-TRIAL CHAMBER

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

Date: 3 March 2008

<b>ឯកសារដើម</b>
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PUBLIC

**RULING ON THE DEFENCE'S REQUEST FOR A PUBLIC HEARING ON THE APPEAL AGAINST PROVISIONAL DETENTION ORDER AND ON THE CO-PROSECUTORS' REQUEST FOR REDACTION OF THE DEFENCE'S APPEAL BRIEF**

Office of the Co-Prosecutors

CHEA Leang  
Robert PETIT  
PICH Sambath  
Alex BATES

<b>ឯកសារបានថតចម្លងត្រឹមត្រូវតាមច្បាប់ដើម</b>
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Charged Person

KHIEU Samphan

Defence Counsel

SAY Bory  
Jacques VERGÈS



**THE PRE-TRIAL CHAMBER** of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”);

**NOTING** that the Co-Lawyers for the Charged Person marked their Appeal Brief dated 21 December 2007 against the Provisional Detention Order of 19 November 2007 (“Appeal Brief”) “confidential”;

**NOTING** that the Co-Prosecutors’ Response to the Appeal Brief dated 6 February 2008 (“Response”) was similarly marked “confidential” and requested that the hearing be held *in camera*, on the basis that the Appeal Brief essentially aimed at challenging the sufficiency of the evidence and involved detailed discussion of the material in the Case File;

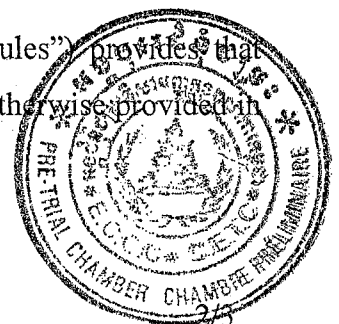
**NOTING** the Co-Lawyers’ document titled “[TRANSLATION] Problem of the absence of a public hearing raised by the Co-Prosecutors in their Response dated 6 February 2008 to Khieu Samphan’s Appeal Brief against Provisional Detention Order dated 19 November 2007”, dated 13 February 2008, in which they ask that the hearing be held in public and declare that they have no objection to their Appeal Brief being made public on the date of the hearing;

**NOTING** the Pre-Trial Chamber’s Order for Co-Prosecutors to File Response, dated 14 February 2008, in which the Co-Prosecutors were asked to state their position on the issues raised by the Co-Lawyers;

**NOTING** the Co-Prosecutors’ Response on the question of a public hearing for Khieu Samphan’s appeal against provisional detention dated 19 February 2008 (“Response on the question of a public hearing”) in which the Co-Prosecutors reiterate their arguments concerning the need for a hearing *in camera* but declare that they have “no objection to holding a public hearing in relation to the arguments dealing with the grounds for provisional detention under Rule 63(3)(b) of the ECCC Internal Rules (...), as has been the practice of the Pre-Trial Chamber to date”;

**NOTING** that in their Response on the question of a public hearing, the Co-Prosecutors ask that paragraphs 18, 23, 32, 44, 45 and 48-55 inclusive of the Defence’s Appeal Brief be redacted from the public version of the document as those paragraphs refer to the Introductory Submission or make specific evidentiary assertions;

**CONSIDERING** that Rule 77(5) of the ECCC Internal Rules (“Internal Rules”) provides that “[h]earings of the Pre-Trial Chamber shall be conducted in camera, except as otherwise provided in sub-rule 6”;



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**CONSIDERING** that the Appeal Brief involves detailed discussion of the evidence contained in the Case File;

**CONSIDERING** that Rule 56 of the Internal Rules provides that “[i]n order to preserve the rights and interests of the parties, judicial investigations shall not be conducted in public” and that “[a]ll persons participating in the judicial investigation shall maintain confidentiality”;

**CONSIDERING** that Article 34 (new) of the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea, which states that “[t]rial shall be held in public”, applies at the trial stage and not during the investigation;

**PURSUANT TO** Rules 77(5) and (6) of the Internal Rules and Article 3.12 of the Practice Direction on the filing of documents before the ECCC (ECCC/01/2007/Rev. 1) ;

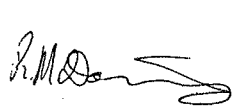
**THEREFORE HEREBY DECIDES:**

1. The hearing on the Appeal against the Provisional Detention Order will be conducted *in camera*, except for such parts that might involve discussion of the grounds for provisional detention under Rule 63(3)(b) of the Internal Rules, which will be held in public; and
2. The Co-Lawyers for the Charged Person are permitted to file a public redacted version of the Appeal Brief by redacting paragraphs 18, 23, 32, 44, 45 and 48-55 inclusive, for publication by the Pre-Trial Chamber. mt


Phnom Penh, 3 March 2008

**Pre-Trial Chamber**

**President**



Rowan DOWNING



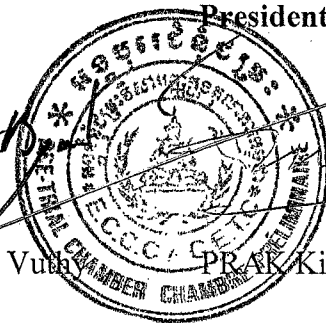
NEY Thol



Katinka LAHUIS



HUOT Vuthy



PR. AK Kimsan