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C201127

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

អង្គបុរេជំនុំជម្រះ

PRE-TRIAL CHAMBER
CHAMBRE PRELIMINAIRE

In the name of the Cambodian people and the United Nations and pursuant to 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.

Criminal Case File N° 002/19-09-2007-ECCC/OCIJ (PTC02)

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

Greffiers CHUON Sokreasey
Anne-Marie BURNS

Date: 9 July 2008

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PUBLIC
DECISION ON APPEAL AGAINST PROVISIONAL DETENTION ORDER
OF IENG THIRITH

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Charged Person

IENG Thirith

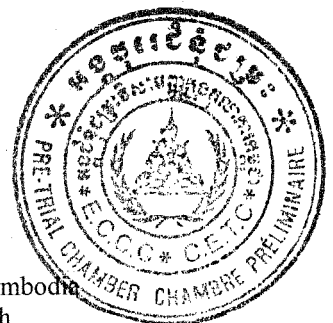
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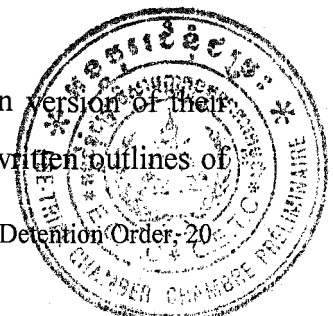
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1. **THE PRE-TRIAL CHAMBER** of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) is seized of the Appeal against the Provisional Detention Order of Ieng Thirith (the “Charged Person”).

I. INTRODUCTION

2. The Pre-Trial Chamber refers to, repeats and adopts the Report of Examination, dated 20 May 2008, on the proceedings and legal and factual issues in this case, which forms part of this Decision.
3. On 18 March 2008, the Pre-Trial Chamber issued a Scheduling Order in which a hearing date was set for 21 April 2008. The Chamber rescheduled the hearing to 21 May 2008, after an application to postpone the hearing was filed by the Co-Lawyer for the Charged Person.
4. On 20 May 2008, the Pre-Trial Chamber directed that Civil Parties, who were previously allowed to participate in the hearing, could make oral submissions through their lawyers.¹
5. Before the hearing, the Pre-Trial Chamber received access to the Case File, which was updated.
6. On 21 May 2008, the Pre-Trial Chamber held a hearing partly in public and, at the request of the Parties, partly *in camera*. Pursuant to Rule 56 of the Internal Rules of the ECCC (the “Internal Rules”), the information contained in the Case File shall remain confidential at this stage of the proceedings where the facts are still being investigated. In the *in camera* part of the hearing, the confidential evidence contained in the Case File was considered.
7. At the hearing, the Co-Lawyers submitted to the Pre-Trial Chamber a forty-page document titled “Oral Arguments in Support of Appeal Against Provisional Detention Order of 14 November 2007 – Pre-Trial Chamber Hearing of 21 May 2008” (the “Defence Oral Arguments”). This document contains the written version of their oral submissions, accompanied by jurisprudence. There was a reference made to a “Confidential Annex A”, which was not provided to the Pre-Trial Chamber. The Co-Prosecutors objected to this document being considered and to the late filing of jurisprudence.
8. The Pre-Trial Chamber notes that the Co-Prosecutors also provided a written version of their oral submissions. Before the hearing, the Pre-Trial Chamber requested that written outlines of

¹ Directions on Civil Party Oral Submissions during the Hearing of the Appeal against Provisional Detention Order, 20 May 2008, C20/I/21.



oral submissions should, if possible, be provided as an aid to the court interpreters. The Pre-Trial Chamber will only take into account what was actually stated orally. The documents mentioned above have only been used to assist the judges in listening to the oral submissions. The documents will not be part of the Case File.

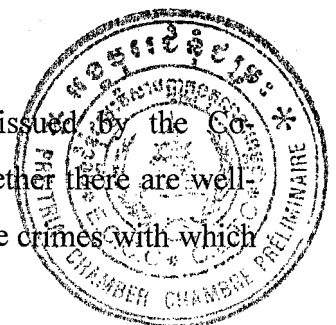
9. The jurisprudence submitted by the Co-Lawyers has been taken into consideration by the Pre-Trial Chamber. The Pre-Trial Chamber finds that the Defence is authorised to refer to authorities in order to respond to the arguments raised by the Co-Prosecutors and the Lawyers for the Civil Parties, which were filed after the Defence's Appeal Brief. The new authorities were provided to the other Parties and the judges at the hearing. The Co-Prosecutors and the Civil Parties were able to respond to these during the hearing and the Pre-Trial Chamber finds that they have been able to do so effectively.
10. On 29 May 2008, the Co-Lawyers attempted to file the Defence Oral Arguments, together with the "Confidential Annex A". This document was rejected by the Greffier of the Pre-Trial Chamber on 2 June 2008. The Pre-Trial Chamber notes that the document was submitted for filing after the hearing, without leave, and in circumstances where the other Parties would not have had an opportunity to reply or comment upon the "Confidential Annex A".

II. ADMISSIBILITY OF THE APPEAL

11. On 12 December 2007, the Co-Lawyers for the Charged Person filed a notice of appeal. By order of the Chief Greffier dated 19 December 2007, the Pre-Trial Chamber allowed the Co-Lawyers to file their pleadings within fifteen days after receiving the notification of that order. This order was notified to the Charged Person the same day. The Appeal Brief was filed on 2 January 2008 and, therefore, in time.

III. THE NATURE OF THE APPEAL

12. By her appeal, the Charged Person seeks to be released, subject to any conditions the Pre-Trial Chamber might find appropriate, arguing that the conditions for ordering provisional detention as set out in Internal Rule 63(3) have not been satisfied.
13. The Pre-Trial Chamber will review the Provisional Detention Order issued by the Co-Investigating Judges on 14 November 2007 (the "Order") to decide (i) whether there are well-founded reasons to believe that the Charged Person may have committed the crimes with which



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she has been charged pursuant to Internal Rule 63(3)(a), and (ii) whether provisional detention is a necessary measure pursuant to the criteria set out in Rule 63(3)(b).

14. In this appeal, the Parties disagree on the scope of the appeal and on the role of the Pre-Trial Chamber, as mentioned in the Report of Examination.

15. In the previous cases, the Pre-Trial Chamber has ruled:

The Pre-Trial Chamber will review the Provisional Detention Order (“the Order”) by an examination of:

- a. the procedure of the Co-Investigating Judges prior to the Order being issued;
- b. the sufficiency of the facts for ordering provisional detention under Internal Rule 63(3);
- c. whether the circumstances on which the Order was based still exist today; and
- d. the exercise of discretion by the Co-Investigating Judges in applying Internal Rule 63(3).²

16. The Pre-Trial Chamber will examine the case in the same way as it has done previously as no new arguments have been raised which would lead to another approach.

IV. EXAMINATION OF THE CONDITIONS UNDER RULE 63(3) OF THE INTERNAL RULES

17. Rule 63(3) of the Internal Rules provides:

The Co-Investigating Judges may order the Provisional Detention of the Charged Person only where the following conditions are met:

- a) there is well founded reason to believe that the person may have committed the crime or crimes specified in the Introductory or Supplementary Submission; and
- b) the Co-Investigating Judges consider Provisional Detention to be a necessary measure to:
 - i) prevent the Charged Person from exerting pressure on any witnesses or Victims, or prevent any collusion between the Charged Person and accomplices of crimes falling within the jurisdiction of the ECCC;
 - ii) preserve evidence or prevent the destruction of any evidence;
 - iii) ensure the presence of the Charged Person during the proceedings;

² Decision on Appeal against Provisional Detention Order of NUON Chea, 20 March 2008, C11/54 (the “Decision on Nuon Chea’s Provisional Detention Appeal”).



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- iv) protect the security of the Charged Person; or
- v) preserve public order.

18. In considering the appeal, the Pre-Trial Chamber will undertake its own analysis, applying the standard set out in Internal Rule 63(3).

19. The basis of this appeal is provisional detention and not a refusal to grant provisional release. In Internal Rule 64, there is a separate provision regarding provisional release which can be ordered by the Co-Investigating Judges, such decision being open to appeal before the Pre-Trial Chamber.

20. In deciding if the grounds for provisional detention as set out in Rule 63(3) are met, the Pre-Trial Chamber has taken into account the written pleadings of the Parties and their oral submissions, the evidence they have submitted and the whole Case File of the Co-Investigating Judges up to the date of the hearing. Only the material contained in the Case File available during the hearing will therefore be considered. This excludes some interviews referred to by the Co-Prosecutors which were not part of the Case File at the time of the hearing³.

a. Well-founded reasons to believe that the Charged Person may have committed the crime or crimes specified in the Introductory Submission (Internal Rule 63(3)(a))

21. In examining whether there are well-founded reasons to believe that the Charged Person may have committed the crime or crimes mentioned in the Introductory Submission, the Pre-Trial Chamber will decide whether facts or information exist which would satisfy an objective observer that the person concerned may have committed the offences.⁴

22. In the Provisional Detention Order, the Co-Investigating Judges found that there are well-founded reasons to believe that Ieng Thirith might have committed the following crimes, of which she was notified at the initial appearance:

“crimes against humanity (murder, extermination, imprisonment, persecution and other inhumane acts), being crime(s) set out and punishable under Articles 5, 29(new) and 39(new) of the ECCC Law (the “charges”),

³ The Pre-Trial Chamber more particularly refers to some interviews of Duch by the Co-Investigating Judges which are part of a different case file and to a witness statement which was only notified after the date of the hearing.

⁴ Decision on Nuon Chea’s Provisional Detention Appeal, para. 46.



for having, throughout Cambodia during the period from 17 April 1975 to 6 January 1979:

- in her capacity as the Minister of Social Action, exercised authority and effective control over the ministry and all of its constituent and subordinate organs,
- instigated, ordered, failed to prevent and punish, or otherwise aided and abetted in the commission of the aforementioned crimes;
- directed, encouraged, enforced or otherwise rendered support to the Communist Party of Kampuchea policy and practice, which was characterised by murder, extermination, imprisonment, persecution on political grounds and other inhumane acts such as forcible transfers of the population, enslavement and forced labour;
- as part of a widespread or systematic attack targeting a civilian population.” (the “charges”)⁵

23. As the Order of the Co-Investigating Judges was based on crimes more limited in their scope than the ones identified in the Introductory Submission, the Pre-Trial Chamber will use this limited scope to review the Order.

24. After an examination of the Case File, the Pre-Trial Chamber is satisfied that there is well-founded reason to believe that the specific crimes for which the Charged Person is under investigation may have been committed as part of widespread and systematic attacks on discriminatory grounds. The Co-Lawyers did not, in this appeal, contest the general facts set out in the charges mentioned above, rather they contested the alleged involvement of the Charged Person. The Court observes that in accordance with Article 29 of the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia of 27 October 2004, the term “committed” includes committing, planning, instigating, ordering, aiding and abetting as well as superior criminal responsibility.

25. The Pre-Trial Chamber observes that, in order to ensure that the investigation is not compromised, some excerpts of the full Decision have been redacted from this public version.

26. The Charged Person has admitted that she was the Minister of Social Affairs and, as such, in charge of the well-being of the population. She does not contest that she was also involved in broader areas of the health sector, notably in the administration of hospitals and pharmaceutical plants. During the Adversarial Hearing, the Charged Person stated:

⁵ Written Record of Initial Appearance, 12 November 2007, D39, pp. 1-2.



“At that time I was Minister for Social Action, I was not only responsible for repairing medicine factories in Phnom Penh, but also for the maintenance of hospitals and the political education of the personnel. His Excellency Chun Choeurn, Minister of Health, asked me to help him, because he only wanted to work as a doctor. I accepted because there were very few doctors and he was an excellent doctor, educated in Paris. My duty was heavy. I was also responsible for the food at the hospital and the Ministry of Social Action.”⁶

27. Documents in the Case File indicate that the Charged Person spoke at and chaired work meetings, in which she explained policies of the Communist Party of Kampuchea in respect of enemies, such as the Vietnamese (Yuon), CIA and undisciplined elements.⁷ A former worker at the Ph-2 Pharmaceutical Plant in Phnom Penh between 1975 and 1979 has declared that “regular monthly conferences continued, with major conferences every three months, at which IENG Thirith constantly announced that this person or that person was a traitor.”⁸

28. [REDACTED].^{9 10 11}

29. [REDACTED].^{12 13}

30. [REDACTED].¹⁴

31. The prisoner lists and confessions from S-21 contain the names of hundreds of staff members from within the Ministry of Social Affairs and its related organs, hospitals and medical supply factories.¹⁵ [REDACTED].^{16 17 18 19 20 21 22 23 24 25}

⁶ Written Record of Adversarial Hearing, 14 November 2007, C18, p. 3.

⁷ [REDACTED].

⁸ [REDACTED].

⁹ [REDACTED].

¹⁰ [REDACTED].

¹¹ [REDACTED].

¹² [REDACTED].

¹³ [REDACTED].

¹⁴ [REDACTED].

¹⁵ See notably: S-21 Prisoner Lists of 1 February 1977, 1 January 1978, 30 April 1978, 1 May 1978, May 1978 and 28 May 1978.

¹⁶ [REDACTED].

¹⁷ [REDACTED].

¹⁸ [REDACTED].

¹⁹ [REDACTED].

²⁰ [REDACTED].

²¹ [REDACTED].

²² [REDACTED].

²³ [REDACTED].

²⁴ [REDACTED].

²⁵ [REDACTED].



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32. Duch confirmed in his interview by the Co-Investigating Judges that the decision to arrest people for sending them to S-21 was partly made by the “relevant unit”. [REDACTED].²⁶
33. [REDACTED].²⁷
34. The S-21 Confession of [REDACTED] bears the mention that this confession was sent to the Ministry of Social Affairs “for solution” and also contains an annotation that “medium torture [was applied] when (sic.) he refused to talk about his previous and late history of activities.”²⁸
35. A witness who declared to have been the Charged Person’s courier between 1976 and 1979 mentioned that two other couriers “had taken letters to S-21 for Thirith”.²⁹
36. A number of former staff members in the health sector stated that they were aware that cadres and others purged from the Ministry of Social Affairs who were arrested were tortured and/or executed at S-21 or elsewhere.³⁰
37. It is reported in a media article that during an interview conducted in 1991, Ieng Thirith recognised that “[TRANSLATION FROM FRENCH] [a]lleged purges against alleged traitors possibly happened but not genocide”. She reportedly added: “excesses certainly took place like in every revolution”.³¹
38. As Minister of Social Affairs, the Charged Person had travelled in the countryside and witnessed the poor living conditions imposed on the civilian population, as she declared to the journalist Elizabeth Becker during an interview conducted in 1980:

“(IT) Yes, I was travelling in order to see the conditions of the people and at the time when I came back in Phnom Penh I reported to our leaders that there was something queer in some provinces, for example in Battambang, I saw something very clear, that they make people, all people going to the rice fields, very far from the village and they have no home; and I saw they have no home and they are all ill. I reported to my leaders that...

(EB) Who were your leaders? Who did you report to?

²⁶ [REDACTED].

²⁷ [REDACTED].

²⁸ [REDACTED].

²⁹ [REDACTED].

³⁰ [REDACTED].

³¹ Suspect Statement of IENG Sary and IENG Thirith entitled “Les erreurs de Ieng Sary”, *Le Nouvel Observateur*, 17-23 October 1991, pp. 86-87.



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(IT) To the Prime Minister. That's quite queer. It is not normal. There is something wrong in this. In fact, when they made inquiry, they saw that So Phim was an agent of the Vietnamese because he was an ancient member of Indochina Communist Party, you see and at that time they joined in a new party but when the Vietnamese ... (interrupted by somebody attending the interview)... Ruos Nhim in Battambang (So Phim was in the East). He was in Northwestern Region.

(EB) So this is 1976. Then there was a purge in 1977.

(IT) At the time I told my leader there is something wrong in that province because I know the directives of the Prime Minister: not young, not old people, not pregnant women, not women feeding babies and not small children, but I saw everybody there in the rice fields in open air, nothing and with the sun, very hot sun. I saw many people ill of diarrhea and malaria so I reported it to him.

(EB) And what happened?

(IT) They made an inquiry and in the end, in 1978 we...

(EB) Executed?

(IT) ... no, we arrest him. We know that Ruos Nhim was in big collusion with So Phim in order to carry out the orders of XXX (Youn?) in order to sabotage our policy and to massacre our people. So in this way they can make people rise against us because they don't know. (...)³²

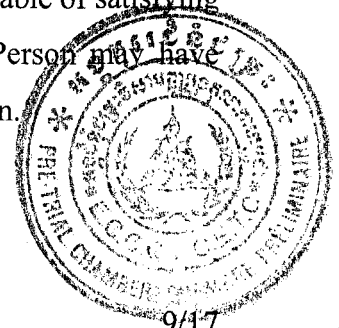
39. The Charged Person is further reported to have declared to the press, in 1981, that "between 1975 & 1978 abuses of human rights were committed by cadres who were Vietnamese agents". Being asked whether she thought all those abuses were committed by Vietnamese agents and never by Khmer Rouge, she answered: "Vietnamese agents were the majority. But there were also others".³³

40. There are well-founded reasons to believe that the Charged Person was, in her capacity as Minister of Social Affairs, in a position to prevent the enslavement and other inhuman acts to which the civilian population was allegedly subjected and that she failed to do so. The Charged Person might therefore be responsible for these alleged crimes of enslavement and other inhuman acts which, in the context of a widespread or systematic attack against the civilian population, can be characterized as crimes against humanity.

41. The Pre-Trial Chamber therefore finds that the Case File contains evidence capable of satisfying an objective observer, at this stage of the investigation, that the Charged Person may have committed the crimes for which she has been placed under judicial investigation.

³² Ieng Thirith's interview by Elizabeth Becker, 1980, pp. 25-26.

³³ "Human Rights for the Khmer Rouge", *AsiaWeek*, 28 August 1981, D56.



42. The Pre-Trial Chamber further observes that any concern expressed by the Co-Lawyers as to whether the Co-Investigating Judges disregarded the presumption of innocence is resolved by the analysis that this Chamber has undertaken.
- b. Consideration of the grounds making provisional detention a necessary measure (Internal Rule 63(3)(b))
- i) *The first and second grounds in Internal Rule 63(3)(b): to i) prevent the Charged Person from exerting pressure on any witnesses or Victims, or prevent any collusion between the Charged Person and accomplices of crimes falling within the jurisdiction of the ECCC, and to ii) preserve evidence or prevent the destruction of evidence*
43. These two grounds for provisional detention can be analysed together since they are supported by the same arguments. The statements made by witnesses can be considered as “evidence” within the meaning of Internal Rule 63(3)(b)(ii).
44. The Pre-Trial Chamber notes that the whole Case File has been made available to the Charged Person, including the names of potential witnesses. As stated by the Co-Prosecutors at the hearing, there are few remaining witnesses who can testify to the Charged Person’s involvement in the alleged crimes. These witnesses have not yet been interviewed by the Co-Investigating Judges.
45. As stated above, the Charged Person was Minister of Social Affairs during the Democratic Kampuchea period and was involved in broader areas of the health sector. The Pre-Trial Chamber finds that a degree of influence is necessarily attached to such senior positions and involvement in political movements. This influence does not stop when one no longer occupies such positions and can therefore still be exerted today.
46. The Charged Person continues to enjoy support in Pailin, a region traditionally described as a Khmer Rouge stronghold.
47. In these circumstances, the Pre-Trial Chamber considers that the Charged Person has the necessary influence to organise others to place pressure on witnesses and victims.

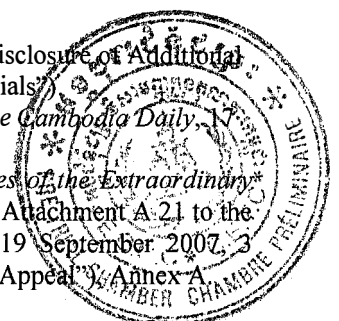


48. The Charged Person has publicly displayed hostility to those who suggested that the former senior leaders of the Democratic Kampuchea regime should be put on trial and to those deemed to have spoken about her alleged role in this regime.
49. In response to a suggestion that she had been one of the Central Committee members of the Communist Party of Kampuchea during the Democratic Kampuchea regime, the Charged Person wrote a letter to the Cambodia Daily describing all “so-called findings” of Chhang Youk, Head of the Documentation Center of Cambodia, as “lies and defamations, the only aim of which is to split Cambodia and eventually annihilate the nation and its people as a whole”. She further called for Chhang Youk’s dismissal, accusing him of being a liar to keep his employment, an “arrogant”, “incompetent”, “mean and uprooted person” who can only view things in terms of money and never cares for the future of Cambodia.³⁴
50. It is reported that during a meeting held in Pailin for the Democratic National United Movement’s annual congress in 2003, Mey Makk, deputy governor of Pailin, asserted that Khieu Samphan, Nuon Chea and Ieng Sary should be put on trial. The Charged Person, who was attending the meeting, reacted violently as she stood up and “called other people to make him stop talking”.³⁵
51. The Pre-Trial Chamber finds that the Charged Person’s past actions and behaviour in themselves display a concrete risk that she could use her influence to interfere with witnesses and victims. It might also influence the witnesses’ fear of testifying before the ECCC which has already been expressed by potential witnesses.³⁶
52. Therefore, at this stage of the proceedings where the witnesses have not been heard, the Pre-Trial Chamber finds that detention is a necessary measure to prevent the Charged Person from exerting pressure on witnesses or victims and destroying evidence.
- ii) The third ground in Internal Rule 63(3)(b): to ensure the presence of the Charged Person during the proceedings*
53. The Pre-Trial Chamber observes that, in view of the gravity of the charges, the Charged Person could face a sentence of imprisonment from five years to life if she is found guilty.

³⁴ Letter from Ieng Thirith to Chris Decherd, 7 February 1999, Attachment 45 to the Notice of Disclosure of Additional Materials and Authorities, 18 October 2007, D29 (the “Notice of Disclosure of Additional Materials”).

³⁵ “Khmer Rouge Inc: Former Communists Embrace the Market Economy in Malai District”, *The Cambodia Daily*, 7 February 2007, Attachment 36 to the Notice of Disclosure of Additional Materials.

³⁶ Geerteke Jansen, *Voices of Takéo: A pilot fear assessment with respect to possible witnesses of the Extraordinary Chambers in the Courts of Cambodia*, Phnom Penh: Documentation Center of Cambodia, 2006, Attachment A 21 to the Co-Prosecutors’ Response to Nuon Chea’s Appeal against Provisional Detention Order of 19 September 2007, 3 December 2007, C11/11 (the “Co-Prosecutors’ Response to Nuon Chea’s Provisional Detention Appeal”, Annex A).



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54. The evidence indicates that until 1996, the Charged Person lived in Pailin, a Khmer Rouge centre of support located very close to the Thai border. Even after she moved to Phnom Penh, the Charged Person continued to spend some time in Pailin.³⁷ Moreover, the evidence indicates that the Charged Person has connections in Pailin, notably with the governor of the town and his deputy. These contacts are likely to be in position to assist the Charged Person should she wish to flee. They can notably assist the Charged Person in obtaining a V.I.P. card to cross the Thai border. It is also more than likely that these influential persons are well-known in the region, on both sides of the border, contributing to the Charged Person's possibilities to flee.
55. The Pre-Trial Chamber also notes that after the collapse of the Democratic Kampuchea regime, both the Charged Person and her husband travelled abroad frequently.³⁸ The Charged Person has always had a passport since her defection in 1996.³⁹ The Charged Person is likely to have allies in foreign countries who would be capable of assisting her in travelling abroad.
56. The Charged Person has regularly travelled to Thailand, in some periods up to four times a year.⁴⁰ According to the Charged Person, she went to Thailand to receive medical treatment. Considering that significant expenses are necessarily associated with these past travels, it can be inferred that the Charged Person has the financial means, or access to such, to facilitate her escape.
57. The Charged Person argues that she was living openly in Phnom Penh before her arrest and did not seek to hide or to live under a false name. She adds that her family resides in Cambodia and that her ties with the country are "very strong".⁴¹ She further argues that she is seventy-six years old and in need of regular medical treatment, so she will not be in a position to abscond.
58. While it is true that the Charged Person could have attempted to flee before, the situation is no longer the same now that she is under investigation before the ECCC.

³⁷ "Ieng Sary Keeps Silence Whereas Nuon Chea and Khieu Samphan are Trying to Disavow Crimes During the 'Killing Fields' Regime", *Moneaksekar Khmer*, 27 July 2007, Attachment 8 to the Notice of Disclosure of Additional Materials.

³⁸ Co-Prosecutors' Response to Ieng Thirith's Appeal against Provisional Detention Order of 14 November 2007, 21 January 2008, C20/I/7, footnote 70.

³⁹ "Former Khmer Rouge leader in line for passport; report", *Agence France Presse*, 12 September 2000, Attachment 54 to the Notice of Disclosure of Additional Materials; "Ex-Khmer Rouge foreign minister's diplomatic passport revoked", *Reuters News*, 7 January 2002, Attachment 55 to the Notice of Disclosure of Additional Materials.

⁴⁰ Copy of the current passport of Madame Ieng Thirith, Annex B to the Appeal against the Provisional Detention Order, 8 January 2008, C20/I/3 (the "Appeal Brief"); Medical Report of Madame Ieng Thirith from the Bumfungard Hospital, Annex A to the Appeal Brief; "Ex-Khmer Rouge FM flies to Thailand for treatment", *Reuters News*, 15 November 2001, Attachment 57 to the Notice of Disclosure of Additional Materials; Kevin Doyle, "Cambodia's co-operation with the UN puts Pol Pot's henchemen on notice For Brother No 2", *South China Morning Post*, 13 March 2003, p. 11, Attachment 59 to the Notice of Disclosure of Additional Materials.

⁴¹ Appeal Brief, para. 62.



59. For these reasons, the Pre-Trial Chamber considers that provisional detention is a necessary measure to ensure the Charged Person's presence during the proceedings.

iii) The fourth ground in Internal Rule 63(3)(b): to protect the security of the Charged Person

60. As submitted by the Defence, the Charged Person has, for the last ten years, resided in the heart of Phnom Penh. She has lived under her true name and has not assumed any false identity. The evidence supports the assertion that the nearest neighbours were aware of the identity of the Charged Person and that of her husband.

61. Although the press has occasionally associated the name of the Charged Person with the Khmer Rouge regime and mentioned her position as Minister of Social Affairs, the Charged Person has not, at any time, suffered from threats or attacks on her person. On the contrary, two neighbours of the Charged Person have expressed to the press their wish to see the senior leaders of the Democratic Kampuchea being prosecuted before the ECCC.

62. There is no evidence that this situation will be affected by the fact that the Charged Person is now under investigation before the ECCC. The media articles published after the arrest of the Charged Person only refer to the fact that she was arrested and that she has been charged for crimes against humanity as a result of her position as Minister of Social Affairs.

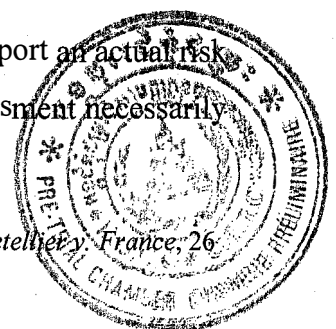
63. The Pre-Trial Chamber finds that there is no evidence in the Case File, nor has any been submitted by the Co-Prosecutors, leading to the conclusion that specific threats to the security of the Charged Person can be expected.

iv) The fifth ground in Internal Rule 63(3)(b): to preserve public order

64. As reasoned in previous decisions of the Pre-Trial Chamber, to satisfy this ground "facts capable of showing that the accused's release would actually disturb public order must exist. In addition detention will continue to be legitimate only if public order remains actually threatened [...]".⁴²

65. The Pre-Trial Chamber finds that although specific evidence is required to support an actual risk that public order may be disrupted if the Charged Person is released, this assessment necessarily

⁴² Decision on Nuon Chea's Provisional Detention Appeal, para. 76, referring to ECHR, Case of *Letellier v. France*, 26 June 1991, para. 51.



involves a measure of prediction particularly in the context of the crimes falling within the jurisdiction of the ECCC.⁴³

66. The Pre-Trial Chamber finds that the passage of time has not diminished the impact of the Democratic Kampuchea regime on society. It is believed that a proportion of the population that lived through this period from 1975 to 1979 suffers from post-traumatic stress disorder. Specialists have stated that the commencement of judicial activities before the ECCC “may pose a fresh risk to the Cambodian society”. It may “lead to the resurfacing of anxieties and a rise in the negative social consequences that may accompany them”.⁴⁴

67. The General Assembly of the United Nations has recognised that the crimes committed during the Democratic Kampuchea period from 1975 to 1979 are still a matter of concern for Cambodian society, and for humanity:

“Recalling that the serious violations of Cambodian and international law during the period of Democratic Kampuchea from 1975 to 1979 continue to be matters of vitally important concern to the international community as a whole,

[...]

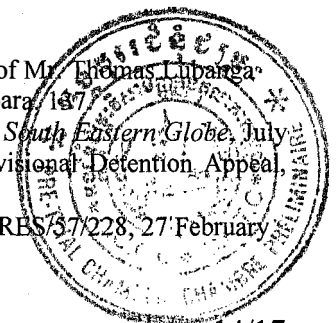
Recognizing that the accountability of individual perpetrators of grave human rights violations is one of the central elements of any effective remedy for victims [...].”⁴⁵

68. The four hearings before the Pre-Trial Chamber, including that of the Charged Person, have generated a great deal of interest amongst the Cambodian population and press, as well as the international community. Hundreds of people, including members of the public and representatives of the press, non-governmental organisations and the international community, came to attend the hearings. This interest is demonstrative of the fact that the proceedings, even in the pre-trial phase, against suspects alleged to be senior leaders and those most responsible for the crimes committed during the Kampuchea Democratic period from 1975 to 1979, are still a matter of great concern today for the Cambodian population and the international community.

⁴³ *The Prosecutor v. Thomas Lubanga Dyilo*, 01/04-01/06 (OA 7), “Judgment on the Appeal of Mr. Thomas Lubanga Dyilo against the Decision of the Pre-Trial Chamber”, Appeals Chamber, 13 February 2007, para. 187.

⁴⁴ Rob Savage, “Post Traumatic Stress Disorder: A Legacy of Pain and Violence”, *Monthly South Eastern Globe*, July 2007, pp. 24-27, Attachment A 25 to the Co-Prosecutors’ Response to Nuon Chea’s Provisional Detention Appeal, Annex A.

⁴⁵ Preamble, *Resolution adopted by the General Assembly – Khmer Rouge Trials*, GA Res A/R/S/37/228, 27 February 2003.



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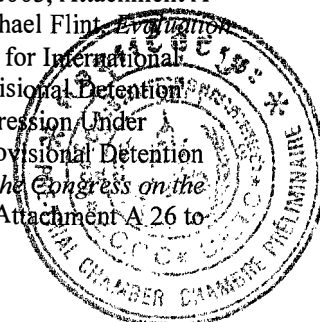
69. The nature of the crimes for which the Charged Person has been placed under investigation has been disclosed to the public. Before she was arrested, the Charged Person was not clearly identified as a potential suspect to be prosecuted before the ECCC.
70. The Pre-Trial Chamber observes that the perceived threat to security is not illusory. This is firstly demonstrated by everyday disturbances or even violent crimes, of which the Pre-Trial Chamber takes notice as facts of common knowledge. Secondly, the example of the anti-Thai riots in 2003 points towards the potential for politically motivated instability.⁴⁶
71. The Pre-Trial Chamber also notes that the Charged Person has publicly shown her hostility toward those who suggested that the senior leaders of the Democratic Kampuchea regime should be put on trial and to those deemed to have spoken about her alleged role in this regime. It is possible to envisage that the Charged Person will issue further statements that, in the context of today's Cambodian society, have the potential to affect public order, notably if they were to be issued after the Charged Person's release from provisional detention.
72. The Pre-Trial Chamber finds that the facts mentioned above are capable of showing that the Charged Person's release would actually disturb public order. Therefore, the Pre-Trial Chamber finds that the provisional detention of the Charged Person is a necessary measure to preserve public order.

Bail

73. The Co-Lawyers submit that any concerns the Pre-Trial Chamber might have can be met by provisionally releasing the Charged Person and imposing the proposed conditions set out in Annex C of the Defence Appeal Brief. By this document, the Charged Person has proposed a number of conditions that could be attached to a bail order to guarantee that she will stay in Phnom Penh and not contact any witnesses or victims.⁴⁷

⁴⁶ John Aglionby, "Thais cut links with Cambodia after riots", *The Guardian*, 31 January 2003, Attachment A 15 to the Co-Prosecutors' Response to Nuon Chea's Provisional Detention Appeal, Annex A; "Thai diplomats return to Cambodia", *BBC News*, 10 February 2003, Attachment A 16 to the Co-Prosecutors' Response to Nuon Chea's Provisional Detention Appeal, Annex A; "Cambodia apologizes for riots", *CNN.com*, 30 January 2003, Attachment A 17 to the Co-Prosecutors' Response to Nuon Chea's Provisional Detention Appeal, Annex A; Michael Flint, *Evolution of DFID Country Programmes, Country Study: Cambodia 1997-2003*, London: U.K. Department for International Development, 2004, p. 4, Attachment A 19 to the Co-Prosecutors' Response to Nuon Chea's Provisional Detention Appeal, Annex A; Human Rights Watch and Amnesty International, "Cambodia: Freedom of Expression Under Attack", 11 February 2003, Attachment A 20 to the Co-Prosecutors' Response to Nuon Chea's Provisional Detention Appeal, Annex A; U.S. Department of State, Bureau of East Asian and Pacific Affairs, *Report to the Congress on the Anti-Thai Riots in Cambodia on January 29, 2003*, Washington: U.S. Department of State, 2003, Attachment A 26 to the Co-Prosecutors' Response to Nuon Chea's Provisional Detention Appeal, Annex A.

⁴⁷ Proposed Bail Conditions for Madame Ieng Thirith, Annex C to the Appeal Brief.



74. The Pre-Trial Chamber finds that, in the instant case, the conditions of Rule 63(3)(a) and the grounds set out in Rule 63(3)(b)(i), (ii), (iii) and (v) have been met, though any one of these would have been sufficient to justify the provisional detention of the Charged Person. This means that provisional detention is a necessary measure to ensure the security of the victims and witnesses, to preserve evidence, to ensure the presence of the Charged Person during the proceedings and to preserve public order. In these circumstances, the Pre-Trial Chamber considers that the Charged Person cannot be released on bail, as any of the conditions proposed by the Charged Person are outweighed by the necessity for her provisional detention.




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THEREFORE, THE PRE-TRIAL CHAMBER HEREBY DECIDES UNANIMOUSLY:




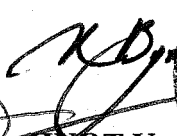

- 1) The appeal is admissible in its form;
- 2) The Co-Investigating Judges properly exercised their discretion to order the provisional detention of the Charged Person;
- 3) Provisional detention is still a necessary measure on the basis of the above-mentioned grounds;
- 4) The Order of the Co-Investigating Judges is affirmed with the reasons expressed in this decision being substituted for the reasons of the Co-Investigating Judges;
- 5) The appeal is dismissed.

In accordance with Rule 77(13) of the Internal Rules, this decision is not subject to appeal.

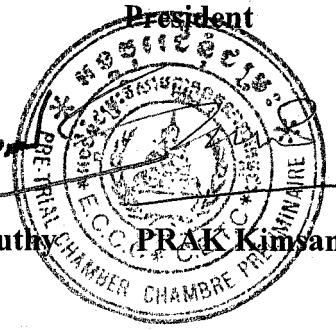
GIVEN IN PUBLIC BY the Pre-Trial Chamber, in the presence of the Charged Person and her Co-Lawyer. 


Phnom Penh, 9 July 2008

Pre-Trial Chamber

Rowan DOWNING **NEY Thol** **Katinka LAHUIS** **HUOT Vuthy** **PRAK Kimsan**





CHUON Sokreasey

Greffiers

(The International Greffier is unavailable to sign)

Anne-Marie BURNS