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ព្រះរាជាណាចក្រកម្ពុជា  
ជាតិ សាសនា ព្រះមហាក្សត្រ  
Kingdom of Cambodia  
Nation Religion King  
Royaume du Cambodge  
Nation Religion Roi

**អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា**

Extraordinary Chambers in the Courts of Cambodia  
Chambres extraordinaires au sein des tribunaux cambodgiens

**អង្គបុរេជំនុំជម្រះ**

Pre-Trial Chamber  
Chambre Préliminaire

*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 (PTC33)**

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

**Greffiers:** Chanrath SAR  
Entela JOSIFI

**Date:** 30 April 2010

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**PUBLIC REDACTED**

**DECISION ON IENG THIRITH'S APPEAL AGAINST ORDER ON EXTENSION OF PROVISIONAL DETENTION**

**Co-Prosecutors**

CHEA Leang  
Andrew CAYLEY  
YET Chakriya  
William SMITH  
SENG Bunkheang  
Vincent de WILDE d'ESTMAEL

**Charged Person**

IENG Thirith

<b>ឯកសារបានចម្លងត្រឹមត្រូវតាមច្បាប់ដើម</b>	
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..... SANN BADA .....	



**Lawyers for the Civil Parties**

Mr. NY Chandy  
 Mr. Madhev MOHAN  
 Ms. Lima NGUYEN  
 Mr. KIM Mengkhy  
 Ms. MOCH Sovannary  
 Ms. Elizabeth-Joelle  
 RABESANDRATANA  
 Ms. Annie DELAHAIE  
 Mr. Philippe CANONNE  
 Ms. Martine JACQUIN  
 Ms. Fabienne TRUSSES-  
 NAPROUS  
 Ms. Françoise GAUTRY  
 Ms. Isabelle DURAND  
 Ms. Christine MARTINEAU  
 Ms. Laure DESFORGES  
 Mr. Ferdinand DJAMMEN  
 Mr. LOR Chunthy  
 Mr. SIN Soworn  
 Mr. SAM Sokong  
 Mr. HONG Kim Suon  
 Mr. KONG Pisey  
 Mr. KONG Heng  
 Ms. Silke STUDZINSKY  
 Mr. Olivier BAHOUGNE  
 Ms. Marie GUIRAUD  
 Mr. Patrick BAUDOUIN  
 Ms. CHET Vanly  
 Mr. PICH Ang  
 Mr. Julien RIVET  
 Mr. Pascal AUBOIN

**Unrepresented Civil Parties****Co-Lawyers for the  
Charged Person**

PHAT Pouv Seng  
 Diana ELLIS



1. **THE PRE-TRIAL CHAMBER** of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) is seized of the “Defence Appeal against [the Co-Investigating Judges] Order to Further Extend Madame Ieng’s Provisional Detention” filed by the Co-Lawyers for the Charged Person Ieng Thirith on 9 December 2009 (the “Appeal”).<sup>1</sup>

### I. PROCEDURAL BACKGROUND

2. The Pre-Trial Chamber refers to, repeats and adopts the Report of Examination<sup>2</sup> dated 8 February 2010, which forms part of this Decision.
3. On 10 November 2009, the Co-Investigating Judges issued their Order on Extension of Provisional Detention (the “Extension Order”) extending the provisional detention of Ieng Thirith, who has been detained since 14 November 2007.<sup>3</sup>
4. On 18 November 2009, the Co-Lawyers for the Charged Person filed a Notice of Appeal and, on 9 December 2009, they filed their Appeal which was notified to the Parties on 16 December 2009.
5. On 5 January 2010, the Co-Prosecutors submitted their Response to the Appeal (the “Co-Prosecutors’ Response”).<sup>4</sup>
6. No Response was filed by the Civil Parties.
7. On 20 January 2010 the President of the Pre-Trial Chamber issued an Order scheduling a public hearing on the Appeal for 15 February 2010.<sup>5</sup> Before the hearing, the Pre-Trial Chamber was given access to the Case File, which was updated.
8. On 15 February 2010, the Pre-Trial Chamber held a hearing where the Charged Person was represented by her National Co-Lawyer and an International Lawyer from her Defence team. This hearing was held in public.

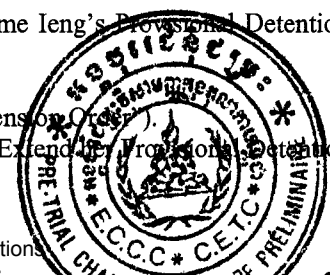
<sup>1</sup> Defence Appeal against Co-Investigating Judges Order to Further Extend Madame Ieng’s Provisional Detention, 9 December 2009, C20/9/1 (the “Appeal”).

<sup>2</sup> Report of Examination, 8 February 2010, C20/9/6.

<sup>3</sup> Order on Extension of Provisional Detention, 10 November 2009, C20/8 (the “Extension Order”).

<sup>4</sup> Co-Prosecutors’ Response to Ieng Thirith’s Appeal against OCIJ Order to Further Extend her Provisional Detention, 5 January 2010, C20/9/2 (the “Co-Prosecutors’ Response”).

<sup>5</sup> Scheduling Order, 20 January 2010, C20/9/3.



## II. ADMISSIBILITY OF THE APPEAL

9. The Extension Order was issued on 10 November 2009 and notified to the Parties on the same day. The Co-Lawyers for the Charged Person filed a Notice of Appeal on 18 November 2009. The Appeal was filed on 9 December 2009 and therefore within the time provided for in Internal Rule 75(3) of the ECCC Internal Rules (the “Internal Rules”).

## III. APPLICABLE LAW

10. Reference is made to Internal Rule 63.

## IV. NATURE OF THE APPEAL

11. In the Appeal, the Co-Lawyers request that the Pre-Trial Chamber quash the Extension Order and release the Charged Person on bail.<sup>6</sup> They contend that the requirements set out in Internal Rule 63 have been improperly determined by the Co-Investigating Judges and in any event are no longer fulfilled. They assert that “the available exculpatory evidence, combined with the fact that the Charged Person has been detained for more than two years now, and the fact that the closure of the investigations against her is imminent, makes that continuation of her provisional detention is unwarranted and unjustified.”<sup>7</sup>
12. The Co-Prosecutors in their Response to the Appeal request from the Pre-Trial Chamber to dismiss the Appeal on the grounds that: 1) the Extension Order is sufficiently and adequately reasoned, 2) the length of time of provisional detention is not unreasonable and there has been no lack of due diligence by the Co-Investigating Judges, 3) the contention that the Co-Investigating Judges failed to act impartially is not valid, 4) the Appellant has failed to demonstrate material change in circumstances, and 5) the conditions for detention are still met.<sup>8</sup>



<sup>6</sup> The Appeal, paras. 38 and 39.

<sup>7</sup> The Appeal, para. 37.

<sup>8</sup> The Co-Prosecutors' Response, para. 2, subparas. a-e.

13. The Pre-Trial Chamber, in the light of its rulings related to detention matters<sup>9</sup> and the submissions of the Parties as set out in the Report of Examination, will review the Extension Order by an examination of:

- a. Well founded reasons to believe that the Charged Person may have committed the crimes specified in the Introductory Submission (Internal Rule 63(3)(a));
- b. Grounds that would make detention a necessary measure (Internal Rule 63(3)(b));
- c. Due diligence in the conduct of investigation;
- d. Request for release on bail.

## V. CONSIDERATIONS

### 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)):

14. In the Extension Order, the Co-Investigating Judges noted that in their Order of 10 November 2008<sup>10</sup> extending provisional detention of the Charged Person and the Pre-Trial Chamber Decision of 11 May 2009<sup>11</sup> on Appeal against Extension of Provisional Detention it was found that there were well founded reasons to believe that Ieng Thirith may have committed the crimes with which she is charged.<sup>12</sup>

15. The Co-Investigating Judges further note:

“Since [the hearing of the Appeal dated 24 February 2009], the Co-Investigating Judges have continued to investigate the allegations contained in the Introductory Submission and to place evidence on the Case File. Twenty one new witness statements have been added which assist in clarifying whether the Charged Person played any role in connection with the alleged crimes.”<sup>13</sup>

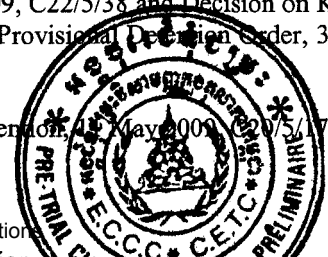
<sup>9</sup> Decision on Appeal of Charged Person Nuon Chea against Co-Investigating Judges' Order for Extension of Provisional Detention, 18 May 2009, C9/4/7; Decision on Appeal of Charged Person Ieng Thirith against Co-Investigating Judges' Order for Extension of Provisional Detention, 11 May 2009, C20/5/18; Decision on Appeal of Ieng Sary against OCIJ's Order on Extension of Provisional Detention, 26 June 2009, C22/5/38 and Decision on Khieu Samphan's Appeals against Order Refusing Request for Release and Extension of Provisional Detention Order, 3 July 2009, C26/5/26.

<sup>10</sup> Order on Extension of Provisional Detention, 10 November 2008, C20/4.

<sup>11</sup> Decision on Ieng Thirith's Appeal Against Order on Extension of Provisional Detention, 11 May 2009, C20/5/18.

<sup>12</sup> Extension Order, paras. 11-13.

<sup>13</sup> Extension Order, para 14.



16. The Co-Investigating Judges, in the same paragraph, continue to enumerate the evidence that they consider to be of an inculpatory nature. They mention that some of the evidence may appear to be exculpatory, but consider that this evidence is not sufficient to invalidate the basis of the well founded reason to believe that the Charged Person may have committed the crimes with which she is charged.<sup>14</sup>

17. The Co-Investigating Judges conclude that:

“after a fresh review of the evidence on the Case File, at this stage of the judicial investigation, there are sufficient additional facts or information which would satisfy an objective observer that there is well founded reason to believe that Ieng Thirith, in one or more of her [...] roles and functions, either planned, instigated, ordered, failed to prevent or otherwise aided and abetted in the commission of crimes specified in the Introductory Submission and, thus, that the condition set out in Internal Rule 63(3)(a) is still met, notwithstanding the passage of time.”<sup>15</sup>

18. The Co-Lawyers submit in their Appeal that the Co-Investigating Judges, by finding that some evidence “is” inculpatory and that some other evidence “may appear to be” exculpatory, have employed a different standard in both instances and therefore failed to act impartially and to properly and fairly evaluate evidence as required under Internal Rule 63(3)(a). The Co-Lawyers, quoting extracts from the interview conducted with [REDACTED] on 20 October 2009, which was not mentioned in the Extension Order, add that the Co-Investigating Judges have “failed to consider all relevant evidence before making their determination as to the existence of a well-founded reason.” The Co-Lawyers conclude that under the above circumstances it cannot be concluded that there are sufficient facts or information to persuade an objective observer that the Charged Person may have committed the crimes with which she is charged.<sup>16</sup> In the hearing of 15 February 2010 the Co-Lawyers added that the recent Rogatory Letter Completion Report, D231, of 25 June 2009 provides substantial amount of exculpatory evidence and complain about the long time it took the Co-Investigating Judges to place such evidence in the Case File.<sup>17</sup>

19. In their Response to the Appeal, the Co-Prosecutors submit that the Pre-Trial Chamber should take into account not only the new evidence filed since the Extension Order but also

<sup>14</sup> Extension Order, paras. 15 and 16.

<sup>15</sup> Extension Order, para. 17.

<sup>16</sup> Appeal, paras. 14 -21.

<sup>17</sup> Transcript of the hearing of 15 February 2010 on the Appeal, C20/9, pp. 18-19.



the fact that the Charged Person was notified additional charges on 21 December 2009.<sup>18</sup> The Co-Prosecutors also mentioned during the hearing of 15 February 2010 that on 8 December 2009 an Order on the application of the form of liability known as joint criminal enterprise was rendered by the Co-Investigating Judges.<sup>19</sup> The Co-Prosecutors maintain that the totality of the evidence gathered to date demonstrates that there is well founded reason to believe that the Charged Person may have committed the crimes with which she is charged. In relation to [REDACTED] statement of 20 October 2009, the Co-Prosecutors submitted that it should be considered in a broader context together with the rest of the evidence, adding that there is vast directly relevant inculpatory evidence in the Case File.<sup>20</sup>

20. In relation to the Co-Prosecutors' submission on the additional charges, the Pre-Trial Chamber observes that the Order on Extension of Provisional Detention was issued on 10 November 2009 and the Co-Investigating Judges issued an Order to clarify the charges against the Charged Person on 20 November 2009 which was notified in English to the Parties on 11 December 2009.<sup>21</sup>
21. On 21 December 2009, during an interview of the Charged Person, the Co-Investigating Judges notified the Charged Person and her Co-Lawyers of the charges for which she may be indicted, indicating that "there is clear and consistent evidence that acts constituting crimes against humanity, grave breaches of the 1949 Geneva Conventions, crimes of genocide and national crimes were committed."<sup>22</sup> The Co-Investigating Judges say that they "confirm the charges that the [Charged Person] was notified of at [her] initial appearance and, following a review of the evidence, [they] now consider that additional charges are warranted."<sup>23</sup> while at the initial appearance the Charged Person had been "advised that she was [...] placed under judicial investigation for the acts of which she [was] notified and specified the offences with which she was charged in relation thereto: Crimes Against Humanity [...] offences defined and punishable under Articles 5, 29 (new) and 39 (new) of the Law on the Establishment of the Extraordinary Chambers dated 27 October 2004".<sup>24</sup>
22. In the interests of justice, the Pre-Trial Chamber points to its previous decision on the Appeal against the Closing Order in Case 001 ("Decision on Appeal against the Closing

<sup>18</sup> Co-Prosecutors' Response, para 8.

<sup>19</sup> Transcript of the hearing of 15 February 2010 on the Appeal, C20/9, pp. 49-50.

<sup>20</sup> Co-Prosecutors' Response, paras. 19-23.

<sup>21</sup> Order Concerning the Co-Prosecutors' Request for Clarification of Charges, 20 November 2009, D193 (the "Order on Clarification of Charges").

<sup>22</sup> Written Record of Interview with the Charged Person, 22 December 2009, D286, para. 1.

<sup>23</sup> Written Record of Interview with the Charged Person, 22 December 2009, D286, para. 1.

<sup>24</sup> Written Record of Initial Appearance, 12 November, 2007, D39, p.2 and 3.



Order”).<sup>25</sup> The Pre-Trial Chamber found that only where the factual elements are exactly the same one can assert that other crimes are included in the charge and where the elements differ, the other crimes are not included.<sup>26</sup> In the same Decision, the Pre-Trial Chamber found that, for instance, the national crimes contain different elements from the international crimes.<sup>27</sup> The Pre-Trial Chamber also found that according to international standards, the Charged Person must be informed of any and all separate charges against him/her as soon as they are justified “to such an extent that he/she is able to exercise the rights accorded to him/her during the investigation, including the right to request investigative action pursuant to Internal Rule 58(6).”<sup>28</sup>

23. The Pre-Trial Chamber further observes that in the Appeal, the Co-Lawyers of the Charged Person contest the existence of well-founded reasons to believe that the Charged Person may bear responsibility for the crimes under investigation alleging that the Co-Investigating Judges failed to act impartially and to properly and fairly evaluate evidence by giving more weight to inculpatory evidence and not considering some evidence of exculpatory nature. In this respect, the Pre-Trial Chamber notes that in the Extension Order the Co-Investigating Judges have: conducted a fresh review of the evidence on the Case File including both inculpatory and exculpatory evidence,<sup>29</sup> taken into consideration the relevant material contained in the Case File and concluded that the well founded reasons still exist. The wording used by the Co-Investigating Judges to describe exculpatory evidence as it “may appear to be” so, is indicating their understanding of the weight that should be given to this piece of the evidence in the totality of evidence which has been examined.

24. The Pre-Trial Chamber notes, as also pointed out by the Co-Lawyers, that other evidence of potential exculpatory nature had been placed on the Case File before the Extension Order was issued.<sup>30</sup> Considering the totality of the evidence in the Case File until the time when the Extension Order was issued, the Pre-Trial Chamber finds that this piece of evidence does not undermine the conclusion that the Co-Investigating Judges were justified to find that there are well-founded reasons to believe that the Charged Person may be responsible for the crimes for which she has been placed under judicial investigation. The fact that the interview conducted with [REDACTED] on 20 October 2009 was not mentioned in the Extension

<sup>25</sup> Decision on Appeal against the Closing Order Indicting KAING Guek Eav Alias “Duch” 5 December 2008, D99/3/42 (“Decision on Appeal against the Closing Order”).

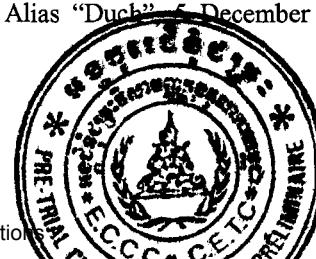
<sup>26</sup> Decision on Appeal against the Closing Order, paras.85 and 88.

<sup>27</sup> Decision on Appeal against the Closing Order, paras 60 -88.

<sup>28</sup> Decision on Appeal against the Closing Order, para.138.

<sup>29</sup> Extension Order, paras. 14-17.

<sup>30</sup> Written Record of Interview of Charged Person, [REDACTED] 20 October 2009, D225.





Order does not necessary mean that the Co-Investigating Judges did not examine it. The Pre-Trial Chamber will take this interview in consideration in examining the evidence afresh.

25. In relation to the Co-Lawyers complaint about the long time it took the Co-Investigating Judges to place the Rogatory Letter Completion Report, D231, of 25 June 2009 in the Case File,<sup>31</sup> the Pre-Trial Chamber firstly observes that the Co-Lawyers do not refer to specific evidence in it and secondly finds that in dealing with this appeal this issue has no consequences as the Pre-Trial Chamber looking at the evidence afresh will examine this Rogatory Letter Report when considering whether there are well founded reasons to believe that the Charged Person has committed the crimes for which she is charged. The Pre-Trial Chamber notes that in the Appeal the Co-Lawyers of the Charged Person were able to comment on the substance of this letter, although they choose not to do so.
26. The Pre-Trial Chamber therefore finds that the Co-Investigating Judges exercised their discretion correctly in concluding that the “well founded reasons” still exist.
27. The Pre-Trial Chamber, having looked at the case file afresh, notes that it found that there are recent statements and documents placed in the case file which constitute evidence of an exculpatory<sup>32</sup> and inculpatory<sup>33</sup> nature. After an examination of the totality of the evidence, the Pre-Trial Chamber did not find that the new exculpatory evidence would undermine, at this time, the conclusion that well-founded reasons exist.
28. The Pre-Trial Chamber finds that the “well founded reasons” that would satisfy an objective observer that the Charged Person may have been responsible for, or committed, the alleged

<sup>31</sup> The Pre-Trial Chamber observes that the Rogatory Letter Completion Report, D231, of 25 June 2009 was filed in the original Khmer and in the translated French and English versions on 11 November 2009.

<sup>32</sup>

<sup>33</sup>



crimes specified in the Introductory Submission not only exist, as ascertained by the Co-Investigating Judges in their Extension Order, but are, at present, also supported by additional evidence.

29. Therefore, the Pre-Trial Chamber finds that the first condition for ordering provisional detention, mentioned in Internal Rule 63(3)(a), is still met.

**B. Consideration of the grounds making provisional detention a necessary measure (Internal Rule 63(3)(b)):**

30. In the Extension Order, the Co-Investigating Judges referred to the Pre-Trial Chamber's findings in its Decision on Ieng Thith's Appeal against the Order on Extension of Provisional Detention dated 11 May 2009<sup>34</sup> and considered whether the conditions under Internal Rule 63(3)(b) still remain satisfied. The Co-Investigating Judges found in their Extension Order that because there has been no change in the circumstances and because the defence has not put forward anything indicating the contrary, detention is still a necessary measure to prevent the Charged Person from exerting pressure on any witnesses or victims, to preserve evidence, to ensure the presence of the Charged Person during the proceedings and to preserve public order.<sup>35</sup>

31. The Pre-Trial Chamber finds that in applying this standard the Co-Investigating Judges acted correctly.

Risk of the Charged Person exerting pressure on witnesses and destroying evidence if released (Internal Rule 63(3)(b)(i) and (ii)):

32. In the Appeal the Co-Lawyers contend that the Co-Investigating Judges should have considered the fact that the Charged Person has not given any indication that she directly or indirectly sought to interfere or obstruct the administration of justice, although she has had access to the names of many sensitive witnesses throughout the investigation. The Co-Lawyers add that the fact that the closure of investigations is close means that it is not anymore necessary to keep the Charged Person detained in order to ensure the integrity of investigations.

<sup>34</sup> Decision on Appeal of Charged Person Ieng Thirith against Co-Investigating Judges' Order for Extension of Provisional Detention, 11 May 2009, C20/5/18.

<sup>35</sup> Extension Order, paras. 18-26.



33. The Co-Prosecutors argue that the offensive attitude of the Charged Person consisting of threats and attempts to intimidate the parties at hearings or in the detention facility are evidence that the Charged Person has clearly shown her potential to exert pressure against witnesses and victims if she were released.<sup>36</sup> The Co-Prosecutors add that the integrity of investigations is still at stake even after the closure of the investigations because pursuant to Internal Rule 66(1) witnesses can still be interviewed between the closure of the investigation up until the closing order and they further point out that witnesses will be heard during trial.<sup>37</sup>
34. The Pre-Trial Chamber notes, as also observed by the Co-Investigating Judges in the Extension Order, that the Charged Person has access, through her lawyers, to evidence containing details of witnesses' names. Although they find that there is no change in circumstances, in their Extension Order, the Co-Investigating Judges do not explain clearly how the Charged Person's knowledge of details of witnesses' names still poses a risk to the integrity of investigations at this stage.
35. The Pre-Trial Chamber observes, as also pointed out by the Co-Prosecutors, that the history of an intimidating attitude on the part of the Charged Person combined with the fact that witnesses can still be interviewed between the closure of the investigation up until the closing order and during trial, justifies the conclusion that there is still a need to prevent possible pressure that may be exercised on witnesses and victims by the Charged Person if released. These reasons shall be added to the relevant paragraphs in the reasoning of the Extension Order.<sup>38</sup>
36. The Pre-Trial Chamber finds that provisional detention is still necessary to prevent the Charged Person from exerting pressure on witnesses or victims and from destroying evidence. The grounds mentioned in Internal Rule 63(3)(b)(i) and (ii) are thus still met.

Necessity to ensure the presence of the Charged Person during the proceedings (Internal Rule 63(3)(b)(iii)):

<sup>36</sup> Co-Prosecutors' Response paras.27-29.

<sup>37</sup> Transcript of hearing of 15 February 2010 on the Appeal, C20/9, pages 55-56.

<sup>38</sup> Extension Order, paras. 20-22.



37. The Co-Lawyers argue in their Appeal that the Charged Person's medical condition and need for ongoing medical treatment makes the conclusion that if released she will be able to abscond unrealistic.<sup>39</sup> The Pre-Trial Chamber does not find this argument convincing because, given the connections and possibilities that she has, the Charged Person, if released, would be able to find alternative adequate medical treatment elsewhere.
38. The Pre-Trial Chamber further 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 found guilty. Nothing placed on the case file up to now leads to a conclusion that the circumstances have changed. Moreover, the new evidence added in the case file adds to the arguments supporting a connection between the alleged acts and the Charged Person, thus putting greater pressure on her.<sup>40</sup>
39. The Pre-Trial Chamber finds that the Co-Investigating Judges were correct in concluding that there is still a need to keep the Charged Person in detention in order to ensure her presence in the proceedings.

Necessity to ensure Public Order (Internal Rule 63(3)(b)(v)):

40. The Co-Lawyers, referring to a Judgment of the European Court of Human Rights (ECHR), argue in their Appeal that in order to justify detention "facts capable of showing that the accused's release would actually disturb public order" are required and that no such facts are available in this case.<sup>41</sup> The Co-Prosecutors in their Response, giving count of referenced documentation from the case file,<sup>42</sup> submit that such facts do exist and that the Defence has not provided anything to prove the contrary. In Reply, during the hearing of 15 February 2010, the Co-Lawyers argued that only 5 per cent of the Cambodian population is over 50 years of age and could suffer from Post Traumatic Stress Disorder (PTSD) resulting from the period of Democratic Kampuchea and that most people will recover from that in three months time.<sup>43</sup>
41. The Pre-Trial Chamber observes that the Co-Lawyers did not put forward any supporting documentation for their arguments submitted during the hearing of 15 February 2010. The

<sup>39</sup> Appeal, paras. 26-29.

<sup>40</sup> See para. 27 and footnote 33 above.

<sup>41</sup> Appeal paras. 32-33.

<sup>42</sup> Co-Prosecutors' Response, para. 30.

<sup>43</sup> Transcript of hearing of 15 February 2010 on the Appeal, C20/9, page. 66.



findings of the Co-Investigating Judges in their Extension Order and the documents referred to by the Co-Prosecutors in their Response<sup>44</sup> are capable of showing that the Charged Person's release would actually disturb public order.

42. The Pre-Trial Chamber finds that the Co-Investigating Judges were correct in concluding that there is still a need to keep the Charged Person in detention in order to avoid disturbance of public order.

Conclusion:

43. Therefore, the Pre-Trial Chamber finds that provisional detention is still a necessary measure to: (i) prevent the Charged Person from exerting pressure on witnesses or victims, (ii) to preserve evidence, (iii) to ensure the Charged Person's presence during the proceedings, and (iv) to protect public order.

**C. Due Diligence by the Co-Investigating Judges:**

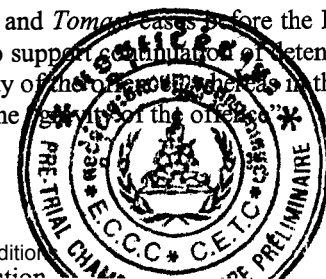
44. In the Extension Order, the Co-Investigating Judges acknowledged that "the passage of time is relevant to determining the legitimacy of continued provisional detention of a Charged Person."<sup>45</sup> They indicate that the scope of the judicial investigation required by the Introductory Submission and the gravity of the crimes alleged therein with regard to the Charged Person require large-scale investigative actions. They further give count in the Extension Order of the investigative actions undertaken since 24 February 2009, which include written records of witnesses and Civil Parties interviews and documents added to the Case File either at the request of Parties or *proprio motu*.<sup>46</sup>
45. The Co-Lawyers argue that the Co-Investigating Judges' consideration that in view of the materials added to the Case File, they do not consider that the passage of time calls into question the need for continued provisional detention is irrelevant. The Co-Lawyers further reiterate their reliance on the "special diligence requirement".<sup>47</sup>

<sup>44</sup> The Pre-Trial Chamber observes that differently from this case, in the *Lettelier and Tomasi* cases before the ECHR, cases referred to by the Co-Lawyers, the only argument used by the prosecution to support continuation of detention as a necessary measure to prevent public disorder in those two cases was "the gravity of the offences in the case before this court the arguments put forward by the prosecution go far beyond just the gravity of the offences".

<sup>45</sup> The Extension Order, para. 27.

<sup>46</sup> The Extension Order, paras. 28-30.

<sup>47</sup> Appeal, paras. 34-36.



46. The Co-Prosecutors respond that the Defence has not demonstrated how the length of detention has prejudiced the Appellant's case in such a manner as to justify a reconsideration of provisional detention. They argue that the Defence has failed to substantiate the applicability of the "special diligence" standard of the ECHR and have provided no new evidence that could persuade the Pre-Trial Chamber that the duration of detention is unreasonable. They conclude that the length of detention is reasonable under Article 9(3) of the International Covenant on Civil and Political Rights (ICCPR) given the gravity of the crimes charged, the complexity of the case, the conduct of the proceedings and the extent of the ongoing investigations.<sup>48</sup>
47. The Pre-Trial Chamber refers to, repeats and adopts its general findings and observations in the previous Decision on the Charged Person's Appeal against the Order on Extension of Provisional Detention on special diligence.<sup>49</sup>
48. Pre-Trial Chamber further finds that the reasonableness of the length of detention and the diligence of the Co-Investigating Judges in conducting their investigation are factors that shall be taken into consideration when exercising the discretionary power to extend provisional detention.
49. The Pre-Trial Chamber finds that there is sufficient additional evidence in the case file to demonstrate that the investigations have progressed expeditiously during the period under consideration. The Co-Investigating Judges have provided sufficient reasoning in the Extension Order to support this finding.
50. The Pre-Trial Chamber finds that the gravity and nature of the crimes with which the Charged Person is charged require large-scale investigative actions which have been undertaken, and that in view of the scope and current stage of the investigations, the Co-Investigating Judges used their discretion to order the extension of the provisional detention reasonably.

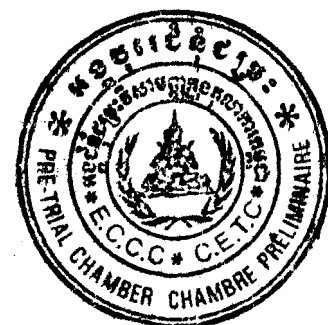


<sup>48</sup> The Co-Prosecutors Response paras. 12-17.

<sup>49</sup> Decision on Appeal of Charged Person Ieng Thirith against Co-Investigating Judges' Order for Extension of Provisional Detention, 11 May 2009, C20/5/18.

**D. Request for Release on Bail:**

51. In the Appeal the Co-Lawyers request from the Pre-Trial Chamber to release the Charged Person on bail under conditions as suggested by their Appeal against the Detention Order.<sup>50</sup>
52. The Pre-Trial Chamber has decided on this same request in its Decision on the Charged Person's Appeal against Provisional Detention Order, dated 9 July 2008, stating that "the Charged Person cannot be released on bail, as any of the conditions proposed by the Charged Person [in Annex C attached to her appeal] are outweighed by the necessity for her provisional detention".<sup>51</sup>
53. As the request for bail contains no additional submissions the Pre-Trial Chamber, rejects the request for release on bail without further reasoning.



<sup>50</sup> Appeal, paras.38-39.

<sup>51</sup> Decision on the Charged Person's Appeal against Provisional Detention Order, 9 July 2008, para. 74.

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

1. The Appeal is admissible in its form;
2. The Extension Order of the Co-Investigating Judges is affirmed with the reasons expressed in paragraph 35 of this decision, in part, being added to the reasons of the Co-Investigating Judges;
3. The request for release on bail is rejected;
4. The Appeal is dismissed.

In accordance with Internal Rule 77(13), 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, 30 April 2010 <sup>CR</sup>

Pre-Trial Chamber

  
Rowan DOWNING

  
NEY Thol

  
Katinka LAHUIS

  
HUOT Vuthy

  
PRAK Kimsan



  
Chanrath SA

  
Entela JOSIFI

