



**អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា**

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

**ព្រះរាជាណាចក្រកម្ពុជា**  
**ជាតិ សាសនា ព្រះមហាក្សត្រ**

Kingdom of Cambodia  
Nation Religion King  
Royaume du Cambodge  
Nation Religion Roi

D427/2/13

**អង្គជំនុំជម្រះ**  
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 No: 002/19-09-2007-ECCC/OCIJ (PTC145 & PTC146)**

**Before:** Judge PRAK Kimsan, President  
Judge Rowan DOWNING  
Judge NEY Thol  
Judge Catherine MARCHI-UHEL  
Judge HUOT Vuthy

**Date:** 21 January 2011

<b>ឯកសារដើម</b>	
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**PUBLIC**

**DECISION ON IENG THIRITH'S AND NUON CHEA'S APPEALS AGAINST THE CLOSING ORDER : REASONS FOR CONTINUATION OF PROVISIONAL DETENTION**

**Co-Prosecutors**

CHEA Leang  
Andrew CAYLEY

**Accused**

IENG Thirith  
NUON Chea

**Lawyers for the Civil Parties**

LOR Chhunthy  
Kong Pisey  
HONG Kim Suon  
YUNG Phanit  
KIM Mengkhy  
MOCH Sovannary  
Martine JACQUIN  
Philippe CANONNE  
Elizabeth RABESANDRATANA  
Mahdev MOHAN  
Olivier BAHOUGNE  
SILKE Studzinsky  
DELAHAIE Annie  
Fabienne TRUSSES-NAPROUS

**Co-Lawyers for the Accused**

PHAT PouV Seang  
Diana ELLIS  
SON Arun  
Michiel PESTMAN  
Victor KOPPE

**The Co-Investigating Judges**

YOU Bun Leng  
Siegfried BLUNK

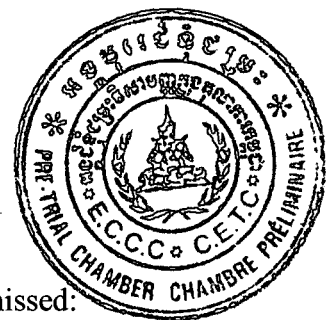


SIN Soworn  
BAUDOUIN Patrick  
GUIRAUD Marie  
LYMA Nguyen  
PICH Ang  
CHET Vannly  
DESFORGES Laure  
DURAND Isabelle  
GAUTRY Françoise  
MARTINEAU Christine  
Pascal AUBOIN  
Ferdinand Djammen-Nzepa  
Emmanuel ALTIT  
Emmanuel JACOMY  
Julien RIVET  
Barnabe NEKUÏE  
Nicole DUMAS  
Daniel LOSQ  
VEN Pov



**THE PRE-TRIAL CHAMBER** of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) is seized of Ieng Thirith Defence Appeal from the Closing Order (the “Ieng Thirith Appeal”),<sup>1</sup> and Nuon Chea’s Appeal Against the Closing Order (the “Nuon Chea Appeal”),<sup>2</sup> filed on 18 October 2010 and 18 October 2010, respectively.

1. On 13 January 2011, the Pre-Trial Chamber has pronounced the final disposition of the Appeals and announced that the reasons for this decision shall follow in due course.
2. In particular, the Pre-Trial Chamber decided unanimously that:
  1. The Appeal is admissible in its form;
  2. Grounds one, two, three, four and five of the Nuon Chea Appeal and grounds one, two, three, four, five (partially) and seven (partially) of the Ieng Thirith Appeal are admissible. The rest of the grounds of these appeals are inadmissible. The inadmissible sub-grounds of grounds five and seven of the Ieng Thirith Appeal are:
    - Ground 5, in so far as it alleges that the Co-Investigating Judges’s decision to confirm jurisdiction with respect to domestic crimes charged under the 1956 Penal Code is in violation of the Ieng Thirith’s right to equality before the law;
    - Ground 7, in so far as it alleges that the Co-Investigating Judges failed to properly plead as a factual matter, the existence of a legal duty to act and its basis in domestic law as an element of superior responsibility.
  3. Ground one of Nuon Chea’s appeal is dismissed;
  4. Ground two of Nuon Chea’s appeal is dismissed;
  5. Ground three of Nuon Chea’s Appeal is dismissed;
  6. Ground four of Nuon Chea’s Appeal is dismissed;
  7. Ground five of Nuon Chea’s Appeal is dismissed;
  8. Ground one of Ieng Thirith’s Appeal is dismissed;
  9. Ground two of Ieng Thirith’s Appeal is dismissed;
  10. Ground three of Ieng Thirith’s Appeal is dismissed;
  11. Ground four is granted in part as follows and is otherwise dismissed:



<sup>1</sup> Ieng Thirith Defence Appeal from the Closing Order, 18 October 2010, D427/2/1 (“Ieng Thirith Appeal”).

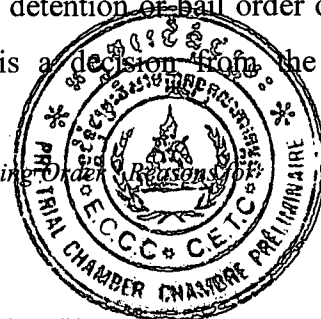
<sup>2</sup> Appeal Against the Closing Order, 18 October 2010, D427/3/1 (“Nuon Chea Appeal”).

1. This ground of Appeal is granted in so far as the Co-Lawyers assert that the Co-Investigating Judges erred by failing to consider that during the temporal jurisdiction of the ECCC, international customary law required a nexus between the underlying acts of crimes against humanity and an armed conflict. The “existence of a nexus between the underlying acts and the armed conflict” is added to the “Chapeau” requirements in Chapter IV(A) of Part Three of the Closing Order.
  2. This ground of Appeal is granted in so far as the Co-Lawyers argue that rape did not exist as a crime against humanity in its own right in 1975-1979. Therefore, the Pre-Trial Chamber decides to strike rape out of paragraph 1613 (Crimes Against Humanity, paragraph (g)) of the Closing Order and to uphold the Co-Investigating Judges finding in paragraph 1433 of the Closing Order that the facts characterized as crimes against humanity in the form of rape can be categorized as crimes against humanity of other inhumane acts."
  12. Those parts of ground five of Ieng Thirith's Appeal that are found admissible are dismissed;
  13. Those parts of ground seven of Ieng Thirith's Appeal that are found admissible are dismissed;
  14. The Appeal is otherwise dismissed;
  15. The Accused Persons are indicted and ordered to be sent for trial as provided in the Closing Order being read in conjunction with this decision;
  16. The provisional detention of the Accused Persons is ordered to continue until they are brought before the Trial Chamber.
3. The Pre-Trial Chamber hereby provides the reasons for the sixteenth conclusion of this decision where the provisional detention of the Accused Persons was ordered to continue.

#### **MAINTENANCE OF THE ACCUSED IN PROVISIONAL DETENTION:**

#### **REASONS**

4. Pursuant to sub-rule 68(2), once an appeal is lodged against the Indictment, no matter what the nature of the appeal is, “the effect of the detention or bail order of the Co-Investigating Judges shall continue until there is a decision from the Pre-Trial Chamber.”

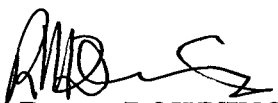
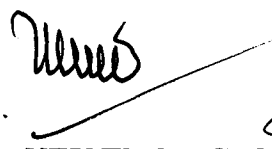
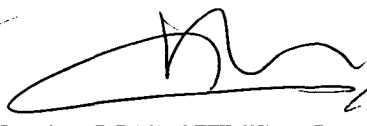




witnesses or victims or destroying evidence if released.<sup>5</sup> The Pre-Trial Chamber considers that the reasons given by the Co-Investigating Judges to order that the Accused remain in provisional detention, which it adopts, justify that it orders that the provisional detention of the Accused continue until they are brought before the Trial Chamber.

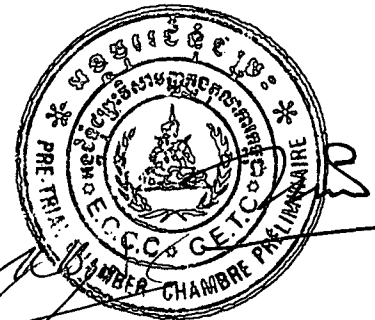
Phnom Penh, 21 January 2011 <sup>CR</sup>

Pre-Trial Chamber

President

Rowan DOWNING    NEY Thol    Catherine MARCHI-UHEL    HUOT Vuthy    PRAK Kimsan



<sup>5</sup> Internal Rule 63(3)(b) i), ii), iii) and v).