



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

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 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

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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

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IENG Thirith
NUON Chea

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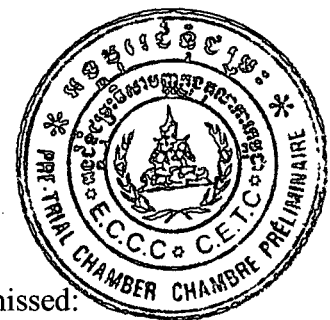


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THE PRE-TRIAL CHAMBER of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) is seized of Ieng Thirith Defence Appeal from the Closing Order (the “Ieng Thirith Appeal”),¹ and Nuon Chea’s Appeal Against the Closing Order (the “Nuon Chea Appeal”),² 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:



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

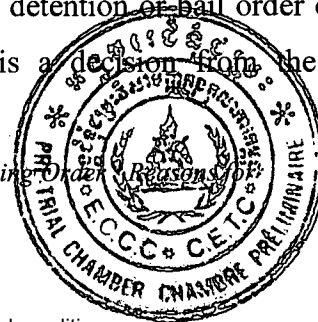
² Appeal Against the Closing Order, 18 October 2010, D427/3/1 (“Nuon Chea Appeal”).

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.”



5. The Accused have not lodged an appeal against the detention order of the Co-Investigating Judges issued within their Closing Order. There is no new circumstance except the confirmation of the indictment by the Pre-Trial Chamber, which reinforces the well founded reasons to believe that the Accused may have committed the crimes charged in the indictment.³ It also reinforces the necessity to maintain NUON Chea in provisional detention to ensure his presence at trial, protect his security, preserve public order and avert the risk of the Accused exerting pressure on witnesses or victims or destroying evidence if released⁴ and to maintain IENG Thirith in provisional detention in order to ensure her presence at trial, preserve public order and avert the risk of the Accused exerting pressure on witnesses or victims or destroying evidence if released.⁵ 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 pursuant to Internal Rule 68(3) continue until they are brought before the Trial Chamber.

Phnom Penh, 21 January 2011 ^{CR}

Pre-Trial Chamber

President



Rowan DOWNING NEY Thol



Catherine MARCHI-UHEL



HUOT Vuthy PRAK Kimsan

³ Internal Rule 63(3)(a).

⁴ Internal Rule 63(3)(b) i) to v).

⁵ Internal Rule 63(3)(b) i), ii), iii) and v).