



**អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា**

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

៩២/៥, ៣១  
ព្រះរាជាណាចក្រកម្ពុជា

**ជាតិ សាសនា ព្រះមហាក្សត្រ**

Kingdom of Cambodia  
Nation Religion King

Royaume du Cambodge  
Nation Religion Roi

**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 (PTC17)

**Before:** Judge PRAK Kimsan, President  
Judge Rowan DOWNING  
Judge NEY Thol  
Judge Katinka LAHUIS  
Judge HUOT Vuthy  
**Greffiers** Chanrath SAR  
Entela JOSIFI  
**Date:** 26 June 2009

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**PUBLIC (REDACTED VERSION)**  
**DECISION ON APPEAL OF IENG SARY AGAINST OCIJ'S ORDER ON EXTENSION OF PROVISIONAL DETENTION**

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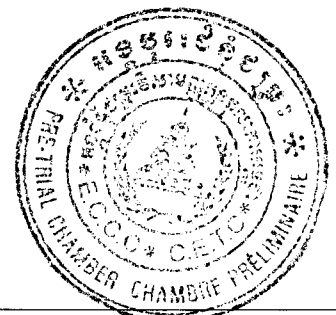
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**Charged Person**

IENG Sary

**Co-Lawyers for the Defence**

ANG Udom  
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**THE PRE-TRIAL CHAMBER** of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) is seized of “Ieng Sary’s Appeal against the [Co-Investigating Judges’] Order on Extension of Provisional Detention” filed on 10 December 2008 (“the Appeal”).

## I. INTRODUCTION

1. The Pre-Trial Chamber refers to, repeats and adopts the Report of Examination, dated 23 February 2009, on the proceedings and legal and factual issues in this case, which is attached to this Decision.<sup>1</sup>
2. On 29 January 2009, the Pre-Trial Chamber issued a Scheduling Order in which a hearing date was set for 26 February 2009.<sup>2</sup>
3. Before the hearing, the Pre-Trial Chamber received access to the Case File, which was updated. For the purposes of considering this Appeal, the Pre-Trial Chamber reviewed the documents in the case file and all the evidence up to and including 2 April 2009, being the last day of the hearing of the Appeal.
4. On 26 February 2009, the Pre-Trial Chamber heard preliminary matters from the Co-Lawyers.<sup>3</sup> The Pre-Trial Chamber adjourned the hearing to continue on 2 April 2009. On 2 April 2009, the Pre-Trial Chamber heard the oral submissions of the parties.

## II. ADMISSIBILITY OF THE APPEAL

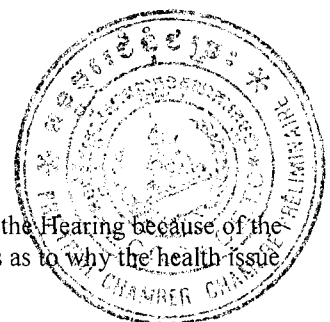
5. On 11 November 2008, the Co-Investigating Judges rendered an Order on Extension of Provisional Detention of Ieng Sary (“Extension Order”). On 11 November 2008 the Co-Lawyers received notice of the Extension Order and filed a Notice of Appeal. The Appeal was filed on 10 December 2008 and therefore within the time provided for in Internal Rule 75(3) of the ECCC Internal Rules (“the Internal Rules”).

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<sup>1</sup> PTC17 Report of Examination, 23 February 2009, C22/5/17.

<sup>2</sup> Scheduling Order, 29 January 2009, C22/5/10.

<sup>3</sup> Written Version of Oral Decision on Co-Lawyers’ Requests to hear Dr. Falke, to Adjourn the Hearing because of the Health Condition of the Charged Person and to Allow the Co-Lawyers to make submissions as to why the health issue is crucial for the Pre-Trial Chamber’s consideration, 27 February 2009, C22/5/24.



### III. APPLICABLE LAW

6. Internal Rule 63, on Provisional Detention, provides in relevant part:

“2. An order for Provisional Detention shall:

- a) set out the legal grounds and factual basis for detention, based on sub-rule 3 below;

[...]

3. 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;
  - iv) protect the security of the Charged Person; or
  - v) preserve public order.

[...]

6. Provisional Detention may be ordered as follows:

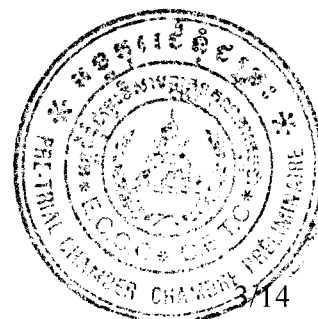
- a) for genocide, war crimes and crimes against humanity, for a period not exceeding 1 (one) year. However, the Co-Investigating Judges may extend the Provisional Detention for further 1 (one) year periods;

[...]

7. Any decision by the Co-Investigating Judges concerning extension of Provisional Detention shall be in writing and shall set out the reasons for such extension. An extension shall be made only after the Co-Investigating Judges notify the Charged Person and his or her lawyer and give them 15 (fifteen) days to submit objections to the Co-Investigating Judges. No more than 2 (two) such extensions may be ordered. All such orders are open to appeal.”

### IV. NATURE OF THE APPEAL

7. In the Appeal, the Co-Lawyers request the Pre-Trial Chamber to:



- a. “Vacate the Extension Order [dated] 10 November 2008 and to order provisional release for the Charged Person; or to,
- b. Order the Co-Investigating Judges to modify the conditions of detention according to Internal Rule 63(8) and impose house arrest.”<sup>4</sup>

They assert that the Co-Investigating Judges have not conducted their investigation with due diligence and have not respected the Charged Person’s fundamental rights.<sup>5</sup>

8. The Co-Prosecutors in their Response to the Appeal request from the Pre-Trial Chamber to dismiss the Appeal on the ground that the Charged Person “has failed to demonstrate any material change in circumstances since he was originally detained by the Co-Investigating Judges on 14 November 2007.”<sup>6</sup>
9. The Civil Parties in their Response to the Appeal request the Pre-Trial Chamber to dismiss the Appeal, as “[t]he Extension Order of the [Co-Investigating Judges] is reasonable, justifiable and the discretion is properly exercised.”<sup>7</sup>
10. The Pre-Trial Chamber, in the light of its rulings related to detention matters<sup>8</sup> and the submissions of the Parties as set out in the Report of Examination, will review the Co-Investigating Judges’ Order on Extension of Provisional Detention (“the Order”) by an examination of:
  - A. well founded reasons to believe that the Charged Person may have committed crimes specified in the Introductory Submission;
  - B. grounds that would make detention a necessary measure;
  - C. due diligence in the conduct of investigation;
  - D. the Co-Lawyers’ for the Charged Person request for release or modification of the conditions of detention by imposing house arrest instead.

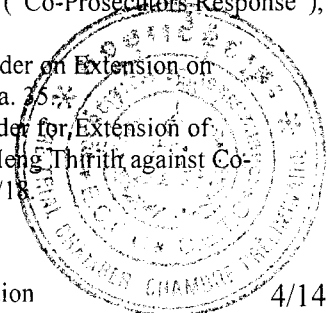
<sup>4</sup> The Appeal, p. 53.

<sup>5</sup> The Appeal, para. 1.

<sup>6</sup> Co-Prosecutors’ Response to Ieng Sary’s Appeal on Extension of Provisional Detention (“Co-Prosecutors Response”), 9 January 2009, C22/5/7, para. 2.

<sup>7</sup> Civil Party Co-Lawyers’ Joint Response to the Appeal of Ieng Sary against the OCIJ Order on Extension on Provisional Detention (“Civil Parties’ Joint Response”), 26 December 2008, C22/5/6, para. 35.

<sup>8</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 and Decision on Appeal of Charged Person Ieng Thirith against Co-Investigating Judges’ Order for Extension of Provisional Detention, 18 May 2009, C80/5/18.



## V. CONSIDERATIONS

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

11. In the Extension Order, the Co-Investigating Judges noted that both the Provisional Detention Order and the Decision on Appeal against Provisional Detention found that the case file “contains evidence capable of satisfying an objective observer that the Charged Person may have committed the specific crimes for which he is currently under investigation.”<sup>9</sup>

12. The Co-Investigating Judges further note:

“Since the hearing of the appeal, the Co-Investigating Judges have continued to investigate the allegations contained in the Introductory Submission. During this time, no exculpatory evidence has been placed on the case-file which tends to materially undermine the above evidence relied on by the Pre-Trial Chamber and thus invalidate its reasoning [...]”<sup>10</sup>

13. The Co-Investigating Judges maintained that, due to the recent nature of the Pre-Trial Chamber’s analysis of the case file, they did not consider it necessary to further elaborate on the key evidence and therefore they endorsed the Pre-Trial Chamber’s analysis as an accurate summary of the case of Ieng Sary.

14. The Co-Investigating Judges conclude:

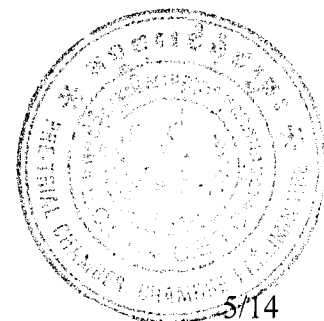
“For these reasons, the Co-Investigating Judges consider that, having looked at the totality of the evidence on the case file afresh, there continues to be, at this stage of the investigation, facts or information which would satisfy an objective observer that Ieng Sary, in his capacity of Minister of Foreign Affairs, may have:

- a) exercised authority and effective control over the Ministry and all its constituent and subordinate organs; and

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<sup>9</sup> Extension Order, paras. 11 and 12.

<sup>10</sup> Extension Order, para. 13.



b) as a full rights member of the Central and Standing Committees of the Communist Party of Kampuchea, instigated, ordered, failed to prevent to punish, or otherwise aided and abetted in the commission of the crimes for which he is charged.”<sup>11</sup>

15. The Co-Lawyers submit in their Appeal that the Co-Investigating Judges did not identify any new evidence collected since the last evaluation of evidence by the Pre-Trial Chamber.<sup>12</sup> The Co-Lawyers argue that:

“As such, the [Co-Investigating Judges] can only rely upon the evidence already used by the Pre-Trial Chamber in its Detention Appeal Decision. While such evidence may have been considered sufficient when the original Provisional Detention Order was issued in November 2007, a higher level of evidence is required to satisfy Internal Rule 63(3)(a) after Mr. IENG Sary has spent a year in detention while still under investigation. By failing to identify any new evidence relating to whether Mr. IENG Sary may have committed the crimes with which he is charged, to supplement the evidence already identified by the Pre-Trial Chamber, the [Co-Investigating Judges have] not satisfied its burden of persuasion outlined above in relation to Internal Rule 63(3)(a).”<sup>13</sup>

16. In their Response to the Appeal, the Co-Prosecutors submit that “the Appellant does not contest the well founded reasons determination of the Detention Appeal Decision. He only challenges the Co-Investigating Judges’ alleged lack of due diligence in conducting their investigation [...]”<sup>14</sup> The Co-Prosecutors then give an account of the added evidence in the case file in the recent months, which demonstrates that it has increased both in volume and gravity.<sup>15</sup> The Co-Prosecutors add that “no significant exculpatory evidence has been found to undermine the determination of the existence of “well founded reasons.”<sup>16</sup>

17. The Co-Lawyers for Civil Parties in their Response to the Appeal submit:

“The [Co-Investigating Judges] submitted seven pages of grounds for their decision to extend the detention. Related to Internal Rule 63 (3) (a), the [Co-Investigating

<sup>11</sup> Extension Order, para. 16.

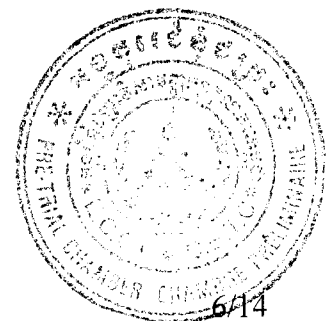
<sup>12</sup> The Appeal, para 21.

<sup>13</sup> Extension Order, para. 22.

<sup>14</sup> Co-Prosecutors Response, para. 22.

<sup>15</sup> Co-Prosecutors Response, paras. 23 and 24.

<sup>16</sup> Co-Prosecutors Response, para. 26.



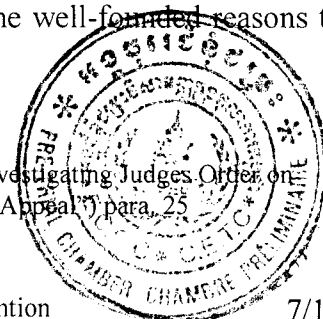
Judges] referred mainly to the decision of the Pre-Trial Chamber which published their decision recently. The [Co-Investigating Judges] added other new evidence, taken after the [Pre-Trial Chamber's] decision.”<sup>17</sup>

18. The Pre-Trial Chamber observes that in the Appeal, the Co-Lawyers of the Charged Person do not contest the existence of well-founded reasons to believe that the Charged Person may bear responsibility for those crimes under investigation, therefore the Pre-Trial Chamber will not review the evidence in the case file in this respect before the Appeal was filed.
19. The Co-Lawyers argue that notwithstanding the existence of evidence that established well-founded reasons at the time of the Provisional Detention Order, “a higher level of evidence is required to satisfy the requirements of Rule 63(3)(a) after Ieng Sary has spent a year in detention.”
20. The Pre-Trial Chamber notes that the Co-Investigating Judges in their Extension Order mention that they did look at the evidence in the case file afresh and that due to the recent nature of the Pre-Trial Chamber’s analysis of the case file, they did not consider it necessary to further elaborate on the key evidence establishing the existence of “well founded reasons.”
21. The Pre-Trial Chamber observes that once the existence of “well founded reasons” has been established, unless exculpatory evidence has been found to undermine it, it is sufficient to fulfil the requirement of Rule 63(3)(a) throughout the pre-trial stage of the proceedings. Whereas a different level of suspicion or doubt is required at later stages of criminal proceedings, the level of suspicion necessary to justify pre-trial detention is only that which is considered “reasonable” and evidence placed in the case file has already established this. Therefore, the Co-Investigating Judges exercised their discretion correctly in concluding that the “well founded reasons” exist.
22. As far as the contention of the Co-Lawyers is related to allegations for lack of due diligence in investigations, the Pre-Trial Chamber elaborates on this in the paragraphs that follow.<sup>18</sup>
23. The Pre-Trial Chamber notes that it found that recent witness statements and documents placed in the case file add to the existing body of evidence that supports the well-founded reasons to

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<sup>17</sup> Civil Party Co-Lawyers’ Joint Response to the Appeal of Ieng Sary against the Co-Investigating Judges Order on Extension of Provisional Detention, 26 December 2008, (“Civil Parties Response to the Appeal”) para. 25

<sup>18</sup> See: paras. 38-46 below.



believe that the Charged Person may have committed the crimes specified in the Introductory Submission.<sup>19</sup>

24. The Pre-Trial Chamber, having looked at the case file afresh, did not find exculpatory evidence. The Co-Lawyers for the Charged Person did not provide any exculpatory evidence in the Appeal. Under these circumstances, 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 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.

**B. Whether sufficient grounds that make detention a necessary measure still exist (Internal Rule 63(3)(b))**

25. The Pre-Trial Chamber notes that the Co-Lawyers for the Charged Person, apart from observing the advanced age and the fact that his wife is also here in detention, did not present new facts or circumstances that show that conditions under Rule 63(3)(b) have changed in order to convince the Co-Investigating Judges or this Chamber that detention is not warranted at present.

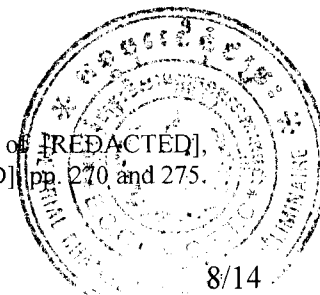
26. The Pre-Trial Chamber notes that the Co-Investigating Judges in their Extension Order provided sufficient reasoning in finding that the risks that substantiated initial detention still exist. The Pre-Trial Chamber shall therefore address here the only the issues raised by the Co-Lawyers in the Appeal.

The Risk of flight (Rule 63(3)(b)(iii))

27. 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 found guilty. Nothing placed on the case file since this Chamber’s previous decision on provisional detention 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 him.<sup>20</sup>

<sup>19</sup> See: Witness statement of [REDACTED], dated 10 March 2009, D141/1; Witness statements of [REDACTED], dated 23 March 2009, D144 and D147; Document dated 25 March 2009, D155.3, [REDACTED] pp. 270 and 275.

<sup>20</sup> See: para.23 above.





28. The Co-Lawyers' arguments that his advanced age and that his wife is also in detention significantly reduce both his ability and motivation to flee are not convincing. There is no evidence or information that would prove that people at an advanced age are not able to travel. In addition, the Charged Persons wife's risk of flight is still confirmed by this Chamber.<sup>21</sup> This may count as an aggravating circumstance, rather than a mitigating one, when examining risk of flight of the Charged Person.
29. For all the reasons already elaborated in its previous Decision on Appeal against Provisional Detention, which remain valid, and because there are no convincing arguments to prove otherwise, the Pre-Trial Chamber considers that, at present, the provisional detention is still a necessary measure to ensure the Charged Person's presence during the proceedings.

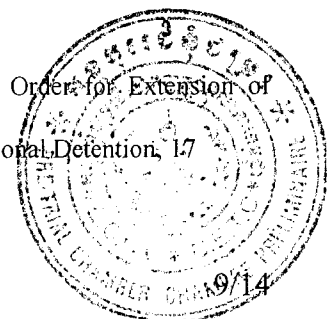
To Protect the Security of the Charged Person (Rule 63(3)(b)(iv))

30. The Pre-Trial Chamber observes that the Co-Investigating Judges found in their Extension Order that the Rule 63(3)(b)(iv) conditions necessitating the Charged Person's detention were still met in light of the findings of the Pre-Trial Chamber in its Decision on Provisional Detention Appeal. The Co-Lawyers did not put before the Co-Investigating Judges or the Chamber any argument or change in circumstances indicating the contrary. The Co-Investigating Judges found that detention is necessary to ensure the Charged Person's security. Further examination of the Case File by the Pre-Trial Chamber has not caused it to differ from this conclusion of the Co-Investigating Judges.
31. In addition to the facts already observed by the Pre-Trial Chamber,<sup>22</sup> new facts, as indicated by the Civil Parties in their Response to the Appeal, have emerged recently that indicate the high tension within the Cambodian society is still present, which would necessitate the detention of the Charged Person in order to protect his security.<sup>23</sup>
32. The Co-Lawyers contend that the alleged nexus between [REDACTED ] and Ieng Sary is based on a presumption of Ieng Sary's guilt and that until the threat becomes significant, the condition under Rule 63(3)(b)(iv) may not be used to justify continued detention.

<sup>21</sup> Decision on Appeal of Charged Person Ieng Thirith against Co-Investigating Judges' Order for Extension of Provisional Detention, 18 May 2009, C80/5/18.

<sup>22</sup> Decision on Appeal of the Charged Person against Co-Investigating Judges' Order for Provisional Detention, 17 October 2008, C22/I/74.

<sup>23</sup> Civil Parties Response to the Appeal, para. 25.



33. While the Pre-Trial Chamber recognizes that, at this stage, the nexus between the Charged Person and [REDACTED] can only be seen as an allegation, it notices that it has already been established that such allegation would satisfy an objective observer that the Charged Person may have been responsible for or committed the alleged crimes. Therefore, the Pre-Trial Chamber in its examination of the circumstances under Rule 63(3)(b)(iv) also considered new evidence in this respect.<sup>24</sup> The Pre-Trial Chamber finds that, after establishing well founded reasons to believe that the Charged Person may have committed crimes which are related to the crimes with which [REDACTED] is charged, the risk that the aggression towards [REDACTED] could also be vented towards this Charged Person is not illusionary.<sup>25</sup>

34. The Pre-Trial Chamber considers that provisional detention remains a necessary measure to protect the Charged Person's safety.

To Preserve Public Order (Rule 63(3)(b)(v))

35. The Pre-Trial Chamber observes that the Co-Investigating Judges found in their Extension Order that the Rule 63(3)(b)(v) conditions necessitating the Charged Person's detention were still met in light of the findings of the Pre-Trial Chamber in its Decision on Provisional Detention Appeal. The Co-Lawyers did not put before the Co-Investigating Judges or the Chamber any argument or change in circumstances indicating the contrary. Thus, the Co-Investigating Judges are found to have exercised their discretion correctly in this part of their Extension Order in finding that detention is necessary to preserve public order.

36. In the Appeal the Co-Lawyers contend that such threat as it may be caused by the modifications of conditions of detention of an 83 year old man is now practically non-existent. The Pre-Trial Chamber observes that the Charged Person, as of the time when reasonable suspicion was established, notwithstanding the observance of the presumption of innocence by this Court, it is a reality that the way how he is being perceived within the Cambodian society has changed and in that respect he cannot be considered as simply "an ordinary 83 year old man."

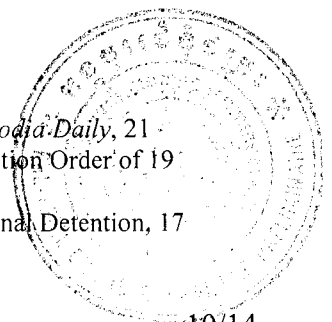
37. The Pre-Trial Chamber finds that the facts mentioned in its Decision on Appeal against Provisional Detention of the Charged Person<sup>26</sup> still exist and are capable of showing that the

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<sup>24</sup> See: para. 23 above.

<sup>25</sup> Erika Kinetz and Yun Samean, "Duch Faces Judges in 1st Public ECCC Hearing", *The Cambodia Daily*, 21 November 2007 (Co-Prosecutors' Response to NUON Chea's Appeal against Provisional Detention Order of 19 September 2007, 3 December 2007, C11/11, Annex A, Attachment A 24).

<sup>26</sup> Decision on Appeal of the Charged Person against Co-Investigating Judges' Order for Provisional Detention, 17 October 2008, C22/I/74.



Charged Person's release would actually disturb public order, at present. Therefore, the Pre-Trial Chamber finds that the provisional detention of the Charged Person still remains a necessary measure to preserve public order.

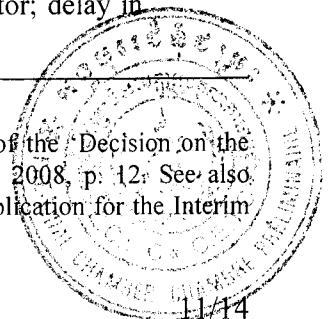
### C. Due diligence in the conduct of investigation;

38. The Pre-Trial Chamber considers that the nexus between the length of time a defendant spends in detention and the diligence displayed in the conduct of investigations is a relevant factor, as also asserted by the Co-Lawyers for the Charged Person, when considering continuation of detention or release.
39. The ECCC Rules that apply in this regard are: in relation to the length of time allowed, Internal Rule 63(7) provides that “no more than 2 (two) such extensions [of provisional detention] may be ordered”; and in relation to due diligence, Internal Rule 21(4) provides that “[p]roceedings before the ECCC shall be brought to a conclusion within a reasonable time”. “Proceedings before the ECCC” include judicial investigations. While the limit set for the progress of investigations is that the time spent is “reasonable”, the limit set for the time that a Charged Person can spend in provisional detention is very specific. The Internal Rules make clear how these limits are set, that when a Charged Person is detained, the level of consideration is higher, as the right to liberty of a person still presumed innocent is in question. Therefore, analysis of what steps have been taken by the investigation authorities and to what degree they affect the situation of the Charged Person is continuously necessary.
40. The international bodies refer to this matter in a similar manner. The International Criminal Court (ICC) has required that investigations and proceedings be undertaken in an expeditious manner, within the bounds envisaged by the Statute of the Court. As long as proceedings are in accordance with the time regime of the ICC, the requirement of expediency will be considered to be met<sup>27</sup>. The Appeals Chamber in the *Lubanga* case noted:

“[P]aragraph 4 of article 60 of the Statute casts a duty upon the Pre-Trial Chamber to make certain that the detention of a person is not prolonged for an unreasonable period of time owing to inexcusable delay on the part of the Prosecutor; delay in

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<sup>27</sup> *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, ICC-01/04-01/07, “Review of the Decision on the Application for Interim Release of Mathieu Ngudjolo Chui”, Pre-Trial Chamber I, 23 July 2008, p. 12. See also *Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06, “Review of the Decision on the Application for the Interim Release of Thomas Lubanga Dyilo”, Pre-Trial Chamber I, 14 February 2007, pp. 6 and 7.



this context signifies a failure to take timely steps to move the judicial process forward, as the ends of justice may demand. If such a delay is noticed, the Chamber is empowered to release the person, conditionally or unconditionally.<sup>28</sup>

41. Guidance can be sought in the practise of the European Court of Human Rights (ECHR) which has determined a standard of “special diligence” on the part of national authorities when undertaking investigations.<sup>29</sup> Where grounds given by the national judicial authorities are found by the court to justify continued detention, the Court will then ascertain whether the national authorities displayed diligence in the conduct of their proceedings.
42. The Pre-Trial Chamber finds that there is evidence in the case file to demonstrate that the investigations have progressed expeditiously during the period under consideration. New evidence has been transferred from Case File No. 001 to Case File No. 002 which adds to the previous reasons to believe that the Charged Person may have committed the crimes specified in the Introductory Submission.<sup>30</sup> The number of witness statements already taken and of pending rogatory letters show that investigative actions during the period under consideration are considerable.<sup>31</sup>
43. The Co-Lawyers for the Charged Person assert that investigations requested by Defence teams have not even been pursued.<sup>32</sup> The Pre-Trial Chamber reviewed the case file and observes that the Co-Lawyers for the Charged Person first request for investigative action was only filed on 20 March 2009.<sup>33</sup> This request was placed in the case file on 24 March 2009<sup>34</sup> which is less than two weeks before the end of the period under consideration for the purposes of this Appeal. Therefore an examination of how this request has been handled by the Co-Investigating Judges is, at present, premature.
44. As far as the requests for investigative action filed by other Defence Teams are concerned, to which the Co-Lawyers refer in their Appeal, the Pre-Trial Chamber reviewed several documents in the case file which show that the Co-Investigating Judges responded to their requests in

<sup>28</sup> *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, ICC-01/04-01/07 OA 4, “Judgment In the Appeal by Mathieu Ngudjolo Chui of 27 March 2008 against the Decision of Pre-Trial Chamber I on the Application of the Appellant for Interim Release”, 9 June 2008, para.14.

<sup>29</sup> ECHR, *Ilijkov v. Bulgaria*, Application no. 33977/96, “Judgment”, 26 July 2001, para. 77. See also *Labita v. Italy*, Application no. 26772/95, “Judgment”, 6 April 2000, paras 152 and 153; *Assenov and others v. Bulgaria*, Application no. 90/1997/874/1086, “Judgment”, 28 October 1998; *Stögmüller v. Austria*, Application no. 1602/62, “Judgment”, 10 November 1969; and *Wemhoff v. Germany*, Application no. 2122/64, “Judgment”, 27 June 1968.

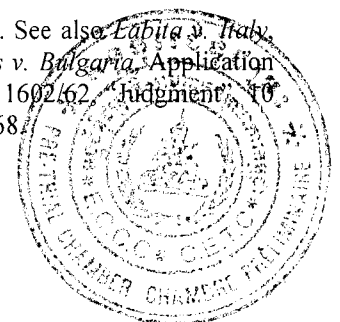
<sup>30</sup> See: para. 23 above.

<sup>31</sup> Co-Prosecutors Response to the Appeal, para. 23.

<sup>32</sup> The Appeal, paras. 10 and 11.

<sup>33</sup> Ieng Sary’s lawyers First Request for Investigative Actions, 20 March 2009, D153.

<sup>34</sup> See: 002/19-09-1007-ECCC/OCIJ: D153/1.



pursuance with the provisions of Internal Rules 21(4) and 55(5) and (10).<sup>35</sup> This assertion of the Co-Lawyers will, therefore, be left aside by the Pre-Trial Chamber.

45. For all these reasons, the Pre-Trial Chamber finds that the conduct of the investigating authorities in this case fulfils the requirement of due diligence and that the fundamental human rights of the Charged Person are respected.<sup>36</sup>

46. The Pre-Trial Chamber further finds that the gravity and nature of the crimes with which the Charged Person is charged require large-scale investigative actions to be undertaken, and in view of the scope and current development of the investigations, the Co-Investigating Judges used their discretion to order the extension of the provisional detention reasonably.

**D. Request for release or for modification of the conditions of detention by imposing house arrest instead of detention.**

47. The Co-Lawyers have submitted that “reasonable conditions of house arrest would adequately protect the objectives set out in Internal Rule 63(3)(b).”<sup>37</sup>

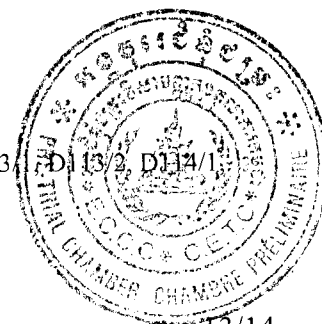
48. The Pre-Trial Chamber found that, in the present case, the conditions of Internal Rule 63(3)(b) are still met. Any one of these conditions alone would have been sufficient to justify the continuation of the provisional detention of the Charged Person. The conditions proposed by the Charged Person are outweighed by the necessity for his provisional detention. Under these circumstances, the Co-Lawyers’ request for provisional release or modification of conditions of detention is rejected.

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<sup>35</sup> See: 002/19-09-1007-ECCC/OCIJ: D100/2, D100/5, D100/1, D101/1, D102/1, D105/2, D113/1, D113/2, D114/1, D122/1, D126/1, D128/1, D136/1, D140, D140/1.

<sup>36</sup> The Appeal, para. 1/A.

<sup>37</sup> The Appeal, para.1/E.



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

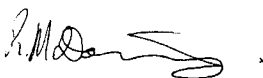
1. The Appeal is admissible in its form;
2. The Order of the Co-Investigating Judges is affirmed;
3. The request for release (or modification of conditions of detention) is rejected;
4. The Appeal is dismissed.

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 his Co-Lawyers,

Phnom Penh, 26 June 2009

**Pre-Trial Chamber****President**

  
Rowan DOWNING

  
NEY Thol

  
Katinka LAHUIS

  
HUOT Vuthy

**Greffiers**

  
Chanrath SAR

  
Entela JOSIFI

