



PRE-TRIAL CHAMBER DENIES IENG SARY'S APPEAL REGARDING HIS PROVISIONAL DETENTION

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Before three observers in the gallery and only a handful of lawyers in the courtroom, Pre-Trial Chamber President H.E. Prak Kimsan announced the denial of Ieng Sary's appeal regarding the co-investigating judges' order extending his provisional detention, which was issued in November 2008. The appeal was decided on the basis of written submissions and hearings held in February and April 2009.

Ieng Sary's appeal had requested that the Pre-Trial Chamber vacate the extension order and allow provisional release or, in the alternative, modify the conditions of detention to allow for house arrest.

Under ECCC Internal Rule 63, the co-investigating judges have the discretion to order provisional detention when "there is a well-founded reason to believe that the person may have committed the crimes" and when such detention is "a necessary measure" to prevent the person from interacting with witnesses or accomplices, to preserve and protect evidence, to ensure the person's presence at trial, to protect the person, or to "preserve public order."

In the appeal, Ieng Sary's lawyers had argued that, notwithstanding well-founded reasons established for the initial detention, a higher level of evidence is necessary to extend detention. The President dismissed this argument, saying the co-investigating judges properly established well-founded reasons to believe Ieng Sary had committed the charged crimes and that unless exculpatory evidence is added to the case file those reasons are a sufficient basis for detention throughout the pre-trial period. The President noted that, on the contrary, a great deal of inculpatory evidence has been added to the case file since the extension order was issued.

In challenging the conditions of his detention and seeking house arrest, Ieng Sary's lawyers had argued that since he is 83 years old and his wife, Ieng Thirith, is also detained, he is not a flight risk. The President dismissed this argument saying that there is no evidence that 83 year olds cannot travel and that the Chamber considered his wife's detention an aggravating factor rather than a mitigating one.

The President noted that recent evidence demonstrates a “high tension” in Cambodian society and a changing public perception of Ieng Sary such that detention is necessary for his safety and to protect public order. Further, the Chamber determined detention is still necessary to ensure Ieng Sary’s presence at proceedings.

Finally, the President noted that the investigation has proceeded expeditiously while meeting international standards regarding due diligence. Thus, Ieng Sary’s fundamental human rights are being respected despite the fact he has been detained by the ECCC since November 14, 2007.

Ieng Sary is charged with crimes against humanity and grave breaches of the Geneva Conventions of 1949. During the Khmer Rouge period, he was the Deputy Prime Minister, Minister of Foreign Affairs, and a high-ranking member of the Communist Party of Kampuchea.