

**BEFORE THE TRIAL CHAMBER OF THE
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

FILING DETAILS

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**URGENT
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OF MADAME IENG THIRITH**

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**Civil Party Lawyers and
Unrepresented Civil Parties**

I INTRODUCTION

1. On 15 September 2010 the Office of the Co-Investigating Judges (**OCIJ**) issued the Closing Order, which was notified to the parties on 17 September 2010.¹ The Closing Order ordered the renewed provisional detention for four months pursuant to Internal Rule 68.² The defence lodged with the Chamber³ its notice of appeal on 20 September 2010. On 18 October 2010, the defence filed its appeal grounds.⁴ On 13 January 2011 the Pre-Trial Chamber (**PTC**) issued its 'Decision on Ieng Thirith's and Nuon Chea's Appeals against the Closing Order' (**Appeal Decision**).⁵ The defence submits this does not comply with the requirements necessary to constitute a 'decision' as set out in Internal Rule 77(14).
2. The defence for Madame Ieng Thirith (**Charged Person**) submits this application to the Trial Chamber now that this four months' detention period has expired. Internal Rule 68(3) provides that four months is the maximum period of pre-trial detention permitted after the issuance of the Closing Order by the Co-Investigating Judges and before the start of the trial. It follows that detention of the Charged Person thereafter is unlawful.
3. The defence herewith files its request for the release of the Charged Person immediately as the non-renewable four month time limit of Internal Rule 68(2) has expired and the trial against the Charged Person has not started.

¹ OCIJ, Closing Order, 15 September 2010, Document No. D427 (**Closing Order**).

² Closing Order, paras. 1619, 1622-1624.

³ A notice of appeal against an order from the Co-Investigating Judges is filed to the Greffier of the OCIJ, who immediately informs the Greffier of the Chamber thereof; see Internal Rule 75(2).

⁴ Ieng Thirith Defence Appeal from the Closing Order, 18 October 2010, Document No. D427/2/1.

⁵ PTC, Decision on Ieng Thirith's and Nuon Chea's Appeals against the Closing Order, 13 January 2011, Document No. D427/2/12.

II BACKGROUND

4. The Charged Person was arrested by the ECCC authorities and has been provisionally detained since 12 November 2007.⁶ The Closing Order of 15 September 2010 indicted the Charged Person with international and domestic crimes, and renewed her provisional detention on the basis of Internal Rule 68.⁷ On 20 September 2010 the defence notified the Pre-Trial Chamber of its appeal against the Closing Order. The defence for the Charged Person filed its appeal grounds with the Pre-Trial Chamber on 18 October 2010.⁸ The Co-Prosecutors filed their observations in response on 19 November 2010.⁹ Thereafter, the defence submitted its reply to the Co-Prosecutors' Observations on 6 December 2010.¹⁰

III RELEVANT LEGAL PROVISIONS

5. Internal Rule 68 sets out the effects of a Closing Order on provisional detention. This Rule reads:
1. The issuance of a Closing Order puts an end to Provisional Detention and Bail Orders once any time limits for appeals against the Closing Order have expired. However, where the Co-Investigating Judges consider that the conditions for ordering Provisional Detention or bail under Rules 63 and 65 are still met, they may, in a specific, reasoned decision included in the Closing Order, decide to maintain the Accused in Provisional Detention, or maintain the bail conditions of the Accused, until he or she is brought before the Trial Chamber.
 2. Where an appeal is lodged against the Indictment, 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. The Pre-Trial Chamber shall decide within 4 months.
 3. In any case, the decision of the Co-Investigating Judges or the Pre-Trial Chamber to continue to hold the Accused in Provisional Detention, or to maintain bail conditions, shall cease to have any effect after 4 (four) months unless the Accused is brought before the Trial Chamber within that time.
 4. [...].

⁶ OCIJ, Police Custody Decision, 12 November 2007, Document No. C15.

⁷ Closing Order, paras. 1622-1624.

⁸ Ieng Thirith Defence Appeal from the Closing Order, 18 October 2010, Document No. D427/2/1.

⁹ Co-Prosecutor's Joint Response to Nuon Chea, Ieng sary and Ieng Thirith's Appeal against the Closing order, 19 November 2010, D427/2/7.

¹⁰ Defence Reply to Prosecution Joint Response to Ieng Thirith Defence Appeal against the Closing Order, 6 December 2010, Document No. D427/2/11.

6. Any apparent ambiguity as to whether the four months deadline starts running from the time when the notice of appeal is lodged, or from the date when the actual appeal grounds are filed, is clarified and thus resolved by reference to the French text. Internal Rule 75(2) states that
- 'l'Appel est formé [...]'* for the English 'notice of appeal', which is the same term employed in Internal Rule 68(2), which reads: *'Si un appel est formé [...]'*.
7. Hence, the period of four months is calculated from the date upon which the Pre-Trial Chamber is informed of the Charged Person's notice of appeal. Furthermore, this interpretation of the second limb is also logical when read in conjunction with the third limb of Internal Rule 68.
8. Article 249 of the 2007 Criminal Procedure Code of the Kingdom of Cambodia contains a similar provision which reads, insofar as is relevant, 'under separate decisions of a settlement warrant,¹¹ the investigating judge can keep the accused person under pre-trial detention until the time he/she appears in the court. [...] The decision to keep the accused person under pre-trial detention shall cease to have effect after 4 (four) months. If the accused person does not appear in the court within 4 (four) months, the accused person shall be automatically allowed to stay outside custody.'
9. Further, a distinction is made in the Rules between the Trial Chamber being seized of the Indictment,¹² and the start of the trial, which only commences with the initial hearing.¹³
10. The Closing Order did extend the provisional detention of the Charged Person accordingly,¹⁴ but the Pre-Trial Chamber has failed to issue its decision on time, and further, even though the Trial Chamber deems itself seized of the Indictment, the trial has not yet started. Thus, Internal Rule 68 has been infringed.

¹¹ 'Settlement Warrant' in the Cambodian Criminal Procedure Code is what 'Closing Order' is in the ECCC proceedings; see Article 247 of the 2007 Cambodian Code of Criminal Procedure.

¹² Internal Rule 79(1).

¹³ Internal Rule 80bis(1): 'The trial begins with the initial hearing'.

¹⁴ Closing Order, para. 1624.



IV SUBMISSIONS

11. Internal Rule 68(3) indicates that the Charged Person's provisional detention, initiated by the Co-Investigating Judges' Closing Order, shall cease unless the Charged Person is brought before the Trial Chamber within four months following the issuance of the OCIJ's Closing Order. This has also been confirmed by the Co-Investigating Judges in the Closing Order.¹⁵

12. This motion is filed on 21 January 2010. More than four months have expired since the issuance of the Closing Order, and exactly four months after the parties were notified of the Closing Order. Four months have expired since the defence notified the Pre-Trial Chamber of its appeal. In accordance with Internal Rule 68(2) and (3) and the provisions of Article 249 of the Cambodian Criminal Procedure Code, the renewed detention ordered by the Co-Investigating Judges on 15 September 2010 expires at the latest on 21 January 2010. The Appeal Decision by the Pre-Trial Chamber does not qualify as 'final Closing Order' and the trial against the Charged Person has not yet commenced. Consequently, the Charged Person must be released immediately as continued detention fails to have any basis in the law and is in violation of her fair trial rights as embedded in Internal Rule 21 and human rights instruments by which the Court is bound.

V CONCLUSION

13. On the basis of the arguments set out above, the defence for the Charged Person respectfully requests the Trial Chamber to immediately release the Charged Person under reasonable conditions in order to meet the requirements set out in Internal Rule 68 and Article 249 of the Cambodian Criminal Procedure Code.

¹⁵ Closing Order, para. 1619.



Party	Date	Name Lawyers	Place	Signature
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