



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

C2011/22

Extraordinary Chambers in the Courts of Cambodia
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

អង្គបុរេជំនុំជម្រះ

PRE-TRIAL CHAMBER
CHAMBRE PRELIMINAIRE

Criminal Case File No. 002/19-09-2007-ECCC/OCIJ (PTC02)

ឯកសារដើម
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/Date de reception): 20 / 1 / 05 2008
ម៉ោង (Time/Heure): 16 : 50
មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé du dossier: SANN RADA

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ឯកសារបានថតចម្លងត្រឹមត្រូវតាមច្បាប់ដើម
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មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé du dossier: CHHA Kosal

I- PROCEEDINGS

A) Introduction

Pursuant to Rule 77(10) of the Internal Rules of the Extraordinary Chambers in the Courts of Cambodia (“the Internal Rules”), the President of the Pre-Trial Chamber has assigned Judges Huot Vuthy and Rowan Downing to set out the details of the decision of the Co-Investigating Judges to make the Detention Order which is being appealed against and examine the Case File No. 002/12-09-2007-ECCC/OCIJ (PTC02).

Identification of the Charged Person

Ieng Thirith, alias Phea, female, Cambodian, born on March 10, 1932, 5th quartier, Phnom Penh, Cambodia, residing before her arrest at N° 47B, street 21, Tonle Bassac, Chamkamorn, city of Phnom Penh, father’s name: Khieu On (deceased), mother’s name: Ouk Ponn (deceased).

Ieng Thirith is represented by Defence Co-Lawyers Mr Phat Pouv Seang and Ms Diana Ellis.

Charges

Ieng Thirith is charged with crimes against humanity (murder, extermination, imprisonment, persecution and other inhumane acts), being crime(s) set out and punishable under Articles 5, 29(new) and 39(new) of the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia dated 27 October 2004 (“the ECCC Law”),

“for having, throughout Cambodia during the period from 17 April 1975 to 6 January 1979”



- in her capacity as the Minister of Social Action, exercised authority and effective control over the ministry and all of its constituent and subordinate organs,
- instigated, ordered, failed to prevent and punish, or otherwise aided and abetted in the commission of the aforementioned crimes;
- directed, encouraged, enforced or otherwise rendered support to the Communist Party of Kampuchea policy and practice, which was characterised by murder, extermination, imprisonment, persecution on political grounds and other inhumane acts such as forcible transfers of the population, enslavement and forced labour;
- as part of a widespread or systematic attack targeting a civilian population.”¹

Purpose of this report

This report of the Co-Rapporteurs sets out the details of the decision being appealed against and the relevant facts before this Court. It is meant to assist those who are not parties to the proceedings to understand the matters before the Court.

B) Co-Prosecutors’ request for provisional detention

On 18 July 2007, the Co-Prosecutors of the ECCC filed an Introductory Submission in which they asked the Co-Investigating Judges to open a judicial investigation against a number of suspects, including Ieng Thirith, and asked that all suspects be arrested and detained.²

The Co-Prosecutors requested that Ieng Thirith be placed in provisional detention on the grounds that there are well-founded reasons to believe that Ieng Thirith is guilty of the aforementioned crimes and that such detention is necessary to prevent pressure on witnesses, ensure her presence at the trial, protect her personal safety and preserve public order.³

C) Detention Order of the Co-Investigating Judges

On 8 November 2007, the Co-Investigating Judges issued an arrest warrant to bring the Charged Person Ieng Thirith before the Court.⁴ On 12 November 2007, Ieng Thirith was arrested and brought before the Co-Investigating Judges for her Initial Appearance.⁵ Ieng Thirith requested

¹ Written Record of Initial Appearance, 12 November 2007, p. 2.

² Introductory Submission, 18 July 2007, D3, para. 124.

³ Introductory Submission, para. 118.

⁴ Arrest Warrant, 8 November 2007, C13.

⁵ Record of the Arrest of Ieng Sary and Ieng Thirith and the Search of their home address in Phnom Penh, 13 November 2007, D31/III and Written Record of Initial Appearance, 12 November 2007, D39.



the adjournment of the adversarial hearing on provisional detention in order to prepare her defence. The Co-Investigating Judges granted the adjournment and ordered that she be placed in police custody for forty-eight hours.⁶ Upon request of the Co-Investigating Judges, Ieng Thirith was examined by a doctor while she was in police custody.⁷ On 14 November 2007, the adversarial hearing proceeded⁸ and the Co-Investigating Judges issued a Provisional Detention Order for a period not exceeding one year.⁹

Reasons for the Decision of the Co-Investigating Judges

Factual situation and legal issues raised in the Decision

The Co-Prosecutors have requested the provisional detention of Ieng Thirith on the following grounds:

“[...] on the one hand, being in possession of a passport, she could easily flee to another country if she were left at liberty, and that this is all the more likely since she risks life imprisonment if convicted; on the other hand, that in the absence of detention, the victims might seek revenge and that provisional detention is, thus, necessary to prevent disturbing public order and to ensure the security of the Charged Person; and finally, that there is a danger of pressure on witnesses.”¹⁰

At her initial appearance and during the adversarial hearing, Ieng Thirith denied involvement in the crimes with which she has been charged. She asked that proof of her guilt be provided, “specifying that, within the framework of her functions at the Ministry of Social Action and in the health sphere, she did nothing other than helping the population and patients, in particular by organising repairs to damaged hospitals and the fabrication of medication.”¹¹ Ieng Thirith’s national lawyer also argued that her provisional detention is not necessary¹² and that such detention “could lead to complications” since she is seventy-five years old and suffers from chronic physical and mental illness.¹³

⁶ Police Custody Decision, 12 November 2007, C15.

⁷ Order to bring the Charged Person for Medical Examination, 13 November 2007, A58; Prolice Custody Report, 13 November 2007, C15/1.

⁸ Written Record of Adversarial Hearing, 14 November 2007, C18.

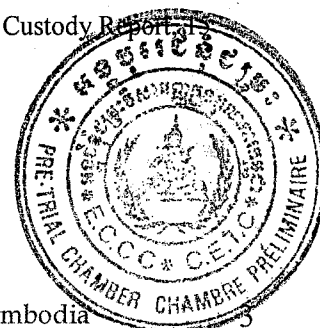
⁹ Provisional Detention Order, 14 November 2007, C20.

¹⁰ Provisional Detention Order, para. 3.

¹¹ Provisional Detention Order, para. 4.

¹² Provisional Detention Order, para. 4.

¹³ Written Record of Adversarial Hearing, p. 3.



The issues before the Co-Investigating Judges were (i) pursuant to Rule 63(3)(a), whether there are well-founded reasons to believe that Ieng Thirith may have committed the crimes with which she has been charged and (ii) if provisional detention is a necessary measure pursuant to the criteria set out in Rule 63(3)(b).

Conclusion of the Co-Investigating Judges

The Co-Investigating Judges reasoned as follows:

“In light of the many documents and witness statements implicating IENG Thirith, contained in the Introductory Submission, there are well-founded reasons to believe that she committed the crimes with which she has been charged.”¹⁴

They therefore found that the provisions of Rule 63(3)(a) had been satisfied.

The Co-Investigating Judges determined that provisional detention was a necessary measure with reference to the grounds set out in Rule 63(3)(b) (i), (iii), (iv) and (v). They first found that provisional detention was necessary to protect public order and Ieng Thirith’s security:

“These crimes are of a gravity such that, 30 years after their commission, they still profoundly disrupt public order to such a degree that it is not excessive to conclude that a decision to leave the Charged Person at liberty would, in the fragile context of today’s Cambodian society, risk provoking protests of indignation which could lead to violence and perhaps imperil the very safety of the charged person, given that the situation is clearly no longer perceived in the same way since the official prosecution has commenced.”¹⁵

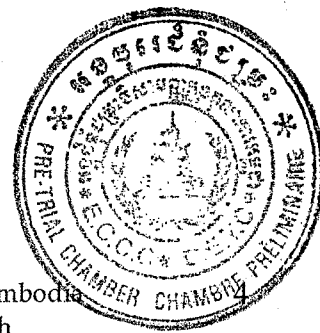
The Co-Investigating Judges further stated that if Ieng Thirith were to remain at liberty, it may be feared that she will interfere with witnesses, since she will have access to the whole Case File and that she “has numerous family members and sympathizers [...], some of whom currently hold influential positions”.¹⁶ The Co-Investigating Judges added that she might also be tempted to flee, since she has the means to do so and faces a possible sentence of life imprisonment.¹⁷

¹⁴ Provisional Detention Order, para. 5.

¹⁵ Provisional Detention Order, para. 6.

¹⁶ Provisional Detention Order, para. 7.

¹⁷ Provisional Detention Order, para. 8.



Finally, the Co-Investigating Judges stated that no bail conditions would be rigorous enough to make provisional detention unnecessary under Rule 63(3)(b) of the Internal Rules¹⁸ and that “none of the documents produced by the defence leads us to believe that the Charged Person’s state of health is incompatible with detention”.¹⁹

D) Appeal lodged by Ieng Thirith against the Provisional Detention Order

On 12 December 2007, Ieng Thirith’s Co-Lawyers filed a Notice of appeal against the Provisional Detention Order and, on 2 January 2008, they filed an Appeal Brief.

The Co-Lawyers seek Ieng Thirith’s release, subject to any conditions the Pre-Trial Chamber might find appropriate, arguing that the conditions for ordering provisional detention, as set out in Internal Rule 63(3), have not been satisfied.

E) Response of the Co-Prosecutors

Submissions in response to the Appeal Brief were filed by the Co-Prosecutors on 21 January 2008.

The Co-Prosecutors submit that the appeal should be dismissed and that the Co-Investigating Judges’ finding should not be disturbed, for “the conditions for detention under Rule 63 (3) were and are still met and there was no breach of the presumption of innocence”.²⁰

F) Response of the Civil Parties

On 20 March 2008, the Pre-Trial Chamber issued, in the case of Nuon Chea, a decision allowing Civil Parties to participate in provisional detention appeals. Consequently, on 24 March 2008, the Pre-Trial Chamber allowed Civil Parties to file a response to the Charged Person’s Appeal Brief within 15 days, a time limit which was subsequently extended to 25 April 2008. On 25 April 2008, the Civil Party Co-Lawyers filed a Joint Response to the Appeal of Ieng Thirith against the Provisional Detention Order.²¹ By their response, the Co-Lawyers ask that the Defence’s appeal be rejected and support the position of the Co-Prosecutors.

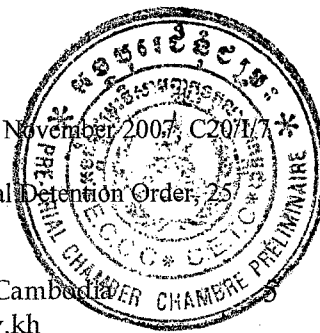
G) Invitation to submit amicus curiae briefs

¹⁸ Provisional Detention Order, para. 9.

¹⁹ Provisional Detention Order, para. 10.

²⁰ Co-Prosecutors’ Response to Ieng Thirith’s Appeal against Provisional Detention Order, 14 November 2007, C20/I/7 (the “Co-Prosecutors’ Response”), para. 1.

²¹ Civil Party Co-Lawyers’ Joint Response to the Appeal of Ieng Thirith against the Provisional Detention Order, 25 April 2008, C20/I/17 (the “Civil Parties’ Response”).



For the assistance of the Court, the Pre-Trial Chamber invited, on 16 January 2008, organisations and members of the public to submit written amicus curiae briefs in this matter within fifteen days from the date of notification. No amicus curiae brief was filed in this case.

II- EXAMINATION OF THE CASE BY THE CO-RAPPORTEURS

Ieng Thirith, if found guilty of the offense for which she is currently detained and under investigation, is liable under Article 39 of the ECCC Law to “be sentenced to a prison term from five years to life imprisonment.”

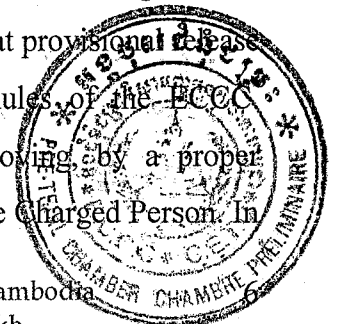
Provisional detention in the present case is governed by Rule 63 of the Internal Rules. Rule 63(3) states the grounds on which the Co-Investigating Judges can order provisional detention and Rule 63(4) provides for a right to appeal before the Pre-Trial Chamber against such an order.

Rule 63(3) of the Internal Rules provides:

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

The Co-Lawyers argue that the Co-Investigating Judges disregarded the presumption of innocence when they found that there are well-founded reasons to believe that Ieng Thirith committed the crimes with which she has been charged. They further submit that provisional release pending trial is the rule according to Cambodian law and the Internal Rules of the ECCC. Consequently, they submit that the Co-Prosecutors bear the burden of proving, by a proper evidential basis, that there are grounds to withhold the provisional release of the Charged Person. In



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their view, the Co-Investigating Judges failed to support their decision by cogent evidence and sufficient reasoning.

The Co-Prosecutors respond that the Co-Investigating Judges did not violate the right to be presumed innocent, for they concluded, after having reviewed the evidence contained in the Case File, that the standard of “well founded reasons to believe” was met, such standard being much lower than the “necessarily high standard to convict a Charged Person of an international crime”.²² The Co-Prosecutors further respond that the Co-Investigating Judges and the Pre-Trial Chamber have discretion in how they reach their decision that provisional detention is a necessary measure.²³ In the Co-Prosecutors’ view, the Co-Investigating Judges only needed to consider, on the basis of the case file, that one of the grounds set out in Rule 63(3)(b) is met.²⁴ They submit that according to international criminal law, the burden of proof falls on the accused to satisfy the court that he/she should be released from provisional detention.²⁵

The Co-Lawyers for the Civil Parties essentially support the Co-Prosecutors’ position but add that since the Co-Investigating Judges’ decision to order provisional detention is a discretionary one, the Pre-Trial Chamber has only to decide whether the Co-Investigating Judges correctly exercised their discretion in reaching their conclusion.²⁶ They argue that the appeal fails in this regard since “it does not analyse if the OCIJ erred in facts or law” and requests the Pre-Trial Chamber to substitute its discretion for that of the Co-Investigating Judges.²⁷

1. The existence of well-founded reasons to believe that the Charged Person has committed the crimes specified in the Introductory Submission (Internal Rule 63(3)(a))

The Co-Lawyers argue that the Co-Investigating Judges disregarded the presumption of innocence when they found that there are well-founded reasons to believe that Ieng Thirith committed the crimes with which she has been charged. They further submit that Ieng Thirith denies any responsibility for the criminal acts contained in the Introductory Submission. They argue that she was not a member of the CPK Standing Committee that was responsible for the decisions made by the Democratic Kampuchea Party and she did not attend the meetings of that committee.

²² Co-Prosecutors’ Response, para. 24.

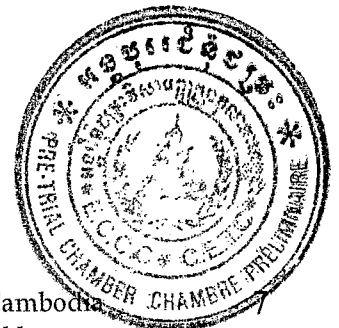
²³ Co-Prosecutors’ Response, para. 13.

²⁴ Co-Prosecutors’ Response, para. 14.

²⁵ Co-Prosecutors’ Response, para. 15.

²⁶ Civil Parties’ Response, paras 6-13.

²⁷ Civil Parties’ Response, para. 17.



The Co-Prosecutors respond that the Co-Investigating Judges did not violate the right to be presumed innocent, for they concluded, after having reviewed the evidence contained in the Case File, that the standard of “well founded reasons to believe” was met, such standard being much lower than the “necessarily high standard to convict a Charged Person of an international crime”.²⁸

The Co-Prosecutors submit that the Co-Investigating Judges’ finding that there are well founded reasons to believe that Ieng Thirith may have committed the crimes specified at paragraphs 122 a) to d) of the Introductory Submission is supported by many documents in the Case File and had been further supported by additional documents disclosed since the Detention Order was issued. The Co-Prosecutors allege that despite the fact that Ieng Thirith denies responsibility for all criminal acts alleged, she does not deny that she was Minister of Popular Education and Youth in 1975 and Minister of Social Affairs from at least 1976 to 1979 and that she was responsible for large areas in the health sector in Democratic Kampuchea.²⁹ The Co-Prosecutors submit that in these positions, amongst others referred to in the Introductory Submission, Ieng Thirith participated in “the creation and the implementation of the criminal policies that led to” the crimes specified in the Introductory Submission. According to the Co-Prosecutors, there is also evidence supporting the “direct involvement” of Ieng Thirith in the unlawful killings of hundreds of staff members of the Ministry of Social Affairs at S-21.³⁰

2. Provisional detention as a necessary measure (Internal Rule 63(3)(b))

Necessary measure to prevent the Charged Person from exerting pressure on any witnesses or victims, or prevent collusion between the Charged Person and accomplices of crimes falling within the jurisdiction of the ECCC (Internal Rule 63(3)(b)(i))

The Co-Lawyers submit that the Co-Investigating Judges did not base their decision on any evidence that Ieng Thirith interfered with witnesses or victims in the past but rather that “it might be feared...that she might attempt to put pressure on witnesses”.³¹ Without any evidence that Ieng Thirith, her family or sympathizers have interfered with witnesses in the past, they argue that the mere perception of the Co-Investigating Judges is not sufficient to justify provisional detention on that ground.

The Co-Prosecutors submit that “Ieng Thirith has been an influential woman in Cambodia for most of her adult life”³², notably because of the senior positions she occupied

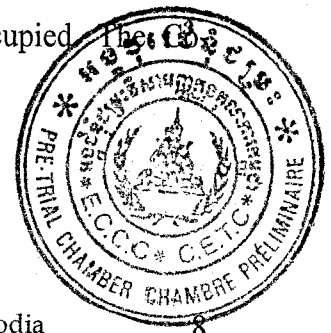
²⁸ Co-Prosecutors’ Response, para. 24.

²⁹ Co-Prosecutors’ Response, para. 20-22.

³⁰ Co-Prosecutors’ Response, para. 23.

³¹ Appeal Against the Provisional Detention Order (“Appeal Brief”), par. 49.

³² Co-Prosecutors’ Response, para. 26.



Prosecutors further assert that Ieng Thirith “has a continuing association with her husband IENG Sary, whose own senior positions and involvement in recent political movements, both during and since the DK regime, are well-known”.³³ According to the Co-Prosecutors, Ieng Thirith continues to enjoy popular support in Pailin, Phnom Malai and Phnom Penh and still has influence over the victims and witnesses of the crimes committed during the Democratic Kampuchea Regime.

The Co-Prosecutors submit that “the fact that no one has been brought to justice for almost 30 years for such crimes has created a culture of impunity for the former leaders of the Khmer Rouge and for others most responsible”.³⁴ They further allege that there is, on the one hand, a widespread fear of testifying amongst witnesses based on concerns of intimidation and revenge and, on the other hand, no witness protection scheme and a high incidence of violent crime and access to weapons. The Co-Prosecutors add that “the surviving witnesses of the Ministry of Social Affairs have often expressed their fear while serving as staff members in the Ministry of Social Affairs under the Charged Person”³⁵, so this fear might return and prevent them from testifying should Ieng Thirith be released.

The Co-Prosecutors further submit that “the Charged Person has not only consistently denied the existence of the crimes alleged in the Introductory Submission and her participation in them, but has also publicly condemned the proceedings before the ECCC. They argue that this evidence of her contempt for the rule of law, her past conduct, the continuing opportunity to collude with accomplices or powerful family members, and her previous influential positions significantly increase the risk that she will exert pressure on witnesses and victims, particularly on residents of Pailin, Phom Mali, and Phnom Penh”.³⁶

Finally, “[t]he Co-Prosecutors concur with the view expressed by the [Co-Investigating Judge] in the Detention Order that, since the Charged Person has now access to the case file and to the knowledge of the identity of the inculpatory witnesses and victims involved in the proceedings, the fear of influence and pressure exercised against key witnesses is particularly justified”.³⁷

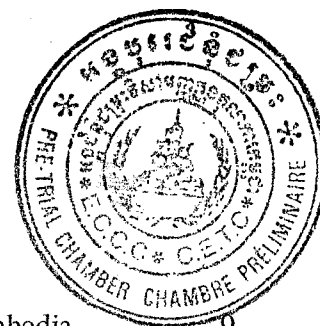
³³ Co-Prosecutors’ Response, para. 26.

³⁴ Co-Prosecutors’ Response, para. 27.

³⁵ Co-Prosecutors’ Response, para. 27.

³⁶ Co-Prosecutors’ Response, para. 29.

³⁷ Co-Prosecutors’ Response, para. 30.



The Co-Lawyers for the Civil Parties support the arguments raised by the Co-Prosecutors, adding that “[a]s stated in the last [United States] survey about Human Rights and the rule of law, Cambodian authorities are not in a position to effectively prosecute potential intimidators”.³⁸

Necessary measure to preserve evidence or prevent the destruction of evidence (Internal Rule 63(3)(b)(ii))

The Co-Prosecutors submit that the statements of the witnesses can be considered as evidence so interference with witnesses could also lead to destruction of evidence.

Necessary measure to ensure the presence of the Charged Person during the proceedings (Internal Rule 63(3)(b)(iii))

The Co-Lawyers suggest that a real risk of flight needs to be established and the arguments cannot solely be based on the severity of the sentence faced. Moreover, according to the Co-Lawyers, if it is the only reason for detention and it is possible to obtain guarantees to ensure future attendance at trial, release must be ordered.³⁹

The Co-Lawyers submit that Ieng Thirith “has shown by her actions that she is not likely to avoid attending her trial if granted Provisional Release”.⁴⁰ They argue that although Ieng Thirith has regularly travelled to Thailand for medical treatment, she has always come back. In any event, the Co-Lawyers point out that there is an extradition treaty between Cambodia and Thailand. The Co-Lawyers further submit that having many close family members living in Cambodia and very strong ties with the country, Ieng Thirith has a strong incentive to stay in Cambodia. They also allege that although Ieng Thirith has known for a long time that the ECCC was to be established and was even informed of her imminent arrest⁴¹, she never tried to abscond and was in fact arrested at her residence in Phnom Penh.

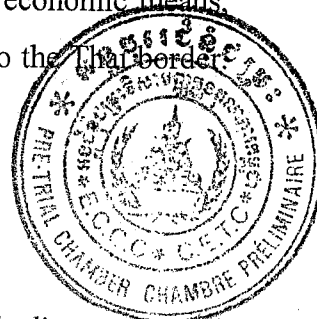
The Co-Prosecutors submit that while the assessment of whether a person might abscond necessarily involves a measure of prediction, the evidence from the Case File supports the finding of the Co-Investigating Judges. In their view, the seriousness of any sentence the Charged Person faces if she is convicted and the fact that she will be tried publicly before her former victims for the crimes she is charged with are incentives to abscond. According to the Co-Prosecutors, Ieng Thirith has also the material means to flee, for she and her husband have considerable economic means, they have allies in Cambodia and foreign countries and they have a house close to the Thai border.

³⁸ Civil Parties’ Response, para. 23.

³⁹ Appeal Brief, para. 26.

⁴⁰ Appeal Brief, para. 57.

⁴¹ Appeal Brief, para. 3.



Furthermore, they allege that Ieng Thirith has regularly travelled abroad since the collapse of the Democratic Kampuchea regime, notably to Bangkok, Thailand, where she might have a residence. The Co-Prosecutors point out that Ieng Thirith's national lawyer falsely declared at the Adversarial Hearing that Ieng Thirith's passport had not been extended after August 2006, while in fact she holds a passport valid until 24 April 2009. The Co-Prosecutors add that Ieng Thirith, who apparently was informed of her arrest prior to the event on 12 November 2007, obtained a Thai visa on 8 November 2007, "a visa she might have used to flee the county if the arrest did not take place as soon as 12 November 2007".⁴² Finally, the Co-Prosecutors point out that it is only since the filing of the Introductory Submission that Ieng Thirith's name has appeared in the media as a potential suspect.

The Co-Lawyers for the Civil Parties add that "[i]t should be noted that those who live in Pailin have access to so called 'VIP cards' which are accepted as an allowance to cross the border even without passport or visa".⁴³

Considerations related to Ieng Thirith's health condition

The Co-Lawyers allege that Ieng Thirith suffers mental and physical disabilities which require medical assistance, as shown by the medical certificate filed at the adversarial hearing and by the medical report filed as Annex A, inferring that she will not be in position to flee. When discussing the applicable law, the Co-Lawyers refer to jurisprudence where "Provisional Release pending trial was allowed on compassionate grounds".⁴⁴

The Co-Prosecutors respond that Ieng Thirith's medical condition would not prevent her from fleeing, as inferred by the Defence. The Co-Prosecutors further submit that none of the physical troubles mentioned in the medical records filed by the Defence (Annex A) is grave enough to indicate that Ieng Thirith's state of health is incompatible with detention and there is no evidence supporting the Defence's allegation that she is suffering from any mental disease.⁴⁵ The provisional detention will not prevent Ieng Thirith from receiving adequate medical care since medical care is provided at the ECCC detention facility and an arrangement has been made with Calmette Hospital regarding regular medical examinations.

⁴² Co-Prosecutors' Response, para. 34.

⁴³ Civil Parties' Response, para. 28.

⁴⁴ Appeal Brief, para. 29.

⁴⁵ As for Annex A, the Co-Prosecutors request that the medical records bearing Thai language handwritten notes be rejected as no translation into any ECCC official language was provided. See: Co-Prosecutors' Response, para. 39.



*Necessary measure to protect the security of the Charged Person and to preserve public order
(Internal Rules 63(3)(b)(iv) and (v))*

The Co-Lawyers submit that there is no evidence supporting the conclusion of the Co-Investigating Judges that Ieng Thirith's provisional release "risks provoking protests of indignation which could lead to violence and perhaps imperil the safety of the Charged Person". The Co-Lawyers submit that Ieng Thirith has lived under her real name and under her nickname "Phea" in her area of origin Mailin, in Pailin Province and in Phnom Penh since 1979.⁴⁶ Even if it was mentioned in many publications that she had been the Minister of Social Action during the Democratic Kampuchea period, the Co-Lawyers argue that she has not been the subject of any attack and did not suffer any repercussion.⁴⁷

The Co-Prosecutors respond that the Co-Investigating Judges were correct in finding that Ieng Thirith's security could be in danger now that the official prosecution against her has started, considering that her publicly documented arrest and the information publicized by the media on her role in the Democratic Kampuchea regime mean that if released, she will not enjoy the same protection as she did before. The Co-Prosecutors also allege that considering that the public has waited many years to see an end to impunity, Ieng Thirith's release, at this stage, may ignite certain parts of the community to take revenge against her. They indicate that the risks related to attacks of revenge are evidenced by the fact that members of the public had difficulty refraining from spontaneous acts of violence when Duch made his first public appearance before the ECCC. According to the Co-Prosecutors, "the threat to the Charged Person's safety comes from the victims and their relatives, members of the staff working for her at the Ministry of Social Affairs or even from other Charged Persons or suspects".⁴⁸

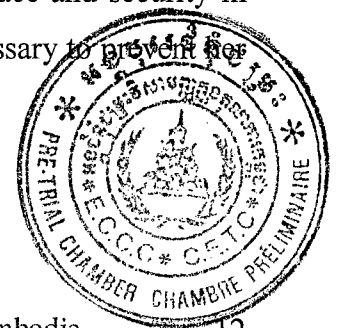
The Co-Prosecutors further submit that the Co-Investigating Judges were correct in finding that Ieng Thirith's release could also pose a threat to public order. Considering that nearly every Cambodian has lost relatives or friends during the Democratic Kampuchea regime period and that a portion of the population who lived through this period suffers from Post-Traumatic Stress Disorder, the Co-Prosecutors argue that the ECCC proceedings may pose risks to the Cambodian society. The Co-Prosecutors further contend that Ieng Thirith and her husband have made public statements containing "thinly-veiled references to adverse consequences for peace and security in Cambodia should Cambodians be prosecuted"⁴⁹ so provisional detention is necessary to prevent her

⁴⁶ Appeal Brief, para. 17 and 45.

⁴⁷ Appeal Brief, para. 45-46.

⁴⁸ Co-Prosecutors' Response, para. 42.

⁴⁹ Co-Prosecutors' Response, para. 49.



from issuing further such statements and jeopardizing public order. In the Co-Prosecutors' view, this situation has to be viewed in the context that support for the former Khmer Rouge still exists in Pailin, where the government officials have publicly stated that the arrests of suspects by the ECCC are "saddening and disturbing the peace"⁵⁰, and that the anti-Thai riots in 2003 demonstrate how a minor attack on Cambodian history can be potentially explosive.

Proposition of bail conditions

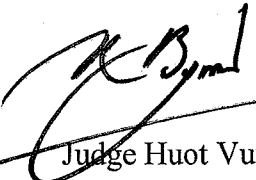
Ieng Thirith has proposed a number of conditions that could be attached to a bail order in order to guarantee that she will stay in Phnom Penh and not contact any witnesses or victims.⁵¹

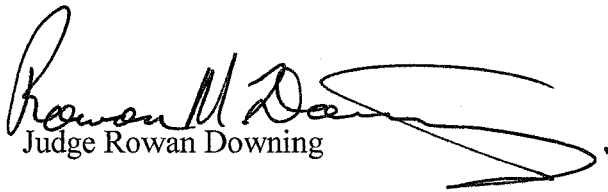
The Co-Prosecutors submit that the Co-Investigating Judges were correct in not granting release on bail, for Ieng Thirith's declaration filed as annex C is not an affidavit, does not set out the consequences in the event of her failure to respect the proposed conditions and does not address concerns related to the protection of her security nor the preservation of public order. The Co-Prosecutors also submit that there is no precedent in Cambodia, practical experience or proven capacity to provide safeguards or enforcement mechanisms, the concept having been introduced recently in the Cambodian Code of Criminal Procedure.

The Co-Lawyers for the Civil Parties submit that in accordance with the procedural rules applicable at the international level, the Charged Person bears the burden to establish that she is entitled to be released on bail.⁵²

Phnom Penh, 20 May 2008

Co-Rapporteurs


Judge Huot Vuthy


Judge Rowan Downing

⁵⁰ Co-Prosecutors' Response, para. 48.

⁵¹ Proposed Bail Conditions for Madame Ieng Thirith, Annex C.

⁵² Civil Parties Response, paras 33-34.

