EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

PRE-TRIAL CHAMBER

CASE NO. 002/19-09-2007-ECCC/OCIJ(PTC 16) IENG THIRITH

TUESDAY, 24 FEBRUARY 2009
0903H
APPEAL HEARING

Before the Judges:

PRAK Kimsan, Presiding
Rowan DOWNING
HUOT Vuthy
NEY Thol
Katinka LAHUIS
PEN Pichsaly (Reserve)

For the Pre-Trial Chamber:

CHUON Sokreasey
Anne-Marie BURNS

For the Office of the Co-Prosecutors:

SENG Bunkheang
Vincent DE WILDE D'ESTMAEL

For the Charged Person IENG THIRITH

PHAT Pouv Seang

For the Civil Parties

KONG Pisey
MOCH Sovannary
HONG Kimsuon
LOR Chunthy
KIM Mengkhy
David BLACKMAN

PROCEEDINGS

(Judges enter the courtroom)

MR. PRESIDENT:

In the name of the Cambodian people and the United Nations, today, the Pre-Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia declares open the hearing of the criminal case number 002/19/09/2007/ECCC/OCIJ/PTC16, dated 10 November 2008 in which the charged person, Ieng Thirith, Cambodian nationality, alias Phea, Cambodian nationality, female, born on the 10th of March, 1932, living in the 5th quarter, Phnom Penh, Cambodia; residing before her arrest at no. 47B, Street 21, Tonle Bassac, Chamkamorn, City of Cambodia. Father's name Khieu On (deceased), mother's name Ouk Ponn (deceased), husband's name, Ieng Sary; four children; is charged with crimes against humanity, crimes 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.

Defence lawyers, Mr. Phat Pouv Seang and Ms. Diana Ellis. Lawyers for the civil parties, Mr. Hong Kimsuon, Mr. Lor Chunthy, Mr. Ny Chandy, Mr. Kong Pisey, Mr. Yung Phanit, Mr. Kim Menghky, Ms. Moch Sovannary, Ms. Silke Studzinsky, Ms. Martine Jacquin, Ms. Philippe Cannone, Mr. Pierre-Olivier Sur, Ms. Elizabeth Rabesandratana, Ms. Olivier Bahoune and Mr. David Blackman.

The greffier, are all the participants present at the hearing?

MR. CHUON SOKREASEY:

Yes, all except Ms. Diana Ellis, sir.

MR. PRESIDENT:

Today's hearing comprising the following elements: Mr. Prak Kimsan, President; Mr. Rowan

Downing, Judge; Mr. Ney Thol, Judge; Mrs. Katinka Lahuis, Judge; Mr. Huot Vuthy, Judge; Mr. Pen Pichsaly, Reserve Judge; *greffiers*, Mr. Chuon Sokreasey, Ms. Anne-Marie Burns. Co-Prosecutors, Mr. Seng Bunkheang, Mr. Vincent De Wilde D'Estmael, deputy Co-Prosecutors.

Mrs. Ieng Thirith, please stand up. What is your name?

THE CHARGED PERSON:

My original name is Khieu Thirith --

MR. PRESIDENT:

What is your alias name.

THE CHARGED PERSON:

-- alias Phea. I am 77 years old, and I am Cambodian nationality. I was born at Sangkat number 5, Phnom Penh.

MR. PRESIDENT:

And what is your occupation?

THE CHARGED PERSON:

I am a English literature professor.

MR. PRESIDENT:

Where did you live before you were arrested?

THE CHARGED PERSON:

I lived at quarter 5, Phnom Penh, Cambodia. And my husband's name Ieng Sary.

[9.09.06]

MR. PRESIDENT:

How many children have you got?

THE CHARGED PERSON:

We're got four children.

MR. PRESIDENT:

Have you asked any lawyers to help you?

THE CHARGED PERSON:

We have lawyer Phat Pouv Seang and Ms. Diana Ellis but she is not here.

MR. PRESIDENT:

I would like to inform you that pursuant to Rule 21(1)(d) of the Internal Rules, you are presumed innocent as long as your guilt has not been established. You have the right to be informed of any charges brought against you. You have the right to be defended by a lawyer of your own choice, and you have the right to remain silent. Please sit down.

I would like to invite Judge Huot Vuthy to read the report of examination please.

JUDGE HUOT VUTHY:

Report of examination. 1. Proceedings. 2. Examination of the case by the co-rapporteurs.

1. Proceedings. A. Introduction. Pursuant to Rule 77(10) of the Internal Rules of the Extraordinary Chambers in the Courts of Cambodia, the President of the Pre-Trial Chamber has assigned Judges Huot Vuthy and Rowan Downing to set out the details of the Order on Extension of Provisional Detention issued by the Co-Investigating Judges, against which the present Appeal is lodged, and examine the Case File No. 002/19-09-2007-ECCC/OCIJ (PTC 16).

[9.11.29]

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 crimes 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 ("ECCC Law"). Purpose of this report. This report of the co-rapporteurs sets out the details of the decision appealed against and the facts at issue before this Court. It is to assist those who are not parties to the proceedings understand the matters before the Court.

B. Co-Investigating Judges' Order on Extension of Provisional Detention. On 11 November 2008, the Co-Investigating Judges issued an Order extending provisional detention of Ieng Thirith, who had been then detained since 14 November 2007, for a period not exceeding one year, pursuant to Internal Rule 63(6)(a).

[9.13.38]

The Co-Investigating Judges found that the first criterion to order provisional detention, mentioned in Rule 63(3)(a), is still met as there are "well founded reasons to believe that the charged person committed the crimes with which she is charged." To reach this conclusion, they rely essentially on the analysis of the case file that was undertaken by the Pre-Trial Chamber when seised of the charged person's appeal against the initial order for provisional detention, whose conclusions have not been undermined by exculpatory evidence.

The Co-Investigating Judges found that there has been no change in circumstances since the Pre-Trial Chamber decided that provisional detention is a necessary measure to ensure the presence of the charged person during the proceedings, to protect her security and to preserve public order. They thus considered that these three grounds set out in Internal Rule 63(3)(b) continue to be met. The Co-Investigating Judges considered that detention for nearly twelve months is not "excessive in view of the scope of the investigations, the complexity and gravity of the crimes of which the Co-

Investigating Judges are seised" and added that the exercise of the right to remain silent by the charged person, although recognised and undisputed, "is not conducive to speedy proceedings".

C. Ieng Thirith's Appeal Brief. On 9 December 2008, the co-lawyers for the charged person filed their Appeal Brief against the Order of the Co-Investigating Judges, in which they request the Pre-Trial Chamber to (1) hold that the strict requirements for the extension of the charged person's detention are no longer met, (2) quash the Order extending the charged person's provisional detention for another year and (3) immediately release the charged person, under conditions deemed appropriate by the Pre-Trial Chamber. They do so on the grounds that the decision of the Co-Investigating Judges is not adequately reasoned and the Co-Investigating Judges have not conducted their investigation with due diligence.

[9.17.01]

D. Co-Prosecutors' Response. The Co-Prosecutors submit in response that the Appeal should be dismissed in its entirety as the charged person has not demonstrated any material change in circumstances since she was originally detained upon order of the Co-Investigating Judges.

2. Examination by the co-rapporteurs. A. Insufficiently reasoned decision. The co-lawyers submit the following: "Given that the Co-Investigating Judges (i) failed to provide adequate reasoning for its allegations, (ii) provided incorrect information relating to alleged evidence against the charged person, and (iii) provided incorrect or inadequate information concerning the charged person's access to the Case File, the Extension Order lacks sufficient reasoning in contravention of Rule 63(7) of the Internal Rules and the aforementioned general principle of law. This failure should lead to the quashing of the Extension Order."

The Co-Prosecutors submit that "the Extension Order by the Co-Investigating Judges is sufficiently

and adequately reasoned: the Co-Investigating Judges set out the legal grounds and facts taken into account before coming to their Extension Order and are not obliged to indicate a view on all the factors. Contrary to what the Defence allege, the Extension Order does not contain any incorrect information and the Appellant has indeed access to all elements of the Case File, through her lawyers".

[9.18.48]

B. Diligence in the conduct of the investigation. The co-lawyers for the charged person submit that the Co-Investigating Judges have not conducted their investigation with "special diligence", as they have failed to gather any evidence supporting the charges mentioned in the Introductory Submission during the year that the charged person has spent in detention. They argue that the diligence exercised by the Co-Investigating Judges should be seen in light of the evidence gathered during the charged person's detention, not the scope of the investigation.

The co-lawyers state that "arguably, the investigations cover a complex area of facts, but if the Co-Investigating Judges have been unable to bring any incriminating evidence – more than merely confirming that she was a Minister of Social Action – against her in this one year of detention, the complexity or scope of the investigations is not relevant, or at least an insufficient standard. They further argue that "the Extension Order, by putting the blame for delay on the defence, thus infringes the right to remain silent."

The Co-Prosecutors submit in response that "the Defence have not shown how the length of detention has prejudiced the charged person's case in such a manner as to prevent a fair trial and/or to demonstrate how it can, in and of itself, justify a reconsideration of detention." They further argue that the length of pre-trial detention is reasonable given the gravity of the crimes

charged, the complexity of the case and the extent of ongoing investigations being carried out by the Co-Investigating Judges.

[9.22.12]

The Co-Prosecutors also submit that "the alleged infringement of the charged person's right to remain silent appears to be based on an erroneous reading of the Extension Order; and the right to remain silent is recognized and undisputed by the Co-Investigating Judges. However, the absence of cooperation of the Charged person does not assist the Co-Investigating Judges in discovering exculpatory evidence."

C. Well founded reasons to believe that the charged person may have committed the crime or crimes specified in the Introductory Submission, Internal Rule 63(3)(a). The Co-Prosecutors submit that "the principal issue in the determination of the appeal against an Extension Order is whether the conditions set out in Rule 63(3) are still met". They further submit that, considering that the Pre-Trial Chamber can undertake its own analysis and cure any defect in the Order by substituting its own reasons, most of the arguments raised by the charged person in her Appeal are of no material relevance.

The Co-Prosecutors point out that the defence does not challenge the existence of a well-founded reason to believe that the charged person may have committed the crimes specified in the Introductory Submission. In their views, the Pre-Trial Chamber's finding that the condition set out in Internal Rule 63(3)(a) is met has been reinforced by new evidence gathered since the decision was issued.

D. Consideration of the grounds making provisional detention a necessary measure, Internal Rule 63(3)(b). The co-lawyers submit that the Co-Investigating Judges failed to provide any reasoning or

evidence for their conclusion that there is a "real risk" that witnesses might refuse to take part in proceedings if the charged person were released. They state that the initial standard of proof is no longer sufficient after one year in pre-trial detention. The Co-Prosecutors respond that "the charged person does not identify any material change of circumstances to show that conditions necessitating her detention under Rule 63(3)(b) are no longer met" and does not contest that four of the five alternative conditions are met.

The Co-Prosecutors submit that the "offensive attitude" of the charged person at the Pre-Trial Chamber hearings of the 21st of May 2008 and 9th of July 2008, "consisting in threats and attempts to intimidate the parties and/or the judges", and should be taken into account when considering the risks to witnesses and victims and the personal security of the charged person under Rule 63(b)(iv) and (v). The Co-Prosecutors further state that "the recent statements and behaviour of some victims or civil parties show that any release of the five charged persons might degenerate into violence directed against the former Khmer Rouge leaders, including the charged person, the defence teams or the ECCC." Phnom Penh, 19th of February 2009, Co-rapporteurs, Judge Huot Vuthy and Judge Rowan Downing.

[9.27.09]

MR. PRESIDENT:

The charged person Ieng Thirith please stand up. Do you want to -- would you like to make a statement related to your appeal, or you would like your co-lawyer to speak on your behalf?

THE CHARGED PERSON:

I'm too weak and I would like my lawyer to talk on my behalf.

MR. PRESIDENT:

Now I would like the defence co-lawyer to respond. You have one hours to make your brief statement.

MR. PHAT POUV SEANG:

Your Honours, the Pre-Trial Chamber and all participants. I am Phat Pouv Seang, the co-lawyer for Mrs. Ieng Thirith. Before making my submission I would like your leave to allow my client to sit behind us so that she can feel comfortable, because when she feels weak then she is close to us.

Next, I would like to respectfully submit the following 13 points in my submission. I will be elaborating the detailed items in sequential order first. Introduction. The co-defence lawyer do not intend to repeat the arguments we have already submitted in the appeal brief. However, we will be trying to explain some clarification in the form of things, and also to respond to the arguments in the response of the Co-Prosecutors. The co-defence lawyers are not intending to discuss any evidence in the Extension Order or object or challenge any incorrect references as such.

[9.30.35]

And the discussion on the substance of the evidence and that we would like the Pre-Trial Chamber to conduct the hearing in a Closed Session. However, it is not the right time to discuss the well-founded reasons shown by the Co-Investigating Judges who have only based their arguments on the responses of the charged person. So the defence is going to only focus on the legal arguments in our appeal brief. And we will discuss on the facts only if requested by the Pre-Trial Chamber.

These arguments will address the following topics: a, the nature and scope of the appellate review procedure; b, the requirements of Rule 67(3) of the Internal Rules regarding the reasoning of a decision; c, that no material change of circumstances required as pleaded by the Co-Prosecutors; d, the special diligence requirement; English, the relevance of jurisprudence of the European Court of Human Rights which is of particular relevance to these proceedings; f, the unreasonable length of the period of pre-trial detention; g, the lack of evidence brought forward against the charged person; h, the Co-Prosecutors' unwarranted interpretation of the charged person's behaviour; i, the

behaviour of certain victims; j, the charged person's right to remain silent and not actively cooperate with the investigations against her; and k, the possibility of house arrest or release on bail which would provide the same guarantees as provisional detention, but would be less intrusive to the well-being of the charged person.

The primary contention of the defence is that the extension of the pre-trial detention period is no longer legitimate, given the failure by the Office of the Co-Investigating Judges to exercise special diligence in their investigations into the crimes allegedly committed by the charged person. The defence submits that the evidence contained in the case file shows that the charged person was Minister of Social Action during the relevant period, as identified in the indictment. Such evidence was placed on the case file prior to her arrest, and no other significant evidence has been added to the case file during the period of her detention from November 2007 to the present time.

The Office of the Co-Investigating Judges has had more than one year and three month to assemble evidence in support of the charges. In that time, they have failed to produce any evidence that directly links the charged person to the crimes committed during the relevant time. In the absence of such evidence, the threshold requirement for prolonged pre-trial detention is no longer met.

[9.34.58]

The nature and scope of appellate review. The Pre-Trial Chamber's role is to scrutinise and monitor the OCIJ's investigations in order to safeguard the rights of the charged person. In paragraph 5 of its response, the Co-Prosecutors allege that it is irrelevant whether the OCIJ makes errors of law and/or fact in its decision, because the Pre-Trial Chamber can still undertake its own analysis and cure the defects by substituting its own reasons. This argument would render the meaning of Rule 63(7) at the level of the Co-Investigating Judges pointless. This Rule, however, applies to all levels

of the judiciary including the OCIJ, and under the terms of Rule 63(7), the decision shall be in writing, and shall set out the reasons for an extension of provisional detention, and are thus mandatory and any breach is subject to the scrutiny of the Pre-Trial Chamber. The defence submits that it is relevant that the Co-Investigating Judges have made numerous errors of fact and law in their order and accordingly it should be quashed by the Pre-Trial Chamber.

Insufficient reasoning of decision. Rule 63(7) of the Internal Rules provides that any decision by the Co-Investigating Judges concerning the extension of provisional detention shall be in writing, and shall set out the reasons for such extension. The defence submits that this provision has been violated on several occasions. On several occasions throughout the extension order the OCIJ failed to provide adequate reasoning for its allegations and provided incorrect information relating to alleged evidence against the charged person. The extension order lacks sufficient reasoning in contravention of Rule 63(7) of the Internal Rules and the aforementioned general principle of law.

This failure should lead to the quashing of the extension order. Firstly, the prosecution has misinterpreted Rule 63 in paragraph 8 of its response where it states that the OCIJ is only required to set out the legal grounds and facts taken into account, and that referring to the case file in general and other circumstances is sufficient. Rule 63(7) clearly requires that the OCIJ to refer to the evidence upon which it bases its decision.

[9.38.48]

What is required, in line with the jurisprudence from many other jurisdictions, is a reasoned decision. Given that the law explicitly requires the decision to be reasoned, general references to the case file do not suffice as they lack of specificity. The prosecution denies that the extension order contains any mistakes, response paragraph 9, but nonetheless attempts to provide references to evidence there where the extension order lacks reasoning.

No material change of circumstances required. The Co-Prosecutors state in paragraphs 13 and 45 of their response that the situation of the charged person should be compared to the situation of defendants before the ICC, ICTR, ICTY and SCSL, where the defendant must demonstrate a material change of circumstances. What the prosecutors failed to mention is that the presumption at the ECCC is release and not detention, as mentioned in article 203 of the Cambodian Criminal Procedure Code, and Rule 63(3) of the Internal Rules provides that the Co-Investigating Judges may order the provisional detention of the charged person only where the following conditions are met.

Rule 82(1) of the Internal Rules, provides that the accused shall remain at liberty whilst appearing before the Chamber unless provisional detention has been ordered in accordance with these Internal Rules, which clearly suggests a presumption of liberty. Article 9(3) of the ICCPR, which was ratified by Cambodia on the 26th of August 1992, states: "It shall not be a general rule that persons awaiting trial shall be detained in custody, but at least may be subject to guarantees to appear for trial." The standard which governs the pre-trial detention proceedings at the other tribunals is thus not applicable to the ECCC.

[9.41.45]

The OCIJ needs to prove that there is a basis for further incarceration at this stage of the proceedings, and this is not on the defence, this is not the responsibility of the defence. The defence do not need to show a material change of circumstances are suggested by the Co-Prosecutors. In any event, the prolonged nature of the investigatory stage has caused the charged person to undergo a considerable period of detention to date, and this may, without more *(indistinct)* I would say a material change of circumstances.

Special diligence standard. In the extension order, the OCIJ employed the standard of due

diligence in determining whether it complies with a process within a reasonable time period. The OCIJ is required to make sure that its investigations are done in an adequate way. The defence argued that the appropriate standard is not of due diligence as applied by the OCIJ, but a higher standard of special diligence as set out on many occasions by the European Court of Human Rights.

In paragraph 17 of the English original version of its response, the Co-Prosecutors erroneously and without foundation allege that the defence refers to a standard of absolute diligence, and the defence did not use this term, nor did it imply such an unattainable standard. It is submitted that the OCIJ have incorrectly applied a lower standard of due diligence instead of special diligence. [9.44.08]

With regard to the application of the appropriate standard, the Co-Prosecutors in footnote 76 concedes that indeed the pace of the investigations has not been optimised during the first year of the charged person's incarceration, where they state that: "Now that the closing order has been issued in case file number one, it is expected that the pace of investigations will drastically accelerate in the near future.

Relevance of European Court of Human Rights jurisprudence. The Co-Prosecutors deny any applicability of European Court of Human Rights jurisprudence in determining whether the investigations exceed a reasonable period of time. They suggest that, rather than looking at the European Court for guidance, the ICTY and ICTR should provide such assistance. This neglects the fact that both the ICTY and the ICTR have on many occasions taken the case law of the European Court as guidance in human rights matters relevant to the proceedings, as did the ICC and the Special Court for Sierra Leone.

There is no basis upon which the Co-Prosecutors can conclude that guidance in this area cannot be sought from the judgements, meaning from the European Court of Human Rights. The defence submits that case law of the ICTY and ICTR is less relevant to this specific issue, is that pre-trial detention at the ad hoc tribunals is governed by different rules. Pre-trial detention at the ad hoc tribunals is the principle and release is the exception.

The whole legislative framework of the ECCC is based on the presumption that the charged person would be provisionally released, and that the OCIJ must justify provisional detention. It is thus fundamentally different from the policy of the several ad hoc tribunals. Further, the ICTY and ICTR systems are based on common law, rather than civil law. The ECCC is based on a civil law system. The European Court jurisprudence cited by the defence in its appeal all relates to countries with a principally civil law system, for example France, Germany and Austria.

[9.47.12]

The defence thus contents that reliance on the same jurisprudence is justified and relevant to the matters in issue and will provide helpful guidance for the Pre-Trial Chamber. At paragraph 17 of its response, the OCP complains that the defence would pick and choose from the European Court case law in order to justify the applicability of the said special diligence standard. To the extent that the OCP may have been thought to imply that there is an alternative standard which has been advanced on other occasions, the defence does not know of any case where a lesser standard has been relied upon.

Furthermore, the OCP has failed to cite any case law to demonstrate that the European Court has on any occasion, apply to different standard. It is submitted that the European Court has used this standard of diligence consistently in all its cases involving the length of pre-trial detention and not merely in certain jurisprudence as alleged by the OCP. Paragraphs 18 and 19 of their response, the

Co-Prosecutor outlined that the European Court jurisprudence is irrelevant because of the fundamentally different nature of the European Court and the ECCC. The nature of these two institutions is different, but the European Court sets the minimum human rights standards its member states should adhere to.

This is a minimum standard which we submit, and should be taken into account by an internationalised tribunal such as the ECCC. And especially in a situation where complex international crimes are under investigation, and it is vital to ensure that the rights of the accused persons are protected. The OCP, at paragraph 19, asserts that the case of the charged person is more complicated than cases brought before the European Court. In fact, many national jurisdictions deal with international crimes, including war crimes and other complex and grave criminal cases. All of *(indistinct)* may be subject to the European Court's scrutiny. The defence submits that the jurisprudence of the European Court cited in this appeal is thus relevant, and can provide helpful guidance of this Court.

[9.50.20]

Unreasonable lengths of pre-trial detention. In paragraph 26 of its response, the Co-Prosecutors imply that the fact that Rule 63 of the Internal Rules provides for a maximum of three years in pre-trial detention proves that any detention period below three years must be reasonable. This position is so evidently erroneous. Where the liberty of the individual is threatened, all societies which adhere to the rule of law provide a benchmark against which to determine the propriety of denying the individual his or her liberty. The test of special diligence provides a safeguard to ensure that any period of pre-trial detention does not become unreasonable. The OCP implies, in paragraphs 18 and 28, that the charge of joint criminal enterprise as a form of liability has complicated the proceedings.

The logic of this is not obvious, and should not be used as a justification for a long period of pre-trial detention. There are a number of references by the OCP, see paragraphs 22, 27 and 28 of its response, to the effect that the charged person's one year in provisional detention is not unreasonable. That period of detention is not the subject matter of this appeal. It is the extension thereof beyond that one year which the defence argues is no longer reasonable in all the circumstances and given the lack of performance by the investigating authorities during the initial period of detention.

[9.52.45]

Lack of evidence. In paragraph 39 the OCP fails to provide any factual basis by references to the case file for its stated belief that the evidence against the charged person "has increased both in volume and gravity in the recent months". The OCIJ have concentrated their investigations on finding evidence in case file 001 during the first year of the charged person's detention, and have failed to provide direct evidence against the Charged Person. In this regard, and as mentioned before, the Co-Prosecutors explicitly state in footnote 76 of their response that "now that the Closing Order has been issued in case file number one, it is expected that the pace of investigations will drastically accelerate in the near future", thus conceding that the pace has not been at full speed until now.

In paragraph 29, the Co-Prosecutors assert that "the evidence collected by the OCIJ covers all *the* modes and types of the appellant's contribution to the crimes against humanity she is charged with, including crimes base evidence, evidence linking crime base to leadership structures within which the appellant exercised command authority, evidence supporting her participation in the joint criminal enterprise, evidence supporting jurisdictional elements such as the widespread and systematic attack against a civilian population, and so forth."

Like the OCIJ, the Co-Prosecutors fail to provide any sources to support such a statement. If this were indeed the case, the case will be ready for trial very soon. The Office of the Co-Investigating Judges clearly concentrated on gathering evidence in the Duch case, and failed to collect direct evidence against the charged person thus demonstrating a lack of 'special diligence' in the conduct of the case of the charged person in case file 002. The Pre-Trial Chamber ruled on an earlier occasion, that the OCIJ order to provisionally detain the charged person was justified. The defence cannot seek to go behind the underlying reasons of that earlier decision.

The defence submit that the OCIJ did not meet the appropriate threshold by failing to provide direct evidence against the charged person during the year in which she has been in provisional detention. The longer the provisional detention is continued, the higher the threshold becomes for the OCIJ to put evidence on the case file. Now that one year has lapsed, the threshold has become higher and the OCIJ needs to provide direct evidence against her. The OCIJ is unable to do so, and the evidence it did find in relation to the charged person relates solely to the fact that she was a Minister of Social Action during the regime, which does not relate to the crimes she is charged with.

[9.56.58]

Interpretation of charged person's behaviour. The Co-Prosecutors assert, in paragraph 47, that the fact that the charged person may speak out on her innocence, as she did during the previous hearing, may affect her security once released. The defence contends that there is no sensible basis for this hypothetical concern. The question is: would the provisional release of the charged person pose a real risk to witnesses, the preservation of evidence and the public order? The Co-Prosecutors wrongly and inappropriately seek to rely -- see paragraph 47 -- on the charged person's conduct at an earlier hearing. The Court is respectfully invited to put out of its mind as irrelevant the matters averred to by the OCP.

Victims' threats against Nuon Chea and Khieu Samphan. The Court is respectfully invited to put to one side the matters referred to in paragraph 52 of the response of the OCP as irrelevant to the determination of the issues in the case. The Charged Person lived and travelled extensively in Cambodia throughout the years preceding her incarceration without any incidents affecting her security. The OCP response refers to an article written by Rob Savage, footnote 108, and the defence addressed the failings of the article in its brief dated. There is no basis upon which the Court could treat the article as an authoritative document. The Court is reminded of the presumption of innocence. Further there is no evidence that victims of violence have sought to act unlawfully against the alleged perpetrators.

[9.59.46]

Right to remain silent and not to cooperate in the proceedings. In the "Defence Objections to the Co-Investigating Judges' Intention to Extend Madame Ieng's Provisional Detention" of 27 October 2008, the defence indicated that "the defence has not requested any investigative action by the OCIJ. This has not led to any delay in the proceedings." The defence is under no obligation to request an investigation. Hence the OCIJ has erred in stating in its Extension Order that the attitude of the defence, is not yet requesting investigative action, is "not conducive to speedy proceedings."

The defence respectfully reminds the court that in a civil law system, the burden of gathering evidence lies first of all with the investigative authorities, and not with the defence. Whether or not the OCIJ succeeds in finding evidence against the charged person, there is no obligation on the defence to request investigative action. The fact that the defence has not made such a request cannot properly be invoked to criticise the defence in any way.

Alternative argument, release on bail. In the alternative, the defence requests that the charged person be released on bail. The defence adopts the points sets out in full in the "Ieng Sary's Appeal

against the OCIJ Order on Extension of Provisional Detention", namely that, as a matter of principle, wherever possible a less intrusive measure should prevail over provisional detention. It is submitted that charged person should be either admitted to bail subject to appropriately stringent conditions, or be required to remain under a form of house arrest. The defence has set out proposed conditions of bail in a document which was annexed to the first Appeal document.

Conclusion. The charged person has been in detention for more than 15 months and investigations have been ongoing for considerably longer. The Pre-Trial Chamber is required to balance the public interest in ensuring a trial takes place in the presence of the charged person without interference with the administration of justice against the presumption of liberty for the charged person, who is presumed innocent. The requirements of Rule 63(3) of the Internal Rules do not provide a sufficient basis for any further period of prolonged incarceration.

[10.03.56]

The OCIJ has not reached the level of required 'special diligence' in its investigations in respect of the case against the charged person. It is no answer to lack of 'special diligence' to state that other charged persons have been investigated. The OCIJ is under a duty to act with 'special diligence' in respect of the case of the charged person. The decision of the OCIJ on 23rd of January 2009 regarding access to the case file makes it unnecessary to pursue this point. In the premises, it is submitted that the charged person should be subject to provisional release. Thank you very much.

MR. PRESIDENT:

The Court may recess for 15 minutes.

(Court recesses from 1005H to 1026H)

MR. PRESIDENT:

Please the Co-Prosecutors, to make a brief submission. You have one hours to split among the national prosecutor and the international prosecutor.

MR. SENG BUNKHEANG:

Your Honours, on behalf of the prosecutions, we would like to confirm our submission, and we would like to make further brief submission as the following. The leaders of the Democratic Kampuchea ruled the country from 17 April 1975 to 6 January 1979. The duration within which the whole population of Cambodia had been unfairly and inhumanly treated, and subjected to all forms of tortures including the heinous ones. On the one hand these brutal acts have caused the death of about 2 million people. On the other hand the survivors have nothing left but the excruciating suffering, frights and traumas.

On top of that scores of orphans, amputees and widows have been rendered helpless, while the entire social structures have been reduced to rubbles. The burden of taking care of them has to be shouldered by the current and succeeding Cambodian society. Fortunately, with the commitment to stop the practice of impunity, the royal government of Cambodia and United Nations intelligently established this Court to prosecute crimes committed during the period of Democratic Kampuchea. To date, the Court, through the introductory submission, which details the facts issued by the Office of Co-Prosecutors on the 18th of July 2007 has indicated five suspected, all of whom have been arrested.

The five charged persons, among them Ieng Thirith, have been charged with their responsibility of the certain crimes which fall under the ECCC's jurisdiction. They have been held in provisional detention pending trials. Ieng Thirith has been charged with crimes against humanity under Articles 5, 29new and 39new of the ECCC Law. The Co-Investigating Judges issued the detention order on the 14th of November 2007 to provisionally put the charged person under a provisional detention for a period not exceeding one year.

Since then, the charged person has exercised her right to remain silent. Due to the scope of the investigation, the complexity of the facts and laws, the gravity of the crimes and other related issues, on the 10th of November 2008, the Co-Investigating Judges ordered that the provisional detention of the charged person be extended for another additional period not exceeding one year. Subsequently the co-defence lawyers for the charged person filed an appeal against this order with the Pre-Trial Chamber. In their appeal, the defence requests the Pre-Trial Chamber reject the order on extension of the provisional detention, or the extension order by the Co-Investigating Judges, and that the charged person be released on bail subject to conditions.

[10.30.52]

In their arguments, the defence submits that the extension order lacks reasoning. The extension order contains incorrect information. The Co-Investigating Judges applies the wrong standard to legal standards. The Co-Investigating Judges have infringed the right to silence. The extension order has shown no real risk which the charged person will exert influence on witnesses. The contention of the Co-Investigating Judges is without any evidential basis. And finally, the defence has proposed the Pre-Trial Chamber to consider releasing the charged person on bails.

Regarding this, the prosecution submits that the extension order by the Co-Investigating Judges is sufficiently and adequately reasoned. The Co-Investigating Judges set out the legal grounds and facts taken into account before coming to their extension order. The Co-Investigating Judges can discharge this obligation by referring to the general and other circumstances of the case file, and that they are not obliged to indicate a view on all the factors. As set out in paragraph 64 to 66 of the decision on Ieng Thirith's appeal against the detention order, the Pre-Trial Chamber indicates that the Office of the Co-Investigating Judges is not obliged to indicate its view on all factors, since the application shows that the Co-Investigating Judges have shown the legal and factual grounds which they have considered before issuing the order.

The Co-Investigating Judges can discharge the obligation in light of the general and other circumstances. The lengths of time of the provisional detention is reasonable and acceptable for the following reasons: The severity of the crimes charged, the complexity of the case file and the level of investigation being conducted by the Co-Investigating Judges. The charged person is faced with several charges in relation to the modes of liability of the joint criminal enterprise, its extended and systematic character.

[10.33.35]

Such provisional detention is permitted under the Internal Rules. It is pursuant to the circumstances of the case and the international jurisprudence. Regarding the review on the assessment of the reasonable nature of the provisional detention, the ICTY has taken into consideration the length of provisional detention, which is much longer than the reasonable lengths of time in light of the gravity of the crimes committed. The jurisprudence of the European Court, the case of *Hadjianastassiou v. Greece*, the accused was sentenced to a gaol term.

They relied entirely on what was heard during the hearing to help him prepare his appeal. There, he did not receive a full written version of the decision, therefore compared with the case of Ieng Thirith, it's different. Here, Ieng Thirith has received in full the decision rendered by the Pre-Trial Chamber which allows her to exercise her right to appeal. On top of that, the decision to extend the provisional detention by the Co-Investigating Judges expressly sets out, in paragraphs 20, 27, 29 and 34, the reasons to extend Ieng Thirith's provisional detention.

So the extension of the provisional detention of the charged person is not unreasonable. Therefore, the defence appeal that the extension order lacks reasoning by making general accusations without providing sources for it is unsubstantiated.

Concerning the defence submission that the extension order contains incorrect information, the prosecution submits that the extension order does not contain incorrect information. Regarding document D88 concerning the interview of the charged person in case file 001, although this document does not refer directly to charged person Ieng Thirith, but it relates to the charged person, because this document shows that the name of the Ministry of Social Action.

[10.36.29]

On top of that, there is another document, the interview of a witness conducted by the Co-Investigating Judges. That witness indicates the relationship between the charged person with S21 and her ability to receive confessions from S21. The submission that the extension order against the charged person contains incorrect information regarding the rights of the charged person to access to the case file is groundless. The Internal Rules of the ECCC state that "parties shall be able to access to all kinds of documents in the case file". The Co-Prosecutors can access to the documents directly, while a charged person and civil parties can do so through his or her lawyers.

The charged person, therefore, has been able to access to all elements of the case file through her lawyers. Rule 22.3 of the Internal Rules states that the recognised lawyers of a person in detention may obtain a copy of the case file or record of proceedings and bring this together with any other relevant document to discuss with their client. Add to this Rule 9.21 of the Rules on the management of the detention facility allows members of the defence team and a detainee to exchange documents during a visit, subject to an order of the Court. Also, on the 8th of February 2008, the Co-Investigating Judges issued a decision concerning case file 001 to allow the defence to provide the detainee a copy of the case file subject to certain conditions as it requires that the document be delivered by hand and taken back every afternoon. According to this decision, the lawyers of the detainees in case 002 have also been allowed to enjoy these benefits temporarily.

It is therefore unequivocal that the charged person has certainly received all kinds of documents in the case file, including the records of the interviews, complaints and civil party applications, unless the co-lawyers of the charged person have not visited their client, nor have they discussed evidence in the case file with her, nor have they communicated with her at all. We should also take into account the consideration of the Co-Investigating Judges in responding to the previous request of the defence team for the charged person to be able to access to the case file within the detention facility.

[10.39.58]

On the 11th of December 2008, the Co-Investigating Judges asked the chief of the detention facility to see whether a copy of the case file could be stored in a separate room in the detention facility for the purpose of any consultation which can be controlled, or whether such a copy could be stored in a locked cabinet for each detainee within or outside the detention room. As a result, on the 19th of December 2008, there was no spare room left for storing such a copy of the case file. But there was as cabinet with a lock which had four drawers for keeping some documents of the case file and could be stored inside of each detainee's room.

Later, on the 23rd of January 2009, the Co-Investigating Judges issued an order on the access to the documents from a detainee in which they stated that due to the fact that the ECCC's detention facility does not have enough room to store the entire documents of the case file, and it was difficult for the staff of the Court Management Section to update such documents, and that the documents could not be kept properly from being accessed by other people, the Co-Investigating Judges agreed to allow all lawyers for the detainees to be responsible for providing their clients with the copy of the case file, and have the rights to communicate with each other to prepare a defence, and be the persons who bring back those documents.

Additionally, the Co-Investigating Judges allowed each detainee to have a cabinet with a lock so that they could keep these documents inside their room as long as necessary, and that the documents were allowed to be used within their room and with their lawyers when they meet them. The prosecution therefore submits that the defence claims that there is no adequate access to the case file is unreasonable.

[10.42.35]

Regarding the due diligence, the duration of the provisional detention is not unreasonable nor does it lack due diligence from the Co-Investigating Judges in conducting the proceedings. The special diligence standard submitted by the defence is not relevant to the proceedings before the ECCC, given the specific complex and diverse nature of the investigation within its jurisdiction. In the case of W*emhoff v. Germany*, the European Court of Human Rights has established that the three year detention of the charged person is reasonable due to the complexity of the case file and since the delay is inevitable, the length of time of the investigation and hearing will be used as a justification.

Furthermore, the charged person has been charged with crimes against humanity, and is being interviewed about planning, instigating, directing, aiding and abetting, having committed or being responsibility for other crimes against humanity. Moreover, the charged person has been placed under a charge of perpetration, which is the contribution of the charged person in the joint criminal enterprise in her capacity as a co-perpetrator who caused the perpetration of certain crimes across Cambodia, being among the serious and complex crimes that the charged person may be faced with life imprisonment if found guilty.

To date, the Co-Investigating Judges have been very committed to search for evidences to that effect, the volume and gravity of the inculpatory evidences have been built up. Evidently, not only

have the Co-Investigating Judges issued several rogatory letters concerning case file 002, but they have also, by themselves, and with their investigators, interviewed more than 100 witnesses who are relevant to the charged persons regarding the crimes as charged.

What is more, the documents in case file 001 which are mainly relevant to the charged person Ieng Thirith have already been transferred to case file 002. Also, the Office of Co-Prosecutors has substantially contributed to this investigation by submitting several documentary evidences since the introductory submission was issued and when the charged persons were arrested and detained. The evidence collected by the Co-Investigating Judges, as well as the evidence submitted by the Co-Prosecutors, has covered all kinds of modes and categories of participation of the charged persons in the crimes against humanity as charged, including the evidence collected from the crime scenes, the evidence that links the crime scenes to the command structure of the charged person, and how the power to command was exercised, evidence which supports the participation in the joint criminal enterprise, the evidence that supports other jurisdictional elements such as the widespread and systematic attack against civilian population, etcetera.

[10.46.42]

Furthermore, in the extension order by the Co-Investigating Judges, they submit that their investigation has been in good progress in the hearing on the appeal against the detention order dated on the 21st of May 2008, due to the fact that more new evidences have been collected. So it is noted that the Co-Investigating Judges have exercised their utmost due diligence in conducting their investigations.

Regarding the right to remain silent, the right to remain silent is secured by the ECCC Law which is in force, and the international standards which the ECCC applies. In the case of *Eckle v. Germany*, the European Court has ruled that there is a violation of article 6, because the time delayed in the

proceedings before the national court is unreasonable. However, Germany, exclusively due to its concern, had conducted its free observation on that fact on the personal act of Eckle. The jurisprudence of the European Court in the case of *Vernillo v. France* supports the Co-Investigating Judges' position. The court notes that the complainant has shown little effort to expeditiously submit his or her submission before the national authority. The court concludes its observation that: "Therefore, it seems that parties have done a lot only to delay the proceedings."

[10.48.56]

In their detention order, the Co-Investigating Judges just indicate that the recognised and undisputed right to remain silent have not contributed to speeding up the proceedings, because the role of the Co-Investigating Judges is to collect inculpatory and exculpatory evidences. With regard to the exculpatory evidence, the charged person is in the best position to help the Co-Investigating Judges in finding it. In general, in case there is no cooperation from the charged person, the investigation takes longer time than when the charged person has provide this evidence.

The extension order does not infringe the rights of the charged person to remain silent, and this right has been realised and not been denied by the Co-Investigating Judges either. Therefore, may we respectfully make a request to the Pre-Trial Chamber to reject all the submissions of the defence regarding its arguments that the Co-Investigating Judges have violated the right to remain silent. Next, I would like to ask my colleague to continue the submission. Thank you very much.

MR. de WILDE D'ESTMAEL:

Mr. President, Your Honours, my learned friends and civil parties, we heard recently in the press about the doubts expressed by a certain number of judicial stakeholders and observers with the future holding of a trial concerning the five charged persons in case number two. This second hearing pertaining to the provisional detention of the first lady of the Khmer Rouge is an important step on the road to end impunity, and to the long-awaited trial. I would like to express once more

the total determination of the Co-Prosecutors, and I am persuaded that this determination is shared by all the stakeholders and parties involved in the proceedings before this Chamber so that justice should be done, and well done, within the rules of the game, within the reasonable timeframe and respecting the rights of the defence, and bearing in mind the interest that judicial truth and if possible historical truth where both concepts can be reconciled can prevail at the end of these proceedings.

[10.51.55]

It is important for the victims, it is important for the future of this country, for Cambodian justice, and also for international justice. After the preliminary matters raised in response to the defence arguments, I would now come to the two conditions set forth in Rule 63(3)(a) and 63(3)(b). These conditions are still being met, and are more than sufficient justification for the extension of the provisional detention of the charged person for a period not exceeding one year. I would first like to emphasize the fact that examination of the continued presence of these two conditions is the real issue at state in the periodic review of a provisional detention by the Co-Investigating Judges and the Pre-Trial Chamber on appeal

It is the important question. And yet, in the main, we have noted that the defence focused in its appeal not on these two cumulative conditions, but on alleged errors of fact and law that the Co-Investigating Judges might have committed. As we showed in our written submissions and at this hearing, these arguments lack strength, relevance and conviction and in the end they are wide of the mark. To request that the decision of the Co-Investigating Judges be quashed or set aside does not seem to be very appropriate in appellate proceedings. It seems to us that the defence is tending to confuse their appeal against an order and an application that an order being made null and void on account of a procedural defect.

In accordance with the scope of the appeals before the Pre-Trial Chamber are set forth in the Internal Rules and on the basis of the Chamber's jurisprudence, the Pre-Trial Chamber should first consider the file, or the case record, as a whole at the time of the hearing, and not at the time when the Co-Investigating Judges took their decision, and that the Pre-Trial Chamber can substitute its own reasoning for that of the Co-Investigating Judges to malady a procedural error in its decisions if such error was in fact committed, and this is not the case.

[10.54.21]

It also appears to us that the defence appeal makes no substantive submission likely to call into question the determination of the Chamber in its decision of the 9th of July 2008 on the issue of provisional detention, as well as the order on the extension of provisional detention. The mere reference to the passage of time cannot be sufficient to justify the reasoning that the Chamber and the Co-Investigating Judges are not correct. If the Co-Investigating Judges extend the provisional detention in spite of the defence objections, then they should provide enough relevant information justifying that the Chamber's reasoning and the Co-Investigating Judges' reasoning in their respective decisions and orders are no longer justified.

I shall now move on to an examination of Rule 63(3)(a), and I would like to say that we are not going to request a Closed Session since we have provided enough material in the written submissions. I would like to say this: with regard to the well-founded reason to believe that the charged person committed the crime, the investigation file, in our view, still contains factual information that is likely to convince an objective observer that the person concerned may have been responsible for the crimes that are mentioned in this interlocutory submission and this -- or may have committed them. Although the appeal makes no explicit submissions concerning the continued existence of the well-founded reasons to believe, and although it doesn't analyse the evidence that the investigation file does contain, the defence makes indirect reference thereto in terse and peremptory fashion, saying

that the extension order and the investigation file have no evidence which is in direct support of the charges supported by the Co-Investigating Judges.

We consider, first of all, that the evidence which was transmitted in support of the introductory submission is still sufficient in and of themselves to meet the criteria, even a year later. This evidence is abundant and supported. I will not return to this evidence, which has been discussed at length last year, and which is dealt with in the introductory submission and its annexes. However, it will be worthwhile to highlight some of the evidence that has come to light in the past year. It shows that the gratuitous and generalised allegations of the defence on the absence of evidence and the absence of sufficient diligence in the conduct of investigations are without any basis.

[10.57.37]

I will also recall that on the 9th of July your Chamber, after *inter partes* proceedings, and after a painstaking analysis of the investigation file as it was on the 21st of May 2008, considered that there were well-founded reasons to believe that the charged person have committed the crimes for which she is being prosecuted. Nothing of substance in the appeal calls into question the reasoning set forth by the Chamber in that decision. Furthermore, as my colleague said a while ago, the investigation file as it is today is even more solid than it was in November 2008 (sic) when the charged person was arrested, and in May 2008, since the evidence collected has increased significantly.

First, since the issuance of the first detention order, the Co-Investigating Judges have issued at least 15 rogatory letters in case number two. While some of these rogatory letters concern the provision of written or audio visual materials, nine of them concern the interview of witnesses with regard to the criminal acts of which the Co-Prosecutors informed the Co-Investigating Judges in July 2007. I shall return to that later.

Secondly, the relevant evidence contained in case file number one were transferred to case file number two by a decision of the Co-Investigating Judges on the 30th of May 2008 and on the 28th of October 2008. It goes without saying that the abundant evidence concerning S21 and its director Duch, whose interviews by the Co-Investigating Judges are key elements concerning the charged person, since a large number of employees of the ministry that she ran were transferred to S21, detained, tortured and executed there.

The record contains sufficient irrefutable evidence in this regard concerning the role of the charged person in the arrest of her subordinates, in their transfer to S21, and in the monitoring of the confessions obtained under torture in S21. This evidence is in fact corroborated by the successive statements made by Duch in the two cases. Thirdly, the Co-Prosecutors also contributed significantly to the investigation by placing on the record of the case many pieces of evidence from the introductory submission and the arrest of the charged person. In this regard, I refer to the materials mentioned in the appeal at footnote 80, which include, and here I shall endeavour not to reveal confidential information.

[11.00.46]

One, the interview of the charged person by Elizabeth Becker in 1980; nearly 500 press articles concerning the regime and the role of the charged persons; the chronological tables of the acts of the various charged persons before, during and after the Democratic Kampuchea era, which show the continuity and the depth of their commitment to the Khmer Rouge cause. We have also contributed compiled lists of the detainees of S21 which show that hundreds of persons under the authority of the Ministry of Social Affairs were detained, tortured and executed.

Lastly, on the 16th of May 2001, and this document I might add could not be taken into account during the hearing on 21st May 2008 because it was notified on the same day. I am referring here to the very important testimony of a person who confirms that the confessions of the members of

staff of the Ministry of Social Affairs which have been obtained in S21 had in fact been transmitted to the charged person.

[11.02.05]

Now, to return to the investigation of the Co-Investigating Judges, to date more than 286 statements have been collected by investigators with regard to the crimes of which the five charged persons suspected in case number two. This is an objective fact, and it is far from insignificant. It cannot be dismissed as the defence is tending to do. This large number of interviews, all of which are connected to the alleged crimes and are therefore relevant, is clearly at odds with the defence statement in its appeal concerning the lack of diligence on the part of the Co-Investigating Judges and the total absence of relevance in the evidence collected.

In response to the appeal, we provided a list of a number of statements which directly concern Ieng Thirith, that is in footnote 83. After 167 statements which have been since been included in the record of the case within the framework of the rogatory letter of the 26th of May 2008 which is registered as document number D125, there is also information concerning the role played by the charged person in Democratic Kampuchea. Obviously the defence submits in its appeal and at this hearing that no testimony and evidence, documentary or video evidence, is not of direct concern to the appellant and her immediate role in the crimes, but that many of them related instead to crimes committed throughout the country in certain places mentioned in the introductory and supplementary submissions.

First of all, it should be recalled that it is not necessary to have committed the crimes in person to be individually responsible for them. You can plan, incite, order to commit, become an accomplice of such crimes or be responsible for them as a superior. This is in Article 29 of the ECCC Law. You can also participate in the crimes as part of a joint criminal enterprise. This is the case we are

making. It is obvious that the evidence collected in the investigation file so far is relevant in this regard and involves the charged person.

[11.04.50]

Furthermore, we should emphasize that a case file like this is very complex and the Co-Investigating Judges have wide discretion with regard to how they will conduct their investigations. They are the ultimate authority with regard to the strategy and the method used to complete the investigation as quickly as possible while taking care not to neglect any of its aspects. The requirements of expeditiousness and efficiency must be reconciled with the Judges' obligation to investigate all the criminal facts of which they are seized in order to comprehend all their aspects both inculpatory and exculpatory.

With regard to the method chosen by the Co-Investigating Judges, it is not a matter for the prosecution, but it seems fairly logical that since the Co-Investigating Judges are primarily seized of criminal acts, they should collect evidence of whether the alleged crimes were in fact committed. They should also collect evidence concerning the constitutive elements of crimes against humanity or war crimes. In the case of the charged person, these are crimes against humanity, including evidence pertaining to this widespread or systematic nature of the attack against the civilian population.

It is also logical for the Co-Investigating Judges to collect evidence pertaining to the links between these crimes and the organisational and hierarchical structure of Democratic Kampuchea within which the charged person played a very important role. Considering the scale of the crimes committed throughout the whole country for such a long time, and considering the number of victims and witnesses, the strategy of the Co-Investigating Judges and its implementation appear to be reasonable.

[11.07.00]

So on no account can it be said that there was a lack of diligence, either normal or special, as the defence says. And so far the defence has failed to say what special diligence is. In fact, the investigation continued all through 2008, and you will see that the interviews were collected every month, and continuously. That said, it is also logical, in my view, that the Co-Investigating Judges should focus in the coming months on the individual responsibility of the charged persons.

With regard to the alternative conditions of Rule 63(3)(b), as we mentioned in our response toe the appeal, provisional detention of the charged person is a necessary measure within the meaning of Rule 63(3)(b). You will remember during the extended arguments pertaining to the five alternative conditions of this rule which took place on the 21st of May last. You will remember this argument, so I will spare you any further discussion. I shall deal with arguments that have been put forward since then.

In fact, I would like to draw your attention to the fact that there are three different circumstances with regard to the conditions set forth in Rule 63(3)(b). First of all, the defence does not challenge the existence of three of these five conditions in the appeal, these are the second, the third and the fifth condition, that is, those pertaining to the need for provisional detention to preserve evidence or prevent the destruction of evidence, to ensure the presence of the charged person during the proceedings, and to preserve public order. Accordingly, as the defence has not challenged the need for provisional detention on these three grounds, and in the absence of any challenge to the reasoning that your Chamber set forth in its judgment of the 9th of July 2008, we request that the continued validity of these three conditions be recognised in your decision.

[11.09.45]

It would be remiss of me not to take a moment to submit arguments which further support our previous submissions regarding these conditions. The second circumstance is that the defence has in effect challenged only one of these conditions in its appeal. The defence counsel consider that in their extension order the Co-Investigating Judges failed to prove that there was a real risk that witnesses would refuse to take part in the current proceedings.

And lastly, the third situation or circumstance, in your decision of the 9th of July one of the five conditions of Rule 63(3)(b) was not considered to have been met by your Chamber. This is the protection of the security of the charged person. The defence did not comment on this. Due to the presence of new materials, we considered that this condition has now been fulfilled. The various new pieces of evidence depend both on the conduct of the charged person during the closed hearing of 21st of May 2008 and during the judgment, or the hearing of the 9th of July 2008, and also the statements in the press and the conduct of a certain number of victims and civil parties during the press conference that was held after your hearing of the 4th of December 2008 with regard to translation rights.

The statements of the victims were startling, and in our view they are the signs of great distress, and profound trauma, which gives us an insight into the threats to the security of the charged person and the threats to public order.

First of all I'd like to return to the conduct, aggressive to say the least, of the charged person in regard to the parties and the Judges during the closed hearing of the 21st of May 2008. This person, on several occasions, interrupted with shouts and protestations, each of the Deputy

Co-Prosecutors and each of the civil party lawyers who took the floor. This led to several remarks by the Judge and finally a warning by the President of the Chamber. She was asked to remain silent or be removed from the courtroom.

[11.12.32]

These repeated interruptions of the hearings, which are set forth in detail in the confidential version of our response to the appeal, why the charged person was not invited to make her views known, show that the charged person cannot bear to be placed face to face with her past and the ignoble crimes committed by the regime to whose most radical cause she belonged. She was the first lady whose influence extended far beyond her official titles and functions.

During the hearing of the 21st of May, the charged person manifestly sought to intimidate, to bring pressure to bear, or even to threaten the Prosecution and the civil party lawyers. It was not a spontaneous reaction in the face of the unbearable truth of her alleged participation in the crimes. This has always been her attitude. The first lady of the Khmer Rouge has -- this is not the first attempt of the first lady of the Khmer Rouge to muzzle people who challenge her view of the facts, that is denying the alleged crimes and her participation therein. We shall also remember two serious incidents which were raised during the last hearing and which are mentioned in the decision on the 9th of July last.

That is, the accusations, attempts to intimidate and insult which were spread in the press against Youk Chhang in February 1999 and the violent reaction of the charged person during a rally of the DNUM party in 2003 when a member of the Assembly proposed that Khmer Rouge leaders should be prosecuted. I would also like to add that during the hearing of the 9th of July she also cried out at the end of the reading of the decision, in public session this time, "I know who wrote this decision, I know who."

All these factors should be taken into consideration when your Chamber will be assessing the real danger that the charged person might seek to bring pressure to bear on the victims, the witnesses and the civil parties if she were granted provisional release. She may do so directly, which is not out of the question, or indirectly through statements in the media, or through members of her family or her loved ones who hold high positions in the Pailin governorship.

[11.15.19]

Considering her past and current influence within the former Khmer Rouge apparatus, and in light of the real trauma suffered by a large number of survivors, it is not an exaggeration to say that her liberation and her presence in society, now the prosecution has been commenced, and considering her media profile, could present a threat to the participation of victims in the proceedings before the ECCC. And yet it is crucial that the few people who are close to her in the years from 1975 to 1979, and who survived, and who can provide information as to her involvement in the crimes committed all over the country and in S21 to testify effectively before the ECCC.

As my colleague set out at length, the effective access of the charged person to the case record has given her the possibility for a year now to identify the key witnesses whose testimony could be crucial to the result of the investigation and the trial. When the defence states that none of the witnesses so far has expressed fears with regard to the end of provisional detention of the charged person, it neglects to point out that most of the direct witnesses are yet to be interviewed by the Co-Investigating Judges.

The defence states in their appeal that the jurisprudence of the European Court of Human Rights consists in saying that the risk of pressure on victims reduces as the case moves forward, and the statements are collected. I refer here to the *Kemmache v. France* and *Clooth v. Belgium* cases which are mentioned in paragraph 62 of the appeal. In addition to our reservations as to the

relevance of reference to original jurisprudence in this case, we should emphasize that the defence neglected to say that while many statements have been collected in case number two, most of the witnesses who were under the Ministry of Social Affairs are yet to be interviewed, not forgetting that several witnesses could be interviewed several times.

[11.17.49]

In the *Kemmache* judgment, the ECHR holds that the risk of pressure on witnesses could continue until they have been interviewed several times. The defence also made reference to the *Labita v. Italy* judgment of the same ECHR. This judgment casts no light on the risks of pressure on witnesses because the circumstances are so different. Mr. Labita was suspected of being a small mafia figure on the basis of unverified statements of informers within the mafia, and these were statements that turned out to be unreliable. The real risk of pressure was not supported by Italy.

I will therefore invite the Chamber to set aside or ignore the judgements which have been mentioned. The incidents that I mentioned during the hearings are to be taken into account, concerning the need for provisional detention to preserve evidence because the statements are in fact evidence. Nor should be forget the matter of public order and the preservation of the charged person's security. In case of secure release, if the charged person were to repeat her threats or her attempts to intimidate people in the media, there is a real risk that public order and her personal security would be jeopardised.

On the issues of public order and personal safety, we should say that in recent statements in the press, New York Times, 17th of June 2008, and the behaviour of certain victims or civil parties at the press conference on 4th of December 2008 at the ECCC that these do show that there is a real risk of violence that might target charged persons, parties, or the ECCC as an institution, possibly even other institutions of state. Of course, we do not support the hateful statements of certain victims

when they say that they would like the charged persons to suffer as much as they themselves have had to suffer under the Khmer Rouge regime.

We deeply regret that they attacked the lawyers of Khieu Samphan, so matter what the attitude of the latter, and we certainly condemn the fact that one of these victims has even repeatedly threatened to use terrorism. We would simply like to take note of the existence of these incidents and of the violence inherent in these statements, which are no doubt due to an emotional factor. Nevertheless, these, in our opinion, betray the presence of post-trauma stress symptoms, which is very intense for a number of victims in Cambodia.

[11.21.10]

We know that the current proceedings can certainly give rise to a reappearance of anxiety, a sense of trauma, of hurt that has never healed, and the re-emergence of these feelings can actually spiral into true violence, not only verbally, in case of the charged person being released, and this kind of violence might even endanger her own safety as well as public order. We think that this level of risk is even more real now in the light of incidents that we've mentioned, and in the context of the decision of your Chamber on the 9th of July 2008.

I would also like to refer to a study called "We will never forget". It is not yet in the file, but it is in the public domain. Very briefly, it indicates that 90 per cent of the persons interviewed believe that members of the Khmer Rouge should be judged for the crimes that they committed. Furthermore, the overwhelming majority of persons interviewed have stated that they feel hatred for the Khmer Rouge who perpetrated violent acts. Seventy one per cent said that they would like the Khmer Rouge to suffer to the same level as victims suffered under the regime. Forty per cent of persons say that they would like to take revenge if it were possible to do so. Others, however, say that since then they have been able to forgive.

Feelings of hatred in this abovementioned study were more frequent for those who lived under the Khmer Rouge than for those who were born thereafter or who lived outside the country. This is perfectly understandable. These points are, we believe, points that support what we have just said. And also support what appeared in the New York Times in June 2008. So to conclude, Mr. President, Your Honours, we would like to ask you to dismiss the contention of the defence concerning the absence of any real risk that potential witnesses would not testify, and on the contrary to find that all five disjunctive conditions under article 63(3)(b) are met at the present time.

[11.23.55]

If there were to be provisional release, the appeal refers to certain conditions under which the charged person could be released. These are the same unacceptable conditions as were already pointed out last year, in particular the fact that the charged person would be in a position to move around freely in Phnom Penh. Since provisional detention is deemed necessary for at least one of the five reasons that I have just mentioned, there is no possibility for conditional release, no matter the level of conditionality that would be applied that would be capable of offering the right kind of guarantees to protect the personal safety of the charged person, to preserve public order, or to prevent the flight of the charged person. Not to mention the risk of pressure on witnesses and victims and consequently the risk of seeing evidence destroyed.

Consequently, and in conclusion, we would like confidently to request and firmly to request that the appeal of the defence be dismissed in its totality and consequently that provisional detention be maintained. Thank you.

[11.25.18]

MR. PRESIDENT:

The defence, do you want to respond? Please.

MR. PHAT POUV SEANG:

Thank you, Your Honour, the President of the Pre-Trial Chamber, the bench. I have been permitted by the Pre-Trial Chamber to respond to the submission of the Co-Prosecutors. The international Co-Prosecutor submitted that, in case file 001 of Kaing Guek Eav alias Duch, was allowed by the Co-Investigating Judges to be transferred to the case file 002. So in this occasion I would like to be permitted to also clarify the submissions of the Co-Prosecutor that, the international Co-Prosecutor's submission is groundless. Because in Duch's testimony in case file 001 before it is transferred to case file 002. I know that there are a number of testimonies but so far I have observed that there are only two testimonies that are relevant to my client.

In particular he submitted that in document D88 the document mentioned in relation to my client but I think Duch's testimony in such a document has nothing to do with my client. Only the testimony links to Nuon Chea, Pol Pot and something but not Ieng Thirith in such a D88 document, so the argument which is groundless is unacceptable and can mislead the whole hearing. Because the public is not informed of the case file so by hearing the brief summary of such a submission without any factual background is very misleading. Also, I don't know whether we can show the content of this document, I know it relates to the factual basis of the case file.

If I am allowed, I am afraid that when I say so that this information will be revealed to the public, and I may request a closed session so that I can mention regarding these points in response to what the Co-Prosecutor has mentioned. May I ask the Pre-Trial Chamber to hold the session in closed session in order for me to say so?

MR. PRESIDENT:

The defence, we will continue the public hearing and then you ask for the closed session and we will consider this request later on.

THE INTERPRETER:

The Interpreter could not hear the defence. Thank you.

[11.29.43]

MR. PHAT POUV SEANG:

I think I can't go on with the public session, I am afraid the ECCC itself. That's why I requested the closed session.

MR. PRESIDENT:

The defence, please continue what you want to make public submission and then we would like the charged person's response and in the end we will have a closed session.

MR. PHAT POUV SEANG:

Thank you, Your Honour; I will now proceed with my submission in public. Regarding the submission of the Co-Prosecutor, and I think its groundless because these arguments, are indirect and in this case I have noticed that the arguments less of factual grounds because in the prosecutor's argument, in his reference to my client although he did not mention the name precisely I could presume that the argument referred to my client and he has probably breached the presumption of innocence principle. I may also would like to submit further in the closed session in detail and I think I am not yet in the position to make it clear in the public session because this matter relates to the closed session.

Regarding the submissions again, when my client allegedly was arrested and have connection with the ministry of social action, the submission related to the decision of the central committee on 3 March 1976. In that decision it elaborates the roles or the decision making power, the power to conduct internal and external purge within the party and I will elaborate further in the closed session regarding this point. Also there are some confessions from Mr. Laurence Picq but his testimony has very little relevance to my client and [redacted] already rejected such testimony for the reason

it lacks factual ground. And Mr. Laurance Picq worked at B1 Ministry, which is the Foreign Affairs Ministry of the Democratic Kampuchea and he met my client but he met less often so his testimony has very little relevance to my client.

And the argument of the Co-Prosecutor were that there were arrests of staff at the Ministry of Social Action, I think I have already reviewed the confessions and the testimonies of the witnesses and you said that the Co-Investigating Judges have interviewed more than 100 witnesses and so far as I know among those witnesses, very few of those witnesses testify against my client in her capacity as the person in charge of the Ministry of Social Action. So I would like to end my public submission now and I would like further submission in the closed session if you may.

[11.36.27]

MR. PRESIDENT:

The charged person, Madame Ieng Thirith, please come before the court.

[11.37.51]

JUDGE DOWNING:

I wish to address a question to the national co-lawyer for the charged person. Is it correct that in the appeal brief you have not requested or addressed the issue of house arrest? I cannot find it in the submission or any of the appeal papers.

MR. PHAT POUV SEANG:

Your Honours, the Pre-Trial Chamber, I have not expressly included the appeal brief in writing but I am raising this now because based on the oral request.

JUDGE DOWNING:

Thank you. I invite you to look at Internal Rule 65 concerning bail orders and Article 223 of the Code of Criminal Procedure and I would be assisted if you could indicate the authority of the Court or Chamber to order house arrest.

MR. PHAT POUV SEANG:

Your Honours, I may not got the question correctly could you please repeat it?

JUDGE DOWNING:

If you look at Internal Rule 65 concerning bail orders, there is a reference to the imposition of such conditions as are necessary to ensure the presence of the person during proceedings. I am wondering how this relates to the Cambodian Criminal Procedure Code Article 223, and if in fact there is a relationship, and where the power comes from for this Tribunal to order house arrest? Are you able to explain where we get our power to provide this as an option?

MR. PHAT POUV SEANG:

Thank you, Your Honour, I would like to submit that based on the Criminal Procedural Code of Cambodia and the Internal Rules the Court can make a decision based on the rules as regulated so in my submission, I submitted some conditions so that my client can be bound when she is released on bail. And I submit such conditions on 2 January 2008, and there were seven points that I submitted to the Pre-Trial Chamber to consider, however the reason I raise this matter orally concerning the house arrest, is based on the Cambodian Law but the title of the code is not clearly prescribed although we can refer to Article 223 which is the obligations under judicial supervision or Rule 65 regarding bail orders.

My client promised the following. First, she lives every day in her house with her daughters in Phnom Penh and she promises that she lives in the house where she was arrested in Bassac Chamkarmon and this happens only if the Pre-Trial Chamber allow it and she continues to live in Phnom Penh regularly and will not move to Pailin or other places if the PTC allowed such a release and she would not travel anywhere except staying in the house. And regarding the documents concerning the travels, she has not requested for the passport back because she has no intention to have her new passport renewed.

And she also said that from 8 pm to 7 am in the morning she promises to stay home, and point number five she promises to report at a police post every day at the location adjacent to the area where she live. And six, she promises she will not contact directly with any victims or witnesses proposed by the ECCC. In case she would like to visit her children in the province she will then inform the local authority so they are informed of where she intends to go so she can be located. She submits these reasons to the Pre-Trial Chamber for such consideration at the earlier stage already.

[11.46.55]

JUDGE DOWNING:

Is there anything arising that the prosecutors would like to say in response?

MR. de WILDE d'ESTMAEL:

I think I have already done so Your Honour, very briefly but I did think this matter was raised on appeal, if that is not the case I would ask that Rule 75(4) be applied considering that if its not mentioned in the appeal brief then there is no reason for it to be mentioned during this hearing. With regards to the conditions themselves I consider that if the conditions of Rule 63(3)(b) have been fulfilled and if it is then therefore considered that provisional detention is necessary, there is no reason in fact, I might say that this is sufficient for rejecting any house arrest or any bail measures that might be suggested. Thank you.

MR. PRESIDENT:

The civil party lawyers please.

MR. HONG KIMSOUN:

Thank you, Your Honour, the President of the Pre-Trial Chamber. I will not make any submission concerning --

MR. PRESIDENT:

What will you submit? Will it be related to the submissions raised by the Co-Prosecutors and the

defence?

MR. HONG KIMSOUN:

Yes, You Honour it relates to the oral submission. So if the defence can do so then the civil party would ask for such consideration because our submission has already been rejected so we would like to request the Pre-Trial Chamber re-consider our submission. Because in the rules it states clearly that only the written submission is allowed before an oral submission is allowed to be raised in this hearing that's why I, on behalf of the civil party to also request for the permission to make our oral submission here.

As the Co-Prosecutor mentioned we are now dealing with the provisional detention so, when you met --

JUDGE LAHUIS:

You have requested permission to oral submit. Do I understand it correctly that you mean oral submissions on the issue of house arrest because this is a new issue now being raised during the appeal?

MR. HONG KIMSOUN:

That's correct Your Honour.

JUDGE LAHUIS:

We agree if you restrict yourself to this part of the submissions.

[11.51.43]

MR. HONG KIMSOUN:

Thank you, Your Honour. Once again, Your Honour, the President, and the bench on behalf of the civil parties, we will restrict to only the submission concerning the oral submission of the defence regarding the house arrest. I submit that it I is not reasonable and not acceptable because regarding the previous period of time when the charged person lived in her house she did not appear in the

public and people in the neighbourhood never saw her and normally when she travelled in the public she would take a field vehicle. I mean no one could see her whenever she could travel somewhere. Regarding the submission of the defence that there is no risk for such house arrest, I think its just an argument, but in reality people in her neighbourhood never knew what happened to her living. So I think that such a submission is unreasonable and I respectfully request the Pre-Trial Chamber to reject that request for such house arrest.

MR. PRESIDENT:

Charged person Ieng Thirith, do you have anything to add?

THE CHARGED PERSON (Interpreted from Khmer):

Your Honour, I have nothing to add, but I would like to clarify my position. I have nothing to be involved with Duch, and it is unreasonable to say that I has any connection with Duch. So far when I worked in Hanoi for three year and the bomb was bombarded in Cambodia and in 1975 Pol Pot asked me and my group to come back to Cambodia, through China, and we have come from China who lead the team and then we could come back through the plane. So the group came one day later; I came first to Cambodia.

So I had nothing to do with Nuon Chea, although I knew what he has done, and I knew he killed people, I knew this. I know this. I know how many people died and who killed those people. I am knowledgeable. So the students who came with me, they are university graduates from Russia, from Moscow, from Prague, from France. So when I came they came with me and stayed, lived in Phnom Penh with me. And at the beginning of everything when my students were arrested and executed it done by Nuon Chea, and they took them in a truck and executed.

And at the hospital, the big hospital was destroyed, and when I came back I was in charge of social action. I could see that patients lived on the ground so I made a decision to renovate the hospital,

and the public and the engineers supported and helped rebuild that hospital along with me, because we could see that the patients could not have any beds to sleep, they had to sleep on the floor, and then we rebuild or renovate the pharmaceutical factory, and I was given an old bicycle and I had a meal with the workers there.

And we worked very hard at the pharmaceutical factories. There were four factories, and we have two Chinese experts to help at each pharmaceutical factory. Two of them assisted us in each factory. And when my students, who learned how to produce medicines, then Nuon Chea ordered them to be arrested under Nuon Chea -- Kaing Guek Eav's supervision, and I would like to make it clear that Nuon Chea killed all my students, and instead I was accused wrongly. So I was -- I had been a well-bred family. My grandfather was a school principal and my father was a school principal in Battambang, so we have been born in a well-bred family.

So I had been learning very hard. I learned English, and I got a certificate in English literature, and I am now very angry because I have done my best for the nation. But now all my students have been executed, you know, they brought a truck and then uploaded them and then brought them to be executed. So everything done by Nuon Chea. Don't implicate Nuon Chea with me, because they did a lot to my students and it is very unjust. And again, Nuon Chea did these things.

[11.59.39]

So when the truck came people mistaken the truck for the delegation, and then these people asked to be taken by the trucks and be executed. So don't accuse me of murder otherwise you will be cursed to the seventh level of hell.

JUDGE LAHUIS:

So you finished your final speech? You finished your -- do you want to continue because then you have to press the microphone.

THE CHARGED PERSON (In English):

Pardon?

JUDGE LAHUIS:

If you want to continue your final words you have to use the microphone, because otherwise we cannot hear you.

THE CHARGED PERSON (In English):

I can't -- I can't -- I can't hear. I cannot hear. Yeah, yes, yes, yes, yes.

JUDGE LAHUIS:

Can translation repeat?

THE CHARGED PERSON (In English):

That is what I have to tell you because you don't know. Because you don't know. Why? Because I want you to know the truth. I want you all to know the truth. There is no need to spend time for nothing. If I lost English because there is nobody who know English, so I have to learn English and I educate Khmer in English. I do everything for my motherland. You must know people. *(unintelligible)* If you see that everyone said this, Thirith say this, you know none. You must know people.

JUDGE LAHUIS:

Okay, this were your last words for the appeal? Because then, as announced, we will close the --

(Deliberation among the Judges)

[12.03.10]

THE CHARGED PERSON (In English):

Know who is the -- who is the killer.

THE CHARGED PERSON (Interpreted from Khmer):

The bad people.

THE CHARGED PERSON (In English):

I want to know that. I just came back from China at that time, and I -- at that time I go to --

THE CHARGED PERSON (Interpreted from Khmer):

-- to repair -- sorry, I forget the location that was bombarded by bombs. Please please, help translator for me.

THE INTERPRETER:

No, I think the interpreter cannot hear because the microphone right before Ieng Thirith was switched off.

JUDGE LAHUIS:

Can you help? If your client wants to continue talking, please advise her that she uses the microphone and she can talk in Khmer because everything will be translated. Because there seems a kind of a problem in that it's not clear whether she is finished or wants to continue.

THE CHARGED PERSON (Interpreted from Khmer):

The reason that I am here to speak the truth, I had been waiting for years because I have been charged with crimes for the effort I had been discharged to help my students. I never even known where Kaing Guek Eav has lived or worked, I never talked to him. Only recently when Nuon Chea brought my students to be killed by Kaing Guek Eav that I started to know this person. So only one student left, the person who I asked to be on duty at the office, because everyone who helped build or repair the factories or the hospitals have all been executed.

So people who were educated were asked to be sent to the city to help build these hospitals, and you have been quite familiar already, so I myself alone rode a bicycle and as the minister of social action I was given only the bike. And I took a bike to help rebuild the hospital. So I don't know why a good person be accused of such crime, and I have been suffered a great deal, and I can't really be patient because I had been wrongly accused. I'm sorry if I be extreme, but I have been well

educated and I have never committed any wrongdoings, and I have never been a murder, and the real murderers -- I don't know, especially the guy who killed people, what is his name? The guy who kills everybody and then he was detained? I forget him. The guy who is under detention and who killed people.

[12.07.40]

I have nothing to do with Kaing Guek Eav, and so Kaing Guek Eav and Nuon Chea are the same people, because Nuon Chea order Kaing Guek Eav and Kaing Guek Eav received order from Nuon Chea. I have to tell the truth.

Having any legal background, but I would like to tell the truth, and I want justice to be done, and I don't want you to prosecute anyone but you have to make a decision based on your discretion and wisdom. So I, once again, would like to confirm that I am no murderer, and I think you already know my grandfather, my father, so we are from the well-bred family. My grandfather, grandfather Ouk, the school principal of Phnom Penh while my father was the school master in Battambang, so I would just like to tell you that our family is a well-bred one, and we have never committed any crimes. We tried our best to train students, and when the students were brought to Cambodia, then they were brought in a truck and then executed. So I think it is now for me to tell you the truth, before you never knew this.

[12.09.32]

So of course, even they are Cambodians, if they are very cruel people then they have to be prosecuted and investigated. Again, I don't know Kaing Guek Eav and I hate him, but I have nothing to challenge him as the leader during that regime. So that's all for me. Thank you very much Your Honours.

JUDGE LAHUIS:

Then the Pre-Trial Chamber announces that now the public hearing is finished, and that we will continue in a Closed Session. The Pre-Trial Chamber notes that about ten minutes of the defence replies are left, of the time which was granted, so the question is whether we continue now after ten minutes, because some things have to be organised that we can continue in camera, or that we remain the sessions after lunch.

The suggestion is to have a short break and then continue in ten minutes, because the defence lawyer is the only party to speak. Everybody's nodding so I assume everybody agrees. So the Court will continue in about ten minutes in a Closed Session, and that means that the public can leave because this is the final part of the session, and we will not continue in any public session anymore.

(Court recess from 1212H to 1231H)