



**PRE-TRIAL CHAMBER DENIES TWO APPEALS CHALLENGING THE
LEGALITY OF KHIEU SAMPHAN'S PROVISIONAL DETENTION**

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In a public session this afternoon, the Pre-Trial Chamber (PTC) summarized its 41-page decision denying two related appeals from Khieu Samphan. Consequently, he may be detained until November 19, 2009.

In brief, the PTC upheld the two orders on the basis that they were free from procedural defects, there are well-founded reasons to believe Khieu committed the crimes with which he is charged, detention is a necessary measure for his security and public order, and the co-investigating judges properly exercised their discretion.

Khieu, the Head of State of Democratic Kampuchea, was arrested on November 17, 2007 and has been detained since that time. Currently under investigation, he is charged with Crimes against Humanity and Grave Breaches of the Geneva Conventions of 1949.

Order Rejecting Request for Release Upheld

On October 28, 2008, the co-investigating judges issued an order rejecting a request for Khieu's release. His lawyers appealed this order mainly on the basis of procedural defects. They argued that due to long delays and the fact that some documents in the case file were not translated into French, the first language of his international counsel, the proceedings were unlawful and the detention was arbitrary. As a consequence of these procedural issues, they argued that they could not mount a proper defense. For instance, Khieu's international counsel declined to appear at a hearing because necessary documents were not available in French. The PTC determined that no procedural defects in the work of the co-investigating judges had been identified.

The PTC re-examined the necessity of detention as determined by the co-investigating judges. The co-investigating judges found that provisional detention was "a necessary measure...to prevent the exercise of pressure on witnesses and victims" on the basis that Khieu was quoted in a 2002 article as saying there would be "retaliation" if a UN court tried the Khmer Rouge leaders. The PTC said this article was insufficient evidence that he would interfere with witnesses.

However, the PTC did agree with the co-investigating judges that detention was “a necessary measure...to protect the security of the Charged Person and to preserve public order.” Regarding Khieu’s safety, the PTC reasoned that ECCC proceedings have led to a “resurfacing of anxieties amongst Victims who suffer from post-traumatic stress” and thus his release could “degenerate into violence directed against him.” Regarding public order, the PTC noted the widespread post-traumatic stress disorder among those who lived through the Khmer Rouge period and “the fragile context of Cambodian society today.”

Khieu’s lawyers had also argued his poor health was aggravated by detention. The PTC looked to the jurisprudence of the International Criminal Tribunal for the former Yugoslavia and determined release for health reasons would be proper only when there is evidence that a detainee’s health condition is “incompatible with detention.”

Order Extending Provisional Detention Upheld

On November 18, 2008, the co-investigating judges ordered an extension of Khieu’s provisional detention for another year.

His lawyers argued that the co-investigating judges’ decision on provisional detention should have been deferred until a pending appeal on a relevant translation order was decided. The PTC noted that appeals do not stay the proceedings and, therefore, found no procedural irregularity.

Under ECCC Internal Rule 63, the co-investigating judges only have the discretion to order provisional detention when “there is a well-founded reason to believe that the person may have committed the crimes.” The PTC reviewed the case file and was satisfied that there are indeed well-founded reasons. For example, there is evidence Khieu led training sessions where Communist Party of Kampuchea ideology was disseminated, gave speeches regarding the “smashing” of enemies, and attended a meeting regarding the execution of traitors. Further, the PTC noted that no additional exculpatory evidence has been added to case file since the order.

As in the decision above, the PTC also found that detention was a necessary measure to protect Khieu’s security and to preserve public order.