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ព្រះរាជាណាចក្រកម្ពុជា  
ជាតិ សាសនា ព្រះមហាក្សត្រ  
Kingdom of Cambodia  
Nation Religion King  
Royaume du Cambodge  
Nation Religion Roi

**អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា**

Extraordinary Chambers in the Courts of Cambodia  
Chambres extraordinaires au sein des tribunaux cambodgiens

**អង្គបុរេជំនុំជម្រះ**  
Pre-Trial Chamber  
Chambre Préliminaire

*In the name of the Cambodian people and the United Nations and pursuant to the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea.*

**Criminal Case File N° 002/19-09-2007-ECCC/OCIJ (PTC36)**

**Before:** Judge PRAK Kimsan, President  
Judge Rowan DOWNING  
Judge NEY Thol  
Judge Katinka LAHUIS  
Judge HUOT Vuthy

**Greffiers:** Proloeng CHHORN  
Entela JOSIFI

**Date:** 30 April 2010

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**PUBLIC REDACTED**  
**DECISION ON KHIEU SAMPHAN'S APPEAL AGAINST ORDER ON EXTENSION OF PROVISIONAL DETENTION**

**Co-Prosecutors**

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Andrew CAYLEY  
YET Chakriya  
William SMITH  
PICH Sambath  
Tarik ABDULHAK

**Charged Person**

KHIEU Samphan

<b>ឯកសារបានមកច្បាប់</b>
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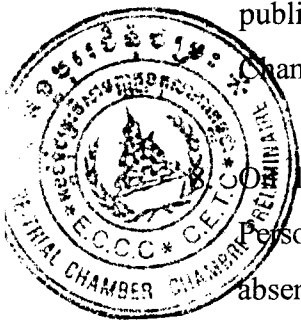
**Unrepresented Civil Parties**



1. **THE PRE-TRIAL CHAMBER** of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) is seized of the Appeal against the Order on Extension of Provisional Detention filed by the Co-Lawyers for the Charged Person Khieu Samphan on 17 December 2009 (the “Appeal”).<sup>1</sup>

### I. PROCEDURAL BACKGROUND

2. The Pre-Trial Chamber refers to, repeats and adopts the Report of Examination<sup>2</sup> dated 8 February 2010, which forms part of this Decision.
  3. On 18 November 2009, the Co-Investigating Judges issued their Order on Extension of Provisional Detention (the “Extension Order”) extending the provisional detention of Khieu Samphan, who has been detained since 19 November 2007.<sup>3</sup>
  4. On 23 November 2009, the Co-Lawyers for the Charged Person filed a Notice of Appeal and, on 17 December 2009, they filed their Appeal which was notified to the Parties on 28 December 2009.
  5. On 11 January 2010, the Co-Prosecutors submitted their Response to the Appeal (the “Co-Prosecutors’ Response”).<sup>4</sup>
  6. No Response was filed by the Civil Parties.
  7. On 20 January 2010, the President of the Pre-Trial Chamber issued an Order scheduling a public hearing on the Appeal for 12 February 2010.<sup>5</sup> Before the hearing, the Pre-Trial Chamber was given access to the Case File, which was updated.
- On 12 February 2010, the Pre-Trial Chamber held a public hearing where the Charged Person was represented by his National Co-Lawyer. His International Co-Lawyer was absent.



<sup>1</sup> Appeal against the Order on Extension of Provisional Detention, 17 December 2009, C26/9/1

<sup>2</sup> Report of Examination, 8 February 2010, C26/9/6.

<sup>3</sup> Order on Extension of Provisional Detention, 18 November 2009, C26/8.

<sup>4</sup> Co Prosecutors’ Response to Khieu Samphan’s Appeal against the Order Extending his Provisional Detention, 11 January 2010, C26/9/2 .

<sup>5</sup> Scheduling Order, 20 January 2010, C26/9/3.

## II. ADMISSIBILITY OF THE APPEAL

9. The Extension Order was issued on 18 November 2009 and notified to the Parties in French on the same day. The Co-Lawyers for the Charged Person filed a Notice of Appeal on 23 November 2009. The Appeal was filed on 17 December 2009 and therefore within the time provided for in Internal Rule 75(3) of the ECCC Internal Rules (the “Internal Rules”).

## III. APPLICABLE LAW

10. Reference is made to Internal Rule 63.

## IV. NATURE OF THE APPEAL

11. In the Appeal, the Co-Lawyers request that the Pre-Trial Chamber release the Charged Person from provisional detention.<sup>6</sup> They contend that the Co-Investigating Judges failed to provide reasons to justify extension of provisional detention.<sup>7</sup> They also submit that the Co-Investigating Judges failed to “address the Defence’s arguments concerning the systematic violation of the presumption of innocence and Mr KHIEU Samphan’s rights”, disregarding the Pre-Trial Chamber previous finding that “the conduct of the entire procedure’ be examined when considering whether the length of provisional detention is reasonable.”<sup>8</sup>
12. In their Response to the Appeal, the Co-Prosecutors request the Pre-Trial Chamber to dismiss the Appeal on the grounds that: 1) the Extension Order is sufficiently and adequately reasoned, 2) the Appellant has failed to demonstrate material change in circumstances since he was originally detained, 3) the length of detention is not unreasonable and the Co-Investigating Judges have conducted the investigation with due diligence, respecting the Appellant’s right to the presumption of innocence, 4) the Appellant’s contention of systematic bias by the Co-Investigating Judges has already been found invalid by the Pre Trial Chamber, and 5) the Appellant’s persistent contention that he is effectively denied access to the case file was already settled when the Pre Trial Chamber upheld the Order on the Translation Rights and Obligations of the Parties.<sup>9</sup>

<sup>6</sup> Appeal, paras 4, 34.

<sup>7</sup> Appeal, paras. 3, 7.

<sup>8</sup> Appeal, para. 31 (emphasis in original).

<sup>9</sup> Co-Prosecutors’ Response, para. 3, subparas a-e.



13. The Pre-Trial Chamber, in the light of its rulings related to detention matters<sup>10</sup> and the submissions of the Parties as set out in the Report of Examination, will review the Extension Order by an examination of:

- a. Well founded reasons to believe that the Charged Person may have committed the crimes specified in the Introductory Submission (Internal Rule 63(3)(a));
- b. Grounds that would make detention a necessary measure (Internal Rule 63(3)(b));
- c. Due diligence in the conduct of investigation;
- d. Request for release on bail.

## V. CONSIDERATIONS

### A. 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)):

14. In the Extension Order, the Co-Investigating Judges noted that in their Order of 28 October 2008 refusing the request for release<sup>11</sup> and 18 November 2008 extending provisional detention of the Charged Person<sup>12</sup> and the Pre-Trial Chamber Decision of 3 July 2009 on the Appeals against both Orders,<sup>13</sup> well founded reasons to believe that Khieu Samphan may have committed the crimes with which he is charged were found.<sup>14</sup>

15. The Co-Investigating Judges further note:

“Since [the hearing of the Appeal dated 27 February 2009], the Co-Investigating Judges have continued to investigate the allegations contained in the Introductory Submission and to place evidence on the Case File. More than 30 new witness



<sup>10</sup> Decision on Appeal of Charged Person Nuon Chea against Co-Investigating Judges' Order for Extension of Provisional Detention, 18 May 2009, C9/4/7; Decision on Appeal of Charged Person Ieng Thirith against Co-Investigating Judges' Order for Extension of Provisional Detention, 18 May 2009, C80/5/18; Decision on Appeal of Ieng Sary against OCIJ's Order on Extension of Provisional Detention, 26 June 2009, C22/5/38 and Decision on Khieu Samphan's Appeals against Order Refusing Request for Release and Extension of Provisional Detention Order, 3 July 2009, C26/5/26.

<sup>11</sup> Order Refusing Request for Release, 28 October 2008, C40/4.

<sup>12</sup> Order on Extension of Provisional Detention, 18 November 2008, C26/4.

<sup>13</sup> Decision on Khieu Samphan's Appeals against Order Refusing Request for Release and Extension of Provisional Detention Order, 3 July 2009, C26/5/26 (the "Decision on Khieu Samphan's Two Appeals").

<sup>14</sup> Extension Order, paras 15-16.

statements have been added which assist in clarifying whether the Charged Person played any role in connection with the alleged crimes . . .”<sup>15</sup>

16. The Co-Investigating Judges, in the same paragraph, continue to list the crimes and cite the evidence tending to prove the Charged Person’s alleged involvement in those crimes.<sup>16</sup>

17. The Co-Investigating Judges conclude that:

“after a fresh review of the evidence on the case file . . . at this stage of the judicial investigation, there are sufficient additional facts or information which would satisfy an objective observer that there is well founded reason to believe that Khieu Samphan, in one or more of his abovementioned roles and functions, either planned, instigated, ordered, failed to prevent or otherwise aided and abetted in the commission of crimes specified in the Introductory Submission and, thus, that the condition set out in Rule 63(3)(a) . . . is still met, notwithstanding the passage of time since he was provisionally detained.”<sup>17</sup>

18. The Co-Lawyers submit in their Appeal that the Co-Investigating Judges violated the principle of the presumption of innocence by extending provisional detention mainly because they “have not found any change in the circumstances” since the previous extension appeal was decided.<sup>18</sup> They assert that the burden to affirmatively prove the factors relevant to provisional detention rests squarely upon the Co-Investigating Judges under Rule 63(7).<sup>19</sup> The Co-Lawyers further submit that the Co-Investigating Judges identified some exculpatory evidence on the case file but failed to properly evaluate it under international jurisprudence and the standards set by Rule 63(3)(a) and the Pre-Trial Chamber.<sup>20</sup>

19. In their Response to the Appeal, the Co-Prosecutors submit that the Defence improperly places the burden of proof upon the Co-Investigating Judges. They submit that the Co-Investigating Judges must only “re-assess whether the criteria for continued detention remain satisfied,”<sup>21</sup> and that “the defence bears the onus of showing that circumstances have changed [and that the grounds in sub-rule 63.3 are no longer satisfied] since the issuance of

<sup>15</sup> Extension Order, para 18 (internal citations omitted).

<sup>16</sup> Extension Order, para. 18.

<sup>17</sup> Extension Order, para. 21.

<sup>18</sup> Appeal, paras 7-8 .

<sup>19</sup> Appeal, para. 7.

<sup>20</sup> Appeal, paras 10-13.

<sup>21</sup> Co-Prosecutors’ Response, para. 10.



the last detention order.”<sup>22</sup> The Co-Prosecutors refute the Defence submission that the exculpatory evidence was ignored by the Co-Investigating Judges, instead submitting that the Co-Investigating Judges expressly identified and properly evaluated all evidence, exculpatory and inculpatory, in reasoning their Order to extend provisional detention.<sup>23</sup> The Co-Prosecutors also submit that the Pre-Trial Chamber should consider all evidence filed since the prior Appeal, including the notification of new charges to the Charged Person.<sup>24</sup>

20. In relation to the Co-Prosecutors’ submission on the additional charges, the Pre-Trial Chamber observes that the Order on Extension of Provisional Detention was issued on 18 November 2009 and the Co-Investigating Judges issued an Order to clarify the charges against the Charged Person on 20 November 2009.<sup>25</sup>

21. At the initial appearance, the Charged Person was notified that he was placed under judicial investigation for “Crimes Against Humanity [...] and Grave Breaches of the Geneva Conventions [. . . ] offences defined and punishable under Articles 5, 6, 29 (new) and 39 (new) of the Law on the Establishment of the Extraordinary Chambers”.<sup>26</sup> On 18 December 2009, during an interview of the Charged Person, the Co-Investigating Judges confirmed those charges and also notified the Charged Person and his Co-Lawyers of additional charges for which he may be indicted, including “crimes of genocide and national crimes.”<sup>27</sup>

22. In the interests of justice, the Pre-Trial Chamber points to its previous decision on the Appeal against the Closing Order in Case 001 (“Decision on Appeal against the Closing Order”).<sup>28</sup> The Pre-Trial Chamber found that only where the factual elements are exactly the same one can assert that other crimes are included in the charge and where the elements differ, the other crimes are not included.<sup>29</sup> In the same decision, the Pre-Trial Chamber found that, for instance, the national crimes contain different elements from the international crimes.<sup>30</sup> The Pre-Trial Chamber also found that according to international standards, the Charged Person must be informed of any and all separate charges against him/her as soon as



<sup>22</sup> Transcript of Hearing of 12 February 2010 on the Appeal, C26/9, p. 28 (citing Decision on Khieu Samphan’s Two Appeals).

<sup>23</sup> Co-Prosecutors’ Response, paras 11-13.

<sup>24</sup> Co-Prosecutors’ Response, para. 8.

<sup>25</sup> Order Concerning the Co-Prosecutors’ Request for Clarification of Charges, 20 November 2009, D198/1. This Order was received and filed by Court Management Services of the ECCC on 11 December 2009.

<sup>26</sup> Written Record of Initial Appearance, 12 November 2007, D42, p. 2.

<sup>27</sup> Written Record of Interview with the Charged Person, 18 December 2009, D285, paras 4 and 9-13.

<sup>28</sup> Decision on Appeal against the Closing Order Indicting KAING Guek Eav Alias “Duch”, 5 December 2008, D99/3/42.

<sup>29</sup> Decision on Appeal against the Closing Order, paras 85 & 88.

<sup>30</sup> Decision on Appeal against the Closing Order, paras 60-88.

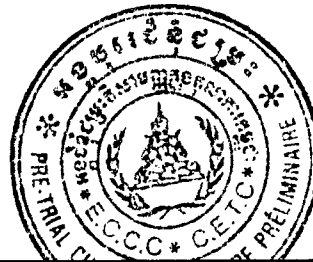
they are justified “to such an extent that he/she is able to exercise the rights accorded to him/her during the investigation, including the right to request investigative action pursuant to Internal Rule 58(6)”.<sup>31</sup>

23. The Pre-Trial Chamber further observes that in the Appeal, the Co-Lawyers of the Charged Person contest the existence of well-founded reasons to believe that the Charged Person may bear responsibility for the crimes under investigation, alleging that the Co-Investigating Judges failed to give proper weight to exculpatory evidence on the case file. In this respect, the Pre-Trial Chamber notes that in the Extension Order the Co-Investigating Judges have conducted a fresh review of the evidence on the Case File including both inculpatory and exculpatory evidence,<sup>32</sup> considered the relevant material contained in the Case File and concluded that the well founded reasons still exist.
24. The Pre-Trial Chamber therefore finds that the Co-Investigating Judges exercised their discretion correctly in concluding that the “well founded reasons” still exist.
25. The Pre-Trial Chamber, having looked at the case file afresh, found that there are recent statements and documents placed in the case file which constitute evidence of an inculpatory<sup>33</sup> nature. After an examination of the totality of the evidence, the Pre-Trial Chamber did not find that the new exculpatory evidence would undermine, at this time, the conclusion that well-founded reasons exist.
26. The Pre-Trial Chamber finds that the “well founded reasons” that would satisfy an objective observer that the Charged Person may have been responsible for, or committed, the alleged crimes specified in the Introductory Submission not only exist, as ascertained by the Co-Investigating Judges in their Extension Order, but are, at present, also supported by additional evidence.

<sup>31</sup> Decision on Appeal against the Closing Order, para. 138.

<sup>32</sup> Extension Order, paras. 18-21.

<sup>33</sup>





27. Therefore, the Pre-Trial Chamber finds that the first condition for ordering provisional detention, mentioned in Internal Rule 63(3)(a), is still met.

**B. Consideration of the grounds making provisional detention a necessary measure (Internal Rule 63(3)(b)):**

28. In the Extension Order, the Co-Investigating Judges referred to the Pre-Trial Chamber's findings in its Decision on Khieu Samphan's Appeals against Order Refusing Request for Release and Extension of Provisional Detention Order<sup>34</sup> and considered whether the conditions under Internal Rule 63(3)(b) are still satisfied. The Co-Investigating Judges found that because there has been no change in the circumstances detention is still a necessary measure to protect the security of the Charged Person and to preserve public order.<sup>35</sup>

29. The Pre-Trial Chamber finds that in applying this standard the Co-Investigating Judges acted correctly.

Necessity to prevent the Charged Person from exerting pressure on witnesses and destroying evidence if released (Internal Rule 63(3)(b)(i) and (ii)), to ensure his presence during the proceedings (Internal Rule 63(3)(b)(iii)):

30. The Pre-Trial Chamber observes that the Co-Lawyers apparently do not agree<sup>36</sup> with the reasoning of the Pre-Trial Chamber in respect of the consideration of new risks pertaining to Internal Rules 63(3)(b)(i)-(iii) in its Decision on Extension of Provisional Detention of 3 July 2009.<sup>37</sup> The Pre-Trial Chamber finds that previous findings are not subject to further discussion unless the requirements for reconsideration of decisions are met.<sup>38</sup> The Pre-Trial Chamber will therefore not discuss the arguments raised.

31. The Pre-Trial Chamber further notes that in the appealed Order the Co-Investigating Judges did not consider that detention is still a necessary measure to prevent the Charged Person

<sup>34</sup> Decision on Khieu Samphan's Two Appeals.

<sup>35</sup> Extension Order, paras 22-28.

<sup>36</sup> Appeal, paras 14-15.

<sup>37</sup> Decision on Khieu Samphan's Two Appeals, paras 40-49.

<sup>38</sup> Decision on Application for Reconsideration of Civil Party's Right to Address Pre-Trial Chamber in Person, C22/I/68, 28 August 2008, para. 25.



from exerting pressure on witnesses and destroying evidence if released and/or to ensure his presence during the proceedings.

Necessity to protect the security of the Charged Person (Internal Rule 63(3)(b)(iv)):

32. The Co-Lawyers argue in their Appeal that the Co-Investigating Judges failed to provide evidence of any concrete present threats to the Charged Person's safety if he were released.<sup>39</sup> They submit that the Co-Investigating Judges improperly rely upon a series of past incidents and threats directed at other Charged Persons to in an attempt to show the threat to the Charged Person's safety.<sup>40</sup> They submit that the Charged Person "personally has no concerns about his security,"<sup>41</sup> and emphasize the long period of time since the 1991 attack and his living in society in relative peace for 10 years without any other incident.<sup>42</sup>
33. The Co-Prosecutors submit that the Pre-Trial Chamber's findings in the previous appeal as to the Charged Person's security remain applicable, as relevant circumstances have not changed in a way to favour release and point out that the "[a]ppellant has provided no evidence to show that the [Co-Investigating Judges'] finding on this issue was erroneous".<sup>43</sup> In fact, they submit that new evidence of such threats to the Charged Person's security have recently come to light, reflected in the testimony from Civil Parties in Case 001.<sup>44</sup>
34. The Pre-Trial Chamber observes that in its 3 July 2009 Decision, it found that the Charged Person's security could not be guaranteed were he released. A number of incidents over the past 20 years evidenced the real and credible threats to the security of the Charged Person.<sup>45</sup> Furthermore, as alluded to by the Co-Prosecutors, the final stages of the proceedings in Case 001 and the imminent rendering of the Judgment create the potential for additional severe reactions against the Charged Persons. Besides the passage of time, which was dismissed by the Pre-Trial Chamber as a mitigating factor in the prior Appeal, it is noted that the Defence did not provide evidence in their written or oral submissions to support their contention that the Charged Person would be secure were he released.

<sup>39</sup> Appeal, paras 17-19.

<sup>40</sup> Objections to the Extension of the Provisional Detention of Mr Khieu Samphan, 20 October 2009, C26/7 (the "Objections"), paras 13-15.

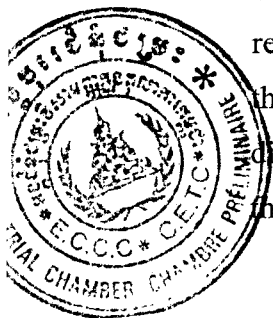
<sup>41</sup> Appeal, para. 17 and Objections, para. 15.

<sup>42</sup> Transcript of Hearing of 12 February 2010 on the Appeal, C26/9, p.22.

<sup>43</sup> Co-Prosecutors' Response, para. 14.

<sup>44</sup> Co-Prosecutors' Response, paras 15-16.

<sup>45</sup> Decision on Khieu Samphan's Two Appeals, paras 53-58.



35. The Pre-Trial Chamber finds that the Co-Investigating Judges were correct in concluding that provisional detention is still necessary to protect the security of the Charged Person, under Internal Rule 63(3)(b)(iv).

Necessity to ensure Public Order (Internal Rule 63(3)(b)(v)):

36. The Co-Lawyers submit that the Co-Investigating Judges failed to give concrete reasons for their determination that provisional detention of the Charged Person remained a necessary measure to ensure public order, arguing that generalized concerns about the psychological effects of the ECCC proceedings on victims cannot be imposed upon the Charged Person.<sup>46</sup> The Co-Lawyers point to the provisional release of accused awaiting trial at the ICTY and the lack of evidence proving the presence of nascent trauma among the Cambodian population as reasons to release the Charged Person.<sup>47</sup>

37. At the hearing, the Co-Prosecutors rejected the comparison made by the Defence to the provisional release of accused at the ICTY, citing an example where an accused was released, but not to the country where the alleged crimes were committed.<sup>48</sup> The Co-Prosecutors also submit that the Pre-Trial Chamber previously found a risk to public order in its 3 July 2009 Decision, and “the Appellant has not provided any new evidence that may convince the PTC to reverse the finding.”<sup>49</sup> They also submit that expert psychological testimony in Case 001 in August 2009 provides new evidence of the trauma and psychological impact of the proceedings on the survivors and the Cambodian population as a whole, including expressions of denial of responsibility from the Charged Persons.<sup>50</sup> Considering these factors in light of evidence of the general security situation in Cambodia, the Co-Prosecutors submit that provisional detention is necessary to preserve public order.<sup>51</sup>

38. The Pre-Trial Chamber observes that the Co-Lawyers did not put forward any supporting documentation for their arguments in relation to the stability and/or psychological health of the Cambodian population in the Appeal or during the hearing of 15 February 2010. The facts presented in the submissions of the Co-Prosecutors support the conclusions of the Co-Investigating Judges that the Charged Person’s release would actually disturb public order.



<sup>46</sup> Appeal, paras 20-22.

<sup>47</sup> Appeal, paras 22-23.

<sup>48</sup> Transcript of Hearing of 12 February 2010 on the Appeal, C26/9, p. 47.

<sup>49</sup> Co-Prosecutors’ Response, para. 18.

<sup>50</sup> Co-Prosecutors’ Response, para. 19; Transcript of Hearing of 12 February 2010 on the Appeal, C26/9, pp. 47-49.

<sup>51</sup> Transcript of Hearing of 12 February 2010 on the Appeal, C26/9, pp. 49-50.

39. The Pre-Trial Chamber finds that the Co-Investigating Judges were correct in concluding that there is still a need to keep the Charged Person in detention in order to preserve public order.

### C. Due Diligence by the Co-Investigating Judges:

40. In the Extension Order, the Co-Investigating Judges acknowledged that “the passage of time since a Charged Person was provisionally detained is relevant to determining the legitimacy of his or her continued provisional detention.”<sup>52</sup> They indicate that the scope of the judicial investigation required by the Introductory Submission and the gravity of the crimes alleged therein with regard to the Charged Person require large-scale investigative actions.<sup>53</sup> They further cite in the Extension Order the investigative actions undertaken since 27 February 2009, which include written records of interviews of witnesses and Civil Parties and other documents added to the Case File either at the request of Parties or *proprio motu*.<sup>54</sup>

41. The Co-Lawyers argue that the Co-Investigating Judges have not acted with diligence in their investigation, only placing 30 written records of interviews on the case file since 27 February 2009.<sup>55</sup> Further, they submit that the Co-Investigating Judges failed to “address the Defence’s arguments concerning the systematic violation of the presumption of innocence and Mr Khieu Samphan’s rights . . .”<sup>56</sup> According to the Co-Lawyers this evidences the “patently systematic bias” to which the Charged Person is subjected, not the due diligence of the Co-Investigating Judges in the conduct of their investigation.<sup>57</sup>

42. The Co-Prosecutors respond that the Co-Investigating Judges have in fact made significant progress in the investigation, such that they notified the Charged Person of additional crimes he may be charged with.<sup>58</sup> They also submit that, considering the gravity of the crimes charged and the complexity of the case, the length of detention is reasonable, and the Defence cannot improperly raise pending or already-determined matters as evidence of lack of due diligence and grounds for provisional release.<sup>59</sup>

<sup>52</sup> Extension Order, para. 29.

<sup>53</sup> Extension Order, para. 30.

<sup>54</sup> The Extension Order, para. 31.

<sup>55</sup> Appeal, para. 27.

<sup>56</sup> Appeal, para. 31.

<sup>57</sup> Appeal, paras 32-33.

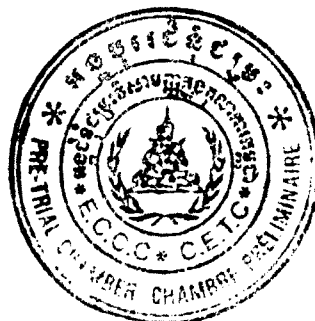
<sup>58</sup> Co-Prosecutors’ Response, para. 20.

<sup>59</sup> Co-Prosecutors’ Response, paras 21-23.



43. The Pre-Trial Chamber refers to, repeats and adopts its general findings and observations in the previous Decision on the Charged Person's Appeals against the Order refusing Request for release and Order on Extension of Provisional Detention regarding the reasonableness of the length of detention.<sup>60</sup>
44. Pre-Trial Chamber further finds that the reasonableness of the length of detention and the diligence of the Co-Investigating Judges in conducting their investigation are factors that shall be taken into consideration when exercising the discretionary power to extend provisional detention.
45. In relation to the Co-Lawyers observation that only thirty written records of interviews were placed on the case file since 27 February 2009, the Pre-Trial Chamber observes that they have misunderstood what the Co-Investigating Judges are saying in the Extension Order. Once paragraphs 31 and 18 of the Extension Order are read together, it is clear that a much larger number of witness statements and other pieces of evidence have been added in the case file since 27 February 2009 and that from this whole body of fresh evidence the Co-Investigated Judges consider as inculpatory only thirty witness statements.
46. The Pre-Trial Chamber finds that there is sufficient additional evidence, including written records of witness, civil party interviews, books, internal documents of the Communist Party of Kampuchea and telegrams received by the Charged Person, and compilations of contemporary news dispatches, on the case file to demonstrate that the investigations have progressed expeditiously during the period under consideration. The Co-Investigating Judges have provided sufficient reasoning in the Extension Order to support this finding.
47. The Pre-Trial Chamber finds that the gravity and nature of the crimes with which the Charged Person is charged require large-scale investigative actions which have been undertaken, and that in view of the scope and current stage of the investigations, the Co-Investigating Judges used their discretion to order the extension of the provisional detention reasonably.

#### **D. Request for Release on Bail:**



<sup>60</sup> Decision on Khieu Samphan's Two Appeals, paras 68-75.

48. In the Appeal the Co-Lawyers request the Pre-Trial Chamber to order the release of the Charged Person,<sup>61</sup> and in the oral hearing they specify that terms of such release could be created to ensure the Charged Person's safety and confirm his whereabouts at all times.<sup>62</sup>

49. The Pre-Trial Chamber finds that the request for release is outweighed by the necessity for the Charged Person's detention.

**THEREFORE, THE PRE-TRIAL CHAMBER HEREBY UNANIMOUSLY DECIDES:**

1. The Appeal is admissible in its form;
2. The Extension Order of the Co-Investigating Judges is affirmed with the reasons expressed in paragraph 34 of this decision, in part, being added to the reasons of the Co-Investigating Judges;
3. The request for release is rejected;
4. The Appeal is dismissed.

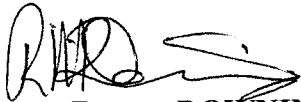


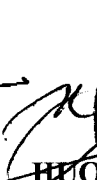

In accordance with Internal Rule 77(13), this Decision is not subject to appeal.



**GIVEN IN PUBLIC BY** the Pre-Trial Chamber, in the absence of the Charged Person and his Co-Lawyer.

**Phnom Penh, 30 April 2010**

**Pre-Trial Chamber**

**President**






  
**Rowan DOWNING**   **NEY Thol**   **Katinka LAHUIS**   **HUON Vuthy**   **PRAK Kimsan**



  
**Entela JOSFI**   **Preloeng CHHORN**

<sup>61</sup> Appeal, para. 34.

<sup>62</sup> Transcript of Hearing of 12 February 2010 on the Appeal, C26/9, p. 19.