

BEFORE THE TRIAL CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

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CO-PROSECUTORS' COMMENT ON THE MILITARY COURT FILE

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I. INTRODUCTION

1. On 1 April 2009, the Defence orally requested the release of the Accused.¹ They supplemented this oral request with a written submission on 10 April 2009.² Upon its own initiative, the Trial Chamber issued a Decision on 24 April 2009 in which it informed the parties that it had requested a copy of the Accused's case file from the Military Court (hereafter the "Military Court case file") and that the Military Court case file would be translated into English and French.³ At the same time, the Chamber informed the parties that "following receipt of the translations of the Military Court file, the parties will have 10 days to comment."⁴
2. On 28 May 2009, the Trial Chamber orally announced during the trial proceedings that, even though not all parts of the Military Court case file had been translated, the Trial Chamber was satisfied that those parts which had not yet been translated were not critical. Accordingly, the Trial Chamber informed the parties that they would have until 4pm on Monday, 1 June 2009 to inform the Chamber of any comments they had on the Military Court case file.

II. CO-PROSECUTORS' COMMENT

3. The Co-Prosecutors believe that the content of the Military Court case file is irrelevant to resolving the Defence's request for immediate release of the Accused. Consequently, the Co-Prosecutors have no comment on the content of the Military Court case file.
4. In their Order of Provisional Detention in relation to the Accused in July 2007, the Co-Investigating Judges concluded that ECCC had not participated in the detention of the Accused by the Military Court, had not acted in concert with the Military Court and had, in

¹ See Transcript of Proceedings, dated 1 April 2009, Case File No. E1/7.1, ERN 00302241-00302320 (KHM), 00302027-00302128 (ENG) at pages 20-32.

² See Supplemental Submissions of the Defence in Support of its Requests Concerning Sentencing, dated 10 April 2009, Case File No. E39/3, ERN 00315430-00315434 (KHM), 00323787-00323790 (ENG).

³ See Decision to Extend Time Limit to Decide on Request for Release, dated 24 April 2009, Case File No. E39/4, ERN 00317553-00317557 (KHM), 00317550-00317552 (ENG).

⁴ *Id.*

fact, not even existed until 22 June 2007.⁵ Accordingly, the Co-Investigating Judges concluded that they did not have jurisdiction to adjudicate the legality of the Accused's detention by the Military Court and that the Accused's detention by the Military Court did not warrant his release by the ECCC.⁶

5. The Accused appealed the Order of Provisional Detention. On appeal, the Co-Prosecutors acknowledged that the Accused's detention by the Military Court might "result in a reduction in sentence in the event of a conviction."⁷ However, the Co-Prosecutors stressed that the Accused was not entitled to immediate release because the ECCC is completely independent from the Military Court and the ECCC did not act in concert with the Military Court to detain the Accused. Therefore, the actions of the Military Court could not be imputed to the ECCC.⁸
6. In its Decision on Appeal against Provisional Detention Order of KAING Guek Eav, the Pre-Trial Chamber agreed with the reasoning of the Co-Investigating Judges and the Co-Prosecutors. The Pre-Trial Chamber concluded that the ECCC is independent of the Military Court and that "[f]or all practical and legal purposes, the ECCC is, and operates as, an independent entity within the Cambodian court structure and therefore has no jurisdiction to judge the activities of other bodies."⁹ The Pre-Trial Chamber also concluded that the Military Court under no circumstances could be considered to have been working in connection with or under the instructions of the ECCC prior to the date when the ECCC's Internal Rules were adopted.¹⁰ Accordingly, the Accused's appeal was dismissed.
7. These decisions demonstrate that the ECCC is independent of the Military Court and that the actions of the Military Court cannot be imputed to the ECCC. In particular, actions taken years before the ECCC existed cannot be imputed to the ECCC, no matter how they were

⁵ Order of Provisional Detention, dated 31 July 2007, Case File No. C3, ERN 00145478-00145881 (KHM), 00145458-00145468 (ENG) at para. 20.

⁶ *Id.*

⁷ Co-Prosecutors' Response to the Defence Appeal Against Co-Investigating Judges' Order of Provisional Detention, dated 3 October 2007, Case File No. C5/8, ERN 00154557-00154603 (KHM), 00155243-00155270 (ENG), at para. 92.

⁸ *Id.* at paras. 77-83.

⁹ Decision on Appeal Against Provision Detention Order of KAING Guek Eav alias DUCH, dated 3 December 2007, Case File No. C5/45, ERN 00154259-00154283 (KHM), 00154284-00154302 (ENG), at paras. 16-22.

¹⁰ *Id.* at para. 22.

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characterized by the Military Court. Moreover, the ECCC has no jurisdiction to adjudicate the legality of the proceedings before the Military Court. Accordingly, the Military Court case file is irrelevant.

8. As the Co-Prosecutors noted during the prior appeal of this issue to the Pre-Trial Chamber, the Accused may be entitled to a “reduction in sentence in the event of a conviction” that takes into account the length of his pre-trial detention. In this context, the Co-Prosecutors acknowledge that the Accused has been in detention since 10 May 1999, a period of more than 10 years. However, the content of the Military Court case file is irrelevant to the Accused’s request for immediate release.

III. CONCLUSION

9. The Co-Prosecutors therefore have no comment on the content of the Military Court case file.

Respectfully submitted,



CHEA Leang
Co-Prosecutor



Robert PETIT
Co-Prosecutor

Signed in Phnom Penh, Kingdom of Cambodia on this 1st day of June 2009.