

**BEFORE THE SUPREME COURT CHAMBER OF THE  
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

**FILING DETAILS**

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-TC/SC(02)

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**DEFENCE REPLY TO CO-PROSECUTORS' RESPONSE TO IENG THIRITH'S APPEAL  
AGAINST THE TRIAL CHAMBER'S 'DECISION ON THE URGENT APPLICATION FOR  
IMMEDIATE RELEASE OF NUON CHEA, KHIEU SAMPHAN AND IENG THIRITH'**

**Defence for Ieng Thirith:**

PHAT Pouy Seang  
Diana ELLIS, QC

**Supreme Court Chamber Judges:**

KONG Srim, President  
Motoo NOGUCHI  
Agnieszka KLONOWIECKA-MILART  
Chandra Nihal JAYASINGHE  
SOM Sereyvuth  
SIN Rith  
YA Narin  
MONG Monichariya  
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PICH Ang  
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**Co-Prosecutors:**

CHEA Leang  
Andrew CAYLEY

## I INTRODUCTION

1. On 16 February 2011, the Trial Chamber issued its 'Decision on the Urgent Applications for Immediate Release of Nuon Chea, Khieu Samphan and Ieng Thirith' (**Impugned Decision**).<sup>1</sup> On 3 March 2011, the defence for Madame Ieng Thirith (**Accused**) filed an appeal against the Impugned Decision (**Defence Appeal**),<sup>2</sup> to which the Co-Prosecutors responded on 21 March 2011 (**Response**).<sup>3</sup> On 31 March 2011, the defence was informed by the Greffier of the Supreme Court Chamber that the Chamber does not intend to plan an oral hearing. The defence instead files its Reply herewith.

## II SUBMISSION IN REPLY

2. The Response alleges that 'the Defence Appeal should be rejected in its entirety as the Accused has failed to demonstrate that the Trial Chamber discernibly erred in the exercise of its discretion [...]'.<sup>4</sup> The defence submits that Internal Rules 104 and 105 specify that the Supreme Court Chamber's jurisdiction over immediate appeals can be based on errors of law, discernible errors in the exercise of the Chamber's discretion and errors of fact. The Defence Appeal was based on errors of law and an error of fact, and in accordance with Internal Rule 105 the defence is not required to show a discernible error in the exercise of the Chamber's discretion, as alleged by the Response. Since the Response does not address the substance of the appeal grounds raised by the defence, it must be set aside.

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<sup>1</sup> Decision on the Urgent Applications for Immediate Release of Nuon Chea, Khieu Samphan and Ieng Thirith, 16 February 2011, Document No. E50.

<sup>2</sup> Appeal against Trial Chamber's 'Decision on the Urgent Applications for Immediate Release of Nuon Chea, Khieu Samphan and Ieng Thirith' filed on behalf of the Appellant Madame Ieng Thirith, 3 March 2011, Document No. E50/2/1/1.


<sup>3</sup> Co-Prosecutors' Response to Ieng Thirith's Appeal against the Trial Chamber's 'Decision on the Urgent Applications for Immediate Release of Nuon Chea, Khieu Samphan and Ieng Thirith', 21 March 2011, Document No. E50/2/1/1/1.

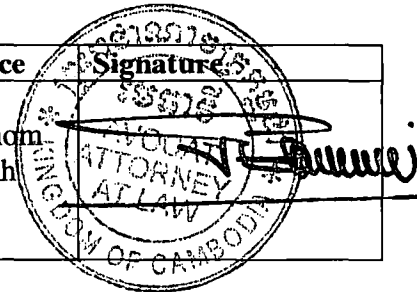
<sup>4</sup> Response, para. 3.

3. The defence submits that most of the arguments raised in the Response have been addressed sufficiently in the Defence Appeal. However, there is one point that the Co-Prosecutors raise at various times, and that concerns the allegation that '[t]he Accused has [...] failed to demonstrate that the error in the Trial Chamber's exercise of its discretion has resulted in prejudice to her'.<sup>5</sup>
4. The defence submits that illegal detention causes prejudice *per se*.
5. Article 9(5) of the International Covenant on Civil and Political Rights (ICCPR) provides that '[a]nyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation'. Such right is automatic, the prejudice is presumed. Stefan Trechsel in his commentary on the European Convention on Human Rights (ECHR) and ICCPR argues indeed, in interpreting Article 5(5) of the ECHR that is similar to Article 9(5) of the ICCPR, that this section 'must be read as presuming *de iure* that unlawful detention always generates damage, even if it is not of a pecuniary nature'.<sup>6</sup>

### III CONCLUSION

6. For these reasons, the defence submits prejudice has been demonstrated, and maintains its arguments and requests put forward in the Defence Appeal.

Party	Date	Name Lawyers	Place	Signature
Co-Lawyers for Ieng Thirith	5 April 2011	PHAT Pou Seang Diana ELLIS, QC	Phnom Penh	



<sup>5</sup> Response, para. 3; see also paragraph 11 thereof.

<sup>6</sup> Stefan Trechsel, *Human Rights in Criminal Proceedings* (2005), p. 500.