

EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

PRE-TRIAL CHAMBER

CASE NO. 002/19-09-2007-ECCC/OCIJ (PTC 36)

KHIEU SAMPHAN

FRIDAY, 12 FEBRUARY 2010

0902H

APPEAL HEARING

Before the Judges:

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

For the Pre-Trial Chamber:

CHHORN Proleoeung
Entela JOSIFI
SAR Chanrath

For the Office of the Co-Prosecutors:

VENG Huot
Tarik ABDULHAK

For the Charged Person, KHIEU SAMPHAN:

SA Sovan

For the Civil Parties:

NY Chandy
David BLACKMAN
PICH Ang
KIM Mengkhy
HONG Kimsoun
LOR Chunthy
SIN Soworn
CHET Vannly

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KHIEU SAMPHAN

12/02/2010

List of Speakers:

Language used unless specified otherwise in the transcript

1

Speaker	Language
MR. ABDULHAK	English
MR. BLACKMAN	English
MR. CHHORN PROLEOEUNG	Khmer
JUDGE DOWNING	English
JUDGE HUOT VUTHY	Khmer
JUDGE LAHUIS	French
JUDGE NEY THOL	Khmer
MR. NY CHANDY	Khmer
MR. SA SOVAN	Khmer
THE CHARGED PERSON	Khmer
THE PRESIDENT (PRAK KIMSAN, Presiding)	Khmer
MR. VENG HUOT	Khmer

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1 P R O C E E D I N G S

2 (Judges enter courtroom)

3 [09.02.25]

4 MR. PRESIDENT:

5 In the name of the Cambodian people and the United Nations, today
6 the Pre-Trial Chamber of the Extraordinary Chambers in the Courts
7 of Cambodia declares open the hearing of the Criminal Case File
8 Number 002/19-09-2007-ECCC/OCIJ (PTC36) dated 18th of November
9 2009 in which the charged person, Khieu Samphan, alias Hem,
10 Cambodian nationality, born on the 27th of July 1931 in Rum Chek
11 Commune, Rom Duol District, Svay Rieng Province, Cambodia;
12 pre-arrest address, Kon Khlong village, Otavao Quarter, Pailin
13 District, Pailin Town, Cambodia; father's name, Khieu Long,
14 deceased; mother's name Por Kong, deceased; wife's name So
15 Socheat, with four children, is charged with Crimes Against
16 Humanity and Grave Breaches of the Geneva Conventions of the 12th
17 of August 1949, being crimes set out and punishable under
18 Articles 5, 6, 29 new and 39 new of the Law on the Establishment
19 of the Extraordinary Chambers in the Courts of Cambodia dated
20 27th of October 2004.
21 Defence co-lawyers include Mr. Sa Sovan and Mr. Jacques Verges.
22 Lawyers for the civil parties include Mr. Hong Kimsuon, Mr. Lor
23 Chunthy, Mr. Ny Chandy, Mr. Kong Pisey, Mr. Yong Phanith, Ms. Sin
24 Soworn, Ms. Chet Vannly, Mr. Pich Ang, Ms. Silke Studzinsky, Mr.
25 Mahdev Mohan, Mr. David Blackman, Mr. Kim Mengkhy, Ms. Moch

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1 Sovannary, Ms. Isabelle Durand, Ms. Elizabeth Rabesandratana, Mr.
2 Philippe Cannone, Ms. Martine Jacquin, Ms. Annie Delahaie, Ms.
3 Fabienne Trusses-Naprous.

4 Are all the participants present at the hearing?

5 THE GREFFIER:

6 Mr. President, Mr. Jacques Verges, the co-counsel for the charged
7 person, is absent. The civil parties' lawyers are present, but
8 only seven of the 19 civil party lawyers are present.

9 [09.07.14]

10 MR. PRESIDENT:

11 Present at today's hearing are Mr. Prak Kimsan, President; Mr.
12 Rowan Downing, Judge; Mr. Ney Thol, Judge; Ms. Katinka Lahuis,
13 Judge; Mr. Huot Vuthy, Judge; Mr. Pen Pichsaly, Reserve Judge.
14 The greffiers include Mr. Chhorn Proloeung, Ms. Entela Josifi.
15 Co-Prosecutors include Mr. Veng Huot, Deputy Co-Prosecutor and
16 Mr. Tarik Abdulak, the Deputy Co-Prosecutor.

17 The charged person, Mr. Khieu Samphan, please rise.

18 What is your name?

19 THE CHARGED PERSON:

20 My name is Khieu Samphan.

21 MR. PRESIDENT:

22 Do you have any alias?

23 THE CHARGED PERSON:

24 My alias is Hem.

25 MR. PRESIDENT:

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1 How old are you?

2 THE CHARGED PERSON:

3 I'm 78 years old.

4 MR. PRESIDENT:

5 What is your nationality?

6 THE CHARGED PERSON:

7 Cambodian.

8 MR. PRESIDENT:

9 Where were you born?

10 THE CHARGED PERSON:

11 I don't remember the village, but I was born in Chek commune.

12 MR. PRESIDENT:

13 Which district?

14 THE CHARGED PERSON:

15 Rom Duol district.

16 MR. PRESIDENT:

17 Province?

18 [09.09.19]

19 THE CHARGED PERSON:

20 Svay Rieng.

21 MR. PRESIDENT:

22 What is your occupation?

23 THE CHARGED PERSON:

24 I have no actual occupation since I have been here in Phnom Penh

25 in 1998.

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1 MR. PRESIDENT:

2 Where did you live before you were arrested?

3 THE CHARGED PERSON:

4 In Konkhlung village, O Tavao, Pailin town.

5 MR. PRESIDENT:

6 What is your father's name?

7 THE CHARGED PERSON:

8 Khieu Long.

9 MR. PRESIDENT:

10 Your mother's name?

11 THE CHARGED PERSON:

12 Por Kong.

13 [09.10.05]

14 MR. PRESIDENT:

15 Your wife's name?

16 THE CHARGED PERSON:

17 So Socheat.

18 MR. PRESIDENT:

19 How many children do you have?

20 THE CHARGED PERSON:

21 Four.

22 MR. PRESIDENT:

23 Have you asked for co-lawyers assistance?

24 THE CHARGED PERSON:

25 I have already sought assistance from two co-lawyers, Mr. Jacques

5

1 Verges and Mr. Sa Sovan, the Cambodian counsel.

2 MR. PRESIDENT:

3 (Microphone not activated)

4 I would like now to inform you of your right according to Rule

5 21.1(d) of the Internal

6 Rules .

7 [09.11.03]

8 You have the following rights. One, you are presumed innocent as

9 long as your guilt has not been established. Two, you have the

10 right to be informed of any charges brought against you. Three,

11 you have the right to be defended by a lawyer of your choice; and

12 four, you have the right to remain silent. Please be seated.

13 The Co-Rapporteur Judge is now invited to read the Report of

14 Examination.

15 JUDGE NEY THOL:

16 Thank you, Mr. President.

17 I am now reading the Report of Examination as follows.

18 The Extraordinary Chambers in the Courts of Cambodia, the

19 Pre-Trial Chamber Criminal Case File Number

20 002/19-09-2007-ECCC/OCIJ (PTC36), Report of Examination.

21 This report lists two main sections; proceedings and examination

22 of the case by -- the case file by the Co-Rapporteurs.

23 [09.12.48]

24 1. Proceedings.

25 (a) Introduction. Pursuant to Rule 77.10) of the Internal Rules

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1 of the Extraordinary Chambers in the Courts of Cambodia, the
2 President of the Pre-Trial Chamber assigned Judges Ney Thol and
3 Katinka Lahuis to prepare a written report setting out the facts
4 at issue and the details of the Co-Investigating Judges' Order on
5 Extension of Provisional Detention dated 18th of November 2009,
6 against which an appeal has been launched. The President also
7 asked the two judges to present relevant facts of case file
8 number 002/19-09-2007-ECCC/OCIJ (PTC36).

9 Identification of the Charged Person. Khieu Samphan, alias Hem,
10 male, born on 27th of July, 1931 at Rom Chek commune, Rom Duol
11 district, Svay Rieng province, Cambodia, Khmer nationality.
12 Pre-arrest address, Konkhlong village, Sangkat, O Tavao, Kan
13 Pailin, Pailin city. Father's name, Khieu Long, deceased;
14 mother's name, Por Kong, deceased; spouse name, So Socheat with
15 four children. Khieu Samphan is represented by co-lawyers, Mr.
16 Sa Sovan and Mr. Jacques Verges.

17 Charges. Khieu Samphan is under investigation for Crimes Against
18 Humanity: murder, extermination, imprisonment, persecution and
19 other inhumane acts; and grave breaches of the Geneva Conventions
20 of the 12th of August 1949 (wilful killing, wilfully causing
21 great suffering or serious injury to body or health, wilful
22 deprivation of rights to a fair trial of a prisoner of war or
23 civilian, unlawful deportation or transfer or unlawful
24 confinement of a civilian, being crimes defined and punishable
25 under Articles 5, 6, 29 new and 39 new of the Law on the

1 Establishment of the Extraordinary Chambers in the Courts of
2 Cambodia dated 27th of October 2004.

3 Purpose of this Report. This report sets out the facts at issue
4 and the details of the decision under the appeal and other
5 related facts at issue before this Court. Its purpose is to
6 assist those who are not parties to the proceedings to understand
7 the matters before the Court.

8 B. Co-Investigating Judges Order on Extension of Provisional
9 Detention. On 18th of November 2009, the Co-Investigating Judges
10 issued an order extending, for a period not exceeding one year,
11 the provisional detention of the charged person who has been in
12 provisional detention since 19th November 2007.

13 [09.17.31]

14 The Co-Investigating Judges noted that the conditions set out in
15 Rule 63.3(a) of the Internal Rules were still met,
16 notwithstanding the passage of time since the charged person was
17 provisionally detained, considering that at this final stage of
18 the judicial investigation there are sufficient additional facts
19 or information which would satisfy an objective observer that
20 there is well-founded reason to believe that Khieu Samphan either
21 planned, instigated, ordered, failed to prevent or otherwise
22 aided and abetted the commission of crimes specified in the
23 Introductory Submission.

24 The Co-Investigating Judges considered that the passage of time
25 was relevant to determining the legitimacy of the charged

1 person's continued provisional detention. In assessing the
2 manner in which the judicial investigation has been conducted in
3 this case and by adhering to the case law of the European Court
4 of Human Rights concerning the reasonableness of the length of a
5 proceeding, the Co-Investigating Judges took account of the facts
6 of the case as a whole, including its complexity in terms of fact
7 and law as well as the conduct of the judicial authorities and
8 that of the parties.

9 The Co-Investigating Judges further noted that the charged person
10 has been in detention for nearly 24 months and that this is a
11 significant period. However, that the scope of the judicial
12 investigation and the gravity of the crimes alleged in the
13 introductory submission with respect to the charged person
14 require large-scale investigative action, including direct
15 interviews of witnesses and civil parties in order to find
16 evidentiary materials to confirm the roles of the charged person
17 during the Democratic Kampuchea period and preparing written
18 records of the interviews.

19 [09.20.44]

20 The Co-Investigating Judges conclude that the conditions for
21 continued provisional detention of the charged person as set out
22 in Rule 63.3 of the Internal Rules are still met to date.
23 According to them, there is still well-founded reason to believe
24 that Khieu Samphan may have committed the crime and crimes
25 specified in the Introductory Submission and provisional

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1 detention is considered as a necessary measure to (1) protect his
2 security and (2) preserve public order.

3 C. Appeal Lodged by Khieu Samphan. On the 17th of December
4 2009, Khieu Samphan's co-lawyers filed an appeal against the
5 Order on Extension of Provisional Detention, requesting the
6 Pre-Trial Chamber to release Mr. Khieu Samphan.
7 They allege that the Co-Investigating Judges had failed to set
8 out in writing the reasons for extending the provisional
9 detention. On the contrary, the Co-Investigating Judges simply
10 noted that they had not found any change in the circumstances.
11 The co-lawyers further argued that provisional detention is an
12 exceptional measure and depriving a person of his or her natural
13 liberty may not be ordered without undertaking a complete and
14 thorough examination of the circumstances of the case. Simply
15 noting that there had been no change in the circumstances and
16 ordering an extension of detention based thereupon for no valid
17 reason amounted to a serious breach of the principle of the
18 presumption of innocence.

19 The co-lawyers therefore request that the charged person be
20 released on the ground that the requirements of provisional
21 detention set out in Rule 63 of the Internal Rules were no longer
22 satisfied.

23 [09.23.48]

24 D. Co-Prosecutors' Response. On 11th of January 2010, the
25 Co-Prosecutors filed their response to the appeal, requesting

1 that the Pre-Trial Chamber dismiss the appeal on the following
2 grounds.

3 (a) The second extension order was sufficiently and adequately
4 reasoned, contrary to the appellant's contention regarding the
5 Co-Investigating Judges' erroneous interpretation of Rule 63.7 of
6 the Internal Rules. In any event, the Co-Investigating Judges
7 had no obligation to either indicate all the reasons for such an
8 extension or to elucidate a view on all the factors raised by the
9 appeal.

10 (b) The appellant had failed to demonstrate any material change
11 in circumstance since he was originally detained by the
12 Co-Investigating Judges on the 19th of November 2007.

13 (c) The defence contention that the Co-Investigating Judges have
14 systematically violated the appellant's right of presumption of
15 innocence was incorrect.

16 (d) The defence contention of being subjected to potentially
17 systematic bias was a challenge to the operations of the Office
18 of the Co-Investigating Judges, none of which had been found to
19 be valid by the Pre-Trial Chamber.

20 (e) The Pre-Trial Chamber had already settled the issue relating
21 to the translation rights and obligations of the parties.
22 Therefore, the appellant's contention that he is without
23 effective access to evidence contained in the case file was
24 repetitive and barred by *res judicata*.

25 E. Civil Parties Response. None of the civil parties filed any

1 response.

2 [09.26.50]

3 2. Examination by the Co-Rapporteurs.

4 A. The Co-Investigating Judges' Order on Extension of

5 Provisional Detention.

6 The co-lawyers for the charged person argued that the

7 Co-Investigating Judges must render a decision in writing and

8 setting out the reasons for extending the provisional detention.

9 They point out that in their order the Co-Investigating Judges

10 simply note that they have not found any change in the

11 circumstances.

12 The co-lawyers for the charged person submit that provisional

13 detention is an exceptional measure and depriving a person of his

14 or her natural liberty may not be ordered without undertaking a

15 complete and thorough examination of the circumstances of the

16 case.

17 They further submit that simply noting that there has been no

18 change in circumstance and ordering an extension of detention

19 based thereupon for no valid reason amounts to a serious breach

20 of the principle of the presumption of innocence.

21 The co-lawyers further argue that the burden is on the

22 Co-Investigating Judges to prove that there are well-founded

23 reasons to believe that the person has committed the crime or

24 crimes specified in the Introductory Submission or any

25 supplementary submission and that detention is necessary, having

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1 regard to the requirements set out in Rule 63.3(b) of the
2 Internal Rules. They add that the Co-Investigating Judges must
3 do this by means of reasoned decision and must therefore provide
4 evidence of the circumstances in question.

5 In response the Co-Prosecutors argue that the defence argument
6 that Rule 63.7 casts the burden of proof on the Co-Investigating
7 Judges was erroneous. They submitted that the Co-Investigating
8 Judges only have an obligation to reassess whether the criteria
9 for continued detention remain satisfied, taking into account all
10 the evidence on the case file and any observations of the
11 defence.

12 [09.30.21]

13 They further submit that the Internal Rules do not place any
14 burden of proof on the Co-Investigating Judges in this respect
15 and that the second extension order was reasoned and duly
16 considered all the conditions.

17 B. Well-founded reason to believe that the charged person may
18 have committed the alleged crimes under Rule 63.3(a) of the
19 Internal Rules. The co-lawyers for the charged person submit
20 that the condition set out in Rule 63.3(a) is not met due to the
21 fact that the Co-Investigating Judges had not identified any
22 evidence of exculpatory nature placed on the case file, even
23 though they emphasized in their order that some of the evidence
24 collected during this period may appear to be exculpatory either
25 as regards Khieu Samphan's level of power within the CPK, the

1 extent of his work and travel within Cambodia or his knowledge of
2 security centres or hospitals.

3 Consequently, they submit that it seems difficult that an
4 objective observer may conclude that there is well-founded reason
5 to believe that the charged person may have committed the crimes
6 specified in the introductory submission. The co-lawyers for the
7 charged person further argued that according to settled
8 international jurisprudence, while the persistence of
9 well-founded reasons to believe that the person arrested
10 committed an offence is a condition sine qua non for the
11 lawfulness of continued detention, after a certain amount of time
12 it no longer suffices.

13 [09.33.08]

14 In such cases, they argue, the Judges must establish whether the
15 other grounds given by the judicial authorities continue to
16 justify the deprivation of liberty. In response, the
17 Co-Prosecutors argue that the role of the Co-Investigating Judges
18 under Rule 63.3(a) of the Internal Rules is to weigh the totality
19 of the evidence gathered after the date of the order and
20 determine whether there are well-founded reasons to believe that
21 the charged person may have committed the crimes specified in the
22 Introductory Submission and any supplementary submission.
23 They further submit that the reference misinterprets this test by
24 arguing that as the Co-Investigating Judges have themselves
25 identified some potentially exculpatory evidence with respect to

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1 the charged person, there are therefore no well-founded reasons
2 to believe that he may have committed the crimes for which he is
3 currently under investigation.

4 C. Provisional detention remains a necessary measure to ensure
5 the appellant's security, in reference to Rule 63(b)(iv) of the
6 Internal Rules. The co-lawyers for the charged person argue that
7 there is no concrete and present risk to the appellant because he
8 himself has no concerns about his safety. They submit that the
9 Co-Investigating Judges merely mentioned some events dating back
10 to 1991, 2000 and 2008. All of it predates the original
11 Provisional Detention Order but provided no information that
12 reflects current circumstances.

13 Therefore, their view, an order extending provisional detention
14 required a fresh examination of circumstances contemporaneous to
15 the order and not a mere recall of past events.

16 [09.36.30]

17 In their response, the Co-Prosecutors submit that: one, it is
18 not for the appellant to determine that there is no concrete and
19 present risk to the appellant because he himself has no concerns
20 about his safety; two, certain victim statements that were
21 expressed at the recently conducted trial of Duch confirm the
22 findings that large numbers of victims have violent feelings
23 towards the appellant and that such feelings could easily
24 transform into violent reactions towards him if he is released.
25 Regarding the risk posed by victims to the security of the

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1 appellant, the Co-Prosecutors also made reference to the
2 incidents and strong statements detailed in paragraph 40 of the
3 Co-Prosecutors' response to Khieu Samphan's appeal against the
4 order on extension of Provisional Detention Order dated 18
5 November 2008, filed 09 January 2009.

6 D. Provisional detention remains a necessary measure to preserve
7 public order in reference to Rule 63(b)(v) of the Internal Rules.
8 The co-lawyers for the charged person refer to the
9 Co-Investigating Judges' conclusion that the trials of the Khmer
10 Rouge leadership are still a matter of great concern for the
11 Cambodian population today. However, the co-lawyers emphasize
12 that the reality of this concern is not the aim of the appeal,
13 but it is certain that it is not intrinsically linked to the
14 person of Mr. Khieu Samphan but rather to the ongoing judicial
15 process and the Cambodian context itself.

16 The Co-Prosecutors respond that the appellant has argued that the
17 fragility of the Cambodian society is far from established and it
18 cannot be said that Khieu Samphan's release would actually and
19 necessarily disrupt public order.

20 [09.39.38]

21 They argue that the appellant has not provided any new evidence
22 that may convince the Pre-Trial Chamber to reverse the finding.
23 The Co-Prosecutors therefore submit that the rationale outlined
24 in the second extension order and the Pre-Trial Chamber detention
25 appeal decision remains wedded.

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1 E. Examination of Circumstance for Release. The co-lawyers for
2 the charged person submit that nowhere in their decision do the
3 Co-Investigating Judges address the defence arguments concerning
4 the systematic violation of the presumption of innocence and Mr.
5 Khieu Samphan's rights. In this regard of the findings of the
6 Pre-Trial Chamber, which recommends in particular that the
7 conduct of the entire procedure be examined when considering
8 whether the length of provisional detention is reasonable.
9 The co-lawyers for the charged person further argue that, in
10 fact, this failure confirms the defence sentiment of being
11 subjected to patently systematic bias. Such bias, they submit,
12 must be denounced and sanctioned. The co-lawyers consider that
13 release is the only appropriate measure in view of the overall
14 circumstances of the conduct of the proceedings.
15 The Co-Prosecutors respond by noting that the Co-Investigating
16 Judges have significantly progressed in their investigation which
17 is evidenced, in part, by their recent notification to the
18 appellant that the evidence collected thus far may result in an
19 indictment for a series of crimes, including genocide.
20 [09.42.42]
21 They argue that given the gravity of the crimes charged, the
22 complexity of the case and the extent of the ongoing
23 investigations, the length of provisional detention of the
24 appellant is reasonable.
25 With regard to the co-lawyers' contention that corruption

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1 allegations have cast a cloud over the proceedings and the
2 investigation has not been conducted with the requisite
3 transparency, the Co-Prosecutors submit that this appeal is not
4 the appropriate forum to raise such issues which have already
5 been rejected by the Pre-Trial Chamber.

6 They submit that this argument is as such brought by res
7 judicata. The Co-Prosecutors conclude, based on their
8 submissions, that since the need for provisional detention has
9 not diminished, the alternatives to detention continue to be
10 outweighed.

11 Phnom Penh, 8 February 2010. Co-Rapporteurs, Judge Ney Thol,
12 Judge Katinka Lahuis.

13 Thank you, Mr. President.

14 MR. PRESIDENT:

15 Mr. Khieu Samphan, please rise.

16 Would you like to make a statement related to your appeal or
17 would you like your co-lawyers to speak on your behalf?

18 THE CHARGED PERSON:

19 I would like my co-lawyers to speak on my behalf.

20 [09.45.18]

21 MR. PRESIDENT:

22 You may sit. The floor is now opened for the co-lawyer for the
23 charged person. You have one hour.

24 MR. SA SOVAN:

25 Good morning, Mr. President, Your Honours. Good morning, Mr.

18

1 Co-Prosecutors, civil party lawyers, and good morning to everyone
2 in and around the courtroom.

3 I am the defence lawyer for the charged person Mr. Khieu Samphan,
4 who is present here, and before I submit my oral submission I
5 would like to seek permission from the President of the Pre-Trial
6 Chamber to allow my client to leave the dock because in the
7 Internal Rules the suspect does not need to sit at the dock, and
8 in the previous hearing the President also permitted my client to
9 sit next to me so that I would have access to him for
10 consultation.

11 MR. PRESIDENT:

12 The Pre-Trial Chamber grants your request and the charged person
13 shall sit at the table next to yours.

14 MR. SA SOVAN:

15 Thank you, Mr. President. Thank you, Your Honours.

16 [09.48.18]

17 MR. PRESIDENT:

18 The charged person shall sit on the other side of the table.

19 JUDGE LAHUIS:

20 Can you assist the lawyer with a microphone and put it on the
21 desk? The lawyer, Sa Sovan -- you can put the microphone on your
22 desk so you don't have to bend.

23 MR. SA SOVAN:

24 Thank you, Madam Judge, for your advice. And thank you, Mr.
25 President, for allowing my client to sit next to me.

1 Since Mr. President granted me one hour for my oral submission,
2 maybe I won't take that long. I would like to recall that the
3 Report of Examination of the Co-Rapporteurs is well detailed but
4 my concern is that the general public may find it hard to
5 understand and follow the report. I would like to summarize that
6 and the responses between the Co-Investigating Judges and the
7 Co-Prosecutors who are on the other side prosecuting my client,
8 and my client, in turn, has to respond.

9 And the profession of the lawyers is to seek the truth, to find
10 the truth. And my father, just to let you know, passed away in
11 1977 during that regime. But do not get confused. This is not a
12 forum for revenge, so I am not worried to put forward my demand
13 because the investigative process of serious crimes time limit
14 had been set for a maximum of one year provisional detention at a
15 time, and this is the third time of the extension. If the Court
16 has not yet made its decision, then it is fair that my client
17 shall be provisionally released.

18 [09.51.34]

19 Usually the provisional detention shall be used only for serious
20 crimes and there are also other alternatives, namely judicial
21 supervision, whereby the person has to inform the local authority
22 of his whereabouts. And the Co-Investigating Judges extended the
23 period of detention of my client for the third year and I lodged
24 my appeal to the Pre-Trial Chamber to consider my request and
25 submission that another year extension of my client's detention

20

1 is not based on any facts or law. Because we are all legal
2 professionals but we see things differently, when I see something
3 white they see something black, but this is beneficial to the
4 general public.

5 Let me remind you that the forfeiture of civil rights of a
6 citizen is only done in exceptional circumstances. Simply put,
7 the general public shall enjoy their freedom and rights and only
8 when a person is accused then forfeiture of civil rights might be
9 done in the form of provisional detention, for instance, or under
10 judicial provision whereby the person has to report to the local
11 authority. These are the measures in place and my client has
12 been in the detention for 24 months and, in addition, the
13 Co-Investigating Judges extended another year. That is 36 months
14 in total and they can no longer do that. Then they shall release
15 him.

16 But I do not want to wait till such time expires. I want to
17 request for my client to be released now, for the following
18 reasons, but before I submit my reasons I would like to remind
19 Your Honours that the Co-Prosecutors allege that my client
20 committed crimes, for example various crimes as reported in the
21 Report of the Examination by the Co-Rapporteur, and the
22 Co-Investigating Judges conducted their investigation and they
23 are the ones to decide either to detain the person involved or to
24 put such person under judicial supervision.

25 [09.54.54]

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1 And regarding my client, he was put under detention since 2007
2 and then there was another extension and there was another
3 subsequent extension. I lodged my appeal to the Pre-Trial
4 Chamber because I had the view that for the Co-Investigating
5 Judges to detain a suspect provisionally there has to be certain
6 criteria as specified in the rules, either domestic or the
7 Internal Rules practised by the Pre-Trial Chamber. That is if
8 the person is to be released and the person exerts pressure on a
9 witness or a victim or that he might attempt to flee or that he
10 might collude with others to stain the evidence, or that if Mr.
11 Khieu Samphan is to be released he will be attacked by the
12 public, as in 1991 when his head was bleeding; or that if he were
13 to be released he'd cause disturbance to the general public or
14 the society as a whole.

15 But the Pre-Trial Chamber recognized the three criteria that he
16 will not flee, one, and that he will not exert any pressure on
17 the witness or that he will not prevent any person from providing
18 information to the Co-Investigating Judges or the Court itself.
19 So the Pre-Trial Chamber already acknowledged the three reasons
20 and there are only two more; namely, if Khieu Samphan is released
21 he might be attacked by the general public, so the continuation
22 of 12-month extension is for his own security.

23 I would like to submit that the person himself does not have the
24 view of the Co-Investigating Judges and as his lawyer I thank the
25 Co-Investigating Judges for their concerns regarding my client's

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1 safety and if they also consider my safety I will be thankful to
2 them too.

3 [09.57.40]

4 However, in this regard my client has experienced the attack in
5 1991 for separate reasons and from 1991 to 2010 has been 20
6 years. Cambodian society has well developed, based on the
7 endeavour of the current government, and I strongly do not
8 believe that if he is to be released he will be attacked as in
9 the case in 1991. Even the general public in the public audience
10 would understand that I, the lawyer, do not support any people
11 who killed my father and I want to seek out for the truth of
12 whether only one person killed my father or another person would
13 kill more than one million Cambodian people.

14 So if he is released I don't think such an incident would occur.
15 He had lived in Pailin for more than 10 years and no such
16 incident, and only people went there to visit him, to ask him
17 what went wrong during that regime, and I can assure Your Honours
18 that from the 4th of December 2008 and when I left the hearing
19 there were about a group of 10 participants or victims who came
20 to confront me but now I believe they understand because their
21 sole purpose is also to search for the truth. And if my client
22 slashed somebody to death that would be a different story and it
23 is my role to defend my client.

24 Therefore, for his personal security, I believe strongly that Mr.
25 Khieu Samphan, if he is to be released tomorrow, there won't be

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1 such incident. And you can look at me. I don't have any weapon
2 or any gun. However, since my defence of my client I never
3 received any threat but I believe that if I commit bad acts or
4 karma then I would be mistreated. If he was to be released and
5 he was attacked then my belief would be wrong.

6 [10.00.25]

7 I also submit that if my client were to be released and that he
8 would cause public disorder, disruption or chaos in the society,
9 I think it would not be possible. One cannot really implicate
10 his case or compare it with the case of Kaing Guek Eav, alias
11 Duch, because in general any Khmer Rouge soldier would be viewed
12 by the public as unable. But I think not all the Khmer Rouge are
13 bad because no-one can really do politics alone, so it has to be
14 involved with other people. So if my client were to be released
15 then he would cause public order disruption, it would not be --
16 there would not be sufficient evidence to prove this.

17 When someone loses their loved one they've been heartbroken but I
18 don't believe that those people will take revenge because of
19 that. We are here today to find justice and for justice to be
20 done it cannot be substantiated by the way that the revenge is
21 sought and that my client further detained, and I may request
22 that please do not really initiate any incitement to take revenge
23 against my client.

24 I have noted that the Pre-Trial Chamber or the Khmer Rouge
25 Tribunal as a whole, and that there is an accusation that more

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1 than one million have been killed, and among the civil parties
2 who like to complain so far there are about 4,000. I know that
3 because of the public awareness raising program -- or I may say
4 the incitement that civil parties rush to file their complaints.
5 However, thank you, the Pre-Trial Chamber, for allowing me the
6 floor but I would like to stress that I am talking here about the
7 public order and the safety of my client. So to sum up, I can
8 say that the Co-Investigating Judges failed that Khieu Samphan
9 has committed serious crimes and that the case file is very
10 complex.

11 [10.03.50]

12 So these are the grounds for such accusation and that because of
13 the grounds my client is under detention. I think it is too
14 simple to really base their arguments on these grounds. As a
15 legal objective practitioner, one would not see any good reason
16 behind this and I believe that my client will never flee or pose
17 any flight risk, and I would like to request that the Pre-Trial
18 Chamber find an alternative measure of detention; for example,
19 the release of my client on bail or put him under judicial
20 supervision.

21 I feel that my client has not committed any crimes. I have known
22 him since he was the parliamentarian in Prek Tauch area. Ever I
23 have been acquainted to him, I have known him of stealing even a
24 chicken and he has been accused.

25 Thank you, Mr. President. My oral submission is concluded.

1 MR. PRESIDENT:

2 It is an appropriate to take the adjournment. We will take 15
3 minutes adjournment.

4 THE GREFFIER:

5 All rise.

6 (Judges exit Courtroom)

7 (Court recesses from 1005H to 1025H)

8 (Judges enter Courtroom)

9 MR. PRESIDENT:

10 Please be seated.

11 The Court is now in session. We would like now to give the floor
12 to the Co-Prosecutor to make his oral submission. You both have
13 one hour.

14 MR. VENG HUOT:

15 Mr. President, Your Honours, we are very grateful to the Bench
16 for allowing the prosecution to respond to the submissions made
17 by the defence counsel. Before we make our submission we would
18 like to inform the Bench that the national Co-Prosecutor will
19 make part of the submission and the remaining time will be used
20 by the international Co-Prosecutor.

21 We are now making our submission in response to the appeal
22 against the Provisional Detention Order and the national
23 Co-Prosecutor will be addressing three of the six points: number
24 1 which is the burden of proof; number 2, failure of the
25 Co-Investigating Judges to give reasons; and number 3, Internal

1 Rule 63.3(a), well-founded reasons. The other three points will
2 be well covered by the international Co-Prosecutor, which include
3 the following.

4 [10.27.13]

5 But I would like to now make my submission concerning the burden
6 of proof. The defence counsel assert that sub-rule 63.7 casts a
7 burden of proof on the Co-Investigating Judges to prove that
8 there are well-founded reasons to believe that the charged person
9 has committed the crimes specified in the Introductory Submission
10 and supplementary submission and that detention is necessary,
11 having regarded to the requirements set out in sub-rule 63.3(b)
12 The Co-Prosecutors submit that this is an incorrect reading of
13 sub-rule 63.7. The Co-Investigating Judges are under no burden
14 of proof. Rather, sub-rule 63.7 requires the Co-Investigating
15 Judges to issue their decision on extension of provisional
16 detention in writing and to set out the reasons for such an
17 extension.

18 As the Pre-Trial Chamber observed in its decision on Khieu
19 Samphan's detention appeal dated 3rd July 2009, the
20 Co-Investigating Judges' power to order detention is a
21 discretionary one. The judges may order an extension of
22 provisional detention where the relevant grounds in Article 63.3
23 are satisfied and where detention remains the only appropriate
24 means to safeguard against any risks identified under sub-rule
25 63.3(b).

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1 In exercising their discretion, the Co-Investigating Judges are
2 required to review the state of the case file and all relevant
3 factors including, for example, whether the length of detention
4 continues to be reasonable, given the gravity of the crimes
5 charged. The progress of the investigation is a further matter
6 which the Co-Investigating Judges are required to consider in
7 exercising their discretion.

8 This, however, does not mean that the judges bear a burden of
9 proof but rather they are required to consider all the relevant
10 factors objectively, which they have done.

11 [10.30.04]

12 We submit that by arguing that the Co-Investigating Judges bear
13 the onus of proof in relation to detention, the defence counsel
14 have confused the judges' obligation to give reasons with the
15 obligations of a party who may bear the onus of proof. This is
16 an important distinction. Unlike the Co-Prosecutors,
17 Co-Investigating Judges are not parties to the proceedings.
18 For example, the Co-Prosecutors are required to prove the guilt
19 of an accused under sub-rule 87.1. On the other hand, the
20 Co-Investigating Judges as independent and impartial judicial
21 officers are required to apply the law correctly and to exercise
22 their discretion based on a correct analysis of the facts.
23 As an illustration of the defence area of law on this issue, I
24 would point to the last sentence of paragraph 9 of the appeal
25 which states that:

1 "The principle of the presumption of innocence will be seriously
2 undermined if the defence were required to justify the charged
3 person's liberty."

4 This statement is a result of the failure on the part of the
5 defence to properly understand the meaning of Rules 63 and 64 as
6 well as the Co-Investigating Judges' Order on Extension of
7 Provisional Detention. Of course, as the Pre-Trial Chamber held
8 on 3rd July 2009, where the defence makes an application for
9 release of the charged person, the defence bears the onus of
10 showing that circumstances have changed since the issuance of the
11 last detention order and that the grounds in sub-rule 63.3 are no
12 longer satisfied.

13 [10.32.30]

14 This is different from an order on the extension of custody where
15 the defence are given an opportunity to make submissions to the
16 Co-Investigating Judges but do not otherwise bear the onus of
17 proof that a person should be released. The Co-Investigating
18 Judges understood this distinction properly. They did not
19 require the defence to justify the charged person's liberty when
20 considering whether to extend his detention.

21 On the contrary, the Co-Investigating Judges held, in paragraph
22 13 of the order, that:

23 "Provisional detention is an exception to the general rule that a
24 charged person should remain at liberty during the judicial
25 investigation."

1 This indicates that the Co-Investigating Judges started their
2 analysis from the correct premise that a charged person should
3 remain at liberty unless the grounds in sub-rule 63.3 are
4 satisfied and unless detention remains necessary in light of all
5 the relevant factors. They did not, contrary to the defence
6 assertion, require the defence counsel to justify the charged
7 person's liberty.

8 I will now move on to deal with the issue of reasons and
9 illustrate that the Co-Investigating Judges have correctly
10 discharged their obligations under sub-rule 63.7.

11 Two: Failure of Co-Investigating Judges to Give Reasons. In
12 paragraphs 8 and 9 of the appeal, the defence assert that the
13 Co-Investigating Judges have failed to give reasons for their
14 decision. They state simply:

15 "Noting that there has been no change in the circumstances and
16 ordering an extension of detention based thereupon for no valid
17 reason amounts to a serious breach of the principle of the
18 presumption of innocence."

19 [10.35.08]

20 The assertion that the Co-Investigating Judges failed to give
21 reasons for their decision does not stand. It is important to
22 recall the standard which the Pre-Trial Chamber set in relation
23 to the duty to give reasons. In its decision on appeal against
24 provisional detention order of Ieng Sary dated 17th October 2008,
25 this Chamber held that the Co-Investigating Judges can't

1 discharge their obligation to give reasons by setting out the
2 legal grounds and facts taken into account before coming to a
3 decision. They are not obliged to indicate a view on all the
4 factors addressed by a party.

5 In their Order, the Co-Investigating Judges felt extensively was
6 the evidence establishing a well-founded reason to believe that
7 the charged person may have committed the crimes for which he has
8 been placed under investigation.

9 The Co-Investigating Judges correctly reviewed the state of the
10 file since the hearing before Pre-Trial Chamber on the last
11 detention appeal. They pointed to more than 30 statements which
12 have been added to the case files and which assist in clarifying
13 whether the charged person may have played a role in connection
14 with the alleged crimes. The Order lists the various roles the
15 charged person may have played in the crimes committed by the
16 Democratic Kampuchea regime and cite relevant evidence in
17 relation to each of the roles.

18 [10.37.16]

19 Consistent with their duty to act impartially and search both for
20 inculpatory and exculpatory evidence, the Co-Investigating Judges
21 also refer to evidence which has been collected and which may
22 have exculpatory effect. The numerous statements to which the
23 Judges referred are additional to hundreds of other items of
24 evidence which have been placed on the case file over the past
25 month and which relate to the crime sites under investigation,

1 the authority structure of Democratic Kampuchea and the alleged
2 involvement of this and the other charged persons in the crimes
3 being investigated.

4 In addition to considering whether there is sufficient evidence
5 establishing a well-founded reason to believe that the charged
6 person may have committed the crimes, the Co-Investigating Judges
7 dealt with two grounds and sub-rule 63.3(b) which, according to
8 the previous findings of this Chamber, necessitated the continued
9 detention of the charged person, namely, the risk to the security
10 of the charged person and the need to preserve public order.

11 The Co-Investigating Judges found that there had been no change
12 in the circumstances which would lead them to a different
13 conclusion in relation to either of those two grounds. They,
14 therefore, concluded that the charged person's continued
15 detention was necessary.

16 The Co-Prosecutors have submitted in their written appeal
17 response that the conclusions of the Co-Investigating Judges in
18 relation to all of the above grounds are valid on the two
19 disjunctive grounds in sub-rule 63.3(b). The Co-Prosecutors have
20 pointed to additional evidence which supports the conclusion of
21 the Co-Investigating Judges and that further evidence may be
22 addressed later by my colleague.

23 [10.39.51]

24 The Co-Investigating Judges gave relatively brief reasons on the
25 issues under sub-rule 63.3(b) and the Chamber may choose to

1 supplement the reasoning of this point with the additional
2 evidence it has been put forward by the Co-Prosecutors. The
3 Chamber is entitled to do so, as it will conduct a fresh review
4 of the file up to date of the hearing.
5 Nevertheless, we submit that the Co-Investigating Judges Order is
6 sufficiently reasoned. The Judges are required to conduct a
7 fresh review of all these circumstances and the Order shows that
8 they have done so. The Order also shows that the Judges remained
9 mindful of the fact that detention is an exception to the general
10 rule that a charged person should remain at liberty during the
11 judicial investigation.
12 The Judges also considered 11 matters, such as the passage of
13 time, the progress of the investigation and the complexity of the
14 case. They observed that 24 months is a significant period in
15 detention, but correctly concluded that given the scope of the
16 investigation and the gravity of the alleged crimes, the period
17 was not unreasonable.
18 The fact that on a fresh review of the case file, the
19 Co-Investigating Judges did not find any evidence which would
20 lead them to a conclusion different from the earlier findings of
21 the Pre-Trial Chamber and sub-rule 63.3(b) does not mean that
22 they have failed to give sufficient reasons. On the contrary,
23 the Order is well-reasoned and follows the principles set out by
24 the Pre-Trial Chamber in its previous decision on appeals against
25 provisional detention orders.

1 [10.42.34]

2 Three: Regarding Internal Rule 63.3(a), there are well-founded
3 reasons. I will next deal with the requirement set out under
4 sub-rule 63.3(a). It is not about that -- the defence did not,
5 in its objections to the extension of the provisional detention
6 of Khieu Samphan dated 20 October 2009, explicitly argue that
7 this ground is not satisfied. This is consistent with the
8 defence's approach to this issue since the beginning of this
9 judicial investigation.

10 Please allow me to set out the background on this issue which may
11 assist the Chamber in assessing the defence submissions in this
12 appeal.

13 In the very first adversarial hearing before the Co-Investigating
14 Judges on 19 November 2007, the charged person's former Cambodian
15 defence counsel argued that Khieu Samphan did not have any
16 effective power in the Democratic Kampuchea regime. The charged
17 person himself, prior to choosing to exercise his right to remain
18 silent, claimed that he did not participate in, nor was he aware
19 of, the crimes of the regime and that, in fact, he only became
20 aware of those crimes after 1979. These submissions were
21 obviously aimed at challenging the existence of the conditions in
22 sub-rule 63.3(a).

23 [10.44.39]

24 When the Co-Investigating Judges ordered that the charged person
25 be placed in detention for a period of 12 months, in its appeal

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1 dated 21 December 2007, the defence argued that Mr. Khieu Samphan
2 was not involved in the crimes of the Democratic Kampuchea
3 regime, that he had no real or effective power in the regime and
4 that even his political speeches given in the period 1975-1979
5 were written by other persons.

6 MR. SA SOVAN:

7 Mr. President, Your Honours, I believe the general public is
8 aboard now. The Co-Prosecutor should not argue on the evidence
9 and if he wishes to do so we should do it in camera. He mentions
10 the histories and the backgrounds of my client's appeals and the
11 evidence shall be examined by the Co-Investigating Judges, and I
12 believe his submission at this stage is not appropriate because
13 in fact his detention is for only two reasons, that is for his
14 own personal safety and for public order. If argument on the
15 facts of evidence needs to be discussed, it shall be done in
16 camera.

17 Thank you, Mr. President.

18 MR. ABDULHAK:

19 Your Honour, if I may very briefly, just by way of background in
20 relation to these submissions.

21 [10.46.34]

22 Of course Rule 63.3(a) is a pre-condition. It sets a
23 pre-condition to any order of detention and insofar as the
24 defence have chosen to challenge the Investigating Judges'
25 finding that there are well-founded reasons to believe that the

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1 charged person may have committed the crimes for which he's being
2 investigated, of course it is appropriate and indeed required for
3 the prosecutors to respond to those submissions.

4 And in fact what my colleague was doing is recalling the history
5 of the arguments on this issue by way of background and certainly
6 not going into confidential matters of evidence. And we
7 certainly don't intend, in this public session, to deal with
8 evidentiary matters.

9 (Deliberation between Judges)

10 JUDGE LAHUIS:

11 The Pre-Trial Chamber will allow the prosecutor to continue with
12 what was reflected on the well-founded reasons as long as no
13 substance of the evidence is discussed, as this should be done in
14 camera. And it is noted that the defence is allowed to respond.

15 MR. VENG HUOT:

16 In reference to the gravity of the crimes, it is not unreasonable
17 for his detention, and if the Co-Investigating Judges could not
18 find any other evidence to conclude in their order pursuant to
19 Rule 63.3(a) it does not mean that they failed to provide their
20 reasons in their order. On the contrary, the order is well
21 reasoned and it was done based on the decision set out by the
22 Pre-Trial Chamber regarding its decision on the appeals against
23 the previous extension of detention.

24 [10.50.21]

25 3. Internal Rule 63.3(a) regarding well-founded reasons. I will

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1 deal next with the requirements set out in sub-rule 63.3(a). It
2 is notable that the defence did not, in its objections to the
3 extension of the provisional detention of Khieu Samphan dated 20
4 October 2009, explicitly argue that this ground is not satisfied.
5 This is consistent with the defence approach to this issue since
6 the beginning of this judicial investigation.

7 Please allow me to set out the background on this issue, which
8 may assist the Chamber in assessing the defence submission in
9 this appeal. In the very first adversarial hearing before the
10 Co-Investigating Judges on 19 November 2007 the charged person's
11 former Cambodian defence counsel argued that Khieu Samphan did
12 not have any effective power in the Democratic Kampuchea regime.
13 The charged person himself, prior to choosing his rights to
14 remain silent, claimed that he did not participate in, nor was he
15 aware of, the crimes of the regime and that in fact he only
16 became aware of those crimes after 1979.

17 As the Chamber will recall, following a refusal by the
18 international defence counsel to participate in the hearing of
19 that first appeal, the defence elected to withdraw the appeal.
20 It filed, in October 2008, an urgent application requesting the
21 Co-Investigating Judges to release the charged person. It is
22 interesting to note that at this stage the defence abandoned its
23 earlier claim that Khieu Samphan should be released because he is
24 not guilty.

25 [10.52.32]

1 It focused its request for release primarily on the length of
2 detention, alleged delays in the proceedings and arguments that
3 none of the conditions in sub-rule 63.3(b) were satisfied. The
4 Co-Investigating Judges refused their request by an order on 4
5 November 2008, and on 27 November 2008 the defence filed an
6 appeal against that order. In this appeal the defence again did
7 not argue that the condition in sub-rule 63.3(a) was not
8 satisfied.

9 Further, in November 2008 the defence filed its objections to the
10 first extension of the charged person's provisional detention and
11 in those objections again it did not argue that there were no
12 well-founded reasons to believe that the charged person committed
13 the crimes under investigation.

14 When the Co-Investigating Judges extended Khieu Samphan's
15 detention the issue of sub-rule 63.3(a) was again not raised.
16 The Pre-Trial Chamber recognized this in its combined decision on
17 the two appeals dated 3rd July 2009. It noted that the defence
18 did not argue in its appeal against the release order that there
19 had been a change in circumstance under sub-rule 63.3(a), nor did
20 it argue in its appeal against the first extension order that the
21 condition was not satisfied.

22 Although this was the case, in its fresh review of the case file
23 the Chamber set out in detail the evidence collected up to the
24 date of the hearing, which showed that there were well-founded
25 reasons to believe that the charged person may have committed the

1 crimes.

2 The relevance of this background is the following. With the
3 exception of its first withdrawn appeal from December 2007, the
4 defence has never argued before this Chamber that the condition
5 in sub-rule 63.3(a) is not satisfied in relation to Khieu
6 Samphan. We submit that there are good reasons for this approach
7 on the part of the defence. As the Pre-Trial Chamber illustrated
8 in its July 2009 decision, there is clearly sufficient evidence
9 to believe at this stage of the investigation that Khieu Samphan
10 may have committed the crimes for which he is being investigated.
11 This Chamber held in its 20 March 2008 decision on Nuon Chea's
12 appeal against a provisional detention order that the test to be
13 applied under sub-rule 63.3(a) is whether facts or information
14 exist which would satisfy an objective observer that the charged
15 person may have committed the crimes under investigation.
16 Clearly, this condition is satisfied in the present case,
17 illustrated in the Pre-Trial Chamber's 3rd July 2009 decision and
18 on a fresh review of the files by the Co-Investigating Judges.

19 [10.57.17]

20 The Co-Prosecutors recalled that in the order the
21 Co-Investigating Judges referred to several roles and activities
22 through which the charged person may bear criminal responsibility
23 for the crimes alleged in the Introductory Submission. For
24 example, they noted his membership of the Central Committee of
25 the Communist party of Kampuchea and his roles as head of the

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1 state presidium and deputy prime minister.

2 The Investigating Judges also made reference to evidence which

3 indicates that Khieu Samphan was aware of, promoted,

4 disseminated, and implemented CPK policies. This of course

5 included the Party's criminal policies such as those relating to

6 the purges of suspected enemies within the country.

7 The Co-Investigating Judges also cited evidence suggesting Khieu

8 Samphan's involvement in the evacuation of Phnom Penh and his

9 close association with the other charged persons and leaders of

10 the CPK throughout the period under investigation. As I noted

11 earlier, the Co-Investigating Judges also referred to evidence

12 which may have exculpatory effect.

13 In conclusion, when taken together, the evidence which the

14 Co-Investigating Judges have collected and to which they refer in

15 their order overwhelmingly support a conclusion that there are

16 well-founded reasons to believe that Khieu Samphan may have

17 committed the crimes under investigation. There is an abundance

18 of facts and information which would satisfy an objective

19 observer of this fact.

20 The limited exculpatory information on the file does not

21 undermine this conclusion. This is why, in our submission, the

22 defence counsel have opted for the tentative argument that it

23 seems difficult to believe this test has been satisfied.

24 [11.00.29]

25 They have failed to offer any argument that may convince the

40

1 Chamber that the Co-Investigating Judges erred in their findings
2 on this condition and their appeal on this point shall be
3 dismissed.

4 Mr. President, Your Honours, my colleague will now deal with the
5 other grounds raised in the appeal. Thank you.

6 MR. PRESIDENT:

7 The International Co-Prosecutor, you may now continue.

8 MR. ABDULHAK:

9 Thank you. Good morning, Your Honours. Good morning, counsel,
10 civil parties and members of the public.

11 As my colleague has indicated, I will be dealing with primarily
12 the conditions set out in sub-rule 63.3(b) and I will also
13 address a number of related matters including the exercise of
14 discretion by the Investigating Judges and allegations of
15 breaches of due process guarantees by the defence.

16 Your Honours, starting with sub-rule 63.3(b)(iv), the security of
17 the charged person, which Your Honours found in your decision of
18 the 3rd of July 2009 to be a requirement necessitating his
19 continued detention, the defence have cited the four factual
20 elements on which Your Honours had previously relied -- or I
21 should say four of the factual elements because Your Honours have
22 actually referred to more than just those four.

23 [11.02.46]

24 And by way of a summary, they include an incident occurring in
25 '91 to which defence counsel referred in his submissions, a

1 request by the charged person for guarantees from domestic
2 authorities and the international community before he was to
3 agree to speak in public, a newspaper article by New York Times
4 in which victims expressed very strong feelings of aggression
5 towards the charged persons and a December 2008 press conference
6 altercation which actually took place within this very building.
7 Your Honours have previously found that these grounds -- that
8 these factors show emotional reactions which, as anticipated by
9 psychiatrists and as stated in expert articles, indicate that
10 proceedings before this Court have led to a resurfacing of
11 anxieties among the victims and that that has led to or can lead
12 to a rise in negative social consequences which accompany such
13 anxieties.
14 Your Honours found that such reactions and anxieties combined
15 with the Cambodian context, or rather with the fragile context in
16 which the Cambodian society still finds itself, that those
17 factors were sufficient to show that a release of Khieu Samphan
18 at this stage might degenerate into violence directed against
19 him.
20 I should say that one of the articles to which Your Honours
21 referred indicated that a range of 28 to 30 percent of the
22 survivors of the Democratic Kampuchea regime continue to suffer
23 from post-traumatic stress disorder and it shows that the effects
24 of the crimes on the victims are very much present to this day.
25 [11.04.58]

1 Your Honours, it is undeniable, it's indisputable that these
2 trials have raised an enormous amount of public interest and that
3 there are very strong emotions among the victims, some of which
4 unfortunately have been expressed through feelings of aggression
5 towards the charged persons.
6 Your Honours have also cited evidence of threats against the
7 charged person Duch at a hearing on the 21st of November 2007.
8 Now the charged person has stated through his counsel that he is
9 not afraid of these threats and these anxieties. But of course,
10 Your Honours, it is not for the charged person to make that
11 determination; it is for this Court. And in their submissions
12 the defence have not offered any convincing argument or any
13 factual matter which would convince Your Honours to depart from
14 your earlier findings of July 2009.
15 In fact, in addition to those findings -- and events since those
16 findings indicate that those findings continue to be well founded
17 and applicable and, if you will allow me, I'll quote as we did in
18 our appeal response, very briefly, statements by just one of the
19 civil parties directed at Duch, the accused in Case 1, and this
20 was in public session. Civil party Robert Hamill, who was not
21 himself a victim of Democratic Kampuchea but whose brother
22 perished at S-21, said:
23 "Duch, at times I've wanted to smash you, to use your words, in
24 the same way that you smashed so many others."
25 [11.06.51]

1 He then proceeds to describe in fairly graphic detail the sort of
2 injuries he would inflict on Duch. Granted these were threats
3 directed at a different accused in a different trial but then the
4 same civil party at page 108 of this transcript -- and this is
5 the transcript of the 17th of August 2009 -- goes on to say:

6 "Duch, I acknowledge you for pleading guilty and I'm angry beyond
7 words with you and what you did, but I acknowledge and respect
8 your guilty plea."

9 A few lines down he says:

10 "Those that have not pleaded guilty and do not accept the harm
11 they have caused are doubly worth all the hate and ridicule."

12 Now, I should pause and say that of course the charged person is
13 entitled to a presumption of innocence, an absolute principle
14 that applies before this Court and a principle to which Your
15 Honours have referred. The reason I make reference to these
16 statements is because they indicate very much the perception from
17 which victims have voiced these very strong feelings and emotions
18 towards the charged persons and accused before this Court.

19 Your Honours of course are free to supplement, as you have done
20 in the past, the Investigating Judges reasoning on this issue,
21 which admittedly is brief. It is interesting, Your Honours, in
22 this respect that even yesterday in a public hearing before this
23 Chamber, the international counsel for Ieng Sary in fact conceded
24 that from the moment of the start of the trial he would accept
25 that detention may be an appropriate remedy to safeguard the

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1 safety of his client. Now, of course that's qualified by the
2 fact that this was a reference to the commencement of the trial,
3 but I would submit that that concession in itself is a relevant
4 matter for you to consider.

5 [11.09.06]

6 The risk, Your Honours, which Khieu Samphan would face if he were
7 to be released is a very present and a real risk. It is not
8 remote and to indicate that I should cite another relevant fact
9 which is a fact of public knowledge, that in the first trial
10 additional security was provided to the defence.

11 Now, I note that my learned friend doesn't feel afraid and
12 doesn't feel that he needs protection, but the authorities have
13 felt that that was required, for example, in the first case and
14 of course it is for this Court to determine whether security is
15 required and I should say that of course Khieu Samphan is a very
16 well-known public figure. These proceedings have been highly
17 publicized; by the statistics of this Court, something like
18 28,000 people have come to watch these proceedings and the level
19 of interest continues to be extremely high, as is evidenced by
20 today's attendance at this detention appeal hearing.

21 Moving on to the issue of public order which is found in sub-rule
22 63.3(b)(v) and where some of the evidence in relation to this
23 ground I should say also supports, I believe, the previous ground
24 which I just discussed. Now, the counsel for the defence have
25 argued that the previous findings of the Pre-Trial Chamber in

1 relation to the suffering from post-traumatic stress disorder and
2 the fragile context of the Cambodian society, that has nothing to
3 do with the release of Khieu Samphan. Effectively they're
4 inviting Your Honours to depart from your previous reasoning
5 without pointing to any change in circumstances and, as I will
6 show, despite evidence which shows that those concerns are very
7 much present and continue to be applicable.

8 The defence say that the ECCC is in line with international
9 courts such as the ICTY and I'll come to that comparison. They
10 also make reference to a case of Maurice Papon, where it was held
11 that the fact that victims are aggravated by reliving the trauma
12 of a criminal trial cannot be construed as a renewed disruption
13 of public order which would warrant an order of detention.

14 [11.11.34]

15 And Your Honours, the defence counsel state that the fragility of
16 the Cambodian society is far from established and of course this
17 again is an invitation for you to depart from your previous
18 findings, which stand, without offering any evidence to support
19 such an assertion.

20 So coming back to the previous findings of the Pre-Trial Chamber,
21 Your Honours have indicated in the Nuon Chea detention appeal
22 decision of 20th of March 2008, the test to be applied; that test
23 being whether there are facts capable of showing that the
24 accused's release would actually disturb public order.

25 Your Honours found in the July decision that the reactions of

1 victims that we discussed earlier, that the fact that the
2 survivor population suffers from PTSD, the fact that the
3 Cambodian society continues to live in a fragile context, as
4 indicated by academic research and professional surveys, that
5 those facts combined are capable of showing that the release of
6 the charged person would actually disrupt public order, and we
7 submit that those reasons very much continue and are very much
8 present.

9 [11.12.55]

10 Now, the defence in fact had invited Your Honours to apply
11 different tests. They say at paragraph 23 of the appeal that a
12 release of Khieu Samphan would not actually and necessarily cause
13 a disruption of public order. That of course is a higher test.
14 That is not the test which Your Honours have applied and Your
15 Honours have referred to well-established jurisprudence from the
16 European Court of Human Rights in applying the test which I
17 referred to earlier.

18 Coming back to the comparisons with the ICTY, the defence state
19 that the ECCC is "in line with" international courts such as the
20 ICTY. This of course is not the case when it comes to the
21 provisions regulating detention. The ICTY in fact applies a
22 system of presumptive detention where Rule 64 of the Rules of
23 Procedure and Evidence of the ICTY states very clearly, "Upon
24 being transferred to the seat of the tribunal, the accused shall
25 be detained in facilities provided by the host country." Of

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1 course this is not the presumption of the ECCC albeit that the
2 underlying considerations of grounds for detention are similar
3 and principles would equally be applicable.

4 Now, regarding releases ordered by the ICTY, the defence have
5 stated that there have been a number of releases by the ICTY
6 which did not lead to public unrest or a detriment to public
7 order and this is an interesting reference because, again
8 yesterday, there was a discussion of the case of Biljana Plavsic,
9 a former member of the Presidency of the Serbian Republic in
10 Bosnia. She was provisionally released by the ICTY, and the
11 defence for Ieng Sary referred to this case and of course the
12 defence counsel for Khieu Samphan have referred to these releases
13 as indicative of the fact that a release of a high-profile
14 accused doesn't lead to, necessarily, public unrest.

15 [11.14.00]

16 An important distinction: this senior accused, Biljana Plavsic,
17 wasn't in fact released to the country in which she had committed
18 crimes for which she has since been convicted. She was released
19 to Belgrade, Serbia, a neighbouring country where the conditions
20 are very different, where there was no previous armed conflict
21 and in which she was of course much safer and in which
22 circumstances were such that public order was not undermined. I
23 would submit that the situation would have been very different
24 had she been released to her country of origin.
25 Your Honours, a further factor to which we referred in our appeal

1 response is a testimony of Dr. Chhim Sotheara in Case 1 and, of
2 course, the evidence in Case 1 has now been transferred to Case 2
3 so it is appropriate for Your Honours to refer to these
4 transcripts, and Dr. Chhim Sotheara who is a medical doctor with
5 post-graduate specialization in Psychiatry. He's a director of
6 the Trans-cultural Psycho-Social Organization, testified on 25th
7 of August 2009 at page 7, and I quote:

8 "The Khmer Rouge regime was a regime which destroys the entire
9 infrastructure of the country,. the social fabric of Cambodia, in
10 every respect."

11 I could confidently say that at a social level, family level and
12 individual level, he cites evidence which he found through his
13 research, the research of his organization, of high levels of
14 depression, family-based violence, drinking habits or alcohol
15 abuse and domestic violence which is on the rise.

16 [11.16.43]

17 And then he states at page 38 of the transcript of the 25th of
18 August 2009:

19 "So the heartbeat of irresponsibility or the absence of
20 responsibility is an extra burden placed upon the victims. Not
21 only the civil parties to these proceedings, but on the Cambodian
22 people as a whole. They are not happy and they feel furious of
23 such deniability."

24 Again, very clear evidence of the sort of public unrest that is
25 felt very much within the general population and of the risk

1 which a release would cause to public order.

2 Defence also makes reference to the case of Maurice Papon, to

3 which I referred to earlier and, again, Your Honours, I would

4 submit this reference is not relevant. This case dealt with the

5 deportation of some 1,600 Jews in a specific area -- Bordeaux in

6 France -- and it's certainly very, very different from the case

7 before Your Honours. A brief review of the introductory

8 submissions shows the magnitude, complexity, the scope of this

9 investigation and the fact that it affects a far, far broader

10 cross-section of the Cambodian community than would have been the

11 case in the Papon case.

12 Your Honours, we've also sought to put on the case file a 2009

13 Global Peace Index Report and I note that it hasn't been notified

14 formally, but we did send a copy of it to our learned friends by

15 way of courtesy, and I would say it is entirely appropriate for

16 us to place this document on the case file and to refer to it,

17 given that you referred to the previous version of this report in

18 your 2009 decision and the 2009 report is merely an updating of

19 the information already before the Chamber.

20 [11.18.35]

21 Very briefly, this report examines the incidence of crime and

22 public unrest and the general security situation in the country.

23 Between 2008 and 2009, Cambodia has retained the same score which

24 is on this index used by the Institute, is a number of 2.179 but,

25 interestingly, in relative terms compared to other countries,

1 Cambodia is now ranked 105th out of 144 countries on the Peace
2 Index. It has actually dropped from its ranking as 91 out of 140
3 in 2008.

4 MR. PRESIDENT:

5 Mr. Co-Prosecutor, could you please be reminded that you have two
6 more minutes to finish your submission.

7 MR. ABDULHAK:

8 Thank you, Your Honour, and I'll be very brief.

9 I'll move onto the issue of due diligence and very, very briefly,
10 Your Honours, you have held that there is a nexus between the
11 length of time a charged person spends in detention and the
12 diligence displayed by the judicial authorities.

13 We would submit that the detention continues to be proportionate;
14 it continues to be reasonable given the diligence which the
15 investigating judges have shown given the scope and progress of
16 this investigation.

17 I would simply note that the investigation is now entering its
18 final stages; the investigating judges have issued a notice on
19 the Rule 66.1. They have noted that they expect to issue a
20 closing order by September of this year, by which time the
21 charged person will either have the charges dismissed or will be
22 forwarded to trial. And by way of a very quick overview of the
23 sort of hard work which has been conducted by the investigating
24 judges, I would indicate, for example, that over 700 written
25 records of interview have been placed on the case file since the

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1 start of the investigation, and since the 27th of February 2009,
2 the last hearing before this Chamber, close to 3,000 new
3 evidentiary documents have been placed on the case file.

4 [11.21.06]

5 Your Honours, I'll submit that the investigating judges have been
6 diligent; they have progressed this investigation at an
7 expeditious pace. The investigation is in its final stages and
8 detention continues to be appropriate. Your Honours have
9 previously found that given the high level of risk under the two
10 grounds in 63.3(b) that no alternative is appropriate; that no
11 alternative is available and I would submit that that continues
12 to be the case, Your Honours.

13 There are a number of other grounds which were referred to by the
14 defence counsel which I'm happy to respond to, but I note that we
15 have a limited time and also the defence counsel didn't raise all
16 of the grounds they referred to in their appeal.

17 But I remain at your disposal. Thank you.

18 [11.22.13]

19 MR. PRESIDENT:

20 The Pre-Trial Chamber would like to note that the civil parties
21 have not submitted any response to the appeal, but they are
22 summoned to participate in the proceeding and they are allowed to
23 file a brief submission or make an oral submission if there is
24 any new application being put during the course of this
25 proceeding. And the Pre-Trial Chamber notes that during the

1 hearing, the defence counsel raised the new matter concerning the
2 provisional detention and house arrest.

3 So the Pre-Trial Chamber now allows the civil party lawyers to
4 make their submission concerning this matter.

5 MR. BLACKMAN:

6 Your Honours, thank you for the opportunity to make a few brief
7 comments with regard to the house arrest issue.

8 As I said yesterday, my name is David Blackman; for the record
9 anyway. I represent Cambodians -- national and international
10 American Cambodians.

11 As I said yesterday and as Mr. Karnavas admitted at the very
12 close of his statement that the idea of the defendants -- I raise
13 the issue -- the idea of the defendants speeding to the
14 courthouse from Phnom Penh from their house arrest -- five of
15 them now -- would be a sight that would be incredibly opprobrious
16 to the people of this country and to the international community.
17 So Mr. Karnavas indicated that in trial that would certainly be
18 the case.

19 I submit to you that in pre-trial situations the defendants
20 coming back-and-forth to court on motions which are frequently
21 made would present the same kind of situation -- a situation that
22 would be incredibly absurd -- to see the population of this
23 country who have been victimized beyond any description, beyond
24 any other communist revolution, to then allow the defendants to
25 come to court by armed escort with military police blocking the

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1 way so that the people of Cambodia cannot go to their
2 destinations. So on that I would submit that under Rule 63.3(b)
3 I or the third prong -- the rules would just simply be absurdly
4 applied to allow that to happen.

5 Thank you very much. My colleague may have something to add. I
6 don't know.

7 MR. PICH ANG:

8 Mr. President, Your Honours, the prosecution and my learned
9 friend in the defence counsel, and people inside and outside the
10 courtroom, the defence counsel raised a new matter which they did
11 not really submit in their previous submission. I would like to
12 submit that such assertion is rejected.

13 First, the under house arrest. The pre-trial detention at the
14 ECCC detention facility is not a means to detain or to jail the
15 person but it is to preserve or protect his security and personal
16 safety from others.

17 [11.27.40]

18 In addition, the detention facility at the Court provides decent
19 services to the charged person, the services that are better
20 compared to that if he would be released under house arrest. So
21 I can conclude that the conditions for his detention at this
22 facility is quite appropriate already and we would like to submit
23 that the Pre-Trial Chamber reject the submission by the defence
24 counsel concerning the house arrest condition.

25 MR. PRESIDENT:

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1 The defence counsel is now allowed the floor to respond.

2 MR. SA SOVAN:

3 Mr. President, Your Honours, the national and international
4 Co-Prosecutors, the civil party lawyers, the victims, and people
5 in and outside of this courtroom, although I am allowed 30
6 minutes to respond to the submission, I think it is more
7 complicated. For example, as I already indicated, the Khmer
8 Rouge would be perceived the same, either he is Ieng Sary or
9 other. And I think if we believe in the unity or, in French (no
10 interpretation) I'm sorry. I had to speak French a bit. I know
11 that it is difficult to have it translated.

12 And like Duch, Ieng Thirith, Mr. Ieng Sary, Nuon Chea and Khieu
13 Samphan are detained all together inappropriately in the same
14 detention facility and I really respect the submission made by
15 the prosecutors. And once again, my father died in 1977 and my
16 friends also are here to observe the proceeding. They lost their
17 loved ones and they want to seek justice.

18 [11.30.41]

19 And if I knew that the Court is seeking revenge I would resign
20 tomorrow because I believe that my client has not committed any
21 crimes and that we are now searching for the truth. So who have
22 actually committed crimes? So do not really implicate everyone
23 as having committed the crimes. And I have been willing to
24 defend Mr. Khieu Samphan because I have known him as the
25 parliamentarian in Sa'ang Prek Tauch when I was still at primary

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1 school.

2 So I would like to remind that -- and I would like to request
3 that this matter is reconsidered because during the Khmer Rouge
4 regime people had different roles and responsibilities. And once
5 again I really respect both the National and International
6 Co-Prosecutor and their submission but please do not really
7 collect or base your argument on the documents collected from Mr.
8 Youk Chhang from DC-Cam. And I respect Mr. Youk Chhang for
9 searching or collecting all the informational documents,
10 searching for the truth.

11 And as I indicated, we do not need to bring the matter of
12 evidence before this Pre-Trial Chamber hearing. The matters have
13 already been dealt with by the Pre-Trial Chamber. The roles of
14 the Co-Investigating Judges is to detain the charged person
15 provisionally, not forever. And the Co-Investigating Judges have
16 already extended the provisional detention to the fourth year
17 already, not the third year.

18 And if they argue that he should be detained further because it
19 would be difficult to bring him to the Court if he would be
20 released, so then he would be detained for another one year. Is
21 it correct?

22 [11.33.08]

23 So as the defence counsel, I do not really contest that the truth
24 is not being sought but having observed the national and
25 international Co-Prosecutor making their submission, I can

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1 conclude that they are more like the cousins of the
2 Co-Investigating Judges. For example, Judge Marcel Lemonde
3 worked so hard to find only inculpatory evidence, not the
4 exculpatory one, so I don't know whether his mission is to really
5 break down the Khmer society or to restore such damage.
6 So I really respect those people who lost their life during the
7 regime and we are here to search to find the truth. I'm not here
8 to defend someone who has committed crimes and to ask that he be
9 acquitted but I am here to also be in favour of my client to
10 respond to the matter that my client has been detained for 36
11 months and after this time limit he shall be released.
12 The pre-trial detention condition -- provisional detention is up
13 to for three years and I think that you cannot really extend his
14 detention. You never detained my client to please the
15 international community. And if you look at the case of Mr.
16 Nelson Mandela, who has been doing his best to unite the human
17 race, the black-skinned people did not take revenge against the
18 white-skinned people and if the Pre-Trial Chamber, especially
19 this Pre-Trial Chamber, can seek for the truth, that would be an
20 excellent view. But I urge the Pre-Trial Chamber to take all
21 those facts into consideration and those people who were
22 responsible and who were in the committee that should be
23 responsible, and my client only took his position under the
24 advice of the King. And if he were not to accept such a position
25 it means he disobeys the order of the Party because the King, at

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1 that time, he was not in the same role as my client and how could
2 he reject such an assignment?

3 He of course acknowledged killings took place during the regime
4 and I strongly believe the Pre-Trial Chamber would consider all
5 the facts and that my client, who used to study at university, he
6 did not build himself to be detained at the present stage. He
7 wants to know the truth as well and he will speak of what he
8 knows.

9 And I urge once again the Pre-Trial Chamber to consider that if
10 he were to be released provisionally and that he would be
11 attacked, as raised by the Co-Prosecutors by providing an example
12 of 1991, 2008 -- by raising the cases involving Duch's case.
13 Duch is not Khieu Samphan and I, Sa Sovan, is different from them
14 too, and here I believe that when an elephant is dead you cannot
15 hide it with a few leaves. If you commit bad acts you cannot go
16 and tell people that you commit good acts. My acts can be
17 observed by those people around me.

18 [11.37.14]

19 And as the international Co-Prosecutor said, a woman wanted to
20 kill Duch, and I myself on the 4th of December 2009 -- that the
21 person wanted to tear me apart, to eat my flesh, and then I
22 explained to her that even if you eat me I'm not that tasty, and
23 that she should know about the truth. We are all Cambodian
24 people and the other five charged persons, they are also Khmer.
25 We are all Khmer and if the worms come out from our own flesh

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1 then there would be another Pol Pot regime in the future.
2 And if Khieu Samphan were to be released and that he were to be
3 attacked, I strongly hold the opposite view because my client is
4 distinct from the rest. Until today he is the most person who is
5 very poor. And why do I say that? Because he never commits any
6 wrongdoing, he was never detained for any bad acts, and I believe
7 when he has such a belief in himself then he would not cause any
8 public disorder, and I urge the Pre-Trial Chamber to consider
9 that fact.

10 The incident in 1991 or 2000 and recently when a Belgian lawyer
11 said lived for 10 years in Pailin and nobody ever went to attack
12 him because he was still under the Khmer Rouge stronghold, but
13 then Robert Petit and Judge You Bunleng went to Pailin to
14 instigate those people to lodge their complaints against the
15 Khmer Rouge and they could do it safely and nobody ever took a
16 grudge against them.

17 [11.39.37]

18 And I never receive any phone calls blaming me for what I do to
19 defend my client. And from the point of view of the
20 Co-Prosecutors, they regard themselves as victims -- the victims
21 here who are living in -- who are here with us today. I would
22 like to recall them to separate the black from the white, and my
23 client is distinct from Pol Pot or Ieng Sary or from the King.
24 So everybody's case is different and the Pre-Trial Chamber shall
25 consider if my client could commit such acts, but I personally

1 strongly believe that he would never commit such acts.
2 And in reference to Rule 63.3 which sets out the protection of
3 the security of the charged person and that he shall not be
4 released, I will respond to the International Co-Prosecutor who
5 raised the exact point in his submission. However, in the
6 Cambodian society and regarding the categorizing of a Cambodian
7 country in the global peace report, that is irrelevant. You talk
8 about the killing of 1,600 people and that cannot be compared to
9 the killings of the more than one million people. It's a
10 different story, I agree to that, but facts need to be found and
11 we have to defend the interest of the Cambodian people.
12 I return back to the two points. First, that he would disturb
13 the public order for his own safety. I believe in our view that
14 is not possible and, no matter what, he shall be released from
15 the provisional detention in 10 months anyway unless amendment is
16 made to the Internal Rules or to the law, which is unlikely. So
17 the Pre-Trial Chamber shall consider once again on the points
18 that I raised, that I believe that he could not commit the crimes
19 alleged by the Co-Prosecutors or that he went to inspect all the
20 achievements in the name of the state or the separate presidium.
21 He did not have anything to do with the security affairs.
22 [11.42.48]
23 If you look at the role of the Prime Minister today, you would
24 not know any details of the arrest made by the police or the
25 police force.

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1 So to conclude, I would urge the Pre-Trial Chamber to again
2 consider all the facts and if possible that he can be
3 provisionally released under judicial supervision; that will be
4 an alternative form. And if the facts are not considered and
5 only return to the previous ruling, that would be a negative view
6 or that revenge is involved in the decision-making.

7 And people who lost their loved ones and who returned from
8 France, they studied the facts, they understood the facts and
9 agreed for me to defend my client in order to seek for the truth.
10 The person lost his wife and lost his four kids during the regime
11 and currently he's teaching at the university with me and he
12 writes various books.

13 Thank you, Mr. President. I conclude my submission.

14 MR. PRESIDENT:

15 Mr. Khieu Samphan, rise.

16 Do you wish to have any final statement made? You are entitled
17 to make your final statement regarding your appeal hearing today.

18 THE CHARGED PERSON:

19 Your Honour, thank you, Mr. President. I have heard the
20 submission of the International Co-Prosecutor and I concur with
21 the view of my defence counsel. Nuon Chea, Ieng Sary, Ieng
22 Thirith, they're all alike. No, it's not like that, Mr.
23 President. I took the role as the state presidium of the
24 Democratic Kampuchea after King Sihanouk resigned from the
25 position and I have my personal reasons in such circumstances.

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1 If I were not to accept that position it meant that I did not pay
2 my attention to the national affairs.

3 [11.45.44]

4 At that time, the country was in a chaotic situation under
5 various factors and to take up the role as the state presidium of
6 the Democratic Kampuchea regime is not only to represent the
7 Khmer Rouge but to represent the entire Cambodian nation, and
8 that we wanted to have our country independently with our own
9 sovereignty and no subordination of any countries; either to the
10 east or to the west or to the Vietnamese Communist Party.

11 And that was the circumstance that I took such a position as is
12 their presidium and what was my power, then, if you might ask. I
13 had no real power, even people under my subordination. I was
14 nothing; I got even no real office and at that time some press
15 refer to me as a leader with only the name and no real power.
16 And if you consider my role in the party, I was not a member of
17 the Standing Committee of the Democratic Kampuchea. I was merely
18 a member of the central committee and I was a member of that
19 committee because of the various positions that I held and that I
20 represent the struggling force -- the rebellion force.

21 [11.47.41]

22 But I was not a commander. I did not have any soldiers under my
23 command and those circumstances compel me to take such a
24 position, and it is clear already why there isn't a need for any
25 further investigation. The Cambodian people can respond to this

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1 question, you just ask real Cambodian people. You don't need to
2 ask just one or two to get the answer. Some people might have
3 various personal reasons, but if you listen to the voice of the
4 Cambodian people as a whole you would understand the state that I
5 was in; that I had no authority to kill anyone and that I was not
6 aware to know of any decision they made in killing people, and
7 today and until now I just don't want to speak about that.

8 But after I have heard for so long, it seems like I am now being
9 tried and that I cannot be released because if I were to be
10 released then disturbance or chaos would fall upon the Cambodian
11 country.

12 This is my final statement, Mr. President and I apologize if
13 there is anything improper in my speech.

14 MR. PRESIDENT:

15 The hearing on the appeal today comes to an end and the Pre-Trial
16 Chamber will notify the decision on the appeal two days before
17 its issuance.

18 The Court is now adjourned.

19 (Judges exit courtroom)

20 (Court adjourns at 1149H)

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