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

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

D427/1/27

អង្គបុរេជំនុំជម្រះ
Pre-Trial Chamber
Chambre Préliminaire

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

Criminal Case File No: **002/19-09-2007-ECCC/OCIJ (PTC75)**

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

Date: **24 January 2011**

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PUBLIC

DECISION ON IENG SARY'S APPEAL AGAINST THE CLOSING ORDER: REASONS FOR CONTINUATION OF PROVISIONAL DETENTION

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Accused

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THE PRE-TRIAL CHAMBER of the Extraordinary Chambers in the Courts of Cambodia ("ECCC") is seized of "Ieng Sary's Appeal against the [Co-Investigating Judges]' Closing Order (the "Ieng Sary Appeal"),[1] filed on 25 October 2010.

1. On 13 January 2011, the Pre-Trial Chamber has pronounced the final disposition of the Appeal and announced that the reasons for this decision shall follow in due course.

2. In particular, the Pre-Trial Chamber decided unanimously that:

    1. The Appeal is admissible in its form;
    2. Grounds one, two, three, five, seven (partially) and eleven (partially) are admissible. The rest of the grounds of this appeal are inadmissible.
    3. Ground one is dismissed;
    4. Ground two is dismissed;
    5. Ground three is dismissed;
    6. Ground five is dismissed;
    7. Ground seven, as far as it is admissilbe, is granted in part as follows and is otherwise dismissed:
        1. This ground of Appeal is granted in so far as the Co-Lawyers assert that the Co-Investigating Judges erred by failing to consider that during the temporal jurisdiction of the ECCC, international customary law required a nexus between the underlying acts of crimes against humanity and an armed conflict . The "existence of a nexus between the underlying acts and the armed conflict" is added to the "Chapeau" requirements in Chapter IV(A) of Part Three of the Closing Order.
        2. This ground of Appeal is granted in so far as the Co-Lawyers argue that rape did not exist as a crime against humanity in its own right in 1975-1979. Therefore, the Pre-Trial Chamber decides to strike rape out of paragraph 1613 (Crimes Against Humanity, paragraph (g)) of the Closing Order and to uphold the Co-Investigating Judges finding in paragraph 1433 of the Closing Order that the facts characterized as crimes against humanity in the form of rape can be categorized as crimes against humanity of other inhumane acts.
    8. Ground eleven, as far as it is admissible, is dismissed;
    9. The Appeal is otherwise dismissed;
    10. The Accused Person is indicted and ordered to be sent for trial as provided in the Closing Order being read in conjunction with this decision;

[1] Ieng Sary's Appeal Against the Closing Order, 25 October 2010, D427/1/6 ("Ieng Sary Appeal").

PRE-TRIAL CHAMBER CHAMBRE PRÉLIMINAIRE E.C.C.C. * C.E.T.C.

11. The provisional detention of the Accused Person is ordered to continue until he is brought before the Trial Chamber.

3. The Pre-Trial Chamber hereby provides the reasons for the eleventh conclusion of this decision whereby the provisional detention of the Accused was ordered to continue.

MAINTENANCE OF THE ACCUSED IN PROVISIONAL DETENTION: REASONS

4. Pursuant to sub-rule 68(2), once an appeal is lodged against the indictment, no matter what the nature of the appeal is, "the effect of the detention or bail order of the Co-Investigating Judges shall continue until there is a decision from the Pre-Trial Chamber."

5. In addition to his Appeal which is the subject of the current decision, the Accused has lodged a separate Appeal against the Closing Order's extension of his provisional detention (the "Appeal on extension of provisional detention").[2] The Appeal on extension of provisional detention was dismissed on 13 January 2011 whereby the Pre-Trial Chamber has pronounced the final disposition of the Appeal and announced that the reasons for this decision shall follow in due course.[3] Reasons for this decision were provided previously today.[4] In its decision, the Pre-Trial Chamber explained why the Appeal on extension of provisional detention failed to demonstrate that the Co-Investigating Judges have committed an error in their order to maintain the Accused in provisional detention.

6. The Pre-Trial Chamber finds that there is no new circumstance since the issuance of the Closing Order by Co-Investigating Judges except the confirmation of the indictment by the Pre-Trial Chamber, which reinforces the well founded reasons to believe that the Accused may have committed the crimes charged in the indictment and the necessity to maintain him in provisional detention in order to ensure his presence at trial, protect his security and preserve public order.[5] The Pre-Trial Chamber considers that the reasons given by the Co-Investigating Judges to order that the Accused remains in provisional detention, which it

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[2] IENG Sary's Appeal against the Closing Order's extension of his provisional detention, 22 October 2010, D427/5/1.
[3] Decision on IENG Sary's Appeal against the Closing Order's extension of his provisional detention, 13 January 2011, D427/5/9.
[4] Decision on IENG Sary's Appeal against the Closing Order's extension of his provisional detention, 21 January 2011, D427/5/10.
[5] Internal Rule 63(3)(b) i), ii), iii) and v).

adopts, justify that it orders that the provisional detention of the Accused pursuant to Internal Rule 68(3) continue until he is brought before the Trial Chamber.

Phnom Penh, 24 January 2011

Pre-Trial Chamber **President**

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