

**BEFORE THE TRIAL CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

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URGENT APPLICATION FOR IMMEDIATE RELEASE OF NUON CHEA

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I. INTRODUCTION

1. Pursuant to Rules 82(2) and 68(3) of the ECCC Internal Rules (the 'Rules'), counsel for Charged Person Nuon Chea (the 'Defence') submit this urgent application (the 'Application') to the Trial Chamber (the 'TC') to release Nuon Chea from provisional detention, effective immediately. For the reasons stated below, keeping Nuon Chea in detention would be in contravention of the provisions of Rule 68 and would amount to a violation of his right to detention in accordance with the law.

II. RELEVANT FACTS

2. Nuon Chea was arrested by ECCC authorities and provisionally detained by the Co-Investigating Judges (the 'CIJs') for one year on 19 September 2007.¹ His provisional detention period was extended for an additional one-year term on 16 September 2008² and again for an identical period on 15 September 2009.³ On 15 September 2010 the CIJs ordered his continued detention until he is 'brought before the Trial Chamber'.⁴ On 13 January 2011 the Pre-Trial Chamber ('PTC') decided to continue the provisional detention until Nuon Chea is 'brought before the Trial Chamber' (the 'Decision').⁵ He is currently detained at the ECCC premises under the custody and supervision of the Ministry of the Interior of the Royal Government of Cambodia.

¹ See Document Nos **C-6**, OCIJ 'Arrest Warrant', 17 September 2007, ERN 00148692-00148693; **C-7**, 'Record of Bringing the Suspect', 19 September 2007, ERN 00148694-00148695; **C-8**, OCIJ 'Written Record of Adversarial Hearing', 19 September 2007, ERN 00148696-00148700; and **C-9**, OCIJ 'Provisional Detention Order', 19 September 2007, ERN 00148701-00148705. On appeal, the Provisional Detention Order was upheld by the Pre-Trial Chamber (the 'PTC'). See Document Nos **C-11/4**, PTC 'Appeal Against Order of Provisional Detention', 12 November 2007, ERN 00149999-00150442 and **C-11/54**, PTC 'Decision on Appeal Against Provisional Detention Order of Nuon Chea', 21 March 2008, ERN 00172907-00172934.

² See Document No **C-9/3**, OCIJ 'Order on Extension of Provisional Detention', 16 September 2008, ERN 00224203-00224204. On appeal, the Order on Extension of Provisional Detention was upheld by the PTC. See Document Nos **C-9/4/1**, 'Appeal Against Order on Extension of Provisional Detention', 16 October 2008, ERN 00232728-00232736 and **C-9/4/6**, PTC 'Decision on Appeal Against Order on Extension of Provisional Detention of Nuon Chea', 4 May 2009, ERN 00303454-00303470.

³ See Document No **C-9/6**, OCIJ 'Order on Extension of Provisional Detention', 15 September 2009, ERN 00375956-00375965. The Defence did not appeal this order.

⁴ Document No **D-427**, OCIJ 'Closing Order', 15 September 2010, ERN 00604508-00605246, at ERN 00604909.

⁵ Document No **D-427/2/12**, PTC 'Decision on Ieng Thirith's and Nuon Chea's Appeals against the Closing Order', 13 January 2011, ERN 00634916-00634922, at ERN 00634922.

III. RELEVANT LAW

A. Application for Release

3. According to the Rules, '[t]he Accused, or his or her lawyers, may request the Chamber to release him or her [...] by written application submitted to the Greffier of the Chamber.' The Chamber shall decide 'after hearing the Co-Prosecutors, the Accused and his [...] lawyers.' The Chamber may 'at any time during the proceedings' order the release of an accused.⁶

B. Effect of Closing Order on Provisional Detention

4. Rule 68 sets out the effect of a closing order on provisional detention:
1. The issuance of a closing order puts an end to provisional detention [...] orders once any time limit for appeals against the closing order have expired. However, where the [CIJs] consider that the conditions for ordering provisional detention [...] under Rule 63 [...] are still met, they may, in a specific, reasoned decision included in the closing order, decide to maintain the accused in provisional detention [...] until he or she is brought before the Trial Chamber.
 2. Where an appeal is lodged against the indictment, the effect of the detention [...] order of the [CIJs] shall continue until there is a decision from the Pre-Trial Chamber [(the 'PTC')]. The [PTC] shall decide within 4 months.
 3. In any case, the decision of the [CIJs] or the [PTC] to continue to hold the accused in provisional detention [...] shall cease to have any effect after 4 (four) months unless the accused is brought before the Trial Chamber within that time.⁷

C. The Requirement of Reasoned Decisions

5. Rule 77(14) reads, in relevant part: 'All decisions under this Rule [...] shall be reasoned [...].' The Decision dated 13 January 2011 is a 'decision under this Rule' (Rule 77) and must therefore be reasoned.
6. In general, the requirement of 'reasoning' underlies the entire system of the Rules and therefore the ECCC: almost every positive action that is undertaken by any party (OCP, OCIJ, Defence, PTC and TC) must be 'reasoned'.⁸

⁶ Rule 82

⁷ The analogous provision of the CCP is comparable to Rule 68, but, unlike the Rules, does not allow for appeals against the Closing Order. *See* CCP, Article 249: ('The closing order terminates provisional detention. [...] However, by a separate decision issued together with the closing order, the investigating judge may order to keep the charged person in provisional detention until the time he is called to appear before the trial court. [...] The decision to keep the charged person in provisional detention ceases to be effective after four months. If the charged person is not called to appear before the trial court within these four months, the charged person shall be automatically released.')

7. The requirement of reasoned judicial decisions is also reflected in international legal standards, such as the case law of the European Court of Human Rights.

In its case-law the Court has frequently held that the reasoning provided in court decisions is closely linked to the concern to ensure a fair trial as it allows the rights of the defence to be preserved. Such reasoning is essential to the very quality of justice and provides a safeguard against arbitrariness.⁹

D. Applicable Law and Procedure at the ECCC

8. The Constitution provides that the ‘detention of any person shall not be done except in accordance with the law’.¹⁰
9. Echoing the Constitution (as well as the relevant provisions of the ICCPR¹¹), the ECCC Agreement and the ECCC Law (together, the ‘Constituent Instruments’) acknowledge the principle of legality: the ‘procedure’ applied at the ECCC ‘shall be in accordance with Cambodian law’;¹² and the prosecution, investigation and trial of any individual shall follow ‘existing procedures in force’.¹³ Notably, ‘[c]onditions for the arrest and the *custody* of the accused shall conform to existing law in force’.¹⁴

⁸ See, e.g.: Rules 29(4), 32, 44(2), 50(3), 55(10), 58(6), 59(5), 63(1)(b), 63(2)(a), 63(7) 64(2), 66(2), 67(4), 68(1), 71(4)(d), 72(4)(e), 76(1), 76(2), 77(14), 79(6)(b), 79(6)(c), 89(3), 99(2), 101(1)(a), 109(3), 111(1), 111(5).

⁹ *Taxquet v Belgium*, European Court of Human Rights, Judgment, 13 January 2009, Application No. 926/05, para 43. This case was referred to the Grand Chamber, which confirmed the reasoning, see *Taxquet v Belgium*, Judgment, European Court of Human Rights, 16 November 2010, Application No. 925/05, paras 90-91; See also *Hadjianastassiou v. Greece*, Judgment, European Court of Human Rights, Application No 12945/87, 16 December 1992, para 33, this decision was also confirmed in *Taxquet v Belgium* (2010), para 91.

¹⁰ 1993 Constitution, Article 38.

¹¹ See ICCPR, Articles 9(1) (‘No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are *established by law*.’); 14(1) (‘In the determination of any criminal charge against him [...] everyone shall be entitled to a [...] hearing by a [...] tribunal *established by law*.’); 14(2) (‘Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty *according to law*.’); 14(5) (‘Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal *according to law*.’); and 16 (‘Everyone shall have the right to recognition everywhere as a person *before the law*.’) (emphasis added). *N.B.* All chambers of the ECCC ‘shall exercise their jurisdiction in accordance with international standards of justice, fairness and due process of law, as set out in Articles 14 and 15 of the 1966 [ICCPR], to which Cambodia is a party’. ECCC Agreement, Article 12(2); See also ECCC Law, Article 35 new.

¹² ECCC Agreement, Article 12(1); See also Document No E-188, TC ‘Duch Judgment’ 26 July 2010, ERN 00572517-00572797, para 35 at 00572534.

¹³ ECCC Law, Articles 20 new, 23 new, 33 new.

¹⁴ ECCC Law, Article 33 new (emphasis added).

E. Ultimum Remedium

10. The internationally recognized principle of *ultimum remedium*—which provides that where ‘other legal avenues exist which could preserve the interests of justice without having resort to detention on remand, for instance through release or bail, such an option should be pursued’¹⁵—is equally applicable before the ECCC, if only because it is recognized in Article 9(3) of the ICCPR.¹⁶ It is further implicitly endorsed by both the CCP and the Rules, e.g. in Rule 68 which provides for the default ‘ceasing’ of the effect of detention orders and CCP Article 249, which provides for the ‘automatic’ release of the accused after the expiration of a four month period. This reveals an underlying preference for the default situation in which the accused is free.

IV. ARGUMENT

A. The Application is Admissible

11. As a result of the indictment by the PTC on 13 January 2011, the TC is now seised. Pursuant to Rule 82, the TC may, ‘[a]t any time’ during the proceedings, release the Accused. Pursuant to the same Rule, the Accused may request the TC to be released. Logic dictates that such a request, then, may be lodged ‘at any time’ during the proceedings.¹⁷ Accordingly, the instant application is admissible.

¹⁵ Geert-Jan Alexander Knoops, *THEORY AND PRACTICE OF INTERNATIONAL AND INTERNATIONALIZED CRIMINAL PROCEEDINGS* (Kluwer 2005), p 151.

¹⁶ Article 9(3) of the ICCPR provides: ‘It shall not be the general rule that persons awaiting trial shall be detained in custody [...]’.

¹⁷ Neither the OCIJ nor the PTC are seised any longer, and these judicial bodies would in all likelihood declare requests for release inadmissible on that basis alone. The underlying system of the Rules, as well as international standards of criminal procedural law, clearly recognize the right of the accused to at all times petition a judicial entity for release. At this stage of the proceedings, the TC is the most obvious judicial entity to entertain the current Application, and in all likelihood the only one willing to do so.

**B. Nuon Chea Must be Immediately Released as the CIJs'
Latest Detention Order Has Ceased to Have Any Effect, and
the PTC has not Reached a 'Decision' as Required by Rule 68**

12. Pursuant to Rule 68(3), the CIJs' latest decision to continue to hold Nuon Chea in detention would cease to have any effect 4 (four) months after the date of its issuance (on 15 September 2010), unless the Accused was brought before the Trial Chamber before that time. Nuon Chea has not been brought before the Trial Chamber within those four months.
13. Pursuant to the same Rule, the PTC may extend the provisional detention period in its decision on an appeal of the Closing Order. The PTC *purportedly* reached such a decision in its Decision of 13 January 2011. However, this Decision cannot qualify as a 'decision' under Rule 68(2) and (3) and must therefore be considered moot.
14. Rule 77 prescribes that all decisions by the PTC shall be reasoned. The Decision is not reasoned. To the contrary, the Decision reads: 'The reasons for this decision shall follow in due course.'¹⁸ A decision by the PTC that is not reasoned is, simply put, not a 'decision' as envisaged by the Rules. Accordingly, the PTC cannot (yet) be considered to have issued a decision on the Appeal against the Closing Order as required by the Rules and has not extended the provisional detention of Nuon Chea. In other words, the Decision as issued by the PTC on 13 January 2011 does not provide an adequate legal basis for the detention of Nuon Chea.
15. As the decision by the OCIJ to keep Nuon Chea in provisional detention ceased to have any effect on 16 January 2011 and the PTC failed to issue a 'decision' according to the definition of this term under the Rules, his continued detention lacks an adequate legal basis and he must be released.

¹⁸ Document No **D-427/2/12**, PTC 'Decision on Ieng Thirith's and Nuon Chea's Appeals against the Closing Order', 13 January 2011, ERN 00634916-00634922, at ERN 00634920.

**C. The PTC's Actions Reflect a Serious Disregard for the Principle
of *Ultimum Remedium* and Thus the Rights of Nuon Chea**

16. The single fact that the Decision is not reasoned provides enough ground in and of itself to conclude that this is not a 'decision' according to the rules and that Nuon Chea should therefore be released.¹⁹ This conclusion is further buttressed by, but does not rely on, the fact that the actions of the PTC reveal a clear disregard for the principle of *ultimum remedium* and therefore a disregard for the rights of Nuon Chea.
17. In fairness, it is undeniable that the PTC issued this Decision within four months solely to avoid the automatic release of Nuon Chea. Needless to say, it is perfectly reasonable for a judicial entity to issue a decision in order to prevent the release of an accused who, in its view, should remain in provisional detention. However, it is highly *unreasonable* to do so in contravention of the clear obligations of the rules that govern the judicial entity.²⁰ In such a situation, the issuing of such a decision amounts to an abuse of power by the judicial entity.
18. The approach by the PTC fails to recognize that the strict time limits in Rule 68 exist primarily (and arguably: solely) for the protection of the Accused;²¹ these time limits reflect his right to be tried within a reasonable time and, more importantly in this case, they embrace the principle of provisional detention as *ultimum remedium*. The *Accused* has a right to a (reasoned) decision on appeal by the PTC within four months, simply because provisional detention is such a heavy burden on anyone; and therefore, it should not be the rule, but rather the exception and must accordingly be controlled by strict time limits.

¹⁹ Of course, the Defence does not doubt that, eventually, reasons will be provided for the Decision. The Defence simply states that the time limits as provided for in the Rules aim to ensure that the accused person obtains a *reasoned* decision within four months, not just a decision.

²⁰ In the case of the PTC: the Internal Rules and their requirement to provide reasoned decisions.

²¹ Of course, certain other interests benefit from the strict time limits, such as the general interest to have the proceedings finish within a reasonable time, see Rule 21(4). However, it is clear that the interests of the accused are the primary concern of Rule 68. This flows from the observation that, after the lapsing of the four months time limits, the detention orders 'cease' to have any effect, without any judicial intervention; this reveals a strong bias towards the interests of the accused. This conclusion is further reinforced by considering the 'mother'-article, CCP Article 249, which does not only provide for the same 'ceasing' of the effects of the detention orders, but additionally stresses that after four months the accused shall be 'automatically released'; thus further elucidating (arguably superfluously) that the four month time limit aims to protect the interests of the accused; Rule 68 should be interpreted analogously.

19. The skewed approach by the PTC leads to an untenable result. The PTC was compelled to issue a decision within four months (in the absence of which the interests of the Accused would have, *by definition*, trumped other concerns) by a rule aimed to *protect* the interests of the Accused. In an ostensible attempt to honor this time limit, it instead *harmed* the interests of the Accused, by providing an unreasoned decision in disregard of the provisions and underlying intent of the Internal Rules, in an attempt to secure his prolonged provisional detention, which would have become impossible to extend in the absence of such a decision.
20. The actions by the PTC thus reveal a flawed understanding of the principle of *ultimum remedium* as (also) reflected in Article 68. Provisional detention is not a goal in and of itself; nonetheless, the PTC as well as the OCIJ consistently treat it as such. Importantly, this is not the first time that the PTC has exposed this indefensible bias towards keeping Nuon Chea detained: it acted in similar fashion in the months leading up to 19 September 2010. In those months, it started to adopt the practice of issuing decisions²² without the underlying reasoning, providing such reasoning at a later date,

²² Document No **D-140/9/4**, PTC 'Decision on Ieng Sary's Appeal Against the Co-Investigating Judges' Order Denying his Request for Appointment of an Additional Demographic Expert to Re-Examine the Subject Matter of the Expert Report Submitted by Ms. Ewa Tabeau and Mr. They Kheam', 10 June 2010 ERN 00527512-00527514 (reasoning followed 28 June 2010 [19 days]); Document No **D-193/5/4**, PTC 'Decision on Appeal of Co-Lawyers for Civil Parties Against Order on Civil Parties' Request for Investigative Actions Concerning All Properties Owned by the Charged Persons' 10 June 2010 ERN 00528319-00528321 (reasoning followed 4 August 2010 [56 days]); Document No **D-310/1/2**, PTC 'Decision on Appeal of Co-Lawyers for Civil Parties Against Order Rejecting Request to Interview Persons Named in the Forced Marriage and Enforced Disappearance Requests for Investigative Action', 10 June 2010 ERN 00527487-00527489 (reasoning followed 21 July 2010 [42 days]); Document No **D-348/2/2**, PTC 'Decision on Appeal of Co-Lawyers for Civil Parties against Order on Civil Parties' Request for Investigative Actions Concerning a Witness of Forced Marriage in S-24', 10 June 2010, ERN 00527490-00527493 and Document No **D-348/2/5**, PTC 'Decision on Appeal of Co-Lawyers for Civil Parties against Order on Civil Parties' Request for Investigative Actions Concerning a Witness of Forced Marriage in S-24' Following Further Submissions', 14 July 2010 ERN 00548805-00548808 (reasoning followed 29 July 2010 [50 days]); Document No **D-356/2/8**, PTC 'Decision on Appeal against OCIJ Order Rejecting Request for a Second Expert Opinion' 10 June 2010 ERN 00527506-00527508 (reasoning followed 1 July 2010 [22 days]); Document No **D-263/2/5**, PTC 'Decision on Ieng Thirith's Appeal Against the Co-Investigating Judges' Order Rejecting the Request to Seize the Pre-Trial Chamber with a View to Annulment of All Investigations (D263/1)', 11 June 2010 ERN 00529255-00529258 (reasoning followed 25 June 2010 [15 days]); Document No **D-264/2/5**, PTC 'Decision on Ieng Thirith's Appeal Against the Co-Investigating Judges' Order Rejecting the Request for Stay of Proceedings on the Basis of Abuse of Process (D264/1)', 11 June 2010 ERN 00529259-00529262 (reasoning followed 10 August 2010 [61 days]); Document No **D-370/2/10**, PTC 'Decision on the Appeal against the 'Order on the Request to Place on the Case [File] the Documents Relating to Mr. Khieu Samphan's Real Activity', 11 June 2010 ERN 00528315-00528318 (reasoning followed 7 July 2010 [27 days]); Document No **D-361/2/3**, PTC 'Decision on Defence Appeal against the OCIJ Order on Ieng Thirith Defence Request for Investigation into Mr. Ysa Osman's Role in the Investigations, Exclusion of Certain Witness Statements and Request to Re-Interview Certain Witnesses', 14 June 2010 ERN 00531063-00531066 (reasoning followed 27 August 2010 [75 days]); Document No **D-300/1/6**, PTC 'Decision on Nuon Chea's Appeal against OCIJ Order on Direction

although no Rule envisioned this possibility.²³ Although it never stated so explicitly, it was abundantly clear to all parties that the PTC did so in an attempt to allow the CIJs to issue the Closing Order before 19 September 2010, the date on which Nuon Chea would have been detained for three years and should have been released in the absence of a closing order.

21. To be sure, the OCIJ's extreme preoccupation with issuing the Closing Order within these three years revealed a similarly flawed appreciation of the *ultimum remedium* principle. The primary concern for the OCIJ in conducting its investigation should have been to conclude its investigation in a substantively satisfactory way; rather, it was moved by a desire to wrap up the investigation within the three year-period so as to avoid the release of Nuon Chea. The PTC, then, decided to support the OCIJ in this flawed approach by issuing its unreasoned decisions.²⁴ In other words, this is not the first time that the PTC has chosen to apply a strained reading of the Rules in order to facilitate the continued detention of Nuon Chea.
22. Again, the Defence does not claim that judicial expeditiousness is something to be lamented; quite to the contrary. But judicial expeditiousness with the sole goal of keeping an accused in prison, while riding roughshod over the provisions of the Internal

to Reconsider the Requests D153, D172, D174, D178 and D284', 14 July 2010 ERN 00546141-00546144 (reasoning followed 28 July 2010 [15 days]); Document No **D-365/2/16**, PTC 'Decision on Reconsideration of Co-Prosecutor's Appeal Against the Co-Investigating Judges Order on Request to Place Additional Evidentiary Material on the Case File which Assists in Proving the Charged Person's Knowledge of the Crimes', 14 July 2010 ERN 00549333-00549337 (reasoning followed *after* the Closing Order was issued, 27 September 2010 [76 days]); Document No **D-375/1/7**, PTC 'Decision on Further Submissions in Appeal Against Order on NUON Chea's Requests for Interview of Witnesses', 14 July 2010 ERN 00554469-00554471 (reasoning followed *after* the Closing Order was issued, 20 September 2010 [69 days]); Document No **D-390/1/2/3**, PTC 'Decision on Ieng Sary's Expedited Appeal Against the OCIJ's Decision Refusing to Accept the Filing of Ieng Sary's Response to the Co-Prosecutor's Rule 66 Final Submission and Additional Observations, and Request for Stay of the Proceedings', 10 September 2010 ERN 00601742-00601742 (reasoning followed *after* the Closing Order was issued, 20 September 2010 [11 days]); PTC 'Decision on Addendum to Nuon Chea Application for Disqualification of Judge You Bunleng', 02 August 2010 ERN 00577612-00577615 (reasoning followed 9 September 2010 [39 days])

²³ Rather, Rule 77(14) governed those decisions as well and these decisions should therefore have been properly reasoned at the time of issuing.

²⁴ In a way, this course of action by the PTC was less 'harmful' than the unreasoned Decision of 13 January 2011, as those decisions themselves did not immediately impact on the provisional detention of Nuon Chea and most of the reasoning eventually was provided *before* the issuing of the Closing Order. However, the simple act of providing the unreasoned decisions itself revealed a disregard for the principle of *ultimum remedium*; moreover, in a few orders (Document Nos **D-365/2/16**, **D-375/1/7** and **D-390/1/2/3**, see n 22 *supra*) the additional reasoning was provided only *after* the issuing of the Closing Order. In other words, had the PTC not issued its 'unreasoned' decision (which would have been the proper thing to do, considering the Rules), Nuon Chea would have been released on 19 September 2010 (which would have been the proper thing to do, considering the Rules) as the issuing of the Closing Order would not have been possible without a decision on all appeals. This course of action thus certainly harmed the interests of Nuon Chea.

Rules, the interests of the accused and the *ultimum remedium* principle, is legally indefensible. If one of the goals of this court is to restore faith in the rule of law, it should abide by its own rules and not engage in this type of creative and (to the accused) detrimental application of the Rules.

D. The ‘Detention-Component’ of the Decision is Unreasoned

23. A separate ground for the request for immediate release is the fact that the Decision is unreasoned specifically with regard to the grounds and reasons for the continued detention.²⁵ Although the Rules do not explicitly dictate the PTC to provide reasons for the continued detention, such an obligation flows from the system of the Internal Rules considered as a whole. Pursuant to the Rules, *all* other decisions on pre-trial detention must be reasoned.²⁶ There is no principled justification for the PTC to not be bound by the same requirement, pursuant to the principles of legality, *ultimum remedium* and the need to issue reasoned judicial decisions in general. Accordingly, the fact that the PTC not only failed to provide reasons for the Decision itself, but additionally failed to provide *any* reasoning for the provisional detention component of this Decision, likewise leads to the conclusion that the continued detention of Nuon Chea lacks adequate legal basis.

E. Any Further Prolongation of Nuon Chea’s Provisional Detention Would Be Illegal

24. As no legal basis currently exists for the continued detention of Nuon Chea, keeping him in custody for any additional amount of time would be illegal. Immediate release is therefore the only legal remedy currently available.

F. The TC Should Hold an Immediate Hearing

25. Surely, the reasoning by the PTC will follow on relatively short notice. It might be tempting to delay the hearing and decision on this Application up until the moment that the PTC issues its reasoning and then declare this Application moot. Such an approach would be untenable. The facts before your Chamber are clear and straightforward: no

²⁵ While this section forms a separate ground of the Application, it must also be understood to further buttress the larger, overarching, claim of indefensible lack of judicial reasoning for the Decision as a whole.

²⁶ Rule 44(2), 51(1) and (3), 63(1)(b), 63(7), 64(2) and, importantly, 68(1).

reasoned decision as required by Rule 68 was issued within four months and therefore Nuon Chea should be released. There is no reason to consider this issue for any extended period of time. The Defence therefore requests an immediate hearing on this issue. International Co-Counsel Mr. Michiel Pestman will be in Cambodia up to and until 25 January 2011; accordingly, a hearing on or (preferably) before that date would be highly convenient.

26. In case both the OCP and the TC are of the opinion that this Application should be granted and that Nuon Chea should be immediately released, the Defence hereby waives its right to a hearing.

V. CONCLUSION

27. For the reasons stated above, the Defence requests the TC to order the immediate release of Nuon Chea and to hold a hearing on this Application as soon as possible.

CO-LAWYERS FOR NUON CHEA



SON Arun



Michiel PESTMAN & Victor KOPPE