



ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

អង្គជំនុំជម្រះសាលាដំបូង

Trial Chamber
Chambre de première instance

សំណុំរឿងលេខ: ០០២/១៩ កញ្ញា ២០០៧/អវតក/អជសដ

Case File/Dossier No. 002/19-09-2007-ECCC/TC

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Before: Judge NIL Nonn, President
Judge Silvia CARTWRIGHT
Judge YA Sokhan
Judge Jean-Marc LAVERGNE
Judge THOU Mony

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**DECISION ON NUON CHEA'S REQUEST TO TRIAL CHAMBER TO ORDER RESUMPTION OF
DETENTION INTERVIEWS**

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1. INTRODUCTION

1. On 17 March 2011, the NUON Chea Defence filed a request with the Trial Chamber to resume periodic detention interviews previously conducted by the Office of the Co-Investigating Judges (OCIJ) pursuant to Internal Rule 63(8) (“Request”).¹ On 28 March 2011, the Office of the Co-Prosecutors (OCP) filed a response opposing the request (“Response”).²

2. SUBMISSIONS

2. The Request contends that the Trial Chamber has an obligation to ensure the appropriate treatment of persons detained by the ECCC as well as the inherent jurisdiction to take steps necessary to protect the rights of the accused. The Request further submits that detention interviews are necessary to create a judicial record of detention conditions and reasonable in view of NUON Chea’s current health and prolonged period of detention.³ It is not currently alleged that the conditions of NUON Chea’s detention are incompatible with the ECCC legal framework or international standards.

3. The Response opposes the Request. The Chamber is not obliged by either the Internal Rules or the Cambodian Code of Criminal Procedure (“CCP”) to hold detention interviews.⁴ Further, NUON Chea’s right to be detained in appropriate conditions is already adequately protected by existing procedures set out in the Detention Facility Rules and Internal Rules. Finally, resumption of detention interviews is not otherwise necessary to protect NUON Chea’s right to be detained in accordance with international standards.⁵

¹ Request to Trial Chamber to Order Resumption of Detention Interviews, E66, 17 March 2011.

² Co-Prosecutors’ Response to Nuon Chea’s “Request to Trial Chamber to Order Resumption of Detention Interviews”, E66/1, 28 March 2011. A related application was made to the Pre-Trial Chamber (“PTC”) on 6 January 2011. The PTC referred the matter to the Trial Chamber (Decision on the Urgent Request to order Resumption of Detention Interviews (Public), Case No. 002/06/11/2011-ECCC/PTC(17), Doc No. 2, 19 January 2011). The Trial Chamber found that it had no jurisdiction over an application made to the PTC (*see* Request dated 6 January 2011 to the Pre-Trial Chamber by the co-lawyers for Nuon Chea seeking a resumption of periodic detention interviews, pursuant to Internal Rule 63(8), E60, 2 March 2011).

³ Request, paras 11-14.

⁴ Response, paras 3-4.

⁵ ECCC Rules Governing Persons Awaiting Trial or Appeal before the Extraordinary Chambers in the Courts of Cambodia, 17 December 2008 (“Detention Facility Rules”); Response, paras 5-10.

3. DELIBERATIONS

4. Internal Rule 63(8) requires a Charged Person in provisional detention to be personally brought before the Co-Investigating Judges at least every four months so as to offer him or her “an opportunity to discuss his or her treatment and conditions during Provisional Detention.” However, the Internal Rules do not require the continuation of these detention interviews during the trial stage.⁶ During trial proceedings, the accused and Defence teams have ample opportunity to raise any issues of concern regarding detention conditions directly before the Trial Chamber.

5. The Chamber observes that NUON Chea or his Defence may presently raise any concerns regarding detention conditions with the administrators of the Detention Facility, who are under an obligation to address these concerns and record the action taken in response. NUON Chea or his Defence may additionally submit complaints directly to the Chamber, pursuant to Rule 13(7) of the Detention Facility Rules or by written or oral submissions during the course of trial.⁷ Internal Rule 10(3) imposes further significant obligations on the Director and Deputy Director of Administration in this area.⁸

6. The Chamber accordingly considers that detention interviews are unnecessary as an additional safeguard of NUON Chea’s right to be detained in humane and dignified conditions.

⁶ See e.g. ECCC Law, Article 33 new (“Conditions for the arrest and the custody of the accused shall conform to existing law in force.”)

⁷ See e.g., Detention Facility Rules 13(4) (“Detainees shall be given the opportunity each weekday to make requests or complaints to the Chief of Detention”) and 13(5) (“Requests or complaints from detainees shall be promptly dealt with and responded to by the Chief of Detention.”) See further Detention Facility Rules 13(6)-(8) (requiring all such complaints and requests to be recorded as well as the recording of the action taken, guaranteeing the right of detainees to make requests or complaints “without censorship as to substance” to the Co-Investigating Judges or the Chambers, as appropriate, with a copy to the General Department of Prisons and the Director and Deputy Director of the Office of Administration, and requiring the Chief of Detention to forward the request or complaint to the appropriate authority).

⁸ Internal Rule 10(3) obliges the “Director and Deputy Director of the Office of Administration, ... in consultation with the Head of the Defence Support Section, the Co-Prosecutors, the Co-Investigating Judges and the Chambers, ... to adopt mechanisms ... [in conformity with] Cambodian law, the Standard Minimum Rules for the Treatment of Detainees and the Basic Principles for the Treatment of Prisoners of the United Nations.”

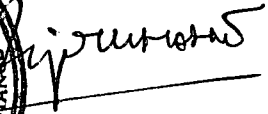
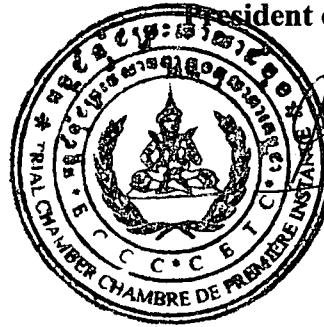
FOR THE FOREGOING REASONS, THE TRIAL CHAMBER:

DENIES the Request.



Phnom Penh, 11 May 2011

President of the Trial Chamber



Nil Nonn