



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

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

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia
Nation Religion King

Royaume du Cambodge
Nation Religion Roi

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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 N° 002/06-01-2011-ECCC/PTC (17)

Before:

Judge PRAK Kimsan, President
Judge Rowan DOWNING
Judge NEY Thol
Judge Catherine MARCHI-UHEL
Judge HUOT Vuthy

Date:

19 January 2011

PUBLIC

DECISION ON URGENT REQUEST TO ORDER RESUMPTION OF DETENTION INTERVIEWS

Co-Prosecutors

CHEA Leang
Andrew CAYLEY

Accused Person

NUON Chea

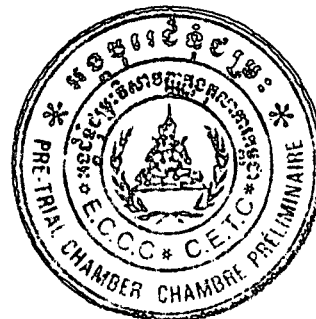
Co-Investigating Judges

Judge YOU Bunleng
Judge Singried BLUNK

Co-Lawyers for the Accused

SON Arun
Michiel PESTMAN
Victor KOPPE

<p>ឯកសារដើម</p> <p>ORIGINAL DOCUMENT/DOCUMENT ORIGINAL</p> <p>ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/Date de réception):</p> <p>19 / 01 / 2011</p> <p>ម៉ោង (Time/Heure): 11:45</p> <p>មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Cas File Officer/L'agent du dossier: Ratanak</p>
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THE PRE-TRIAL CHAMBER of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) is seised of the “Urgent Request to Order Resumption of Detention Interviews” (“the Request”) filed by the Co-Lawyers for the Accused Person NUON Chea (“the Co-Lawyers”) on 6 January 2011.¹

A. Co-Lawyers’ Submissions

1. By their Request, the Co-Lawyers ask the Pre-Trial Chamber to order the Co-Investigating Judges to resume the periodic interviews on the conditions of detention of NUON Chea, previously conducted every four months pursuant to Rule 63(8) of the Internal Rules, until he is brought before the Trial Chamber or, in the alternative to hold such hearings itself.²
2. The Co-Lawyer allege that the Accused, who has been detained at the ECCC detention facility since 19 September 2007, is entitled to be brought before a judge every four months to be interviewed on his conditions of detention as provided for in Rule 63(8).³ They argue that the Co-Investigating Judges have, pursuant to Rule 63(8), the responsibility to conduct such interviews every four months, even after the issuance of a Closing Order, and have failed to fulfil this duty as the last interview was conducted on 28 May 2010, hence more than four months ago.⁴ Accordingly, NUON Chea has had no formal opportunity to report on the conditions of his continued provisional detention since that time.⁵ The Co-Lawyers emphasize that the interviews are necessary to ensure respect NUON Chea’s right to be detained under humane and dignified conditions and to create a formal record of the degree to which NUON Chea’s physical condition might impact on the due course of the proceedings, including his ability to effectively participate in the preparation of his defence.⁶

¹ Urgent Request to Order Resumption of Detention Interviews, 6 January 2011, Doc. No. 1 (the “Request”).

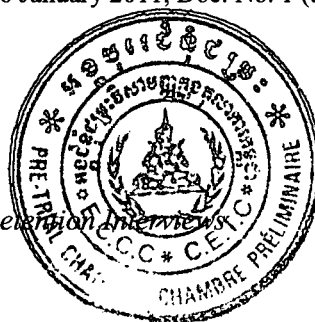
² Request, para. 17.

³ Request, paras 6-8.

⁴ Request, para. 10.

⁵ Request, para. 3.

⁶ Request, paras 1, 2, 7 and 11-13.



3. Acknowledging that the Request does not fall within the subject matter jurisdiction of the Pre-Trial Chamber as defined in Rules 71 to 73 of the Internal Rules, the Co-Lawyers invite the Pre-Trial Chamber to exercise its inherent power based in part on Rule 21 to order the resumption of interviews or conduct these itself as it is currently seized of the case file.⁷

B. Discussion

4. Internal Rule 63(8) provides for an interview of the Charged Person on his or her conditions of detention every four months by the Co-Investigating Judges in the following terms:
 8. In all cases, a Charged Person in Provisional Detention shall be personally brought before the Co-Investigating Judges at least every 4 (four) months. The Co-Investigating Judges shall offer the Suspect an opportunity to discuss his or her treatment and conditions during Provisional Detention. Where any action is required, the Co-Investigating Judges may issue appropriate orders. A written record of the interview shall be placed on the case file.”
5. The Pre-Trial Chamber notes that the text of Internal Rule 63(8) appears to provide only for interviews of a “Charged Person”, which refers to a person subject to prosecution during the period between the Introductory Submission and the Indictment or dismissal of the case⁸, and that these interviews shall be conducted by the Co-Investigating Judges. No other provision in the Internal Rules gives any indication as to the continuation of these interviews after the indictment being issued, nor of any other form of oversight of the provisional detention after that time. However, Rule 21(2) states that “[a]ny coercive measures to which such a person may be subjected shall be taken by or under the effective control of the competent ECCC judicial authorities” and that such measure shall “fully respect human dignity”
6. Recognizing the importance of the interviews provided for in Internal Rule 63(8) to exercise an oversight over provisional detention in order to ensure respect of the

⁷ Request, paras 9 and 15.

⁸ Internal Rules, Glossary.



detainees' rights to be detained under humane and dignified conditions, the Pre-Trial Chamber acknowledged that the Accused, akin to Charged Person, shall be interviewed periodically on their conditions of detention. This is particularly necessary in the light of the Accused's age and the ailments he alleges to suffer of.⁹

7. The Pre-Trial Chamber notes that there is a lacuna in the Internal Rules as to who should conduct the interviews on the conditions of detention at the current stage of the proceedings where the Pre-Trial Chamber has just confirmed the continuation of the detention previously ordered by the Co-Investigating Judges in their Closing Order and issued its Decision on the appeal lodged by Nuon Chea against the Closing Order.¹⁰ By way of this decision, the Trial Chamber becomes seized of the case file¹¹, the Pre-Trial Chamber remaining only seized of providing reasons for its decisions on the appeals against the Closing Order¹² and the appeals by the civil party applicants.
8. The Pre-Trial Chamber further notes that the Cambodian Code of Criminal Procedural¹³ and the procedural rules established at the international level, from which it shall seek guidance in case of a lacuna in the Internal Rules pursuant to Rule 2, do not provide further guidance to determine the matter.
9. Having a particular attention to the fundamental principles set out in Rule 21, particularly its paragraph 2, as required by Rule 2, the Pre-Trial Chamber considers it appropriate under the current circumstances to forward the Request to the Trial Chamber which, at the current stage of the proceedings, will be in a better position to address it.¹⁴

⁹ Request, para. 2.

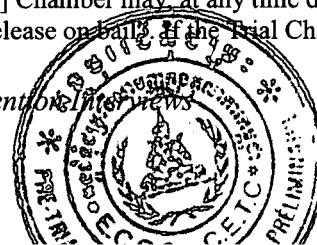
¹⁰ Decision on IENG Thirith's and NUON Chea's Appeals against the Closing Order, 13 January 2011, D427/2/12 & D427/3/12.

¹¹ Internal Rule 79(1).

¹² Decision on IENG Thirith's and NUON Chea's Appeals against the Closing Order, 13 January 2011, D427/2/12 and D427/3/12, Decision on IENG Sary's Appeal against the Closing Order, 13 January 2011, D427/1/26 and Decision on KHIEU Samphan's Appeal against the Closing Order, 13 January 2011, D427/4/14; Decision on IENG Sary's Appeal against the Closing Order's Extension of Provisional Detention, 13 January 2011, D427/5/9.

¹³ Under the Cambodian Code of Criminal Procedure ("CPC"), it is assumed that the jurisdiction over provisional detention passes directly from the Investigative Judge to the Trial Chamber (Articles 249 and 276 of the CPC).

¹⁴ See notably Internal Rule 82(2), which provides that "[t]he [Trial] Chamber may, at any time during the proceedings, order the release of an Accused, or where necessary release on bail, if the Trial Chamber has



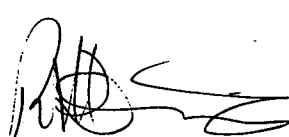

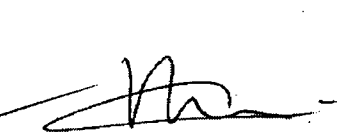

**FOR THE FOREGOING REASONS, THE PRE-TRIAL CHAMBER HEREBY
UNANIMOUSLY:**

DECIDES to forward the Request to the Trial Chamber;

DECLARES that it remains only seized of providing reasons for its decisions on the appeals against the Closing Order and of the appeals lodged by the civil party applicants.

Phnom Penh, 19 January 2011

Pre-Trial Chamber

Rowan DOWNING **NEY Thol** **Catherine MARCHI-UHEL** **HUOT Vuthy** **PRAK Kimsan**



jurisdiction to order the release of the Charge Person, it is assumed that it would be the competent authority to exercise an oversight on the conditions of detention.