



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

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 Jean-Marc LAVERGNE
Judge YA Sokhan
Judge Claudia FENZ
Judge YOU Ottara

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DECISION ON CO-PROSECUTORS' REQUEST TO CALL THET SAMBATH AS A PRIORITY WITNESS

Co-Prosecutors
CHEA Leang
Nicolas KOUMJIAN

Accused
NUON Chea
KHIEU Samphan

Civil Party Lead Co-Lawyers
PICH Ang
Marie GUIRAUD

Lawyers for the Defence
SON Arun
Victor KOPPE
KONG Sam Onn
Arthur VERCKEN
Anta GUISSÉ

1. INTRODUCTION

1. The Trial Chamber is seised of a request by the Co-Prosecutors to call Mr. THET Sambath as a priority witness (“OCP Request”).¹ The NUON Chea Defence agrees in part with the request, seeking in conjunction therewith, the testimony of Mr. Rob LEMKIN (“NUON Chea Defence Response”).²

2. SUBMISSIONS

2. The Co-Prosecutors submit that in his film and book, Mr. THET has documented several admissions by NUON Chea that prove his criminal responsibility for the crimes within the scope of Case 002/2.³ The Co-Prosecutors state that given the importance of this witness and his previous refusal to cooperate with the ECCC, the Chamber should invite him to testify at the earliest opportunity, while the witness remains apparently willing to do so.⁴

3. The Co-Prosecutors also note the NUON Chea Defence request to summons Mr. Sambath before the Supreme Court Chamber as part of the appeal proceedings in Case 002/01, which they oppose.⁵

4. The NUON Chea Defence concurs with the Co-Prosecutors that the testimony of Mr. Sambath should be expedited before the Trial Chamber.⁶ It differs however on the timing of the testimony, submitting that Mr. THET should be scheduled to testify immediately before or after his testimony before the Supreme Court Chamber.⁷ The Defence submits that it would place undue burdens on the witness to require him to travel to Cambodia twice in close succession.⁸

5. The NUON Chea Defence further requests that the Trial Chamber expedite the testimony of Mr. Rob LEMKIN, in conjunction with Mr. THET’s testimony. It submits that Mr. LEMKIN is a key witness who would be able to both testify on the same issues as Mr.

¹ Co-Prosecutor’s Request to Call THET Sambath as a Priority Witness, E335, 15 January 2015.

² NUON Chea’s Response to the Co-Prosecutors’ Request to Call THET Sambath as a Priority Witness, E335/1, 26 January 2015.

³ OCP Request, para. 1.

⁴ OCP Request, paras 3-4.

⁵ OCP Request, para. 5.

⁶ OCP Request, para. 2.

⁷ NUON Chea Defence Response, para. 3

⁸ NUON Chea Defence Response, para. 3.

THET and supplement his evidence.⁹ Given the close connection between the two witnesses, the Defence states that Mr. LEMKIN's testimony should directly precede or follow that of Mr. THET.¹⁰

6. The Co-Prosecutors replied on 6 February 2015.¹¹

3. APPLICABLE LAW AND FINDINGS

7. The Trial Chamber recalls that it is within the discretion of the Chamber to hear the Witnesses, Civil Parties and Experts in the order it considers useful.¹² The Trial Chamber further recalls that pursuant to Internal Rule 87(3), the Chamber may decline to hear evidence that is (a) irrelevant or repetitious; (b) impossible to obtain within a reasonable time; (c) unsuitable to prove the facts it purports to prove; (d) not allowed under the law; or (e) intended to prolong proceedings or frivolous.¹³

8. The Trial Chamber notes that although Mr. THET was proposed by the Co-Prosecutors and NUON Chea Defence as a witness for Case 002/01, Mr. THET failed to respond to the Chamber's efforts to contact him in that case.¹⁴ Both parties have again proposed Mr. THET as a witness for Case 002/02.

9. The Chamber considers that the evidence of Mr. THET may be conducive to ascertaining the truth concerning the issues identified by the Co-Prosecutors and the NUON Chea Defence in their submissions. Although Mr. THET's testimony is most relevant to later scheduled topics in Case 002/02, the Chamber also considers it prudent to hear Mr. THET during earlier topics should he prove to be available.

10. As noted above, the Supreme Court Chamber is seised of a NUON Chea Defence request to summons Mr. THET and Mr. LEMKIN in the appeal of Case 002/01. It has ordered an Internal Rule 93 investigation limited to ascertaining whether additional video footage in

⁹ NUON Chea Defence Response, para. 4.

¹⁰ NUON Chea Defence Response, para. 4.

¹¹ Co-Prosecutors' Response to Nuon Chea's Response to the Request to Call Thet Sambath as a Priority Witness, E335/2, 6 February 2015.

¹² Internal Rule 91.

¹³ Internal Rule 87(3) and 87(4); *see also*, *KAING Guek Eav alias Duch*, Judgement, Trial Chamber, E188, 26 July 2010, para. 41; *Prosecutor v. Karemera et al.*, Decision on Mathieu Ngirumpatse's Appeal from the Trial Chamber Decision of 17 September 2008, ICTR Appeals Chamber (ICTR-98-44-AR73.14), 30 January 2009, para. 25 (finding that the repetitive nature of testimony is to be considered as a factor in determining whether hearing it is necessary).

¹⁴ Interoffice memorandum entitled "Potential Witnesses - Unable to Locate", E292/1/2, 4 July 2013.

possession of Mr. THET or Mr. LEMKIN may be obtained within a reasonable time.¹⁵ The Trial Chamber will take into consideration any information obtained as a result of this investigation in making a final assessment as to whether to call Mr. LEMKIN to testify.

11. At present, the Supreme Court Chamber has not scheduled an appeal hearing in Case 002/01 or granted the request by the Defence to summons Mr. THET or Mr. LEMKIN. Furthermore, the Witness and Expert Support Unit has not been able to contact Mr. THET to ascertain his availability and willingness to testify before the Trial Chamber. Therefore, it would be premature to coordinate Mr. THET's potential testimony before multiple ECCC Chambers.

FOR THE FOREGOING REASONS, THE TRIAL CHAMBER

GRANTS the Co-Prosecutor's Request to call Mr. THET Sambath and **DIRECTS** the Witness and Expert Support Unit to contact Mr. THET Sambath and to report to the Chamber by 21 May 2015 on his availability to testify;

RESERVES its decision on the NUON Chea Defence request to summons Mr. Rob LEMKIN.

Phnom Penh, 7 May 2015
President of the Trial Chamber



NA Nonu

¹⁵ Interim Decision on Part of NUON Chea's First Request to Obtain and Consider Additional Evidence in Appeal Proceedings of Case 002/01, F2/4/3, 1 April 2015.