



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

អង្គជំនុំជម្រះតុលាការកំពូល

Supreme Court Chamber

Chambre de la Cour suprême



សំណុំរឿងលេខ: ០០២/១៩-កញ្ញា-២០០៧-អ.វ.ត.ក/អ.ជ.ត.ក

Case File/Dossier N°. 002/19-09-2007-ECCC/SC

Before:

Judge KONG Srim, President

Judge Chandra Nihal JAYASINGHE

Judge SOM Sereyvuth

Judge Agnieszka KLONOWIECKA-MILART

Judge MONG Monichariya

Judge Florence Ndepele MWACHANDE-MUMBA

Judge YA Narin

Date:

15 June 2015

Language(s):

Khmer/English

Classification:

PUBLIC

DECISION REQUESTING SUBMISSIONS ON THE ADDITIONAL INVESTIGATION

Co-Prosecutors

CHEA Leang

Nicholas KOUMJIAN

Co-Lawyers for NUON Chea

SON Arun

Victor KOPPE

Accused

KHIEU Samphân

NUON Chea

Co-Lawyers for KHIEU Samphân

KONG Sam Onn

Anta GUISSÉ

Arthur VERCKEN

Civil Party Lead Co-Lawyers

PICH Ang

Marie GUIRAUD

THE SUPREME COURT CHAMBER of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea between 17 April 1975 and 6 January 1979 (“Supreme Court Chamber” and “ECCC”, respectively);

RECALLING the Appointment Decision, in which the Supreme Court Chamber decided to initiate an additional investigation pursuant to Internal Rule 93 (“Additional Investigation”),¹ appointing Judge MONG Monichariya and Judge Chandra Nihal JAYASINGHE as Delegate Judges;²

RECALLING that the main purpose of the investigation was to establish direct contact with Robert Thomas Fitzgibbon LEMKIN (“Witness”) and THET Sambath in order to assess whether the footage allegedly in their possession may be obtained within a reasonable period of time and ascertain what specific information could be derived from it;³

RECALLING that the Witness was interviewed by the Delegate Judges on 11 May 2015;⁴

RECALLING that the Witness declared *inter alia* that: (i) his previous statement, contained in an e-mail sent to NUON Chea’s counsel, Victor Koppe,⁵ that he has gathered “a wealth of evidence about [RUOS] Nhim’s agenda”, is primarily based on information obtained from a series of interviews with four individuals;⁶ (ii) he would be willing to disclose their identities and hand over to the Court the footage relating to those four individuals, provided that co-director THET Sambath consents;⁷ and, (iii) he is prepared to provide the Court with his unpublished notes summarising the content of the interviews with the four individuals (“Notes”);⁸

RECALLING that THET Sambath did not consent to the release of the aforementioned footage, on grounds that the individuals recently requested him not to release any footage or

¹ ECCC Internal Rules (Rev. 9), 16 January 2015 (“Internal Rules”).

² Interim Decision on Part of NUON Chea’s First Request to Obtain and Consider Additional Evidence in Appeal Proceedings of Case 002/01, 1 April 2015, F2/4/3 (“Appointment Decision”), paras 25-26.

³ Appointment Decision, paras 21-26.

⁴ Written Record of Witness Interview – Robert T.F. Lemkin, 18 May 2015, F2/4/3/1, (“Lemkin WRI”).

⁵ Request to Admit New Evidence, Summons Rob Lemkin and Initiate an Investigation, 11 July 2013, E294, para. 2.

⁶ Lemkin WRI, para. A34.

⁷ Lemkin WRI, para. A36.

⁸ Lemkin WRI, paras A6, A36, A38.

transcript to any other party, and that such release would place his and other people's safety at risk;⁹

NOTING that on 3 June 2015 the Greffiers of the Supreme Court Chamber received from the Witness and Expert Support Unit ("WESU") the Notes¹⁰ sent by the Witness;¹¹

NOTING that the Witness agreed to provide the Notes to the ECCC on the condition that the Notes be classified as confidential, and that in spite of assurances that the names of the four individuals referred to therein would be classified as strictly confidential, the Witness refused to disclose these names because this would run counter to THET Sambath's directives;¹²

CONSIDERING that, before making its final determination on how to proceed further with the Additional Investigation, the Supreme Court Chamber deems it appropriate to afford the parties an opportunity to make representations thereupon;

HEREBY:

REQUESTS NUON Chea to make written submissions, no later than Monday, 13 July 2015, addressing the following questions: (i) whether the Notes should be admitted into evidence; (ii) whether any further action should be taken by the Delegate Judges or the Chamber in relation to the information emerged from the Additional Investigation;

REQUESTS the other parties to file their responses to NUON Chea's submissions no later than Thursday, 23 July 2015.

Phnom Penh, 15 June 2015

President of the Supreme Court Chamber



KONG Srim

⁹ Witness and Expert Support Unit's Memorandum entitled "Report in response to Supreme [Court] Chamber Decision F2/4/3", 25 May 2015, F2/4/3/2 (confidential).

¹⁰ Annex - Robert Lemkin's Notes on Ruos Nhim's Political Agenda, 15 June 2015, F2/4/3/3.1 (confidential).

¹¹ Electronic mail sent from WESU to Greffiers of the Supreme Court Chamber, entitled "Fw: confidential - unpublished notes", on 3 June 2015 at 09:10AM, on file with the Supreme Court Chamber.

¹² Electronic mail sent from the Witness to WESU, entitled "confidential - unpublished notes", on 29 May 2015 at 08:20PM, on file with the Supreme Court Chamber.