



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

អង្គជំនុំជម្រះតុលាការកំពូល

Supreme Court Chamber

Chambre de la Cour suprême



សំណុំរឿងលេខ: ០០២/១៩-០៩-២០០៧-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:

23 December 2015

Language(s):

Khmer/English

Classification:

PUBLIC

ORDER SCHEDULING THE RESUMPTION OF THE APPEAL HEARING

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 that the Supreme Court Chamber scheduled an appeal hearing in Case File No. 002/19-09-2007-ECCC/SC for 17-19 November 2015 (“Appeal Hearing”),¹ which was adjourned until further notice due to the lack of proper legal representation for NUON Chea, resulting from his International Co-Lawyer not attending the Appeal Hearing and his National Co-Lawyer leaving the courtroom in spite of this Chamber’s order to remain present;²

NOTING that the Supreme Court Chamber instructed the Defence Support Section to appoint standby counsel for NUON Chea,³ which it did on 16 December 2015, appointing Mr PHAT Pouy Seang for an initial term of three months (“Standby Co-Lawyer for NUON Chea”);⁴

RECALLING that: (i) the role of the Standby Co-Lawyer for NUON Chea will not be that of replacing NUON Chea’s chosen lawyers, but rather that of providing proper legal assistance to NUON Chea during the hearing should his chosen Co-Lawyers fail to be present in the courtroom when the hearing resumes, or absent themselves in the course of the hearing; (ii) the Standby Co-Lawyer for NUON Chea shall attend all appeal hearings in Case 002/01, shall be independent of the present Defence team for NUON Chea and shall not consult with, or take direction from, NUON Chea, unless so ordered by this Chamber; (iii) the Standby Co-Lawyer for NUON Chea will, upon reasoned request, be granted adequate time to familiarise him or herself with the case; and (iv) the Standby Co-Lawyer for NUON Chea will not be

¹ Order Setting the Final Timetable for the Appeal Hearing and Informing the Parties of the Issues to Be Addressed, 5 November 2015, F30/4.

² Transcript (EN) of 17 November 2015, F1/4.1, pp. 2, 18, 32, 37-39.

³ Transcript (EN) of 17 November 2015, F1/4.1, p. 39, as detailed in the Supreme Court Chamber’s Memorandum entitled “Follow-up to Supreme Court Chamber’s Instruction to Appoint Standby Counsel for NUON Chea”, 19 November 2015, F30/15 (“Follow-up Memorandum”). *See also* Supreme Court Chamber’s Memorandum entitled “Response to DSS Memorandum of 24 November 2015”, 2 December 2015, F30/15/1/1; DSS Memorandum entitled “First Update on the Supreme Court Chamber’s Instruction to Appoint Standby Counsel for Mr. NUON Chea”, 24 November 2015 (filed 30 November 2015), F30/15/1 (Confidential).

⁴ DSS Memorandum entitled “Second Update on the Supreme Court Chamber’s Instruction to Appoint Standby Counsel for Mr. NUON Chea”, 16 December 2015, F30/15/2, para. 4.

granted a right of audience until this Chamber has directed him or her to take over the defence of NUON Chea⁵;

CONSIDERING that the Appeal Hearing may not resume immediately, given the need to ensure that the Standby Co-Lawyer for NUON Chea is afforded adequate time to familiarise himself with the case;

NOTING that during the Appeal Hearing NUON Chea declared that his International Co-Lawyer was not participating in the hearing and instructed his National Co-Lawyer “not to participate in these proceedings any further, and not to respond to any kind of questions by the Judges or the other Parties”, while “stop[ping] short of withdrawing [his] appeal altogether”;⁶

NOTING that, in subsequent written submissions, NUON Chea’s National Co-Lawyer committed to “sit in the courtroom in future appeal hearings in Case 002/01”, while following his client’s instruction “not to respond to any kind of questions by the judges or the other parties”,⁷ and NUON Chea’s International Co-Lawyer maintained that his client “indicated at the hearing that he had instructed [him] not to be present during the hearing” and stated that, even though the ECCC “is indeed, and always will be, a complete farce”, he will not withdraw as NUON Chea’s International Co-Lawyer;⁸

CONSIDERING that, despite NUON Chea being clearly entitled to waive his right to make oral submissions at the appeal hearing, such a decision is going to significantly affect his ability to present an effective defence, and that therefore, the Chamber intends to satisfy itself that NUON Chea, after a period of reflection, still stands by and fully comprehends and accepts the consequences of his decision;

CONSIDERING that NUON Chea remains entitled to revoke his decision at any time and thus participate actively in the Appeal Hearing – by making oral submissions and/or responding to the judges’ questions, in whole or in part – and that the Chamber accordingly

⁵ Follow-up Memorandum, pp. 3-4.

⁶ Transcript (EN) of 17 November 2015, F1/4.1, pp. 17-18.

⁷ Response of Mr SON Arun to the Oral Decision by the Supreme Court Chamber Regarding the Events of 17 November 2015, 18 November 2015, F30/13, para. 9.

⁸ Victor KOPPE’s Response to the Supreme Court Chamber’s Request for Explanations for his Absence from the Appeal Hearing, 23 November 2015, F30/14/1, paras 8, 10.

will still allocate time to the NUON Chea's Defence team in the timetable for the Appeal Hearing, but will progressively withdraw such allotted time as the Appeal Hearing proceeds through the scheduled thematic sessions with NUON Chea not revoking his decision;

HEREBY:

ORDERS that the Appeal Hearing be resumed on Tuesday, 16 February 2016 at 09:00 a.m. in the main courtroom of the ECCC, and continued on Wednesday, 17 February 2016 and Thursday, 18 February 2016, with Friday, 19 February 2016, serving as a reserve day;

ATTACHES the timetable for the Appeal Hearing;⁹

INSTRUCTS the Standby Co-Lawyer for NUON Chea to remain present in the courtroom at all times during the Appeal Hearing and be prepared to take over the defence of NUON Chea as soon as the Chamber so directs;

REQUESTS the Civil Party Lead Co-Lawyers to inform the Greffiers of the Supreme Court Chamber via e-mail no later than Friday, 12 February 2016 whether and, if so, which individual Civil Parties wish to sit in the main courtroom during the Appeal Hearing;

INFORMS NUON Chea that, when the Appeal Hearing resumes, the Chamber will ask him whether he still stands by his decision not to make oral submissions nor respond to the judges' questions, and whether he fully comprehends and accepts the consequences of his decision.

Phnom Penh, 23 December 2015

President of the Supreme Court Chamber



KONG Srim

⁹ Annex A – Final Timetable for the Hearing, 23 December 2015, F30/17.1.