



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:

11 February 2016

Language(s):

Khmer/English

Classification:

PUBLIC

**DECISION ON NUON CHEA’S REQUEST FOR RECONSIDERATION OF THE
DECISION OF 21 OCTOBER 2015 ON REQUESTS FOR ADDITIONAL EVIDENCE**

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” or “Chamber”);

BEING SEIZED OF the “NUON Chea’s Request for Reconsideration of the Supreme Court Chamber’s Decision not to Summons HENG Samrin and Robert LEMKIN and [not] to Admit Evidence Produced by Robert LEMKIN on Appeal”, filed on 5 February 2016 (“Request”);¹

NOTING that NUON Chea avers that the Supreme Court Chamber’s decision of 21 October 2015 on NUON Chea’s pending requests for additional evidence (“Decision on Additional Evidence”)² was fundamentally wrong, given that it rejected, with reasons to follow, most of his requests, in spite of them being, in NUON Chea’s view, the most crucial, unique and pivotal to the Defence’s case as well as compliant with relevant admissibility requirements;³

NOTING that NUON Chea submits that a chamber’s power to reconsider its decisions applies not only where there is a “change of circumstances”, but also where the previous decision was “erroneous or [...] caused an injustice”,⁴ and that the internationally-recognised right to a reasoned decision applies to decisions of the Supreme Court Chamber;⁵ and that, on this basis, NUON Chea requests that the Supreme Court Chamber reconsider its Decision on Additional Evidence insofar as it denied his requests to summon HENG Samrin and Robert LEMKIN and to admit into evidence the documents submitted by Robert LEMKIN, or in the alternative, provide full reasons for its Decision on Additional Evidence prior to the resumption of the appeal hearing;⁶

NOTING that the Co-Prosecutors, on the one hand, object to NUON Chea’s request for reconsideration, observing that it contains “repetition and irrelevancies” and fails to substantiate any new fact or change in circumstances,⁷ and on the other hand, do not object to

¹ F2/10.

² Decision on Pending Requests for Additional Evidence on Appeal and Related Matters – Disposition, 21 October 2015, F2/9.

³ Request, paras 4-6, 17, 32-33, 45, 56.

⁴ Request, paras 29-30.

⁵ Request, para. 31.

⁶ Request, paras 57-58.

⁷ Co-Prosecutors’ Response to NUON Chea’s Request for Reconsideration of the Supreme Court Chamber’s Decision not to Summons HENG Samrin and Robert LEMKIN and to Admit Evidence Produced by Robert LEMKIN on Appeal, 9 February 2016, F2/10/2 (“Response”), paras 2-5, 7.

NUON Chea's alternative request that the Supreme Court Chamber provide reasons for its Decision on Additional Evidence, pointing out nonetheless that this latter aspect of the Request is untimely;⁸

RECALLING that, consistent with international practice,⁹ the Supreme Court Chamber shall entertain requests for reconsideration where there are "compelling reasons, including any change in circumstances" that warrant reconsideration of a previous decision,¹⁰ since this is an exceptional procedure and not an additional avenue to re-litigate issues that have been discussed, considered and then disposed of;

CONSIDERING that, in the present case, NUON Chea's request for reconsideration replicates arguments already made in previous motions and that the Supreme Court Chamber fails to see any compelling reason to reconsider its original decision;

CONSIDERING that the Supreme Court Chamber will provide reasons for the Decision on Additional Evidence but, for the purpose of procedural economy and to avoid discussing broader evidentiary issues at this point, it decided to provide them at a later point, namely in the judgment on the pending appeals;

CONSIDERING that the deferral of the reasons does not affect the procedural rights of NUON Chea since the Decision on Additional Evidence is non-appealable, nor is there any other procedural action to be undertaken by him that is legally dependent on the immediate availability of these reasons;

⁸ Response, para. 6.

⁹ See e.g. *Prosecutor v. Ruto and Sang*, ICC-01/09-01/11, "Decision on the Sang Defence's Request for Reconsideration of Page and Time Limits", Trial Chamber, 10 February 2015, para. 19; *Prosecutor v. Galić*, IT-98-29-T, "Decision on Defence's Request for Reconsideration", Pre-Appeal Judge, 16 July 2004; *Prosecutor v. Popović*, IT-05-88-T, "Decision on Defence Motion Requesting Reconsideration or Certification of Decision Admitting Exhibits with Testimony of Witness", Trial Chamber, 20 July 2007, pp. 4-5. See also *Prosecutor v. Jean-Bosco Barayagwiza*, ICTR-99-52A-R, "Decision on Jean-Bosco Barayagwiza's Motion for Review and/or Reconsideration of the Appeal Judgement of 28 November 2007", Appeals Chamber, 22 June 2009, paras 22-23.

¹⁰ Decision on Co-Prosecutors' Submissions on Proceeding with Appeal Hearing, 3 December 2015, F30/16/1, p. 3. See also Decision on Renewed Requests to Intervene or Submit *Amicus Curiae* Brief in Case 002/01, 11 December 2015, F31/1, p. 3.

HEREBY:

DENIES the Request.

Phnom Penh, 11 February 2016

President of the Supreme Court Chamber



KONG Srim