



**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-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 Florence Ndepele Mwachande MUMBA
Judge MONG Monichariya
Judge Maureen Harding CLARK
Judge YA Narin

Date: 29 August 2019
Language(s): Khmer/English
Classification: PUBLIC

DECISION ON CO-PROSECUTORS' URGENT REQUEST TO FILE THEIR RESPONSE TO THE NUON CHEA DEFENCE TEAM'S URGENT REQUEST IN ONE LANGUAGE

Co-Prosecutors
CHEA Leang
Brenda HOLLIS (Reserve)

Accused
NUON Chea

Civil Party Lead Co-Lawyers
PICH Ang

Co-Lawyers for NUON Chea
SON Arun
LIV Sovanna
Doreen CHEN

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) is seized of the “Co-Prosecutors’ Urgent Request to File their Response to the NUON Chea Defence Team’s Urgent Request in English First” (“OCP Request”).¹

I. BACKGROUND

1. On 16 November 2018, the Trial Chamber pronounced the verdict in Case 002/02, convicting NUON Chea and KHIEU Samphân (“the Accused”) of crimes against humanity, grave breaches of the Geneva Conventions and genocide, and sentenced them to life imprisonment.² The Trial Chamber provided a summary of its reasons and clarified that the time limit for filing notices of appeal would begin following the notification of the fully reasoned judgement.³ The Trial Chamber subsequently notified the fully reasoned judgement in Khmer, English and French on 28 March 2019.⁴
2. NUON Chea filed his notice of appeal against the Case 002/02 Trial Judgement on 1 July 2019.⁵ NUON Chea filed requests for extensions of time and page limits for filing his notices of appeal against the written judgment.⁶
3. He died on 4 August 2019 at the Khmer-Soviet Friendship Hospital in Phnom Penh.⁷ The Supreme Court Chamber terminated proceedings against him on 13 August 2019.⁸
4. On 6 August 2019, NUON Chea’s defence team filed an “Urgent Request concerning the Impact on Appeal Proceedings of Nuon Chea’s Death prior to the Appeal Judgement” (“Urgent Request”).⁹

¹ Co-Prosecutors’ Urgent Request to File their Response to the NUON Chea Defence Team’s Urgent Request in English First, 28 August 2019, F46/2/2.

² See Transcript 16 November 2018 (Pronouncement of Judgment in Case 002/02), p. 53 (line 21) to p. 56 (line 17).

³ See Transcript 16 November 2018 (Pronouncement of Judgment in Case 002/02), p. 3 (lines 11-16), p. 57 (lines 18-23).

⁴ Trial Chamber Judgement Case 002/02, 16 November 2018, E465 (“Trial Judgement”). The Supreme Court Chamber determined that since it was filed outside the ECCC’s official filing hours, the notification was effective from the next working day, i.e. 29 March 2019: Decision on NUON Chea and KHIEU Samphân’s Requests for Extensions of Time and Page Limits on Notices of Appeal, 26 April 2019, F43, para. 12.

⁵ Nuon Chea’s Notice of Appeal against the Trial Judgement in Case 002/02, 1 July 2019, E465/3/1.

⁶ NUON Chea’s Urgent First Request for an Extension of Time and Page Limits for Filing his Notice of Appeal against the Trial Judgement in Case 002/02, 3 April 2019, F40/1.1.

⁷ Death Certificate of NUON Chea, 4 August 2019, F46/1.1.

⁸ Decision to Terminate Proceedings against NUON Chea, 13 August 2019, F46/3.

⁹ Urgent Request concerning the Impact on Appeal Proceedings of Nuon Chea’s Death prior to the Appeal Judgement, 6 August 2019, F46/2.

II. APPLICABLE LAW

5. Article 7.2 of the Practice Direction on Filing of Documents before the ECCC (“Practice Direction”) states that “[i]n exceptional circumstances, the Co-Investigating Judges or a Chamber of the ECCC may authorize a party to file a document in French or in English in the first instance, provided however that a Khmer translation must be filed before the Chamber at the first opportunity”; and Article 8.3 states that “[a]ny response to an application or pleadings shall be filed together with any list of authorities within 10 calendar days of notification of the document to which the participant is responding”.

III. SUBMISSIONS

6. The Co-Prosecutors seek leave from the Supreme Court Chamber to file their response to the Urgent Request in English first with the Khmer translation to follow by Monday, 2 September 2019.¹⁰ They submit that exceptional circumstances warrant the request because “the complicated and technical nature of the arguments [...] require careful translation into Khmer” and therefore more time.¹¹

IV. DISCUSSION

7. The Supreme Court Chamber recalls that both the national and the international components are crucial elements of the judicial process in the ECCC’s structure and mandate, and are required to engage in fruitful cooperation to attain the ECCC’s statutory goals. To comply with these, the parties must at all times strive to meet the general requirement of simultaneous bilingual filings such that each component of the parties and Chambers has the benefit of submissions in its working language. Filings in any of the three official languages of the ECCC are attributed equal authoritativeness, as implied by Article 26(2) of the Agreement, Article 45 *new* of the ECCC Law and Article 7.1 of the Practice Direction on the Filing of Documents before the ECCC. Permission to file in English or French first, in addition to being justified by extraordinary circumstances, is necessarily predicated upon an assumption that the national component of the filing entity is sufficiently informed of the content of the filing and has suffered no prejudice in expressing its position.¹²

8. The Chamber observes that the OCP Request is countersigned by the National Co-Prosecutor and International Deputy Co-Prosecutor on behalf of the International Reserve Co-Prosecutor. Accordingly, it considers that no prejudice arises in the present circumstances. In view of the important and complex matters of law, procedure and legacy to be considered, the

¹⁰ OCP’s Request.

¹¹ OCP’s Request, para. 2.

¹² Decision on Co-Prosecutors’ Request to File their Response in One Language Only with Khmer Translation to Follow, 11 February 2015, F21/1.

Chamber finds that exceptional circumstances warrant filing of the OCP's response to the Urgent Request in English first with a Khmer translation to follow.

V. DISPOSITION

9. For the foregoing reasons, the Supreme Court Chamber:

GRANTS the OCP's Request.

Phnom Penh, 29 August 2019

President of the Supreme Court Chamber



KONG Srim