



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

ឯកសារដើម
ORIGINAL/ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ (Date):.....02-Oct-2015, 09:15
CMS/CFO:.....Sann Rada

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:

2 October 2015

Language(s):

Khmer/English

Classification:

PUBLIC

DECISION REQUESTING SUBMISSIONS

Co-Prosecutors

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Victor KOPPE

Accused

KHIEU Samphân
NUON Chea

Co-Lawyers for KHIEU Samphân

KONG Sam Onn
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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”);

RECALLING the Delegate Judges’ “Third Interim Decision on the Additional Investigation” (“Third Interim Decision”),¹ in which film maker Robert Thomas Fitzgibbon LEMKIN (“Robert Lemkin”) was requested to provide “all transcripts and logbooks” relating to the interviews he conducted with the four individuals mentioned in the notes he had previously submitted (“Four Individuals”);²

NOTING that on 15 September 2015 the Witnesses and Experts Support Unit (“WESU”) received via e-mail 20 electronic files in PDF format from Robert Lemkin,³ to whom the Supreme Court Chamber takes the opportunity to extend its gratitude for his cooperation during the Additional Investigation, and that those files appear to contain a number of transcripts of interviews conducted with the Four Individuals (“Transcripts”), which are filed as attachment to the present decision;⁴

NOTING that the Transcripts, like most of NUON Chea’s requests for additional evidence, appear to relate in considerable part to a purported rift within the Communist Party of Kampuchea (“CPK”) and activities to overthrow POL Pot and NUON Chea’s leadership of the CPK;

NOTING NUON Chea’s argument that the rift within the CPK and the activities to overthrow POL Pot and NUON Chea’s leadership of the CPK demonstrate that the Party

¹ 20 August 2015, F2/4/3/3/5. *See also* Decision Pursuant to Internal Rule 39(4)(a), 28 August 2015, F2/4/3/3/5/1.

² Third Interim Decision, p. 5. The notes submitted by Robert Lemkin may be retrieved in Case File 002 as Annex - Robert Lemkin’s Notes on Ruos Nhim’s Political Agenda (confidential), 15 June 2015, F2/4/3/3/1.

³ Report by WESU in Response to Supreme Court Chamber Decision F2/4/3/3/5/1, 15 September 2015, F2/4/3/3/6.1.

⁴ Transcripts of Interviews Provided by Robert Lemkin (confidential), 2 October 2015, F2/4/3/3/6.2. The Supreme Court Chamber informs the parties that one document provided by Robert Lemkin contained, apparently inadvertently, the name of the person referred to as “W4”, and other files included hidden text, as it may be inferred from the occasional gaps in the interviews’ timeline and resulting blanks. The Chamber decided to redact W4’s apparent name until WESU has conducted a risk assessment as per the Third Interim Decision, and, on the assumption that the hidden text was not meant to be disclosed, to definitively remove it from the files. The Chamber observes, however, that the content of the hidden text does not appear to have been of any relevance to NUON Chea’s criminal liability or the credibility of the Four Individuals, or conveyed merely information which is already in the case file.

Centre “exercised only limited effective control over cadres throughout the CPK hierarchy”⁵ and that local cadres, especially Zone secretaries, “exercised substantial independent authority”⁶ and, with the support of Vietnam, sought to foment rebellion against the Party Centre and thus seize power,⁷ and that therefore the Trial Chamber’s findings concerning, *inter alia*, the strictly hierarchical structure of the CPK and the exact implementation by local cadres of instructions received from the CPK leadership in Phnom Penh, including NUON Chea, were erroneous, and that the Trial Chamber incorrectly concluded that “the direct perpetrators of the crimes charged were acting pursuant to Party policy and instructions”⁸ and that the Joint Criminal Enterprise encompassed NUON Chea together with individuals who, in NUON Chea’s submission, were the very same individuals who were attempting to stage a coup d’état against him;⁹

CONSIDERING that NUON Chea’s submissions before this Chamber do not precisely specify the exact import of the alleged rift within the CPK and of the activities to overthrow POL Pot and NUON Chea’s leadership of the CPK on his individual criminal responsibility, namely, which factual findings of the Trial Chamber would be affected, and why, if they were to be overturned on appeal, this would invalidate, in whole or in part, NUON Chea’s conviction in relation to specific crimes and modes of liability;

CONSIDERING that, in light of the asserted pivotal importance of this argument to NUON Chea’s appeal, it is in the interests of justice to afford him a further opportunity to specify his submissions in this regard;

HEREBY:

REQUESTS the parties to make written submissions, no later than Friday, 9 October 2015, at 10 a.m., on whether the Transcripts should be admitted into evidence, in whole or in part;

⁵ NUON Chea’s Sixth Request to Consider and Obtain Additional Evidence in Connection with the Appeal Against the Trial Judgement in Case 002/01, 11 September 2015, F2/8 (“Sixth Request for Additional Evidence”), para. 10.

⁶ Sixth Request for Additional Evidence, para. 10.

⁷ *See e.g.* Sixth Request for Additional Evidence, paras 2-13, 151-154; NUON Chea’s Fifth Request to Consider and Obtain Additional Evidence in Connection with the Appeal Against the Trial Judgement in Case 002/01, 25 June 2015, F2/7, paras 1-2, 52-57; Nuon Chea’s Appeal Against the Judgment in Case 002/01, 29 December 2014, F16 (“Appeal Brief”), paras 225-249.

⁸ Appeal Brief, para. 226.

⁹ Sixth Request for Additional Evidence, para. 151.

REQUESTS NUON Chea, in the same submission, to precisely specify the exact import of the alleged rift within the CPK and of the activities to overthrow POL Pot and NUON Chea's leadership of the CPK (including the holding of secret meetings, staging a phony war with Thailand and stockpiling food, weapons and other supplies, in preparation for a rebellion against the Party Centre) on his individual criminal responsibility, namely, which factual findings of the Trial Chamber would be affected, and why, if they were to be overturned on appeal, this would invalidate, in whole or in part, NUON Chea's conviction in relation to specific crimes and modes of liability;

REQUESTS the other parties to file their responses to NUON Chea's submission no later than Friday, 16 October 2015;

ADVISES the parties that no replies shall be permitted;

ADVISES the parties that the requested submissions are to be filed in Khmer and English or French, with no exception being envisaged by the Chamber in this regard.

Phnom Penh, 2 October 2015

President of the Supreme Court Chamber



KONG Srim