



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): 13-Aug-2019, 16:44

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 Florence Ndepele Mwachande MUMBA

Judge MONG Monichariya

Judge Maureen Harding CLARK

Judge YA Narin

Date:

13 August 2019

Language(s):

Khmer/English

Classification:

PUBLIC

DECISION TO TERMINATE PROCEEDINGS AGAINST NUON CHEA

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 death certificate of NUON Chea.¹

I. BACKGROUND

1. On 18 July 2007, the Co-Prosecutors filed an Introductory Submission alleging that NUON Chea, KHIEU Samphân, IENG Sary, IENG Thirith and KAINING Guek Eav (alias Duch) had committed various crimes that fell within the jurisdiction of the ECCC.² On 19 November 2007, NUON Chea was detained by order of the Co-Investigating Judges, transferred to the ECCC detention facility and notified of the charges against him.³ On 15 September 2010, the Co-Investigating Judges indicted NUON Chea, KHIEU Samphân, IENG Sary and IENG Thirith for crimes against humanity, genocide, grave breaches of the Geneva Conventions of 1949 and violations of the 1956 Penal Code.⁴ The Pre-Trial committed the accused for trial on 13 January 2011.⁵

2. On 22 September 2011, the Trial Chamber severed the proceedings against the accused into a first trial, known as Case 002/01.⁶ The Trial Chamber pronounced its verdict in Case 002/01 on 7 August 2014, finding NUON Chea and KHIEU Samphân guilty of crimes against humanity and sentencing them to life imprisonment.⁷ On appeal, the Supreme Court Chamber reversed several convictions, upheld the remainder and affirmed the sentences of life imprisonment.⁸ After a second trial, Case 002/02,⁹ the Trial Chamber on 16 November 2018 found NUON Chea and KHIEU Samphân guilty of genocide, crimes against humanity, and grave breaches of the Geneva Conventions of 1949.¹⁰

¹ Death Certificate of NUON Chea, 4 August 2019, F46/1.1.

² Introductory Submission, 18 July 2007, D3. The proceedings against Duch were later separated into Case File Number 001/18-07-2007. *See* Separation Order, 19 September 2007, D18.

³ Detention Order, 19 September 2007, C9.

⁴ Closing Order, 15 September 2010, D427.

⁵ Decision on Ieng Thirith’s and Nuon Chea’s Appeals against the Closing Order, 13 January 2011, D427/2/12.

⁶ Decision on Co-Prosecutors’ Request for Reconsideration of the Terms of the Trial Chamber’s Severance Order (E124/2) and Related Motions and Annexes, 18 October 2011, E124/7.

⁷ Case 002/01 Trial Judgement, 7 August 2014, E313. IENG Sary passed away on 14 March 2013 during trial proceedings. *See* Termination of the Proceedings against the Accused IENG Sary, 14 March 2013, E270/1. IENG Thirith was found unfit to stand trial and died on 24 August 2015 while under judicial supervision. *See* Termination of the Proceedings against the Accused IENG Thirith, 27 August 2015, E359/1.

⁸ Case 002/01 Appeal Judgement, 23 November 2016, F36.

⁹ Decision on Additional Severance of Case 002 and Scope of Case 002/02, 4 April 2014, E301/9/1.

¹⁰ Transcript 16 November 2018 (Pronouncement of Judgment in Case 002/02), E1/529.1; Case 002/02 Trial Judgement, 28 March 2019, E465.

3. NUON Chea filed his notice of appeal against the Case 002/02 Trial Judgement on 1 July 2019.¹¹ He died on 4 August 2019 at the Khmer-Soviet Friendship Hospital in Phnom Penh.¹²

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".¹³

II. DISCUSSION

5. Article 7(1) of the Cambodian Code of Criminal Procedure stipulates that the death of an offender extinguishes charges in criminal actions against him or her. Pursuant to Internal Rule 23bis(6), civil party proceedings against an accused at the ECCC end on the death of that person. The Supreme Court Chamber is satisfied that under Cambodian law and the ECCC's Internal Rules, NUON Chea's death has the effect of extinguishing criminal actions and terminating civil actions against him before this Chamber.

6. Neither the ECCC Law nor the Internal Rules explicitly detail the consequence of convictions entered at first instance against an appellant who has died after filing his or her notice of appeal. Previous ECCC decisions terminating proceedings are not analogous to the present case: IENG Sary died prior to the issuance of the trial judgement in Case 002/01,¹⁴ while IENG Thirith passed away whilst under judicial supervision after being found unfit to stand trial.¹⁵ In both instances, however, the Trial Chamber found that all criminal and civil actions against the accused had been extinguished by their deaths. Jurisprudence from the International Criminal Tribunal for the former Yugoslavia demonstrates that although appeals chambers have issued decisions after the death of an appellant, no appeal judgment can be rendered with respect to an accused who had, prior to his or her death, duly seized the appeals chamber with a brief containing reasoned grounds of appeal.¹⁶ The position is even clearer in a situation such as the present one in which the appellate chamber has neither been fully briefed on the appeal nor is in a position to commence deliberations on the merits of alleged errors of law or fact which have, in summary form, been outlined in a notice of appeal.¹⁷

¹¹ Nuon Chea's Notice of Appeal against the Trial Judgement in Case 002/02, 1 July 2019, E465/3/1.

¹² Death Certificate of NUON Chea, 4 August 2019, F46/1.1.

¹³ Urgent Request concerning the Impact on Appeal Proceedings of Nuon Chea's Death prior to the Appeal Judgement, 6 August 2019, F46/2.

¹⁴ Termination of the Proceedings against the Accused IENG Sary, 14 March 2013, E270/1.

¹⁵ Termination of the Proceedings against the Accused IENG Thirith, 27 August 2015, E359/1.

¹⁶ *Prosecutor v. Delić*, Decision on the Outcome of the Proceedings, ICTY, IT-04-83-A, 29 June 2010; *Prosecutor v. Popović et al.*, Decision Terminating Appellate Proceedings in relation to Milan Gvero, ICTY, IT-05-88-A, 7 March 2013.

¹⁷ See Internal Rule 105(3); Decision on Defence Motion for Extension of Time and Page Limits on Notices of Appeal and Appeal Briefs, 29 August 2014, F3/3, para. 8. See also, Nuon Chea's Notice of Appeal against the Trial

7. The Supreme Court Chamber accordingly terminates appellate proceedings against NUON Chea but will remain seized of his defence team's Urgent Request concerning, *inter alia*, the impact of his death on the trial judgement and underlying convictions.

III.DISPOSITION

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

FINDS that the death of NUON Chea has the effect of extinguishing criminal actions against him, and terminates all proceedings against him before the Supreme Court Chamber; and

REMAINS SEIZED of NUON Chea Defence's Urgent Request.

Phnom Penh, 13 August 2019

President of the Supreme Court Chamber



KONG Srim

Judgement in Case 002/02, para. 7 (acknowledging that “identification of pinpoint citations for [all] errors [...] may not be comprehensive”).