

**BEFORE THE SUPREME COURT CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

FILING DETAILS

Case No: 002/19-09-2007-ECCC/SC

Party Filing: Co-Prosecutors

Filed to: Supreme Court Chamber

Original Language: English

Date of Document: 9 February 2016

CLASSIFICATION

**Classification of the document
suggested by the filing party:** PUBLIC



Classification by Supreme Court Chamber: សាធារណៈ/Public

Classification Status:

Review of Interim Classification:

Records Officer Name:

Signature:

**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**

Filed by:

Co-Prosecutors
CHEA Leang
Nicholas KOUMJIAN

Distribute to:

Supreme Court Chamber
Judge KONG Srim, President
Judge A. KLONOWIECKA-MILART
Judge SOM Sereyvuth
Judge C. N. JAYASINGHE
Judge MONG Monichariya
Judge YA Narin
Judge Florence Ndepele MUMBA

Accused
NUON Chea
KHIEU Samphan

Lawyers for the Defence
SON Arun
Victor KOPPE
KONG Sam Onn
Anta GUISSÉ
Arthur VERCKEN

Copied to:

Civil Party Lead Co-Lawyers
PICH Ang
Marie GUIRAUD

I. Introduction and Procedural History

1. On 21 October 2015 the Supreme Court Chamber (the “SCC”) rendered a decision (“Decision on Pending Requests”) disposing of numerous pending requests by Nuon Chea to call witnesses and to admit other evidence in the Case 002/01 appeal proceedings.¹ Among other matters, the SCC decided (i) not to summons Heng Samrin and Robert Lemkin as witnesses² (for convenience of reference, the SCC’s decision not to call Heng Samrin and Robert Lemkin as witnesses will be referred to hereinafter as the “Witness Decision”) and (ii) not to admit into evidence certain materials gathered by Mr. Lemkin³ (hereinafter, the “Materials Decision”). The SCC indicated that detailed reasons for the Decision on Pending Requests would follow in due course.⁴
2. On 4 February 2016, Nuon Chea filed a request for relief (the “Nuon Chea Request”)⁵ related to the Decision on Pending Requests. The Nuon Chea Request seeks two kinds of alternative relief: (i) reconsideration of the Witness Decision and the Materials Decision (the “Reconsideration Request”) or (ii) in the alternative, urgent release of the SCC’s detailed reasons for the entire Decision on Pending Requests (the “Reasons Request”).⁶ The Co-Prosecutors now respond, opposing the Reconsideration Request.

II. Submissions

A. Reconsideration Request

3. The Reconsideration Request neither raises new facts nor articulates any change in circumstance since the issuance of the Decision on Pending Requests. Nuon Chea readily concedes that he is, for the most part, merely repeating arguments he has already made on many occasions.⁷ In addition, much of the Reconsideration Request is

¹ **F2/9** Decision on Pending Requests for Additional Evidence on Appeal and Related Matters—Disposition, 21 October 2105 (“Decision on Pending Requests”).

² Decision on Pending Requests, pp. 2, 4-5, 7. For convenience of reference, the Chamber’s decision not to call Heng Samrin and Robert Lemkin as witnesses will be referred to hereinafter as the “Witness Decision”.

³ Decision on Pending Requests, pp. 2-4, 7. The Chamber’s decision not to admit Lemkin’s notes and transcripts will be referred to as the “Materials Decision”.

⁴ Decision on Pending Requests, p. 7.

⁵ **F2/10** 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, 4 February 2016 (“Nuon Chea Request”).

⁶ Nuon Chea Request, para. 58.

⁷ See, e.g., Nuon Chea Request, paras 5-6, 27-28, 35-39, 43-44, 48-54.

a catalogue of old grievances on other matters, unrelated to the relief now being sought.⁸

4. Once the repetition and irrelevancies are stripped away, the Reconsideration Request boils down to the conclusory assertion that the SCC could only have reached its decisions not to summons Heng Samrin and Robert Lemkin as witnesses and not to admit certain of the Lemkin materials on an erroneous basis.⁹
5. This assertion is obviously incorrect. Admission of new evidence on appeal is an extraordinary remedy which should only be granted when fully justified by the moving party. Nuon Chea has never met that burden with respect to the evidence subject to the Reconsideration Request.¹⁰ In the many filings on these issues, the Co-Prosecutors have set out many well-supported, reasonable bases to reject Nuon Chea's new evidence requests, as the new evidence could not have changed the judgment in Case 002/01 and admission of the evidence was not in the interests of justice. There is no need for the Co-Prosecutors to repeat those arguments here as they are already on the record in this case.¹¹ For any of these reasons, the SCC could validly have reached the Witness Decision and the Materials Decision. The Co-Prosecutors therefore respectfully request that the SCC dismiss the Reconsideration Request.

B. Reasons Request

6. The Co-Prosecutors do not oppose the Reasons Request but note that Nuon Chea's request would have been more effective had he not waited until twelve days before the rescheduled appeal hearing to make it. The Decision on Pending Requests was issued 21 October 2015. Notification was given on 23 December 2015 that the Appeal hearings would take place from 16 to 18 February 2016.¹² Nuon Chea does not explain

⁸ See, e.g., Nuon Chea Request, paras 8-16, 21-24.

⁹ Nuon Chea argues "that Heng Samrin's evidence was so important, reliable, relevant and unique that there could not have been any legitimate reasons on which the Supreme Court Chamber could have based its decision not to summons him to testify on appeal" and "that Robert Lemkin's evidence was so important, reliable, relevant and unique that there could not have been any legitimate reasons on which the Supreme Court Chamber could have based its decision not to summons him to testify on appeal or to admit into evidence his Notes and the remaining Transcripts." Nuon Chea Request, paras 45 & 56.

¹⁰ It should be noted that the SCC has in fact granted a number of Nuon Chea's requests to hear additional testimony on appeal in situations where it was satisfied that Nuon Chea had met his burden. **F2/5** Decision on Part of Nuon Chea's Requests to Call Witnesses on Appeal, 29 May 2015.

¹¹ See, *inter alia*, **F17/1** Co-Prosecutors' Response to Case 002/01 Appeals, 24 April 2015, paras 37-54; **F2/4/3/3/3** Co-Prosecutors' Response to Nuon Chea's Response to Questions on the Supreme Court Chamber's Additional Investigation into Footage in the Possession of Filmmakers Rob Lemkin and Thet Sambath, 23 July 2015; **F2/4/3/3/6/3** Co-Prosecutors' Submissions on Transcripts of Interviews Received from Robert Lemkin, 9 October 2015.

¹² **F30/17** Order Scheduling the Resumption of the Appeal Hearing, 23 December 2015, p. 4.

why he was unable to file his request for over three months or why he waited until the appeal hearings are imminent.

III. Conclusion

7. For the reasons set forth above, the Co-Prosecutors respectfully request that the Supreme Court Chamber reject Nuon Chea's request that it reconsider its decisions not to summons Heng Samrin and Robert Lemkin as witnesses and not to admit into evidence certain of the materials gathered by Robert Lemkin.

Respectfully submitted,

Date	Name	Place	Signature
9 February 2016	CHEA Leang Co-Prosecutor	Phnom Penh	
	Nicholas KOUMJIAN Co-Prosecutor		