

-Humanitarian Law RULES!-

Center for the Study of Humanitarian Law

Monthly Newsletter

Issue #2, March 2016

IHL Analysis

ECCC - The right of accused to present a witness

In February 2016, defence counsel for Nuon Chea filed a request with the Supreme Court Chamber (Appeal Chamber) asking it to reconsider its decision of October 2015 not to summon Heng Samrin and Robert Lemkin as witnesses in Case 002/01. The defence argued that it can make such a request because both the Trial Chamber and the Appeal Chamber have failed to publish reasons for their decisions on this issue, despite promising to do so "in due course".

The defence argues that Heng Samrin is "the most crucial defence witness in Case 002/01" as he "spearheaded the evacuation of Phnom Penh" and was "tasked with guiding the implementation of policies." The defence argues his testimony would provide a better understanding of the structure, policies and internal conflicts of the Communist Party of Kampuchea and may exculpate Nuon Chea. As for Lemkin, the Defence argued that his evidence would help to uncover that Ros Nhim acted independently from the CPK to carry out the slaughter of Lon Nol officials at Tuol Po Chrey.

Will Nuon Chea's right to present key witnesses be violated if the Appeal Chamber refuses to reconsider its decision? Arguably yes - article 14(3)(e) of the ICCPR guarantees that an accused "obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him." Finding Nuon Chea guilty without hearing key witnesses breaches this guarantee and Nuon Chea's right to a fair trial. However, such a miscarriage of justice can be avoided if the Appeal Chamber agrees to the defence's request to call Heng Samrin and Lemkin to testify. The defence argues that the Appeal Chamber has broad power under Rule 104(1) of the Internal Rules to "itself examine evidence and call new evidence to determine the issues." The Chamber's decision is pending.

IHL in the news

- **ECCC: Khieu Samphan professes naiveté (Phnom Penh Post, 19 Feb 2016).** Samphan told the court that his role in Democratic Kampuchea was limited, despite his being its Head of state. He contends that the trial chamber has prejudged his guilt.
- **Infant refugee at Center of Hospital protest gets reprieve (Cambodia Daily, 22 Feb 2016).** Australia said instead of returning the baby girl back to the offshore immigration detention, she will be sent to an onshore facility.

The Center is supported by the Raoul Wallenberg Institute of Human Rights and Humanitarian law (RWI), ICRC, Australian Volunteers for International Development (AVID) and Macquarie University's PACE Program. The Center's library is open to all students, visiting academics and university professors.

LIBRARY HOURS

March & April 2016

Mon to Fri: 8.45am – 5.30pm

Closed: 8 March 2016, International Women's Day; 11 to 15 April, Khmer New Year

UPCOMING EVENTS

Jessup Moot International Rounds, Washington DC - 27 March-2 April 2016

CSHL academic conference – June 2016

Legal Ethics and Professional Responsibility Training Workshop – 21 & 22 April 2016

Humanitarian Law documentary series – throughout 2016, dates TBA

RECENT EVENTS

Congratulations to our RULE team that competed in the ICRC IHL Moot International Rounds in Hong Kong from 9-12 March 2016. They performed well against strong opponents and won the Role-Play competition, beating countries such as New Zealand and China!

