

**BEFORE THE OFFICE OF THE PRE-TRIAL CHAMBER  
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

**FILING DETAILS**

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SAM Sokong

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**NATIONAL CIVIL PARTY CO-LAWYER'S REPLY TO IM CHAEM'S RESPONSE  
(D308/3/1/5) TO THE REQUEST FOR AN EXTENSION OF TIME AND FOR LEAVE  
TO FILE A RESPONSE TO THE INTERNATIONAL CO-PROSECUTOR'S APPEAL  
OF CLOSING ORDER (REASONS) IN ENGLISH WITH KHMER TO FOLLOW**

**Filed by:**  
**Civil Party Co-Lawyer:**  
SAM Sokong

**Distribution to:**  
**Pre Trial Chamber Judges:**  
Judge PRAK Kimsan  
Judge BAIK Kang Jin  
Judge NEY Thol  
Judge Olivier BEAUVALLET  
Judge HUOT Vuthy

**Co-Prosecutors:**  
CHEA Leang  
Nicholas KOUMJIAN

**Co-Lawyers for IM Chaem**  
BIT Seanglim  
Wayne JORDASH

**All Civil Party Lawyers in Case 004/1**

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1. The National Civil Party Co-Lawyer respectfully submits the following Reply to *Im Chaem's Response to the National Civil Party Co-Lawyer's Request for an Extension of Time and for Leave to File a Response to the International Co-Prosecutor's Appeal of Closing Order Reasons in English with Khmer to Follow* (Im Chaem Response).<sup>1</sup> Due to the limited time given to file the present Reply, the National Civil Party Co-Lawyer also respectfully requests leave, pursuant to Article 7.2 of the Practice Direction on filing of Documents before the ECCC ("Practice Directions"),<sup>2</sup> to file the Reply in English only, with Khmer translation to follow as soon as possible.
2. The Im Chaem Response argues that the National Civil Party Co-Lawyer's Request is procedurally defective because (a) the Civil Parties lack standing to be heard in Case 004/1 and (b) the Request is a *de facto* notice of appeal and is thereby untimely. The Im Chaem Response, however, disregards the important participatory rights of Civil Parties and misconstrues the nature of the document that the National Civil Party Co-Lawyer seeks to file before the Pre-Trial Chamber.
3. The Supreme Court Chamber has recognized the participatory rights of Civil Parties before the ECCC, particularly as they relate to the opportunity to address issues that impinge on their interests.<sup>3</sup> ECCC Internal Rule 23(c) further enshrines the fundamental principle that victims' rights are to be respected *throughout* the proceedings.
4. First, the Im Chaem Response incorrectly posits that the Civil Parties' failure to successfully challenge the Co-Investigating Judges' *Order on Admissibility of Civil Party Applications* ("CIJ Order") effectively silenced all Civil Party voices from Case 004/1. The CIJ Order rests entirely on the ECCC's lack of personal jurisdiction over Im Chaem

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<sup>1</sup> **D308/3/1/5** Im Chaem's Response to the National Civil Party Co-Lawyer's Request for an Extension of Time and for Leave to File a Response to the International Co-Prosecutor's Appeal of Closing Order (Reasons) in English with Khmer to Follow, 21 August 2017.

<sup>2</sup> **ECCC/01/2007/Rev. 8** Practice Direction on filing of Documents before the ECCC, 7 March 2012

<sup>3</sup> **Case File Dossier N° 002/19-09-2007-ECCC-SC-F10/2**, Supreme Court Chamber Decision on Civil Party Lead Co-Lawyers' Requests Relating to the Appeals in Case 002/01, 26 December 2014, para. 14.

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however, rather than on any deficiencies in the civil party applications themselves,<sup>4</sup> a number of which had otherwise already been accepted.<sup>5</sup> Given the legal basis of the CIJ Order, the Civil Parties could not realistically challenge the admissibility of their applications. Nor does the Im Chaem Response's reliance on inapposite jurisprudence from the International Criminal Court provide support for stripping Civil Parties of their standing to participate in Case 004/1 given the "fundamental differences" between the ECCC and ICC's victim participation regimes.<sup>6</sup> Indeed, respect for the participatory rights of the Civil Parties and the interests of justice strongly counsel for permitting Civil Parties an opportunity to be heard at this critical juncture of Case 004/1 on issues that deeply affect their interests. Further, according to Internal Rule 77*bis*, any Civil Party appeal of the CIJ Order would have had to have been filed within 10 days of the notification of the decision on admissibility (with no extension of time allowed), while the legal justification underpinning the rejection of their applications was not issued by the Co-Investigating Judges until 10 July 2017.<sup>7</sup>

5. Although the Internal Rules are silent on the matter of Civil Party standing to submit responsive briefs to submissions on appeal, the Supreme Court Chamber, while seized of the appeal in Case 002/1, recognized the rights of Civil Parties to respond and reply to other parties' submissions.<sup>8</sup> There, even though Civil Parties did not file an appeal

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<sup>4</sup> **D307** Order on Admissibility of Civil Party Applications, 22 February 2017, para. 11 ("Today, we dismissed all charges in Case 004/1, because Im Chaem, the only charged person in this case, does not fall under the ECCC's jurisdiction. As a consequence, the Civil Party applicants in Case 004/1 no longer have a claim against her under the law of the ECCC. Their application must therefore be rejected.")

<sup>5</sup> The National Civil Party Co-Lawyer also represents a number of civil parties whose applications had previously been accepted prior to the CIJ Order. *See e.g.*, **D5/40/3** Order on the admissibility of the Civil Party application of CHOENG Py, 1 May 2012; **D5/66/3** Order on the admissibility of the Civil Party application of CHECH Sopha, 1 May 2012; **D5/72/3** Order on the admissibility of the Civil Party application of KEU Seung, 1 May 2012.

<sup>6</sup> **Case File Dossier N° 002/19-09-2007-ECCC-SC-F10/2**, Supreme Court Chamber Decision on Civil Party Lead Co-Lawyers' Requests Relating to the Appeals in Case 002/01 ("SCC Decision on Civil Party Requests"), 26 December 2014, para. 16.

<sup>7</sup> **D308/3** Closing Order (Reasons), 10 July 2017.

<sup>8</sup> SCC Decision on Civil Party Requests. at para. 14 (The Supreme Court Chamber notes that pursuant to Internal Rules 92 and 104, "the parties are entitled to make written submissions before the competent chamber up until the closing submissions, as detailed in the practice direction on filing. The authorisation to submit written applications and pleadings reasonably incorporates the right to respond and reply to other parties' submissions, consistent with the adversarial structure of the proceedings. As such it would be discordant with Civil Parties' powers relating to their overall role in all phases of proceedings to disavow their right to respond to the Defence Appeal Briefs at this juncture.")

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against the Trial Chamber judgment, the Court recognized that Civil Parties had standing to file responses to the Defence Appeal Brief, so long as, as is the case here, the proposed response related to grounds that directly affect Civil Parties' rights and interests, and was not overly repetitive.<sup>9</sup>

6. Second, the Im Chaem Response misconstrues as a *de facto* notice of appeal the document that the National Civil Party Co-Lawyer is seeking to submit before the Pre-Trial Chamber. The submission will not raise new grounds of appeal against Im Chaem, nor will it be repetitive of issues already covered by the *International Co-Prosecutors' Appeal of Closing Order (Reasons)*.<sup>10</sup> Nor does the Civil Party Co-Lawyer wish to contradict the grounds for appeals raised by the International Co-Prosecutor. Rather, the purpose of the National Civil Party Co-Lawyer submission is to identify the grave issues arising out of the discussion on the ECCC's alleged exclusive jurisdiction in the portions of the Co-Investigative Judges *Closing Order (Reasons)*, namely Section 2.1.1, that focus on the position of the ECCC within the Cambodian Legal System. Notably, the interests of the Civil Parties are deeply impacted by the Co-Investigating Judges' apparent conclusion that the establishment of the ECCC was intended to forever strip Cambodian national courts of jurisdiction over all other Khmer Rouge-era crimes, regardless of the perpetrators' level of seniority or responsibility.
  
7. Given the structure of the ECCC, the submissions before the Pre-Trial Chamber arising out of the *International Co-Prosecutors' Appeal of Closing Order (Reasons)* are the most straightforward avenue through which the Civil Parties can raise these grave issues for the Pre-Trial Chamber's consideration. The proposed submission was not styled as an appeal of the *Closing Order (Reasons)* specifically because it was not intended to contest the Co-Investigative Judges' dismissal of the charges against Im Chaem. Rather, the proposed submission was termed a *Response to the International Co-Prosecutors' Appeal of Closing Order (Reasons)* so as to address the lacunae of the *International Co-Prosecutors' Appeal of Closing Order (Reasons)* on this significant issue.

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<sup>9</sup> *Id.* at para. 17.

<sup>10</sup> D308/3/1/1 International Co-Prosecutor's Appeal of Closing Order (Reasons), 9 August 2017.

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8. While a prior request by the Lead Co-Lawyers to weigh in on the modes of liability addressed by the Co-Prosecutors in their appeal brief was admittedly rejected in Case 002/001,<sup>11</sup> the circumstances surrounding the current proposed submission are markedly different and compel a different conclusion. Here, the National Civil Party Co-Lawyer is not attempting to contest the International Prosecutor's position on appeal. Moreover, the issue that the Civil Party Co-Lawyer seeks to clarify for the Pre Trial Chamber is one that deeply affects the victims' pursuit of justice. The CIJs' decision stripping Cambodian Courts of any residual jurisdiction over Khmer Rouge crimes, even for individuals that were not investigated by the ECCC because they did not meet the court's restrictive personal jurisdiction, is a significant blow to victims. Such a conclusion was not foreseen by the negotiators of the Court, and would amount to a blanket amnesty, which was not intended by the Agreement establishing the ECCC. Civil Parties should have a right to speak on this issue as it affects their immediate interests before this Court and future interests in their own national courts.
9. In the alternative, should the Pre-Trial Chamber decide not to allow the filing of a *Response to the International Co-Prosecutors' Appeal of Closing Order (Reasons)*, the National Civil Party Co-Lawyer hereby respectfully requests leave to file a note to Case File 004/1, comprising of research that squarely contradicts the reasoning of the *Closing Order (Reasons)* on the exclusive jurisdiction issue, which the Pre-Trial Chamber can take under advisement as it sees fit. Notably, the Internal Rules do not foreclose the ability of parties to supplement the Case File, including while an appeal of a Closing Order is still pending before the Pre-Trial Chamber.
10. As a supplemental alternative, should the Pre-Trial Chamber foreclose the possibility of filing either a *Response to the International Co-Prosecutors' Appeal of Closing Order (Reasons)* or a note to the Case File, the National Civil Party Co-Lawyer hereby respectfully request that the Pre-Trial Chamber invite or grant leave to an organization or

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<sup>11</sup> **Case File Dossier N° 002/19-09-2007-ECCC-SC-F10/2**, Decision on Civil Party Lead Co-Lawyers' Requests Relating to the Appeals in Case 002/01, 26 December 2014, para. 23.

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person, pursuant to Internal Rule 33, to submit an amicus curiae brief in writing to address the Co-Investigative Judges' conclusion in the *Closing Order (Reasons)* that the United Nations and the Royal Government of Cambodia intended to strip Cambodian courts of all residual jurisdiction through the creation of the ECCC.

11. The interests of the Civil Parties are profoundly impacted by the Co-Investigating Judges' conclusions in the *Closing Order (Reasons)* on the issue of the ECCC's exclusive jurisdiction. The issue was never briefed by any of the parties, nor are the Co-Investigative Judges' conclusions reviewable by any Cambodian court despite their impact on Cambodian sovereignty and they are unlikely to ever be addressed by the ECCC outside of the present review by the Pre-Trial Chamber of the *Closing Order (Reasons)*. In light of the foregoing, the National Civil Party Co-Lawyer respectfully:

- Renews the *National Civil Party Co-Lawyer's Request for an Extension of Time and for Leave to File a Response to the International Co-Prosecutor's Appeal of Closing Order Reasons in English with Khmer to Follow*;
- In the alternative, requests leave to file a note to Case File 004/1 on the issue of the exclusive jurisdiction of the ECCC over Khmer Rouge-era crimes;
- As a supplemental alternative, requests that the Pre-Trial Chamber invite or grant leave to an organization or person, pursuant to Internal Rule 33, to submit an amicus curiae brief on the exclusive jurisdiction issue;
- Requests leave to file the present Reply in English only, with Khmer translation to follow as soon as possible.

Respectfully submitted,

Date	Name	Place	Signature
23 August 2017	SAM Sokong Cambodian Civil Party Co-Lawyer	Phnom Penh, Cambodia	