

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

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**OFFICE OF ADMINISTRATION'S RESPONSE TO  
CIVIL PARTY LEAD CO-LAWYERS' URGENT REQUEST (F70)**

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Filed by:

**Office of Administration**

Distribution to:

**Supreme Court Chamber**

**Civil Party Lead Co-Lawyers**

**Civil Party Lawyers (Case 002)**

**Co-Prosecutors**

**Co-Lawyers for Khieu Samphan**

1. The Office of Administration (“OA”) hereby responds to the Civil Party Lead Co-Lawyers’ (“LCLs”) “*Urgent Request for Orders to Protect Civil Party Rights to Effective Representation and a Fair Trial*” (“Urgent Request”).<sup>1</sup>
2. The Supreme Court Chamber has already ruled that the substance of the LCLs’ concerns “involves an administrative decision” which is “not a justiciable issue”.<sup>2</sup> The underlying facts of the matter at hand – including the international LCL’s submissions<sup>3</sup> and OA’s detailed reasons for its decision<sup>4</sup> – were available to the Chamber when it made the above determination, which was fully informed. ***No new facts arise***. The Urgent Request seeks in essence to secure extension of one international consultant<sup>5</sup> (an *administrative* matter which this Chamber has deemed non-justiciable) and is in large part ventilation of the LCLs’ disagreement with the *administrative* decision.<sup>6</sup> On this basis, the Urgent Request should be dismissed.
3. The LCLs seek the Supreme Court Chamber’s intervention by reframing their Urgent Request as a petition to “protect” the rights of civil parties to “effective representation” and a “fair trial”<sup>7</sup> despite acknowledging that OA may determine “how much work is necessary and appropriate for effective representation”.<sup>8</sup> OA continues to be guided by the ECCC’s legal framework and judicial workplan, and maintains that the ***Internal Rules and allocated resources sufficiently protect the rights of the civil parties at this stage of proceedings***. It is the *LCLs themselves*, not their support personnel, who personify and promote effective representation under Internal Rule 12 *ter*. It is furthermore inconceivable that the civil parties in case 002 are deprived of effective representation when their collective interests at the appeal stage are entrusted to two advocates who are duly appointed and recognized before the Extraordinary Chambers in the capacity of LCLs and remunerated each on a full-

<sup>1</sup> **F70**, 28 October 2021.

<sup>2</sup> **F69/1**, Decision on Civil Party Lead Co-Lawyers’ Urgent Request to File in One Language and for Expedited Filing Schedule, 18 October 2021.

<sup>3</sup> Annexed to F69/1 as **F69.1.1**, **F69.1.2** and **F69.1.4**.

<sup>4</sup> **F69.1.5**. Annexed hereto as **Attachment 1**.

<sup>5</sup> See e.g., **Urgent Request**, paras 38, 50, 66-69, 72, 76-77, 80, 85, 99, 109.

<sup>6</sup> See e.g., **Urgent Request**, sections V-VIII.

<sup>7</sup> OA does not dispute the Chamber’s jurisdiction to review and determine legal matters pertaining to effective legal representation and fair trial rights. See **Urgent Request**, section IV. It should be noted that the international LCL’s submission to UNAKRT for consultant resources (being the *only* context in which *potential* jeopardy to “effective representation” was specified) did not particularize how the departure of one individual would render impossible the “effective organization of Civil Party representation” under Internal Rule 12 *ter* based on the work that lay ahead. See **Attachment 1**, para. 16 (fn. 39). The LCLs again inexplicably raise the reduction of their Section’s workforce by one individual as “mak[ing] *impossible* ... effective representation before and after the delivery of the appeal judgment”, and having “real and consequential effects on the civil parties’ right to effective representation” [emphasis added]. See **Urgent Request**, paras 3, 27ff, 67.

<sup>8</sup> **Urgent Request**, para. 55.

time basis. Moreover, the LCLs are *statutorily* supported by 18 civil party lawyers (nine Cambodian and nine foreign) and are further assisted by two legal officers also remunerated on a full-time basis. OA has pointed this out to the LCLs and underscored that its decision making on resource requests must encompass consideration of the *totality* of resources available to their Section, not only those funded by UNAKRT.<sup>9</sup> Nevertheless, the LCLs persist in minimizing the availability of two full-time legal officers reporting directly to them, and the immutable *statutory* role of 18 civil party lawyers,<sup>10</sup> in the face of “practical challenges” to the “international side”.<sup>11</sup>

4. OA maintains that **managerial inconvenience is no basis for displacing the will of the ECCC Plenary as enshrined in the Internal Rules.**<sup>12</sup> It is implausible that the entire framework of Internal Rules 12 *ter* and 23, which is directed at ensuring “effective organization of civil party representation” and “the fair and effective conduct of proceedings” *by the LCLs*, stands or falls with a single legal assistant. The LCLs’ argument to the contrary must fail.
5. Turning to “fair trial” and “fairness” considerations, it should be recalled that OA’s decision, and therefore the Urgent Request, concerns only the period October-December 2021. The LCLs do not specify how or what aspect of fair trial rights *are factually* or *will actually* (as opposed to hypothetically or speculatively) be affected in this period when the appeals in case 002 are fully briefed, and the Supreme Court Chamber has withdrawn for deliberations. As in their submissions to OA,<sup>13</sup> the LCLs refer the Chamber to work of an ongoing nature and without judicial deadline.<sup>14</sup> The Urgent Request does not identify any *impending* work which would logically benefit from an immediate augmentation of human resources. OA has already addressed the LCLs’ concerns – the fact that they are now recharacterized as “fair trial” or “fairness” issues does not make them so. Were there genuine legal concerns, logic suggests that the LCLs would have mentioned them in their

<sup>9</sup> **Attachment 1**, paras 6-9, 22 (referring to the Victim Support Section’s role outside the LCLs’ mandate). Totality also includes resources within the Victims Support Section and Public Affairs Section, which continue to be available to the LCLs, as for any other office of the Extraordinary Chambers, for non-judicial activities.

<sup>10</sup> **Urgent Request**, paras 28-38.

<sup>11</sup> See e.g., **Urgent Request**, paras 27, 68(i), 69.

<sup>12</sup> **Attachment 1**, paras 6, 10.

<sup>13</sup> See **Attachment 1**, para. 15.

<sup>14</sup> **Urgent Request**, paras 67 (referring to meetings with civil parties commencing on 29 October 2021; review of case file materials for reclassification; and collecting and collating information for a report on reparations), 78, 80 (stating that work pertaining to reclassification “will need to be done at *some* stage – if not now, then after the Case 002/02 final judgment” [emphasis added]).

12 October request to file in one language.<sup>15</sup>

6. In short, as concerns fairness OA has already informed the LCLs that:
- a. *Civil Party rights*<sup>16</sup> and *institutional memory*<sup>17</sup> remain preserved by the continued retention of the LCLs – who have been contracted for 11 and two years respectively (appointed since October 2010 and August 2019) – on a full-time basis. In addition, the uninterrupted support of two legal officers reporting directly to the LCLs, as well as 18 lawyers representing civil parties since the outset of the judicial proceedings in the case, remain available to them;<sup>18</sup>
  - b. The *prospect of delays*<sup>19</sup> and *increased burden*<sup>20</sup> on the LCLs and their support staff is offset by the period available to the LCLs to file their work products (being more than one year);<sup>21</sup> and is ameliorated by the declared willingness of the international LCL to do the work which is required in that time;<sup>22</sup> and
  - c. *Cost-effectiveness*<sup>23</sup> does not constitute a fair trial or fairness issue and consequently bears no relation to the LCLs’ need for support personnel.<sup>24</sup> Cost-effectiveness is an *operational* issue, and OA has in this regard undertaken to consider the LCLs’ resource requests without prejudice and accommodate those which are adequately justified.<sup>25</sup>
7. Reference to “expectations” based on prior practices or formed at earlier stages of proceedings<sup>26</sup> are inappropriate.<sup>27</sup> As OA has explained,<sup>28</sup> the ECCC’s (and therein

<sup>15</sup> **F69**, *Civil Party Lead Co-Lawyers’ Urgent Request to File in One Language, and for an Expedited Filing Schedule*, 12 October 2021. The LCLs stated that they would “seek an order ... to ensure the continued provision of resources sufficient ... to provide effective representation” The ensuing discussion concerns preservation of one consultancy resource in the Section’s interests of minimizing inconvenience. The actual infringement of “fair trial” rights is not discussed. See paras 2-3, 7-8, 11.

<sup>16</sup> **Urgent Request**, sections V-VII.

<sup>17</sup> **Urgent Request**, paras 66, 75-77, 80-81.

<sup>18</sup> **Attachment 1**, paras 8, 14 (“...institutional memory is a product of *all* personnel, not select individuals”). See also, fn. 29.

<sup>19</sup> **Urgent Request**, paras 78-81.

<sup>20</sup> **Urgent Request**, paras 82-83.

<sup>21</sup> **Attachment 1**, para. 15. See also revision 30 of the ECCC Completion Plan, projecting the appeal judgment in Case 002/02 by 4<sup>th</sup> Quarter of 2022.

<sup>22</sup> **Attachment 1**, para. 16.

<sup>23</sup> **Urgent Request**, paras 84-88.

<sup>24</sup> **Attachment 1**, paras 13, 17.

<sup>25</sup> **Attachment 1**, para. 33.

<sup>26</sup> **Urgent Request**, section VIII.

<sup>27</sup> **Attachment 1**, para. 17 (“Resources hitherto approved have been adequately justified [by the LCLs] to [OA], particularly in view of the appeal process which required active party participation ... through August 2021”).

<sup>28</sup> **Attachment 1**, para. 23.

UNAKRT's) funding comprises public funds, and diligence in the transparent administration of public money requires that resources be adequately justified according to the legal framework and the realities of the judicial workplan as it develops. As concerns those resources not approved by OA, the LCLs have not done so.

8. Accordingly, **no fair trial issues arise in the context of the work currently before the LCLs**. The Urgent Request should be dismissed.

Respectfully submitted,

2 November 2021	<b>H.E. Tony Kranh</b> Acting Director of Administration	Phnom Penh, Cambodia	
	<b>Mr. Knut Rosandhaug</b> Deputy Director of Administration		