

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

**FILING DETAILS**

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**VICTOR KOPPE'S RESPONSE TO THE SUPREME COURT CHAMBER'S REQUEST  
FOR EXPLANATIONS FOR HIS ABSENCE FROM THE APPEAL HEARING**

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1. In response to the request from the Supreme Court Chamber (the “Chamber”),<sup>1</sup> I, Victor Koppe, the International Co-Lawyer for Mr. Nuon Chea, make the following submissions.
2. On 21 October 2015, the Chamber rendered its Disposition Decision on Pending Requests for Additional Evidence on Appeal and Related Matters.<sup>2</sup>
3. On 28 October 2015, I sent an email to Mr. Volker Nerlich, the Senior Legal Officer of the Chamber. The email reads as follows:

Dear Mr. Nerlich,

I am writing you in your capacity as Senior Legal Officer of the Supreme Court Chamber.

On 21 October 2015, the Supreme Court Chamber rendered its Disposition Decision on Pending Requests for Additional Evidence on Appeal and Related Matters (“Decision”).

In this Decision, the Chamber ruled inter alia that it will not summons Heng Samrin as a witness and will not admit into evidence the majority of the transcripts of film footage made by renowned British filmmaker Robert Lemkin and Cambodian journalist Thet Sambath, including the notes that Robert Lemkin has made based on that same footage. The Chamber provided no reasoning for its Decision.

As a result of the Decision, the outcome of the appeal proceedings that Nuon Chea initiated on 29 September 2014 has now become irrelevant to him. Nuon Chea has accordingly instructed us that he is considering his options as to the way forward, including the possibility of withdrawing his appeal altogether.

The Internal Rules are silent as to the possibility for an accused to withdraw his appeal. Accordingly, I write on Nuon Chea’s behalf to request clarification as to whether it is legally possible for an accused to withdraw an appeal at this stage of the proceedings. If yes, please advise when and in which manner Nuon Chea has to notify the Chamber of such withdrawal.

If it is not legally possible for an accused to withdraw his appeal at this stage, please clarify whether Nuon Chea and his international co-lawyer are obliged to participate in the oral hearings that the Chamber has planned between 16 and 18 November 2015. If no such obligation exists, please be informed that Nuon Chea and/or his international co-lawyer may elect not to participate in these hearings.

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<sup>1</sup> **F30/14**, ‘Decision Requesting Submissions from Mr Victor Koppe regarding His Failure to Attend the Appeal Hearing’, 19 Nov 2015 (‘Decision Requesting Submissions’).

<sup>2</sup> **F2/9**, ‘Decision on Pending Requests for Additional Evidence on Appeal and Related Matters: Disposition’, 21 Oct 2015 (‘Decision on Pending Requests’).

I also take this opportunity to advise that I am now considering to formally withdraw as appeal defence counsel. I plan to speak to the Chief of the Defence Support Section, Mr. Isaac Endeley, as soon as possible, about the legal and practical possibilities for me to withdraw. I will inform you of the outcome of that discussion as soon as possible.

4. On 29 October 2015, Mr. Nerlich wrote to me by email, copying all parties:

Thank you for your email of yesterday afternoon, seeking clarification as to whether an appellant may withdraw his appeal at this stage of the proceedings.

Please note that it is not my role to provide legal advice to the parties to the proceedings before the Supreme Court Chamber. Any procedural action that you may wish to take on behalf of your client should be communicated to the Supreme Court Chamber by way of a formal filing.

I note that the Defence has requested separately that your email of yesterday be filed into the record of the case. Please be advised that this is not possible, as your email was not a filing addressed to the Supreme Court Chamber, nor was it annexed to such a filing.

5. In the same week as said emails I had a private conversation with the Chief of the Defence Office in which I indicated I was not only considering withdrawing as International Co-Lawyer in the appeal in Case 002/01, but also as International Co-Lawyer from Case 002/02 and that I would get back to him as soon as possible.
6. On 5 November 2015, I reiterated these considerations to withdraw publicly in my answers to questions from national media in respect of the appearance of a report<sup>3</sup> by The Asian International Justice Initiative, East-West Centre.<sup>4</sup> In these same comments I also called the ECCC “a complete farce”.<sup>5</sup>
7. At the hearing of 17 November 2015, Nuon Chea repeated what I had written already in my email of 28 October 2015, namely that because of the Decision on Pending Requests made by the Chamber the outcome of the appeal had now become irrelevant to him and that he would therefore not be making any oral submissions or answer any questions from the Chamber or other parties.

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<sup>3</sup> **F30/11.1.3**, David Cohen, Melanie Hyde, Penelope Van Tuyl, Stephanie Fung, *A Well-Reasoned Opinion? Critical Analysis of the First Case against the Alleged Senior Leaders of the Khmer Rouge (Case 002/01)*, East-West Centre, 2015. The report is also available at: <http://www.eastwestcenter.org/system/tdf/private/cohen-wellreasoned2015.pdf?file=1&type=node&id=35372>.

<sup>4</sup> Phnom Penh Post, ‘Deep flaws in KRT’s Case 002/01: report’, 6 Nov 2015, available at: <http://www.phnompenhpost.com/national/deep-flaws-krts-case-00201-report>.

<sup>5</sup> The Cambodian Daily, ‘Tribunal Judgment Slammed in Damning Report’, 6 Nov 2015, available at: <https://www.cambodiadaily.com/news/tribunal-judgment-slammed-in-damning-report-99529/>.

8. Nuon Chea also indicated at the hearing that he had instructed me not to be present during the hearing.
9. On 19 November 2015, the Chamber issued its decision requesting submissions from me “explaining the reasons for” my “failure to attend the Appeal Hearing”.<sup>6</sup>
10. The above is my response to the Chamber. Apart from this, I inform the Chamber that I have now decided not to withdraw as Nuon Chea’s International Co-Lawyer, despite my deep conviction that a fair trial at the ECCC, both before the Trial Chamber and before the Supreme Court Chamber, is absolutely impossible, and despite my deep conviction that the ECCC is indeed, and always will be, a complete farce.

INTERNATIONAL CO-LAWYER FOR NUON CHEA



Victor KOPPE

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<sup>6</sup> **F30/14**, Decision Requesting Submissions, p. 4.