

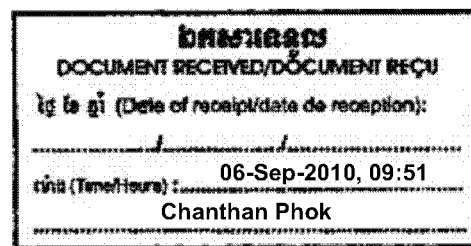
**THE TRIAL CHAMBER  
OF THE EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

**Filing details**

**Case File No.** : 001/18-07-2007-ECCC/SCC  
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**NOTICE OF APPEAL BY THE CO-LAWYERS FOR CIVIL PARTY GROUP 3**

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**Filed by:**

**The Civil Party Co-Lawyers:**

KIM Mengkhy  
MOCH Sovannary  
Martine JACQUIN  
Annie DELAHAIE  
Philippe CANONNE  
Elisabeth RABESANDRATANA  
Fabienne TRUSSES-NAPROUS  
Christine MARTINEAU

**Before:**

**The Trial Chamber:**

Judge NIL Nonn, President  
Judge Silvia CARTWRIGHT  
Judge YA Sakhon  
Judge Jean-Marc LAVERGNE  
Judge THOU Mony

**Copied to:**

**The Accused:**

KAING Guek Eav alias Duch

**The Lawyers for the Accused**

KAR Savuth  
KANG Ritheary

**The Office of the Co-Prosecutors:**

CHEA Leang  
Andrew CAYLEY



**The Lawyers for Civil Parties**

Karim Khan

TY Srinna

Alain WERNER

Brianne McGONIGLE

KONG Pisey

HONG Kimsuon

YUNG Panith

Silke STUDZINSKY

Pierre-Oliver SUR

## INTRODUCTION

1. Pursuant to the provisions of the Internal Rules, the Co-Lawyers for Civil Party Group 3 hereby appeal the Trial Chamber Judgment of 26 July 2010 in which Kaing Guek Eav was found guilty of the crimes of Grave Breaches of the Geneva Conventions and Crime against Humanity, as listed in the disposition, and sentenced to 30 years' imprisonment.
2. "The Chamber declares all Civil Parties listed in paragraphs 645 and 650 to have suffered harm as a direct consequence of the crimes for which KAING Guek Eav has been convicted. [...] It dismissed all the Civil Parties other requests."
3. This appeal concerns only the findings relating to Civil Parties.
4. This appeal concerns the following Civil Parties in respect of Grounds **I, II, III** and **IV**, as explained hereinafter:
  - E2/34 SO Saung
  - D25/11 KHUON Sarin
  - E2/82 MORN Sothea
  - E2/70 CHAN Yoeurng
  - E2/71 SOEM Pov
  - E2/63 PANN Pech
  - E2/33 PHAOK Khan
  - E2/23 LAY Chan
5. This appeal concerns the following Civil Parties in respect of Ground **V**:
  - E2/34 SO Saung
  - D25/11 KHUON Sarin
  - E2/82 MORN Sothea
  - E2/70 CHAN Yoeurng
  - E2/71 SOEM Pov
  - E2/63 PANN Pech
  - E2/33 PHAOK Khan
  - E2/23 LAY Chan
  - E2/84 UK Va Sothin
  - E2/80 CHIN Meth
  - E2/78 MEAS Saroeun
  - E2/79 SIEK Sek
  - E2/72 KAN San
  - E2/76 HUL Voeun
  - E2/30 NHOEM Kim Hoeun
6. This appeal is brought in accordance with Rules 105(2)(a) and (c), and 105(3) of the Internal Rules.
7. The Appellants' authorizations are attached hereto.

### THE LAW

8. On the basis of provisions of the Internal Rules, the Co-Lawyers for Civil Party Group 3 will appeal against an error on a question of law invalidating the decision and against a discernable error in the exercise of the Trial Chamber's discretion.

**I. GROUND 1: ERROR OF LAW CONCERNING THE ADMISSIBILITY OF CIVIL PARTY APPLICATIONS E2/23, E2/33. E2/34, E2/63, E2/70, E2/71, E2/82 and D25/11**

9. The Trial Chamber ruled twice on the admissibility of the civil party applications in violation of Rules *21(1)*, *21(1)(a)*, *21(1)(c)*, *23(4)*, *83(1)* and *100* of the Internal Rules (Rev.3) and contrary to the current practice before other international tribunals.

**II. GROUND 2: ERROR OF LAW CONCERNING THE TAKING OF EVIDENCE**

10. In regard to their statements and the identification of family members found at the Tuol Sleng Museum, The Trial Chamber erred in applying the standard for the provision of information under Rule 23(5) (Rev. 3) and criteria recognized in the jurisprudence of the International Criminal Court to Civil Parties<sup>1</sup> *E2/23*, *E2/33*, *E2/34*, *E2/70* and *E2/82*.
11. Such erroneous application of the rules of evidence amounts to an error on a question of law invalidating the judgment in so far as it rejects the applications of the civil parties identified above.

**III. GROUND 3: ERROR OF LAW CONCERNING KINSHIP AND BONDS OF AFFECTION**

12. Relying on an erroneous interpretation of Rule 23(2) of the Rules, which does not require proof of "special bonds of affection", the Trial Chamber further erred on a question of law in finding that no kinship or bonds of affection existed for Civil Parties *E2/34*, *E2/63*, *E2/71*, and *D25/11*.
13. This error on a question of law invalidates the Judgment, which the Supreme Court Chamber should also amend accordingly.

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<sup>1</sup> Judgement, paras. 647, 648, 649.

#### **IV. GROUND 4: ERROR OF FACT OCCASIONING A MISCARRIAGE OF JUSTICE**

14. The refusal to admit Civil Party Applicants E2/23, E2/33, E2/34, E2/70 and E2/82 is based on an error of fact which has occasioned a miscarriage of justice, in that the Trial Chamber omitted to take account of the fact that photographs of direct victims who were detained at Tuol Sleng were provided.
15. Moreover, the Trial Chamber dismissed Civil Party Applicant E2/34 for lack of evidence despite the fact that proof of kinship was provided in the case file.

#### **V. GROUND 5: ERRORS OF LAW CONCERNING CLAIMS FOR REPARATIONS**

16. The Trial Chamber erred on a question of law by misinterpreting Rule 23(12) (Rev. 3) on moral and collective reparations, which provides that such reparations may take the form of an order to fund any non-profit activity or service that is intended for the benefit of Victims.
17. The Trial Chamber omitted to apply the provisions of the ECCC Law governing property acquired unlawfully or by criminal conduct, which demonstrate that the ECCC may exceed its mandate with regard to implementing awards for reparations.
18. The Trial Chamber erred on a question of law by finding that the Civil Party requests for the erection of monuments memorials on which names would be inscribed lacked sufficient specificity and were indeterminate regarding their envisaged location and estimated cost, whereas the location was clearly indicated.
19. It is not for the Civil Parties to estimate the cost.
20. The Trial Chamber erred in law in that it failed to respond to the request for the establishment of a trust fund in view of awarding reparations.
21. The Trial Chamber erred on a question of law by rejecting the principle of a causal link between the requests for reparation through the creation of medical, health and educational facilities and the crimes committed by KAING Guek Eav whereas with regard to health, the nexus is recognized, and with respect to education, the request was in keeping with the spirit of the trial and was aimed at preventing oblivion.

#### **CONCLUSIONS**

22. The Lawyers for Civil Party Group 3 will file their brief in support of the appeal within 60 days of the filing of this notice of appeal.
23. The Civil Party Co-Lawyers request the Trial Chamber:
24. To find this appeal admissible;

25. To allow them to file additional material;
26. To set aside the Trial Chamber Judgment in respect of the erroneous findings identified *supra*; and
27. To grant all the Civil Parties earlier requests to the Trial Chamber.

**Without prejudice**

Case No. 001/18-07-2007-ECCC/SC

Done in Phnom Penh on 20 August 2010

Lawyers for Civil Party Group 3:

KIM Mengkhy

Martine JACQUIN

MOCH Sovannary

Philippe CANONNE

Christine MARTINEAU

Fabienne TRUSSES-NAPROUS

Annie DELAHAIE

Elisabeth RABESANDRATANA