

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

**FILING DETAILS**

**Case no:** 002/19-09-2007-ECCC/SC  
**Filing party:** Nuon Chea Defence Team  
**Filed to:** Supreme Court Chamber  
**Original language:** English  
**Date of document:** 3 December 2014



**CLASSIFICATION**

**Classification suggested by the filing party:** PUBLIC  
**Classification of the Supreme Court Chamber:** សាធារណៈ/Public  
**Classification status:**  
**Review of interim classification:**  
**Records officer name:**  
**Signature:**

---

**NUON CHEA'S RESPONSE TO THE CIVIL PARTY LEAD CO-LAWYERS'  
REQUESTS RELATING TO THE APPEALS IN CASE 002/01**

---

**Filed by**

**Nuon Chea Defence Team:**  
SON Arun  
Victor KOPPE  
PRUM Phalla  
SUON Visal  
LIV Sovanna  
Doreen CHEN  
Joshua ROSENSWEIG  
Xiaoyang NIE

**Distribution**

**Co-Lawyers for Khieu Samphan:**  
KONG Sam Onn  
Arthur VERCKEN  
Anta GUISSÉ

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

**Co-Lawyers for the Civil Parties:**  
PICH Ang  
Marie GUIRAUD

On 24 November 2014, the Civil Party Lead Co-Lawyers filed a motion to the Supreme Court Chamber making several requests regarding the appeals process for the Case 002/01 Judgement (the “Request”).<sup>1</sup> Pursuant to Article 8.4 of the Practice Direction for the Filing of Documents Before the ECCC (the “Practice Direction”), the Co-Lawyers for Mr. Nuon Chea (the “Defence”) hereby respond to the Lead Co-Lawyers’ Request as follows:

1. The Defence, the Khieu Samphân defence and the Co-Prosecutors are each appealing the Case 002/01 Judgement (the “Judgement”).<sup>2</sup> The Lead Co-Lawyers indicated in their Request that they intend to respond to all of these appeals,<sup>3</sup> and will present a single consolidated response to those aspects of the two defence appeals that they consider to “affect the rights and interests of the Civil Parties”.<sup>4</sup> They request the Chamber to extend the time and page limits for that consolidated response and grant them leave to file it only in English, with a Khmer translation to follow.<sup>5</sup>
2. The Lead Co-Lawyers appear to base their Request on an implicit assumption that civil parties are equal to the other parties in Case 002.<sup>6</sup> They more explicitly articulated this assumption in a filing to the Trial Chamber on 8 October 2014 in which they argued that, “at the ECCC, Civil Parties are *on an equal footing* with the Co-Prosecutors and the Accused”.<sup>7</sup>
3. This assumption plainly contradicts Cambodian law, ECCC jurisprudence, and the Internal Rules, and does not even arise at other international tribunals, none of which contemplate victims participating as full parties.<sup>8</sup> The Trial Chamber, which already faced challenges from the civil parties as to the scope of their role in Case 001,

---

<sup>1</sup> Doc. No. **F10**, ‘Civil Party Lead Co-Lawyers’ Requests Relating to the Appeals in Case 002/01’, from ERN 01036963, 24 Nov 2014, (the “Request”).

<sup>2</sup> On the Defence, *see*, Doc. No. **E313/1/1**, ‘Notice of Appeal Against the Judgment in Case 002/01’, from ERN 01027592, 29 Sep 2014; on the Khieu Samphân defence, *see*, Doc. No. **E313/2/1**, ‘Déclaration d’appel de la défense de M. Khieu Samphân contre le jugement rendu dans le procès 002/01’, from ERN 01027629, 29 Sep 2014; and on the Co-Prosecutors, *see*, Doc. No. **F11**, ‘Co-Prosecutors’ Appeal against the Judgment of the Trial Chamber in Case 002/01’, from ERN 01040229, 28 Nov 2014.

<sup>3</sup> **F10**, Request, para. 1.

<sup>4</sup> **F10**, Request, para. 30.

<sup>5</sup> **F10**, Request, paras. 27, 32, 34.

<sup>6</sup> **F10**, Request, para. 10 (footnotes omitted), in which the Lead Co-Lawyers argued that, “Civil Parties are a party to the proceedings just like the Accused and the Co-Prosecutors and the ECCC is mandated to preserve a balance between the rights of the parties”.

<sup>7</sup> Doc. No. **E316/1**, ‘Civil Party Lead Co-Lawyers’ Urgent Request to Make Opening Remarks on Behalf of the Consolidated Group of Civil Parties’ (“Lead Co-Lawyers’ Case 002/02 Opening Statements Request”), from ERN 01029823, 8 Oct 2014, para. 16.

<sup>8</sup> The closest international jurisdiction is the International Criminal Court, which permits limited victim participation not rising to the level of participation in the proceedings as a full party: *see, e.g.* Article 68(3), Rome Statute of the International Criminal Court.

established at that time that civil parties do not enjoy a “general right of equal participation with the Co-Prosecutors”.<sup>9</sup> Instead, the civil parties’ role must be “interpreted restrictively”,<sup>10</sup> and with reference to Rule 23(1), which prescribes the civil parties’ role as one of “participat[ing] in criminal proceedings against those responsible for crimes within the jurisdiction of the ECCC by *supporting the prosecution*.”<sup>11</sup> It follows, therefore, that civil parties are not on any such “equal footing” with either the co-accused or the Co-Prosecutors.

4. The Trial Chamber insisted on a restrictive view of the role of the civil parties partly in order to safeguard the rights of the accused. It held that the presence of two parties seeking to establish the guilt of one accused “is a matter which can affect the fairness of the proceedings” by undermining the equality of arms. In the Trial Chamber’s view:

[T]he Accused’s right to a fair trial in criminal proceedings includes the right to face one prosecuting authority only. Accordingly, and while the Civil Parties have the right to *support or assist* the Prosecution, *their role within the trial must not, in effect, transform them into additional prosecutors*.<sup>12</sup>

5. In the present case, the Co-Prosecutors have already confirmed that they will respond to the Defence appeal brief.<sup>13</sup> The Co-Prosecutors’ response brief will likely address all Defence appeal grounds, given that they insisted that the appropriate page limit for their brief “correlate[d] strongly” with the full page limit granted for each defence brief.<sup>14</sup> The Co-Prosecutors did not suggest that they would leave it to the Lead Co-Lawyers to offer the sole response to all grounds that may affect the civil parties’ rights and interests. Therefore, it appears that if the Lead Co-Lawyers’ response brief were permitted, both the Co-Prosecutors and the Lead Co-Lawyers would intend to respond to all such grounds, resulting in the Defence facing two parties each advancing distinct cases as to Nuon Chea’s guilt. This will, in other words, improperly transform the Lead Co-Lawyers into a second prosecution and thus violate Nuon Chea’s right to a fair trial. As such, the Defence requests the Supreme Court Chamber to adopt the Trial Chamber’s

---

<sup>9</sup> Case No. 001/18-07-2007/ECCC/TC, Doc. No. **E72/3**, ‘Decision on Civil Party Co-Lawyers’ Joint Request for a Ruling on the Standing of Civil Party Lawyers to Make Submissions on Sentencing and Directions Concerning the Questioning of the Accused, Experts and Witnesses Testifying on Character’, from ERN [00387022](#), 9 Oct 2009 (“Case 001 Civil Party Standing Decision”), para. 25.

<sup>10</sup> Case No. 001/18-07-2007/ECCC/TC, **E72/3**, Case 001 Civil Party Standing Decision, paras. 13, 25.

<sup>11</sup> Rule 23(1) (emphasis added).

<sup>12</sup> **E72/3**, Case 001 Civil Party Standing Decision, para. 26.

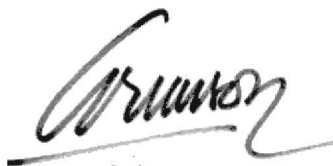
<sup>13</sup> **F7/1**, ‘Co-Prosecutors’ Response and Request on Case 002/01 Appeal and Response Briefs Extensions’ (“Co-Prosecutors’ Response and Request on Case 002/01”), from ERN [01030512](#), 16 Oct 2014, para. 14.

<sup>14</sup> **F7/1**, Co-Prosecutors’ Response and Request on Case 002/01, para. 15.

position with respect to the role of civil parties, dismiss the Lead Co-Lawyers' Request in full, and further declare that no response brief from the Lead Co-Lawyers is allowed or will be considered in this instance.

6. In the event that the Supreme Court Chamber accepts that the Lead Co-Lawyers may file a response brief, however, the Defence responds to the specific requests made in the Lead Co-Lawyers' Request as follows:
  - a. Two of the Lead Co-Lawyers' requests are contradictory. On the one hand, the Lead Co-Lawyers suggest that the time limit for their response should begin to run only after the defence and Co-Prosecutors' appeal briefs have been filed in English and Khmer, since this is necessary to allow for full participation of all civil party lawyers "more than a majority" of whom work in Khmer.<sup>15</sup> Despite this apparent limitation, the Lead Co-Lawyers request to file their brief only in English initially with a Khmer translation to follow; thus, this brief would apparently be filed without the full participation of "more than a majority" of civil party lawyers. The Lead Co-Lawyers simply cannot have it both ways. Accordingly, the Defence requests that the Chamber *at most* grant only one of the Lead Co-Lawyers' two requests, if any at all.
  - b. The Defence will require considerably more time to prepare for an oral hearing on the appeals if it must prepare replies not only to the Co-Prosecutors' response brief but also the Lead Co-Lawyers'. The Defence therefore requests that the Supreme Court Chamber extend the preparation time for any oral hearing by at least the same amount of time as the time limit granted to the Lead Co-Lawyers to prepare and file their response brief.

CO-LAWYERS FOR NUON CHEA



SON Arun



Victor KOPPE

---

<sup>15</sup> This also appears to contradict the Lead Co-Lawyers' own filing, which lists exactly twice as many international co-lawyers for civil parties as national co-lawyers (20 to 10).