

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

**FILING DETAILS**

**Case No:** 002/19-09-2007-ECCC/TC  
**Filing Party:** Nuon Chea Defence Team  
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**NUON CHEA'S NOTICE OF CURRENT INTENTION TO EXERCISE HIS RIGHT  
TO REMAIN SILENT IN CASE 002/02**

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The Co-Lawyers for Nuon Chea (the “Defence”) submit the following notice concerning Nuon Chea’s intention to exercise his right to remain silent in Case 002/02 pursuant to Internal Rule 21(1)(d):

### I. BACKGROUND

1. On 1 July 2016, the Co-Prosecutors requested the Chamber to “order the Accused to indicate whether they intend to testify in Case 002/02”.<sup>1</sup> They reasoned that this was useful for planning purposes, and that “[w]hile the Accused made it clear at the end of Case 002/01 that they did not intend to submit to examination by the Trial Chamber or parties in that trial, the Co-Prosecutors are not aware of any definitive indication that they will maintain this position through the end of Case 002/02”.<sup>2</sup> On 15 July 2016, the Trial Chamber directed the Defence to clarify Nuon Chea’s position by 1 August 2016.<sup>3</sup>
2. On 23 May 2013, during the Case 002/01 trial, Nuon Chea notified the Trial Chamber of his intention to respond to questions.<sup>4</sup> However, as a result of the Defence’s treatment during its cross-examination of witness Stephen Heder, Nuon Chea notified the Chamber on 17 July 2013 that he was reversing his position and instead exercising his right to remain silent.<sup>5</sup> A formal Defence filing on 30 July 2013 (the “Case 002/01 Withdrawal Notice”) explained that this decision was taken in response to repeated, sustained objections by the Co-Prosecutors and civil party lawyers during the Defence’s examination of Mr. Heder that were systematically unreasonable and designed to obstruct and sabotage Nuon Chea’s cross-examination.<sup>6</sup> As a result, the Trial Chamber not only severely constrained the Defence’s ability to confront Mr. Heder, but also applied different standards to the Co-Prosecutors and the Defence.<sup>7</sup> As the Defence further explained in that filing:

Nuon Chea seeks to emphasize for the Chamber, the civil parties and the public that his decision not to appear is a new one. It was not planned. It is a decision that he regrets. It is a decision he has chosen to take because it has again become apparent to him that this Chamber will not critically assess the evidence before it. It has become apparent to him that the Chamber is not seeking his testimony in order to gain a fuller understanding of the CPK or of the reasons and justifications for his conduct. The Chamber is instead seeking to gather extracts from his testimony for use in

<sup>1</sup> E421/1, ‘Co-Prosecutors’ Request Regarding Testimony of the Accused’, 1 Jul 2016, para. 2 (“OCP Request”).

<sup>2</sup> E421/1, OCP Request, para. 1.

<sup>3</sup> Email from Trial Chamber Associate Legal Officer to the Parties, 15 Jul 2016 (**Attachment 1**).

<sup>4</sup> E287, ‘Notice of Intent Pursuant to Internal Rule 90’, 27 May 2013.

<sup>5</sup> T. 17 Jul 2013 (Stephen Heder, E1/225.1), p. 67, ln. 9 – p. 68, ln. 5.

<sup>6</sup> E287/2, ‘Withdrawal of Notice of Intent Pursuant to Internal Rule 90’, 30 Jul 2013, para. 2 (“Withdrawal Notice”).

<sup>7</sup> E287/2, Withdrawal Notice, para. 2.

substantiating a guilty verdict. That is a process in which Nuon Chea cannot and will not participate.<sup>8</sup>

## II. INTENTION TO EXERCISE RIGHT TO REMAIN SILENT

3. Contrary to the Co-Prosecutors' understanding, Nuon Chea has already informed the Trial Chamber in writing on 30 September 2014<sup>9</sup> and subsequently in person during the Case 002/02 Initial Hearing on 17 October 2014 that he will not respond to questions in Case 002/02.<sup>10</sup> On 8 January 2015, the Chamber confirmed that this was its understanding, and advised that if Nuon Chea later waived his right to remain silent, it was incumbent on him to duly advise the Chamber.<sup>11</sup> As the Chamber is aware, Nuon Chea has not done so. Nevertheless, in response to the Chamber's 15 July 2016 request for clarification, Nuon Chea confirms that it is still his intention in the Case 002/02 trial not to respond to questions and to instead exercise his right to remain silent.
4. Nuon Chea again regrets this decision. As he stressed in his Case 002/02 opening statement, Nuon Chea accepts moral responsibility for the suffering of the Cambodian people during the Democratic Kampuchea period<sup>12</sup> and is participating in these proceedings in order to "speak to the Cambodian people about what really happened".<sup>13</sup>
5. Nevertheless, Nuon Chea feels compelled not to respond to questions and to exercise his right to remain silent in Case 002/02 because he believes that this trial is proceeding in the same manner as that which he complained about in the Case 002/01 Withdrawal Notice. That is, Nuon Chea believes the Chamber is still failing to assess evidence critically, is disinterested in fully understanding the CPK and the reasons and justifications for Nuon Chea's conduct, and is instead focused on substantiating Nuon Chea's guilt. Among the abundant examples which could be cited in this regard, one stands out above all: the Trial Chamber's failure to summons ██████████ to testify.
6. The Defence has, to date, requested ██████████ to testify and to expedite his appearance a total of 12 times across all of Case 002 – at pre-trial, trial, and appellate stages. It has already sought ██████████'s appearance three times during Case 002/02, although it has been prohibited by the Trial Chamber from mentioning these

<sup>8</sup> E287/2, Withdrawal Notice, para. 18.

<sup>9</sup> Email from Defence Senior Legal Consultant to Trial Chamber Senior Legal Officer, 30 Sep 2014 (Attachment 2).

<sup>10</sup> T. 17 Oct 2014 (Opening Statements, E1/242.1), p. 9, ln. 9.

<sup>11</sup> T. 8 Jan 2015 (Meas Sokha, E1/247.1), p. 19, ln. 19 – p. 20, ln. 1.

<sup>12</sup> T. 17 Oct 2014 (Opening Statements, E1/242.1), p. 69, lns. 6-13.

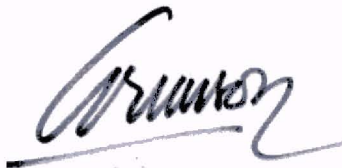
<sup>13</sup> T. 17 Oct 2014 (Opening Statements, E1/242.1), p. 73, lns. 9-10.



requests publicly. The Defence's view is that the order not to reveal requested witnesses' identities<sup>14</sup> is, in the case of [REDACTED], absurd. It is clearly outweighed by the interests of justice, and particularly the public interest in so identifying him, particularly as he surely has no witness protection concerns. As the Defence has already detailed in repeated submissions over the years, [REDACTED] is by far the most important witness in Case 002/02<sup>15</sup> and Case 002 generally.<sup>16</sup> Those submissions stress how [REDACTED]'s importance to the case – including as Nuon Chea's only character witness – places him in a completely different stratosphere to every other witness.

7. However, the Chamber has yet to decide on the Defence's requests for [REDACTED] in Case 002/02. This is despite the fact that it appears that [REDACTED] is still willing and able to actively participate in (at least some) court hearings, for example [REDACTED].
8. Nuon Chea still hopes that he will be able to enjoy the opportunity to meaningfully engage in these proceedings by responding to questions, but he will only do so if he believes there is a semblance of hope that his right to a fair trial can be respected. He believes that this turns fundamentally on whether the Chamber summonses [REDACTED]. Therefore, Nuon Chea notifies the Trial Chamber that if the Chamber summonses [REDACTED] to testify in Case 002/02 and the Defence is afforded a fair opportunity to examine [REDACTED] in the event that he appears before the Chamber, Nuon Chea will strongly reconsider his decision not to respond to questions.

#### CO-LAWYERS FOR NUON CHEA



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<sup>14</sup> E305/15, 'New Pseudonyms for Witnesses, Civil Parties and Experts Proposed to be Heard in Case 002/02', 24 Jul 2014, para. 2.

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<sup>17</sup>