

E28/2/1

EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA
BEFORE THE TRIAL CHAMBER

Case File No. : 001/18-07-2007-ECCC/TC
Date of Document : 10 April 2009
Party Filing : Co-Lawyers for the Civil Parties - Group 1
Original Language : English
Type of Document : Public

GROUP 1--CIVIL PARTIES' CO-LAWYERS' REPLY TO DEFENCE
RESPONSE ON WITNESS AND DOCUMENT LIST

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ORIGINAL DOCUMENT/DOCUMENT ORIGINAL	
ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/Date de reception):	
10 / 04 / 2009	
ម៉ោង (Time/Heure):	
14:50	
មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé du dossier:	
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13 / 04 / 2009	
មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé du dossier:	
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I. INTRODUCTION

1. On 16 February 2009 the Co-Lawyers for Civil Parties Group 1 (“CPG-1”) filed a submission entitled: “Redacted Witness and Document List” (“The Witness List”).¹ As part of this submission, CPG-1 respectfully requested the Trial Chamber to summon “*the experts identified in Annex A [to] ... to give evidence before the Trial Chamber*”.² Two of the experts identified in Annex A are Dr. Christopher Staker (number 3) and Ms Phuong Pham (number 4).³
2. On March 24, 2009, the Lawyers for the Accused filed their Response entitled: “Réponse de la Défense aux Listes des Témoins et des Documents Déposées par les Co-Avocats du Groupe 1 des Parties Civiles” (“The Response”).⁴ The Co-Lawyers for CPG-1 received the English translation on 7 April 2009.⁵ In The Response the Defence attempts to raise an entirely novel and distinct issue, not addressed in the Witness List, under the guise of a response to expert witnesses put forward by CPG-1.
3. The Response is primarily directed towards the limited role which the Civil Parties are to play during the proceedings before the ECCC, arguing that the good administration of justice prevents the Co-Lawyers of CPG-1 to call Dr. Staker and Dr. Pham as witnesses to discuss the issue of sentencing.⁶ Accordingly the Defence requested the Trial Chamber to reject CPG-1’s request to call both expert witnesses and to further find that the Civil Parties are precluded from submitting anything on the matter of sentencing.⁷
4. On April 3 2009, prior to receiving CPG-1’s Reply to the Defense’s Response, the Trial Chamber issued its decision regarding the summoning of witnesses and experts.⁸ In the decision the Trial Chamber rejected the request by CPG-1 to summon both Dr. Staker and Dr. Pham as expert witnesses.⁹ However, the Trial Chamber did not

¹ *Case of Kang Guek Eav*, 001/18-07-2007-ECCC/TC, Civil Parties’ Co-Lawyers’ Redacted Witness and Document List, 16 February 2009, Doc. No. E5/12.

² *Id.* at par. 19.

³ *Id.*

⁴ *Case of Kang Guek Eav*, 001/18-07-2007-ECCC/TC Réponse de la Défense aux Listes des Témoins et des Documents Déposées par les Co-Avocats du Groupe 1 des Parties Civiles, Doc. No. E28/1.

⁵ *Case of Kang Guek Eav*, 001/18-07-2007-ECCC/TC, Defence Response Concerning the List of Witnesses and Documents Filed by the Co-Lawyers for the Group 1 Civil Parties, 24 March 2009, E28/1.

⁶ *Id.* at paras. 2-3.

⁷ *Id.* at par. 21.

⁸ *Case of Kang Guek Eav*, 001/18-07-2007-ECCC/TC, Decision on Protective Measures for Witnesses and Experts and on Parties’ Requests to Hear Witnesses and Experts Summary, 3 April 2009, Doc. No. E40.

⁹ *Id.* at paras. 4-5.

address the second issue regarding the scope of the Civil Parties' participation in relation to the issue of sentencing.

5. During the Initial Hearing on February 18, 2009, the Defence first attempted to raise this important matter by stating that the "*defence will challenge determinedly civil parties if they wish to call witnesses who will come to plead on the sentence that the accused might received.*"¹⁰ The Defence argued that role of the civil parties does not include the right to make submissions on the issue of sentencing, characterizing this as a "fundamental principal of civil law."¹¹
6. The Office of the Co-Prosecutors and four Co-Lawyers for the Civil Parties (Groups 2, 3 and 4) also expressed their views regarding the role that Civil Parties are to play in making submissions to the Court regarding the question of sentencing.¹²
7. At the initial hearing, counsel for Civil Parties Group 1 ("CPG-1"), briefly addressed the Court to why Dr. Staker was being proposed as an expert witness, as well as the broader issue raised by the Defence regarding the extent to which civil parties should be allowed to make submissions on the issue of sentencing.¹³

II. THE RIGHT OF CIVIL PARTIES TO MAKE SUBMISSIONS ON SENTENCING

8. In its Response, the Defence seeks to persuade the Trial Chamber to rule on the broader issue of the right of Civil Parties' to submit filings on the issue of sentencing. It is apparent that the Defence is actually seeking to obtain a ruling on this issue when it goes beyond the scope of the filing by CPG-1. In these circumstances, CPG-1 respectfully submit that the relief requested by the Defence is premature to the extent that it addresses issues not raised in the Witness List filed by the Co-Lawyers for CPG-1 on 16 February 2009 and no oral motion on that topic was ever formally made by the Defence during the Initial Hearing. In the alternative, CPG-1 respectfully prays

¹⁰ *Case of Kang Guek Eav*, 001/18-07-2007-ECCC/TC Transcript Initial Hearing, 18 February 2009, Closed Session, Doc. No. E1/4.2, page 8.

¹¹ *Id. at*, page 8. See also *Case of Kang Guek Eav*, 001/18-07-2007-ECCC/TC Transcript Initial Hearing, 18 February 2009, Public Session, Doc. No. E1/4.1 page 7.

¹² *Id. at*, page 9-15. See also *Case of Kang Guek Eav*, 001/18-07-2007-ECCC/TC Transcript Initial Hearing, 18 February 2009, Public Session, Doc. No. E1/4, page 8-15.

¹³ *Id. at* page 16-21.

that no decision is made without affording the parties an opportunity to address this discrete and important issue as provided for by the rules.¹⁴

III. REQUEST

10. For the reasons adumbrated above, the Co-Lawyers for CPG-1 pray that the Trial Chamber disregard any submissions contained in the Defence's response that relate to the Civil Parties' right to partake in the debate on sentencing. Alternatively, the Co-Lawyers for CPG-1 respectfully request the Trial Chamber to allow for further, extensive briefing on this matter.

Respectfully submitted by

Co-Lawyers for Civil Parties (Group 1)

Signed in Phnom Penh on 10 April 2009

me Ty Srinna
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¹⁴ Practice Direction ECCC/01/2007/Rev.3, Practice Direction on Filing of Documents before the ECCC, art. 8.3