BEFORE THE TRIAL CHAMBER EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

FILING	DETAIL
---------------	---------------

Case no:

002/19-09-2007-ECCC-TC

Filing party:

Nuon Chea Defence Team

Filed to:

Trial Chamber

Original language:

English

Date of document:

18 January 2013

อ สธาตรีช	
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL	
ថ្ងៃ ខ្លាំ ទទួល (Date of receipt/date de reception):	
tëth (Time/Heure): 15:30	
បត្រីនទួលប ន្ទុកសំណុំរឿង /Case File Officer/L'agent char gé	

CLASSIFICATION

Classification suggested by the filing party:

PUBLIC

Classification of the Trial Chamber:

សាធារណៈ/Public

Classification status:

Review of interim classification:

Records officer name:

Signature:

PRELIMINARY SUBMISSIONS CONCERNING THE APPLICABLE LAW TABLE OF AUTHORITIES

Filed by

Nuon Chea Defence Team:

SON Arun
Victor KOPPE
PRUM Phalla

Joshua ROSENSWEIG Sofie HOGESTOL

Renee DE GEUS

<u>Distribution</u>

Co-Accused

Co-Prosecutors: CHEA Leang

Andrew CAYLEY

Co-Lawyers for Civil Parties:

PICH Ang

Elisabeth SIMONNEAU-FORT

CAMBODIAN LAW

ECCC Case Law and Pleadings

Case 002

- 1. Document No. **E-163/5**, 'Trial Chamber Memorandum Notification of Decision on Co-Prosecutors' Request to Include Additional Crime Sites Within the Scope of Trial in Case 002/01 (E163) and Deadline for Submission of Applicable Law Portion of Closing Briefs', 8 October 2012, ERN 00850036-00850037 (not included—ECCC Case File).
- 2. Document No. E-163/5/4, 'Trial Chamber Memorandum Further Notification of Modalities for Closing Briefs', 26 November 2012, ERN 00863627-00863628 (not included—ECCC Case File).
- 3. Document No. **E-163/5/6**, 'Trial Chamber Memorandum Clarification Regarding Applicable Law Briefs', 7 December 2012, ERN 00866790-00866790 (not included—ECCC Case File).
- 4. Document No. **E-163/5/7**, 'Email Communication Concerning Trial Chamber Disposition of Nuon Chea Request for Extension of Time to File Submissions Concerning Applicable Law', 17 December 2012, ERN 00869845-00869848 (not included—ECCC Case File).
- 5. Document No. **E-51/3**, 'Consolidated Preliminary Objections', 25 February 2011, ERN 00648279-00648310 (not included—ECCC Case File).
- 6. Document No. **D-427**, 'Closing Order', 15 September 2010, ERN 00604508-00605246 (not included—ECCC Case File).
- 7. Document No. **D-427/1/30**, 'Decision on Ieng Sary's Appeal Against the Closing Order', 11 April 2011, ERN 00661785-0066199 (not included—ECCC Case File).
- 8. Document No. **D-427/1/17**, 'Co-Prosecutors' Joint Response to Nuon Chea, Ieng Sary and Ieng Thirith's Appeal Against the Closing Order', 19 November 2000, ERN 00626531-00626650 (not included—ECCC Case File).
- 9. Document No. **D-97/15/9** 'Decision on the Appeals Against the Co-Investigative Judges Order On Joint Criminal Enterprise', 20 May 2012, ERN 00486521-00486589 (not included—ECCC Case File).
- 10. Document No. **E-100/6**, 'Decision on the Applicability of Joint Criminal Enterprise', 12 September 2011, ERN 00741351-00741366 (not included—ECCC Case File).
- 11. Document No. E-124/7.3, 'Annex', 18 October 2012, ERN: 00852356-00852358 (not included—ECCC Case File).

- 12. Document No. **D-427/1/6**, 'Ieng Sary's Appeal Against the Closing Order, 25 October 2010, ERN 00617486-00617631 (not included—ECCC Case File).
- 13. Document No. **D-427/2/1**, 'Ieng Thirith Defence Appeal from Closing Order', 18 October 2010, ERN 00613874-00613905 (not included—ECCC Case File).

Case 001

- 14. Document No. **F-28**, 'Appeal Judgment', 3 February 2012, ERN 00797698-00798047 (not included—ECCC Case File).
- 15., Document No. **E-188** 'Judgment', 26 July 2010, ERN 00572517-00572797 (not included—ECCC Case File).

DOMESTIC LAW & CASES

United States

- 16. United States v. Yamashita, 327 US 1 (1946) (available at https://bulk.resource.org/courts.gov/c/US/307/307.US.1.666.html).
- 17. United States v. Medina, in L. Friedman, *The Law of War. A Documentary History*, Volume II, Random House: 1972 (not included ECCC Case File).

INTERNATIONAL LAW

International Conventions, and Documents & Resolutions of International Organizations

- 18. European Convention on Human Rights, Arts 8(2), 15(1), (2) (not included—ECCC Case File).
- 19. American Convention on Human Rights, entered into force 18 July 1978, Arts 22(3), 27(1), (2) (not included—ECCC Case File).
- 20. UN Document No. E/CN.4/1998/53/Add.2, 'Report of the Representative of the Secretary-General, Mr. Francis M. Deng, Submitted Pursuant to Commission Resolution 1997/39 Addendum, General Principles on Internal Displacement, 11 February 1998 (attached).
- 21. UN Document No. CCPR/C/21/Rev.1/Add.9, 'General Comments Adopted by the Human Rights Committee Under Article 40, Paragraph 4, Of the International Covenant on Civil and Political Addendum, General Comment 27 (67) Freedom of Movement Article 12', 1 November 1999 (attached).

- 22. UN Document No. E/CN.4/Sub.2/1992/L.11/Add.4, 'Draft Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities', 28 August 1992 (attached).
- 23. UN Doc. A/CN.4/88, Report of the International Law Commission Covering the Work of its Sixth Session, 28 July 1954, Official Records of the General Assembly, Ninth Session, Supplement No. 9 (attached).
- 24. Draft Code of Crimes Against the Peace and Security of Mankind, 51 UN GAOR Supp. (No. 10) at 14, U.N. Doc. A/CN.4/L.532, corr.1, corr. 3 (1996) (attached).
- 25. Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto CETS No.: 046, entered into force 2 May 1968 (attached).
- 26. UN Doc No. A/RES/2675(XXV), 'Basic Principles for the Protection of Civilian Populations in Armed Conflicts', General Assembly, 1922nd plenary meeting, 9 December 1970 (attached).
- 27. UN Doc No. A/RES/3318(XXIX), 'Declaration on the Protection of Women and Children in Emergency and Armed Conflict', General Assembly, 2319th plenary meeting, 14 December 1974 (attached).
- 28. UN Doc No. A/RES/217A(III), 'International Bill of Human Rights', General Assembly, 183rd plenary meeting, 10 December 1948 *(attached)*.
- 29. UN Doc No. CCPR/C/21/Rev.1/Add.11, General Comment 29, States of Emergency (article 4) (2001) (attached).
- 30. International Covenant on Civil and Political Rights, 16 December 1966 (not included—ECCC Case File).
- 31. ICRC Rules on Customary Law, Rule 129 (not included—ECCC Case File).
- 32. Convention (IV) respecting the Laws and Customs of War on Land and its annex Regulations concerning the Laws and Customs of War on Land, 18 October 1907 ('Fourth Hague Convention'), Arts 43 (not included—ECCC Case File).
- 33. UN Document No. E/CN.4/1998/2 & E/CN.4/Sub.2/1997/50, 'Report of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities on its Forty-Ninth Session, 5 November 1997 (attached).

Case Law from other International Courts

International Military Tribunal at Nuremberg

- 34. Indictment: International Military Tribunal', reprinted in *Trial of the Major War Criminals Before the International Military Tribunal*, Vol. I (not included—ECCC Library).
- 35. International Military Tribunal Judgment, reprinted in *Trial of the Major War Criminals Before the International Military Tribunal*, Vol. I (not included—ECCC Library).

International Military Tribunal for the Far East

36. 'Opinion of Member for the Netherlands (Mr. Justice Röling)', in Neil Boister & Rober Cryer ed., *Documents on the Tokyo International Military Tribunal – Charter, Indictment and Judgments*, Oxford University Press: 2008 (attached).

United States Military Tribunals at Nuremberg Established under CCL. No 10

- 37. United States vs. Josef Altstoetter et al., Case No. 3, 'Indictment', reprinted in Trials of War Criminals Before the Nuernberg Military Tribunals, Volume III (not included—ECCC Library).
- 38. *United States vs. Ulrich Greifelt et al.*, Case No. 8, 'Indictment', reprinted in Trials of War Criminals Before the Nuernberg Military Tribunals, Volume IV *(not included—ECCC Library)*.
- 39. *United States v. Wilhelm List et al.*, Case No. 7, 'Indictment', reprinted in Trials of War Criminals Before the Nuernberg Military Tribunals, Volume XI (not included—ECCC Library).
- 40. *United States v. Friedrich Flick et al.*, Case No. 5, 'Indictment', reprinted in Trials of War Criminals Before the Nuernberg Military Tribunals, Volume VI (not included—ECCC Library).
- 41. *United States v. Wilhelm Von Leeb et al.*, Case No. 12, 'Indictment', reprinted in Trials of War Criminals Before the Nuemberg Military Tribunals, Volume X (not included—ECCC Library).
- 42. *United States v. Alfred Krupp et al.*, Case No. 10, 'Indictment', reprinted in Trials of War Criminals Before the Nuernberg Military Tribunals, Volume IX (not included—ECCC Library).
- 43. *United States vs. Josef Altstoetter et al.*, Case No. 3, 'Opinion and Judgment', reprinted in Trials of War Criminals Before the Nuernberg Military Tribunals, Volume III (not included—ECCC Library).
- 44. *United States v. Wilhelm Von Leeb et al.*, Case No. 12, 'Judgment', reprinted in Trials of War Criminals Before the Nuernberg Military Tribunals, Volume XI *(not included—ECCC Library).*

- 45. *United States v. Wilhelm List et al.*, Case No. 7, 'Judgment', reprinted in Trials of War Criminals Before the Nuernberg Military Tribunals, Volume XI XI (not included—ECCC Library).
- 46. *United States v. Alfred Krupp et al.*, Case No. 10, 'Judgment, reprinted in Trials of War Criminals Before the Nuernberg Military Tribunals, Volume IX *(not included—ECCC Library)*.
- 47. *United States vs. Ulrich Greifelt et al.*, Case No. 8, 'Opinion and Judgment', reprinted in Trials of War Criminals Before the Nuernberg Military Tribunals, Volume V *(not included—ECCC Library).*
- 48. *United States v. Ernst von Weizsaecker et al.*, Case No. 11, 'Judgment', reprinted in Trials of War Criminals Before the Nuernberg Military Tribunals, Volume XIV *(not included—ECCC Library).*
- 49. *United States v. Erhard Milch*, Case No. 2, 'Judgment', reprinted in Trials of War Criminals Before the Nuernberg Military Tribunals (not included—ECCC Library).
- 50. *United States v. Karl Brandt et al.*, Case No. 1, 'Judgment', in Trials of War Criminals Before the Nuernberg Military Tribunals, Volume II *(not included—ECCC Library)*.
- 51. *United States v. Oswald Pohl et al.*, Case No. 4, Judgment, in Trials of War Criminals Before the Nuernberg Military Tribunals, Volume V (not included—ECCC Library).

International Court of Justice

52. North Sea Continental Shelf cases (Germany v. Denmark and Germany v. the Netherlands), Judgment, ICJ, 20 February 1969 (not included—ECCC Case File).

European Court of Human Rights

53. Cyprus v. Turkey, ECHR, Application No. 25781/94, 'Judgment', 10 May 2001 (attached).

ICTY

- 54. Prosecutor v. Kupreskic et al., IT-95-16-T, 'Judgement', 14 January 2000 (attached).
- 55. Prosecutor v. Milutinovic et al., IT-99-37-AR72, 'Decision on Dragoljub Ojdanic's Motion Challenging Jurisdiction: Joint Criminal Enterprise', 21 May 2003 (not included—ECCC Case File).
- 56. Prosecutor v. Kvocka et al., IT-98-30/1-T, 'Judgment', 2 November 2001 (attached).
- 57. Prosecutor v. Kvocka et al., IT-98-30/1-A, 'Judgment', 28 February 2005 (not included—ECCC Case File).
- 58. Prosecutor v. Simic, IT-95-9-T, 'Judgment', 17 October 2003(attached).

- 59. Prosecutor v. Haradinaj et al., IT-04-84-T, 'Judgement', 3 April 2008 (attached).
- 60. Prosecutor v. Haradinaj et al., IT-04-84, 'Second Amended Indictment, 26 April 2006 (attached).
- 61. Prosecutor v. Stakic, IT-97-24-A, 'Judgment', 22 March 2006 (attached).
- 62. Prosecutor v. Vasiljevic, IT-98-32-A, 'Judgment', 25 February 2004 (attached).
- 63. Prosecutor v. Krnojelac, IT-97-25-A, 'Judgment', 17 September 2003 (attached).
- 64. Prosecutor v. Krajisnik, IT-00-39-T, 'Judgment', 27 September 2006 (attached).
- 65. Prosecutor v. Limaj et al., IT-03-66-T, 'Judgment', 30 November 2005 (attached).
- 66. Prosecutor v. Blagojevic and Jokic, IT-02-60-T, 'Judgment', 17 January 2005 (attached).
- 67. Prosecutor v. Brdanin, IT-99-36-T, 'Judgment', 1 September 2004 (attached).
- 68. Prosecutor v. Vasiljevic, IT-98-32-T, 'Judgment', 29 November 2002 (attached).
- 69. Prosecutor v. Halilovic, Case No. IT-01-48-T, Judgment, Trial Chamber, 16 November 2005 (attached).
- 70. Prosecutor v. Krstic, Case No. IT-98-33-T, Judgment, Trial Chamber, 2 August 2001 (attached).
- 71. Prosecutor v. Delalic et al, Case No. IT-96-21-T, Judgment, Trial Chamber, 16 November 1998 (not included ECCC Case File).
- 72. Prosecutor v. Delalic et al, Case No. IT-96-21-A, Judgment, Appeals Chamber, 20 February 2001 (attached).
- 73. *Prosecutor v. Blaskic*, Case No. IT-95-14-A, Judgment, Appeals Chamber, 29 July 2004 (attached).
- 74. *Prosecutor v. Oric*, Case No. IT-03-68-A, 'Judgment', Appeals Chamber, 3 July 2008 (attached).

ICTR

- 75. Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgment, Trial Chamber, 2 September 1998 (attached).
- 76. *Prosecutor v. Mpambara*, Case No. ICTR-01-65-T, Judgment, Trial Chamber, 11 September 2006 (attached).

- 77. Prosecutor v. Rutaganira, Case No. ICTR-95-1C-T, Judgment and Sentence, Trial Chamber, 14 March 2005 (attached).
- 78. *Prosecutor v. Ntagerura et al*, Case No. ICTR-99-46-T, Judgment and Sentence, Trial Chamber, 1 September 2009 (attached).
- 79. Prosecutor v. Ntakirutimana and Ntakirutimana, ICTR-96-10-A and ICTR-96-17-A, 'Judgment', 13 December 2004 (attached).
- 80. *Prosecutor v. Simba*, ICTR-01-76-T, 'Judgment and Sentence', 13 December 2005 (not included ECCC Case File).

ICC

- 81. *Prosecutor v. Bemba Gombo*, Case No. ICC-01/05-01/08, 'Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo', Pre-Trial Chamber, 15 June 2009 (attached).
- 82. *Prosecutor v. Thomas Lubanga Dyilo*, Case No. ICC-01/04-01/06, 'Decision on the Confirmation of Charges, Pre-trial Chamber I',29 January 2007 (attached).

SCSL

- 83. See Prosecuotor v. Sesay, Kallon and Gbao, SCSL-04-15-PT-005, 'Judgment', 25 February 2009 (attached).
- 84. Prosecutor v. Brima et al, SCSL-04-16-A, 'Judgment', 22 February 2008 (attached).

Constitutions, Statutes, and Rules from other International Courts

- 85. ICC Statute, Art. 7(1) (not included—ECCC Case File).
- 86. Charter of the International Military Tribunal, 8 August 1945, Article 6 (not included—ECCC Case File).
- 87. Charter of the International Military Tribunal, 8 August 1945, Article 5(c) (not included—ECCC Case File).
- 88. Law No. 10 of the Control Council for Germany, Article II (1) *(not included—ECCC Case File)*.
- 89. ICTY Statute, Art. 5(d) (not included—ECCC Case File).
- 90. ICTR Statute, Art. 3(d) (not included—ECCC Case File).
- 91. ICC Statute, Art. 30(1) (not included—ECCC Case File).

OTHER Material

Books, Articles and Reports

- 92. Ian Brownlie, 'Principles of Public International Law', Oxford University Press, Sixth Edition (attached).
- 93. M. Cherif Bassiouni, *Crimes Against Humanity in International Criminal Law* (Second Revised Edition), Kluwer Law International: 1999 (not included ECCC Case File).
- 94. *Thayer Scudder*, 'A Comparative Survey of Dam-Induced Resettlement in 50 Cases with the Statistical Assistance of John Gay' in Thayder Scudder, The Future of Large Dams: Dealing with Social, Environmental, Institutional and Political Costs, Taylor & Francis: 2005 (*Not included forthcoming*).
- 95. G.W. Jones and H.V. Richter (eds), *Population resettlement programs in Southeast Asia* (Canberra: Australian National University, 1982) (attached).
- 96. R.H.B.B.S. Samiti, H. Mander, and V. Nagaraj, 'Dams, Displacement, Policy and Law in India', Contributing Paper to the World Commission on Dams (attached).
- 97. C. De Wet, 'The Experience with Dams and Resettlement in Africa', Contributing Paper to the World Commission on Dams *(attached)*.
- 98. Elies van Sliedregt, *Individual Criminal Responsibility in International Law*, Oxford University Press: 2012 (attached)
- 99. M.M. Cernea, 'Involuntary Resettlement in Development Projects: Policy Guidelines in World Bank-Financed Projects', World Bank Technical Paper No. 80, 1988 (attached).
- 100. N. S. Negi and S. Ganguly, 'Development Projects vs. Internally Displaced Populations in India: A Literature Based Appraisal', Working Paper, Research Conference on 'Environmental Change and Migration: From Vulnerabilities to Capabilities', Bad Salzuflen, Germany, 5-9 December (*attached*).
- 101. L. Heming *et al.*, 'Reservoir resettlement in China: past experience and the Three Gorges Dam', (2001) 167 *The Geographical Journal* 195 *(attached)*.
- 102. G. Boas, J.L. Bischoff and N. L. Reid, International Criminal Law Practitioner Library, Volume I, Forms of Responsibility in International Criminal Law (2007) 2009 (attached).
- 103. W. Jordah and P. Van Tuyl, Failure to Carry the Burden of Proof, How Joint Criminal Enterprise Lost its Way at the Special Court for Sierra Leone, 606 8 J. Int'l Crim. Just. (2010) 2009 (attached).
- 104. J .Easterday, Obscuring Joint Criminal Enterprise Liability: The Conviction of Augustine Gbao by the Special Court of Sierra Leone, Berkley J. Int'l L. Publicist 3 (2009) 2009 (attached).

- 105. David J. Scheffer, Future Implications of the Iraq Conflict: Beyond Occupation Law 97 Am. J. Int'l L. (attached).
- 106. Elies Van Sliedregt, *The Criminal Responsibility of Individuals for Violations of International Humanitarian Law*, T.M.C. Asser Press: 2003 (attached).
- 107. Robert Cryer et al., *An Introduction to International Criminal Law and Procedure*, Cambridge University Press: 2010 (attached).
- 108. Antonio Cassese ed., The Oxford Companion to International Criminal Justice, Oxford University Press: 2009 (attached).
- 109. Alexander Zahar & Göran Sluiter, *Intenational Criminal Law*, Oxford University Press: 2008 (attached).
- 110. Guenael Mettraux, *The Law on Command Responsibility*, Oxford University Press: 2009 (attached).