

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

FILING DETAIL

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**ADDENDUM TO IMMEDIATE APPEAL AGAINST TRIAL CHAMBER'S SECOND
DECISION ON SEVERANCE**

Filed by

Nuon Chea Defence Team:
 SON Arun
 Victor KOPPE
 PRUM Phalla
 SUON Visal
 Joshua ROSENSWEIG
 Forest O'NEILL-GREENBERG

Distribution

Co-Accused

Co-Prosecutors:
 CHEA Leang
 Andrew CAYLEY

Co-Lawyers for Civil Parties:
 PICH Ang
 Elisabeth SIMONNEAU-FORT

Pursuant to Rules 104(1), 104(4) and 105(2) of the ECCC Internal Rules (the ‘Rules’), the Co-Lawyers for Nuon Chea (the ‘Defence’) hereby submit the instant Addendum to its Immediate Appeal against Trial Chamber’s Decision on Severance (‘Appeal’)¹:

1. On 27 May 2013, the Defence filed an immediate appeal against the Trial Chamber’s order dated 26 April 2013 renewing the severance of the Case 002 Closing Order. The Defence argued, *inter alia*, that the Trial Chamber erred in ordering renewed severance and in the alternative, that Case 002/01 ought to have included, at a minimum, charges relating to genocide and those arising from cooperatives and worksites.
2. With regard to genocide, the Defence argued (in part) as follows:

Nuon Chea is also entitled to an opportunity to contest all of the allegations against him. As the Defence argued before the Trial Chamber, the Closing Order is a judicially issued indictment which considers that Nuon Chea is ‘probably’ guilty of a plethora of serious international crimes. Any part of the Closing Order which is not heard at trial ‘will survive as the final adjudication of Nuon Chea’s criminal responsibility for the events during Democratic Kampuchea.’ Nuon Chea was granted almost no right of participation in the judicial investigation. The ongoing trial is therefore his ‘only opportunity to present his defence to the allegations in the Closing Order’ and for the Cambodian public to hear a far closer approximation of the historical truth.

[...]

The Closing Order charges Nuon Chea with criminal liability for having ‘deliberately and systematically identified, targeted, gathered and killed’ tens of thousands of people because of their membership in a national or religious group. It concludes that he specifically intended to destroy those groups and sought to destroy them in their entirety. No allegation could more wrongfully mischaracterize the Khmer Rouge or Nuon Chea’s role as one of its leaders.

The sheer gravity of the genocide charge requires that this Chamber be especially vigilant in ensuring that Nuon Chea’s right to contest the allegations against him is respected. The judicially confirmed Closing Order concludes that Nuon Chea ‘probably’ committed the worst crime known to man. This court cannot just decide that count is not important enough to try. It cannot deliberately leave the *decision* hanging against Nuon Chea that he *probably* intended to destroy entire groups of people.

¹ Document No. E-284/4/1, ‘Immediate Appeal Against Trial Chamber’s Second Decision On Severance and Response to Co-Prosecutors’ Second Severance Appeal’, 27 May 2013 (‘Appeal’).

Equally important is the special and privileged role occupied by the phrase ‘genocide’ as an encapsulation of the Khmer Rouge period in the public mind. The entity which founded DC-Cam and in effect collected most of the evidence at this trial, Yale University’s ‘Cambodian Genocide Program’, places Democratic Kampuchea on par with all of the iconic genocides of the 20th Century:

The Cambodian genocide of 1975-1979, in which approximately 1.7 million people lost their lives (21% of the country's population), was one of the worst human tragedies of the last century. As in the Ottoman Empire during the Armenian genocide, in Nazi Germany, and more recently in East Timor, Guatemala, Yugoslavia, and Rwanda, the Khmer Rouge regime headed by Pol Pot combined extremist ideology with ethnic animosity and a diabolical disregard for human life to produce repression, misery, and murder on a massive scale.

In spite of this public perception, genocide is one of the few crimes whose very occurrence is contested even by experts sought by the Prosecution. More than any other single allegation in the Closing Order, public opinion about the role of genocide in the Khmer Rouge misstates the historical record. This tribunal, and its public proclamation of genocide charges against the Accused, is not blameless in creating that perception. Nuon Chea is entitled to an opportunity to disprove these allegations, correct the public record and establish that he did not deliberately murder his fellow citizens.²

3. While the Nuon Chea defence was putting the finishing touches on this argument in its Appeal, Prime Minister Hun Sen was across town at Wat Langka illustrating this exact point. Responding to comments about Tuol Sleng from acting president Kem Sokha of the Cambodia National Rescue Party (CNRP), Hun Sen stated:

Talk with CPP lawmakers to urgently draft a law for the National Assembly to punish anyone who says publicly that the Khmer Rouge did not kill people and that there was no place of torture like Tuol Sleng [...] We should make a law like in Europe to punish those who say there is no Khmer Rouge genocidal regime.³

² Appeal, paras 33, 38-41.

³ Neou Vannarin and Zsombor Peter, ‘Hun Sen Calls for Law Against Denial of KR Crimes’, Cambodia Daily, 28 May 2013 (‘Cambodia Daily Article’), available online at <http://www.cambodiadaily.com/news/hun-sen-calls-for-law-against-denial-of-kr-crimes-27128/>. Similar stories appeared across the Khmer-language Cambodian press and in the international news. *See e.g.*, Koh Santepheap Daily, 27 May 2013, available online at <http://kohsantepheapdaily.com.kh/article/71990.html>; Dap News, 29 May 2013, available online at <http://www.dap-news.com/2011-06-14-02-39-55/64906-2013->

Not to be outdone, the CNRP responded to the Prime Minister's comments by affirming its commitment to condemning the 'Khmer Rouge genocidal regime.'⁴

4. Hun Sen's call for a law to make *illegal* any denial of a supposed Khmer Rouge 'genocide' adds concrete urgency to the Defence's call for an adjudication of the genocide charges at this Tribunal. As the Defence argued in its Appeal, the widespread belief that the Khmer Rouge committed genocide is simply false. Hun Sen now proposes enshrining that falsehood as an irrebutable presumption in Cambodian law.
5. Hun Sen's call for a law criminalizing 'genocide' denial in Cambodia is only the latest episode in a decades-long effort on the part of the current government and its predecessors to place the albatross of genocide around the neck of Nuon Chea and other leaders of the Communist Party of Kampuchea. That effort began with the show-trial conviction for genocide against Pol Pot and Ieng Sary at the People's Revolutionary Tribunal and continued with the creation of the so-called 'Tuol Sleng Genocide Museum'. A conviction against Nuon Chea at this Court for crimes allegedly committed at S-21 alone would reinforce that misleading and distorted narrative. A full and fair adjudication of the genocide charges would go a long way toward rectifying it.
6. Nuon Chea's right to respond to the allegations against him in the judicially confirmed, 800-page Case 002 Closing Order requires that the Supreme Court Chamber take the second path. As the Defence showed in the Appeal – and this week's events again confirm – genocide already encapsulates the Khmer Rouge period in the Cambodian public's mind. Public figures rush to be seen to endorse it. Hun Sen's proposed law would now end any lawful dissent for all time. A trial of the genocide charges at this Tribunal is the best and possibly last chance to hold a public and open debate on this question of crucial importance to both Nuon Chea and the Cambodian public.
7. For these reasons, the Defence respectfully requests that the Supreme Court Chamber:

- a. ADMIT the present Addendum; and

[05-29-00-26-57.html](http://www.washingtonpost.com/world/asia_pacific/linking-opponents-to-khmer-rouge-cambodia-pm-seeks-law-to-punish-those-who-deny-atrocities/2013/05/27/786139f0-c6c7-11e2-9cd9-3b9a22a4000a_story.html); 'Linking Opponents to Khmer Rouge, Cambodia PM seeks law to punish those who deny atrocities' (Associated Press), 27 May 2013, available online at http://www.washingtonpost.com/world/asia_pacific/linking-opponents-to-khmer-rouge-cambodia-pm-seeks-law-to-punish-those-who-deny-atrocities/2013/05/27/786139f0-c6c7-11e2-9cd9-3b9a22a4000a_story.html. The excerpts quoted herein are from the Cambodia Daily Article. Their accuracy has been confirmed by comparison with the Khmer language publications.

⁴ Cambodia Daily Article.

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- b. CONSIDER it in conjunction with the Appeal in support of the Defence's request that this Chamber order the inclusion of the genocide charges as part of the scope of Case 002/01.

CO-LAWYERS FOR NUON CHEA

A handwritten signature in blue ink, appearing to read 'Arun' with a stylized flourish underneath.

SON Arun

A handwritten signature in blue ink, consisting of a stylized 'V' and 'K' with a horizontal line extending to the right.

Victor KOPPE