

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

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**CIVIL PARTY LEAD CO-LAWYERS' SUPPORT TO THE CO-PROSECUTORS'
REQUEST TO ASSIGN AMICI CURIAE COUNSEL AND ADVANCE THE
TRIAL PROCEEDINGS**

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Before:

Trial Chamber

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I. Introduction and Procedural History

1. On 22 November 2014, the Co-Prosecutors submitted a request to assign *amici curiae* counsel and advance trial proceedings¹ in response to the withdrawal of the counsel for Nuon Chea and Khieu Samphan from the main courtroom of the Extraordinary Chambers in the Courts of Cambodia on 17 October 2014 during the Opening Statements in the proceedings for Case 002/02,² and for their nonappearance at the following scheduled Trial Management meeting on 21 October 2014.³
2. The Co-Prosecutors' request that the Trial Chamber order counsel for Nuon Chea and Khieu Samphan to continue to represent their clients in all trial proceedings and attend all trial management meetings; and warn counsel for Nuon Chea and Khieu Samphan that any further failure to attend court hearings, leaving court hearings without permission, or failure to represent their clients to the utmost of their professional ability in all trial proceedings shall be considered an obstruction of justice under Internal Rule 38 for which the Trial Chamber will impose appropriate sanctions. Further, the Co-Prosecutors' request that the Trial Chamber order the Head of Defence Support Section to report confidentially, to the Trial Chamber only, on the availability of two counsel (one per Accused), national or international, to act as *amici curiae* to the Trial Chamber to safeguard fundamental fair trial rights in Case 002/02 for the remainder of 2014. Finally, the Co-Prosecutors' request that the Trial Chamber advise both Accused and their counsel that if counsel fail to attend all hearings the Trial Chamber will designate counsel as *amici curiae* until such time as the Accused' counsel return to participate in the proceedings, or until counsel are barred from appearing for the Accused on grounds of continuing misconduct.
3. On 21 October 2014, during the trial proceedings for case 002/02 and following the withdrawal of the counsel for Nuon Chea and Khieu Samphan from the courtroom,

¹ Co-Prosecutor's Request to Assign *Amici Curiae* Counsel and Advance the Trial Proceedings, E321, 22 October 2014.

² Transcript of Proceedings for Case 002/02, E1/242.1, 17 October 2014.

³ Draft Transcript of Hearing Trial Management Meeting, 21 October 2014.

the President of the Trial Chamber invited the Lead Co-lawyers to express their position on the withdrawal. The International Lead Co-Lawyers urge that while, “[i]t is always and continues to be in the interest of the Civil Parties for the defence rights to be respected”⁴, the Trial Chamber “must balance the rights of the defence with the rights of the victims”⁵. To that end, the Lead Co-Lawyers stated their position that “[t]he work of justice: The work of justice in this courtroom must come to a completion”⁶.

4. The Lead-Co-Lawyers hereby support the Co-Prosecutor’s submission for the assignment of *amici curiae* and ask for specific remedies as outlined below.

II-Applicable Law

5. In addition to the applicable law cited by the Co-Prosecutors, the Lead Co-Lawyers note that Internal Rule 81(7) empowers the Trial Chamber to appoint counsel in certain situations. Internal Rule 81(7) provides:

“Where no lawyer of the Accused is present without justification during the hearing, the Chamber may either adjourn the hearing or, if the Accused requests assistance of a lawyer, request the Defence Support Section to temporarily assign him or her a lawyer, from the lists mentioned at Rule 11. As soon as the assigned lawyer has had sufficient time to acquaint him or herself with the file, the Chamber continues its hearing.”

6. However, the Lead Co-Lawyers note that the circumstances described in the Internal Rules do not apply in the present case as the Accused have expressly instructed their counsel to boycott the evidentiary hearing in Case 002/02 and any other hearing related to Case 002/02⁷.

⁴ Transcript of Proceedings for Case 002/02, **E1/242.1**, 17 October 2014, ERN 01032844, lines 24-25, ERN 01032845, lines 1-3.

⁵ *Ibid*, ERN 01032845, lines 13-14.

⁶ *Ibid*, ERN 01032845, lines 3-4.

⁷ *Ibid*, ERN 01032829, lines 15-18, ERN 01032832, lines 18-25 and ERN 01032841, lines 13-15.

7. Therefore the well-established international law practice and procedure of appointing amici curiae, as outlined in the Co-Prosecutors' submission is more applicable to the circumstances of these proceedings.⁸ Consequently, the Lead-Co-Lawyers support the Co-Prosecutors' proposal and request the Trial Chamber to exercise its discretion to appoint amici curiae to advance the trial proceedings.

III – Support to the Co-Prosecutors' request to assign *amici curiae* counsel and advance trial proceedings

8. The Lead Co-Lawyers have previously submitted that an expeditious trial is in the interests of the health of the Civil Parties. During the Trial Management Meeting of 12 October 2013 held in relation to the commencement of Case 002/02, the National Lead Co-Lawyer for the Civil Parties stated:

“When we start Case 002/02, we have to ensure that this have to be moved forward expeditiously. We share the same concern in relation to the health status of the Accused, as well as the status of health of the civil parties and victims across the country. So it is imperative that the proceedings on evidence in Case 002/02 commence sooner than later”⁹.

9. To demonstrate the continuing need for expeditious trial the Lead Co-Lawyers wish to bring the Trial Chamber's attention to civil party 2-TCCP-282's recent request for withdrawal from the List of Civil Parties appearing before the Trial Chamber for Case 002/02 on the grounds of ill health, specifically the grave deterioration of the civil party's memory¹⁰.

⁸ Co-Prosecutor's Request to Assign *Amici Curiae* Counsel and Advance the Trial Proceedings, **E321**, 22 October 2014, para. 16-20.

⁹ Transcript of Hearing Trial Management Meeting, **E1/238.2**, 12 December 2013, ERN 00966159, lines 17-22.

¹⁰ Mémoire informant du retrait de la partie civile 2-TCCP-282 de la liste des Parties Civiles appelées devant la chambre de première instance E305/7.1.3, **E2/40**, 14 Octobre 2014, p 1, para 5.

10. The Lead Co-Lawyers reinforce the Co-Prosecutors' submission that there is a need to ensure a fair and expeditious trial and that a remedy that allows the trial to proceed uninterrupted must be identified.¹¹
11. Furthermore, the boycott of the evidentiary proceedings in Case 002/02 by the Accused causes further unnecessary delay in the Civil Parties right to justice and redress.¹²
12. Therefore, the Lead Co-Lawyers support the Co-Prosecutors' request to assign *amici curiae* counsel and advance trial proceedings in Case 002/02.

IV. Relief Sought


13. For these aforementioned reasons, the Lead Co-Lawyers hereby request the Trial Chamber to:
 - a. **order** counsel for Nuon Chea and Khieu Samphan to continue to represent their client in all trial proceedings and all trial hearings and trial management meetings;
 - b. **advise** both Accused and their counsel that if counsel fail to attend any hearing, the Trial Chamber will designate counsel as *amici curiae* with the responsibility to protect fundamental fair trial rights of the Accused until such time as the Accused's counsel return to participate in the proceedings, or until counsel are barred from appearing for the Accused on grounds of continuing misconduct.

¹¹ Co-Prosecutor's Request to Assign *Amici Curiae* Counsel and Advance the Trial Proceedings, E321, 22 October 2014, p. 2, para 5.

¹² Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Res. 40/34, 29 November 1985, Principle 6 (e) stating that the "The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by: [...] e. Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.

- c. **order** the Head of the Defence Support Section to report confidentially, to the Trial Chamber only, on the availability of two counsel (one per Accused) to act as amici curiae to the Trial Chamber to safeguard fundamental fair trial rights in Case 002/02 for the remainder of 2014;

Respectfully Submitted,

Date	Nom	Lieu	Signature
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