

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

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**RESPONSE OF MR SON ARUN TO THE ORAL DECISION BY THE SUPREME
COURT CHAMBER REGARDING THE EVENTS OF 17 NOVEMBER 2015**

Filed By

Nuon Chea Defence Team:
SON Arun
Victor KOPPE
LIV Sovanna
PRUM Phalla
Doreen CHEN
Xiaoyang NIE
Marina HAKKOU
Henri DECŒUR

Distribution

Co-Lawyers for Khieu Samphân:
KONG Sam Onn
Anta GUISSÉ
Arthur VERCKEN

Co-Prosecutors:
CHEA Leang
Nicholas KOUMJIAN

Co-Lawyers for the Civil Parties:
PICH Ang
Marie GUIRAUD

Pursuant to the Supreme Court Chamber's Oral Decision ('Decision') on 17 November 2015, I, Son Arun, hereby submit this response:

I. BACKGROUND

1. The Supreme Court Chamber scheduled the appeal hearing of Case 002/01 for 17 to 19 November 2015¹.
2. On 17 November 2015 all parties were present except the International Co-Lawyer, Mr Victor Koppe, who was under clear instructions from Mr. Nuon Chea not to participate in the hearing.
3. In the hearing Mr Nuon Chea was given a chance to make a remark on his appeal. *Inter alia*, he made clear remarks regarding his instructions to his lawyers:

Following a discussion with me, my international lawyer Victor Koppe is not participating in these hearings. I will also leave these proceedings once I have finished making my comments and I would also like to instruct my national lawyer Mr Son Arun not to participate in these proceedings any further and not to respond to any kind of questions by the judges or the other parties. We choose instead to rest on the arguments made in my appeal brief.²

4. Even with these clear remarks, the Chambers still insistently asked for clarification and compelled me to be present in the courtroom, even though I tried to explain the Chambers of Law on the Bar which at article 58 states 'lawyers shall determine by their own conscience and with the consent of the client what issues to raise in order to defend the interest of the client.'³ Similarly, a previous decision by the Bar Association of the Kingdom of Cambodia ('BAKC') concerning a Cambodian lawyer practising at the ECCC held that 'a professional lawyer is independent and free to serve the judicial sector'.⁴ This means in their professional work, lawyers are independent in their technical work in accordance with their professional rules and the applicable provisions. In order 'to protect the interest of his/her duties in the interest of his/her client the lawyer shall consult, accept and listen to his client's instructions. The lawyer is a judicial assistant to society, not to court.'⁵

¹ Doc F30/4 'Order Setting the Final Timetable for the Appeal Hearing and Informing the Parties of Issues to Be Addressed' 05 November 2015.

² SCC's Trial Transcript (draft) 17 November 2015, p. 17.

³ Law on the Bar, Article 58.

⁴ Doc E330/1/1 Letter from the Bar Association of the Kingdom of Cambodia, 13 July 2015, ERN 001117737-01117738

⁵ Doc E330/1/1 Letter from the Bar Association of the Kingdom of Cambodia, 13 July 2015, ERN 001117737-01117738

5. However, the Chambers still maintain that it is an obligation of the lawyers to stay in the courtroom in accordance with Rules 22(4) and 81(7), article 7 of the Administrative Law, article 301 of the Code of Criminal Procedure of the Kingdom of Cambodia.⁶
6. I understand that Rule 22(4) also requires lawyers to respect the Law on the BAKC and their Professional Rules. Additionally, Article 301 of the Code of Criminal Procedure of the Kingdom of Cambodia also states that the assistance of lawyer is an obligation of the court in case the accused has not selected a lawyer.
7. I also said in the hearing that a professional lawyer shall obey the rule and respect the court while at the same time following my client's instructions. The Chambers warned me that the walking out is a contempt of the court.⁷ Therefore, at that time I considered that my only choices were to follow my client's instruction or I follow the court's order. The obligation of the lawyer is also to follow the client's instructions within the bounds of the law. I would only have other options if I thought my client's instructions were against the law, my conscience or ethics; in this case I could withdraw myself from defending Mr Nuon Chea in the appeal hearing in case 002/01. But it seems that it is not a choice for me as my client's instructions are not against the law or my conscience or ethics and I would be an immoral and irresponsible lawyer if I withdraw in the present situation which would also lead to a delay until new lawyers will be selected.
8. Due to warning from the Chamber, I decided to return to the courtroom in the afternoon session and continue to follow my client's instruction not to respond to questions. However, the Chamber ignored my presence and did not give me an opportunity to speak despite me having requested to do so. Instead, it ruled that my act might constitute misconduct which could lead to disciplinary sanctions and use of Rule 81(7)⁸ even though Mr Nuon Chea and I clearly explained the reasons.

II. MY POSITION

9. Finally, I would like to clarify that I will sit in the courtroom in future appeal hearings in Case 002/01 since the Chamber compels me to do so. However, I am obliged to follow my client's instruction not to respond to any kind of questions by the judges or the other parties.

⁶ SCC's Trial Transcript (draft) 17 November 2015, p. 19.

⁷ SCC's Trial Transcript (draft) 17 November 2015, p. 19.

⁸ SCC's Trial Transcript (draft) 17 November 2015, pp. 37, 38.

NATIONAL CO-LAWYER FOR NUON CHEA

SON Arun