

BEFORE THE SUPREME COURT CHAMBER**EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA****FILING DETAILS****Case No:** 002/19-09-2007-ECCC/SC**Party Filing:** The Defence for MEAS Muth**Filed to:** The Supreme Court Chamber**Original language:** ENGLISH**Date of document:** 20 November 2015**CLASSIFICATION****Classification of the document
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**MEAS MUTH'S RENEWED REQUEST TO INTERVENE IN THE APPEAL
PROCEEDINGS IN CASE 002/01 FOR THE PURPOSE OF ADDRESSING THE
APPLICABILITY OF JCE III AT THE ECCC**

OR, IN THE ALTERNATIVE,

**RENEWED REQUEST FOR LEAVE TO SUBMIT *AMICUS CURIAE* BRIEF ON JCE
III APPLICABILITY**

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All Defence Teams**All Civil Parties**

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III APPLICABILITY**

Mr. MEAS Muth, through his Co-Lawyers (“the Defence”), hereby submits a renewed request to intervene, orally and in writing, in the matter of the Co-Prosecutors’ Appeal Against the Judgment of the Trial Chamber in Case 002/01, in which the Co-Prosecutors appeal the Case 002/01 Judgement on the ground that the Trial Chamber erred in not considering the extended form of joint criminal enterprise (“JCE III”).¹ This renewed request is made necessary because of a change in circumstances in Case 002/01.

I. BACKGROUND

1. On 17 November 2015, the Supreme Court Chamber ordered the appointment of stand-by counsel to represent Mr. NUON Chea during the Case 002/01 appeal hearings. During the 17 November 2015 hearing, Mr. NUON Chea indicated that he had instructed his Co-Lawyers not to participate in the appeal hearings and not to respond to any questions from the Judges or other parties.² Pursuant to Mr. NUON Chea’s instructions, Mr. NUON Chea’s International Co-Lawyer did not attend the appeal hearing; his National Co-Lawyer was present but indicated that he had been instructed not to participate or answer any questions.³ Mr. NUON Chea indicated that he and his Co-Lawyers rested on the arguments made in their Appeal Brief.⁴
2. The Supreme Court Chamber adjourned the appeal hearings. It held that the nature of the appeal hearings was such that Mr. NUON Chea could not waive his right to be represented by counsel and that counsel must be present, and ordered the appointment of stand-by counsel.⁵

¹ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/SC, Co-Prosecutors’ Appeal Against the Judgment of the Trial Chamber in Case 002/01, 28 November 2014, F11.

² *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/SC, Response of Mr. Son Arun to the Oral Decision by the Supreme Court Chamber Regarding the Events of 17 November 2015, 18 November 2015, F30/13, para. 3.

³ *Id.*, paras. 2-3.

⁴ *Id.*, para. 3.

⁵ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/SC, Oral Decision of Supreme Court Chamber, 17 November 2015 (document number unavailable; draft transcript not publicly available). *See also* Anthony Jensen, *Nuon Chea’s Defence Stages Walkout at Tribunal*, CAMBODIA DAILY, 18 November 2015.

II. REQUEST

3. The events of 17 November 2015 caused a change of circumstances in Case 002/01 that warrants granting this Request. Although the Supreme Court Chamber previously denied a similar request by the Defence,⁶ it may reconsider its decision where there is a legitimate basis, such as a change of circumstances (including new facts or arguments), or where it realizes that the previous decision was erroneous or has caused an injustice.⁷
4. The change in circumstances in Case 002/01 merits permitting the Defence to intervene in the interests of justice.⁸ Mr. NUON Chea's National Co-Lawyer indicated that his team would make no additional submissions on the applicability of JCE III, as they are resting on their Appeal Brief.⁹ Mr. NUON Chea's stand-by counsel will be new to the ECCC and unfamiliar with Cases 001 and 002 and the parties' briefings on the applicability of JCE III at the ECCC. There is no indication whether stand-by counsel will make submissions on this issue. Even if stand-by counsel did make submissions, they may not be equipped to fully address the issue due to a lack of familiarity with the Cases and this issue. Permitting the Defence to intervene would ensure that the Supreme Court Chamber is fully briefed on the applicability of JCE III at the ECCC.
5. In the alternative, pursuant to Rule 33 of the ECCC Internal Rules, the Defence seeks leave to file an *amicus curiae* brief on the issue of whether JCE III is applicable at the ECCC. The Defence does not intend to act as substitute counsel for Mr. NUON Chea or supplement any submissions that stand-by counsel may make on this issue. The brief is intended simply to aid the Supreme Court Chamber on this issue.¹⁰ The brief would

⁶ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/SC, Decision on Requests to Intervene or Submit *Amici Curiae* Briefs in Case 002/01 Appeal Proceedings, 08 April 2015, F20/1.

⁷ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/OCIJ(PTC03), Decision on Application for Reconsideration of Civil Party's Right to Address the Pre-Trial Chamber in Person, 28 August 2008, C22/I/68, para. 25; *Case of MEAS Muth*, 003/29-07-2011-ECCC/PTC (01), Decision on Motion for Reconsideration of the Decision on the Defence Support Section Request for a Stay in Case 003 Proceedings before the Pre-Trial Chamber and for Measures Pertaining to the Effective Representation of Suspects in Case 003, 4 October 2012, 5, para. 3.

⁸ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/SC, Decision on Requests to Intervene or Submit *Amici Curiae* Briefs in Case 002/01 Appeal Proceedings, 08 April 2015, F20/1, para. 12.

⁹ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/SC, Response of Mr. Son Arun to the Oral Decision by the Supreme Court Chamber Regarding the Events of 17 November 2015, 18 November 2015, F30/13, para. 3.

¹⁰ In Case 001, the Pre-Trial Chamber recognized the complexity of this issue and invited *amicus curiae* briefs. In Case 002, it granted the parties extensions of time and pages to address the issue. *See, e.g., Case of Kaing*

demonstrate that JCE III did not exist as customary international law in 1975-79 and therefore should not be applied at the ECCC.

6. In support of the Defence's submissions on intervening in Case 002/01 or acting as an *amicus curiae*, the Defence incorporates by reference its submissions in paragraphs 1 to 17 of the Case 003 Defence Request to Intervene in the Appeal Proceedings in Case 002/01 for the Purpose of Addressing the Applicability of JCE III at the ECCC or, in the Alternative, Request for Leave to Submit *Amicus Curiae* Brief on JCE III Applicability.¹¹

WHEREFORE, for all of the reasons stated herein, the Defence respectfully requests the Supreme Court Chamber to allow it to intervene, orally and in writing, in the matter of the Co-Prosecutors' Appeal Against the Judgment of the Trial Chamber in Case 002/01. In the alternative, the Defence seeks leave to file an *amicus curiae* brief on the issue of whether JCE III is applicable at the ECCC.

Respectfully submitted,



 ANG Udom





 Michael G. KARNAVAS

Co-Lawyers for Mr. MEAS Muth

Signed in Phnom Penh, Kingdom of Cambodia on this **20th** day of **November, 2015**

Guek Eav, 001/18-07-2007-ECCC-OCIJ (PTC 02), Invitation to *Amicus Curiae*, 23 September 2008, D99/3/12; *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC-OCIJ (PTC 02), Invitation to *Amicus Curiae*, 25 September 2008, D/99/3/13 and D99/3/14; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC-OCIJ (PTC 35, 37, 38, 39), Decision on the Co-Prosecutors' Applications for Extension of Time and Page Limits to File a Joint Response to IENG Thirith, KHIEU Samphan, IENG Sary and Certain Civil Parties' Appeals Against the Order on Joint Criminal Enterprise, 9 February 2010, D97/16/4.

¹¹ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/SC, Case 003 Defence Request to Intervene in the Appeal Proceedings in Case 002/01 for the Purpose of Addressing the Applicability of JCE III at the ECCC or, in the Alternative, Request for Leave to Submit *Amicus Curiae* Brief on JCE III Applicability, 12 January 2015, F20.