

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

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CIVIL PARTY LEAD CO-LAWYERS' RESPONSE IN SUPPORT OF THE CO-PROSECUTORS' REQUEST FOR THE TRIAL CHAMBER TO EXCLUDE THE ARMED CONFLICT NEXUS REQUIREMENT FROM THE DEFINITION OF CRIMES AGAINST HUMANITY

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Before:

The Trial Chamber
Judge NIL Nonn, President
Judge Silvia CARTWRIGHT
Judge YA Sakhan
Judge Jean-Marc LAVERGNE
Judge THOU Mony

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I – PROCEDURAL BACKGROUND

1. On 15 September 2010, the Co-Investigating Judges issued the Closing Order against the four accused.¹
2. Ieng Sary and Ieng Thirith appealed the definition of crimes against humanity adopted by the Co-Investigating Judges in the Closing Order, on 25 October 2010 and 18 October 2010 respectively.²
3. On 26 November 2010, the Civil Parties filed a “Combined Response by Avocats Sans Frontières France Co-Lawyers for the Civil Parties to the Appeals by IENG Sary, IENG Thirith and NUON Chea against Co-Investigating Judges’ Closing Order.”³
4. On 29 November 2010, the Civil Parties filed two submissions entitled “Joint Observations on Mr. Nuon Chea, Mr. Ieng Sary and Mrs. Ieng Thirith’s Appeals against the Closing Order”,⁴ and “Observation of Co-Civil Party Lawyer Related to Nuon Chea, Ieng Sary, and Ieng Thirith’s Appeals against the Closing Order.”⁵
5. The Pre-Trial Chamber issued full reasoned decisions on the appeals of Ieng Sary and Ieng Thirith in the “Decision on Ieng Sary’s Appeal against the Closing Order” dated 11 April 2011, and the “Decision on Appeals by Nuon Chea and Ieng Thirith against the Closing Order” dated 15 February 2011.⁶
6. In these decisions, the Pre-Trial Chamber found that the Co-Investigating Judges had erred in their articulation of the definition of Crimes against Humanity in the Closing Order and added the “*existence of a nexus between the underlying acts and the armed*

¹ Closing Order, 15 September 2010, **D427**.

² **D427/1/6**, and **D427/2/1**.

³ Combined Response by *Avocats Sans Frontières* France Co-Lawyers for the Civil Parties to the Appeals by IENG Sary, IENG Thirith and NUON Chea against Co-Investigating Judges’ Closing Order, 26 November 2010, **D427/1/18**.

⁴ Joint Observations on Mr. Nuon Chea, Mr. Ieng Sary and Mrs. Ieng Thirith’s Appeals against the Closing Order, 29 November 2010, **D427/3/8**.

⁵ Observation of Co-Civil Party Lawyer Related to Nuon Chea, Ieng Sary, and Ieng Thirith’s Appeals against the Closing Order, 29 November 2010, **D427/1/20**.

⁶ Decision on Ieng Sary’s Appeal against the Closing Order, 13 January 2011, 11 April 2011, **D427/1/30** and Decision on Appeals by Nuon Chea and Ieng Thirith against the Closing Order, 15 February 2011, **D427/3/15**.

Civil Party Co-Lead Lawyers Urgent Request.

conflict” to the “Chapeau” requirements in Chapter IV (A) of Part Three of the Closing Order.”⁷

7. On 15 June 2011, the Co-Prosecutors filed the “Co-Prosecutors’ Request for the Trial Chamber to Exclude the Armed Conflict Nexus Requirement from the Definition of Crimes against Humanity”.⁸

II – CIVIL PARTY LEAD CO-LAWYERS SUBMISSION

8. The Civil Party Lead Co-Lawyers refer to the arguments made in submissions filed by the Civil Party Lawyers dated 26 November 2010 and 29 November 2010 and the “Co-Prosecutors’ Request for the Trial Chamber to Exclude the Armed Conflict Nexus Requirement from the Definition of Crimes against Humanity” dated 15 June 2011.
9. The Civil Party Lead Co-Lawyers fully support and adopt all the arguments made by the Co-Prosecutors in their 15 June 2011 submission, and join their request to the Trial Chamber to correct the legal definition of crimes against humanity in the Indictment (as amended by the Pre-Trial Chamber) to confirm that there is no requirement for a nexus with armed conflict for crimes against humanity under customary international law during the temporal jurisdiction of the ECCC.
10. Furthermore, Civil Party Lead Co-Lawyers submit that considering the implications that determination of the matter will have for the parties’ preparation for trial, it is proper for the Trial Chamber to determine the issue and notify the parties prior to the commencement of the trial.

REQUEST


The Civil Party Lead Co-Lawyers request that :

- The Trial Chamber confirm that the definition of crimes against humanity during the temporal period of the ECCC does not require a nexus with armed conflict; and
- Correct the Amended Closing Order accordingly.

⁷ D427/1/30, para 313 and D427/3/15, para 148.

⁸ Co-Prosecutor’ Request for the Trial Chamber to Exclude the Armed Conflict Nexus Requirement from the Definition of Crimes Against Humanity, 15 June 2011, E95.
Civil Party Co-Lead Lawyers Urgent Request.

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