

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

FILING DETAILS

Case File No.: 001/18-07-2007-ECCC/SCC

Date of Document: 4 March 2011

Party Filing: Co-Lawyers for Civil Parties Group 3

Filed Before: THE SUPREME COURT CHAMBER

Original: French/ Khmer Translation

CLASSIFICATION

Classification of document Suggested by the Filing party: PUBLIC

Classification by the Co-Investigating Judges or the Chamber: Public

Classification Status:

Review of Interim Classification:

Records Officer's Name:

Signature:



**Request to Submit Additional Evidence in Support of Appeal Brief by the
Co-Lawyers for Civil Parties Group 3**

Filed by:

The Civil Party Co-Lawyers

KIM Mengkhy
MOCH Sovannary
Martine JACQUIN
Annie DELAHAIE
Philippe CANONNE

Elisabeth RABESANDRATANA

Fabienne TRUSSES NAPROUS

Christine MARTINEAU

Before:

The Supreme Court Chamber

Judge KONG Srim, President
Judge Motoo NOGUCHI
Judge SOM Sereyvuth
Judge Agnieszka KLONOWIECKA-MILART
Judge SIN Rith

Judge Chandra Nihal JAYASINGHE

Judge YA Narin

Distribution to:

The Accused:

KAING Guek Eav *alias* Duch

Original FRENCH : 00649702-00649707

Lawyers for the Accused:

KAR Savuth

Office of the Co-Prosecutors:

CHEA Leang

Andrew CAYLEY

YET Chakriya

William SMITH

Civil Party Lawyers:

Karim KHAN

TY Srinna

Alain WERNER

YUNG Panith

NY Chandy

LOR Chunthy

KONG Pisey

HONG Kim Suon

Silke STUDZINSKY

I- INTRODUCTION

- 1- On 26 July 2010, the ECCC Trial Chamber found Kaing Guek Eav guilty of Grave Breaches of the Geneva Conventions and Crimes against Humanity, and sentenced him to thirty-five years imprisonment with a five-year reduction of the sentence for his illegal detention.
- 2- On 5 October 2010, the Civil Party Co-Lawyers appealed against the Judgement with regard to the inadmissibility of certain Civil Party applicants represented by the said Group and to the question of reparations.
- 3- On 3 December 2010, the Civil Party Co-Lawyers filed their observations on the Defence Appeal of 18 November 2010.
- 4- By Memorandum dated 21 February 2011, and with reference to paragraph 106 of the Appeal by the Co-Lawyers for Civil Parties Group 3 by which the Supreme Court Chamber was requested “to allow the filing of further material”, the *Greffiers* of the Supreme Court Chamber invited the Co-Lawyers for Civil Parties Group 3 to file any request to submit additional evidence that complies with Internal Rule 108(7) (Rev. 6).
- 5- The Memorandum invites the Co-Lawyers to file the application in Khmer and French no later than Friday, 4 March 2011.
- 6- The present application is therefore admissible.

II- DISCUSSION

- 7- According to Rule 108(7) (Rev 6), “Subject to Rule 87(3), the parties may submit a request to the Chamber for additional evidence provided it was unavailable at trial and could have been a decisive factor in reaching the decision at trial. The request shall clearly identify the specific findings of fact made by the Trial Chamber to which the additional evidence is directed. The other parties affected by the request may respond within 15 (fifteen) days of the receipt of notification of the request.”

Original FRENCH : 00649702-00649707

8- Rule 87(3) provides that “[t]he Chamber bases its decision on evidence from the case file provided it has been put before it by a party or if the Chamber itself has put it before the parties. Evidence from the case file is considered put before the Chamber or the parties if its content has been summarised, read out, or appropriately identified in court. The Chamber may reject a request for evidence where it finds that it is:

- a) irrelevant or repetitious;
- b) impossible to obtain within a reasonable time;
- c) unsuitable to prove the facts it purports to prove;
- d) not allowed under the law; or
- e) intended to prolong proceedings or is frivolous.”

A – ADDITIONAL EVIDENCE IN SUPPORT OF MR PHAOK KHAN’S CIVIL PARTY APPLICATION

9- **Mr PHAOK Khan (E2/33)** was tortured and interrogated in a prison situated close to Phnom Penh during the Democratic Kampuchea period.

10- In rejecting his Civil Party Application, the Trial Chamber maintained that: “[w]hile it is plausible that the Civil Party may have been detained and tortured by Khmer Rouge soldiers, there is no objective evidence that this occurred at the S-21 complex.”

11- Mr PHAOK Khan (E2/33) also reported that members of his family died at S-21. It was only after visiting S-21 that he was able to identify the photographs of his wife,¹ his uncle,² and the latter’s wife.³

12- These photographs are therefore tendered in support of the application.

¹ Annexes 1 and 2, photographs of PHAOK Khan’s wife.

² Annexes 3 and 4, photographs of PHAOK Khan’s uncle.

³ Annexes 5 and 6, photographs of PHAOK Khan’s aunt.

Original FRENCH : 00649702-00649707

B – ADDITIONAL EVIDENCE IN SUPPORT OF MR LAY CHAN’S CIVIL PARTY APPLICATION

13- Concerning Mr LAY Chan (E2/23), the Chamber considered that “*although the Chamber does not doubt that LAY Chan (E2/23) suffered severe harm as a result of detention, interrogation and torture during the DK period, no evidence was provided to show that this occurred at S-21.*”

14- The Chamber considered further that: “[t]he Chamber does not doubt that he suffered severe harm as a result of detention, interrogation and torture during the DK period”, but found that “his description of detention practices is at odds with the bulk of the evidence before the Chamber regarding established practices at S-21.”

15- The Chamber considered, in particular, that [LAY Chan] gave a “*description of his cell that does not correspond to others provided of the cells at S-21 [...]*”.

16- However, a photograph taken at S-21 shows that, as reported by LAY Chan, there were indeed many cells below a staircase as described and reported several times by him.⁴

III- CONCLUSION

- 1- The Co-Lawyers for Civil Parties Group 3 request the Supreme Court Chamber to admit this additional evidence.

⁴ Photograph taken at S-21 showing the location of Mr LAY Chan’s cell.
Original FRENCH : 00649702-00649707

Done in Phnom Penh, on 4 March 2011

By the Co-Lawyers for Civil Parties Group 3:

(Signed)

KIM Mengkhy

Attorney-at-Law

MOCH Sovannary

Philippe CANONNE

Christine MARTINEAU

Fabienne TRUSSES-NAPROUS

Annie DELAHAIE

Elisabeth RABESANDRATANA

(Signed)

Martine JACQUIN

Head, ASF-France Project

Original FRENCH : 00649702-00649707