

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

FILING DETAILS

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**NUON CHEA'S LETTER AUTHORISING HIS LAWYERS TO FILE AN APPEAL
AGAINST THE CASE 002/02 JUDGEMENT**

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PART 1. INTRODUCTION

1. Pursuant to Internal Rules 106, 79, and 109; Article 14 of the International Covenant on Civil and Political Rights; and in the interests of justice, the Co-Lawyers for Nuon Chea (the “Defence”) hereby attach Nuon Chea’s letter authorising his lawyers to file an appeal against Case 002/02 Judgement and request that the letter be added to the case file, classified as public and added to the ECCC website, prior to the filing of his notice of appeal (the “Request”).

PART 2. BACKGROUND

2. On 16 November 2018, the Trial Chamber (the “Chamber”) issued its informal summary judgement in Case 002/02 against Nuon Chea and Khieu Samphân (the “Judgement Summary”).¹ On 28 March 2019, the Chamber issued its fully-reasoned, written judgement (the “Judgement”).²

I. NUON CHEA’S RESPONSE TO THE CASE 002/02 JUDGEMENT

3. On 3 April 2019, the Defence filed its Urgent First Request for Extension of Time and Page Limits for Filing Nuon Chea’s Notice of Appeal Against the Trial Judgement in Case 002/02 (the “First Request for Extension”) to the Supreme Court Chamber.³ In it, the Defence requested, *inter alia*, an extension of time for filing the notice of appeal of 150 days (for a total period of 180 days), instead of the usual 30 calendar days.⁴ No decision on that Request has yet been rendered.
4. On 16 November 2018, immediately following the issuance of the Judgement, Nuon Chea informed his then-Co-Lawyers of his intention to appeal that judgement. He has consistently expressed the same intention to appeal to his current Co-Lawyers and, on 6 April 2019, he signed an official letter confirming that intention.⁵ An internal English translation of the letter follows:

¹ ‘Trial Chamber Summary of Judgement Case 002/02’, 16 Nov 2018 (“Judgement Summary”).

² E465, ‘Case 002/02 Judgement’, 16 Nov 2018 [*sic* - 28 Mar 2019] (“Judgement”).

³ F40/1.1, ‘Nuon Chea’s Urgent first Request for an Extension of Time and Page Limits for Filing his Notice of Appeal Against The Trial Judgement in Case 002/02’, 3 Apr 2019 (“First Request for Extension”).

⁴ F40/1.1, First Request for Extension, paras 1(a) and 61(a).

⁵ Letter from Nuon Chea to Trial Chamber President, 6 Apr 2019 (**Attachment 1**).

Dear Mr. President,

As you may know, right after the Trial Chamber announced its summary judgement in Case 002/02 on 16 November 2018, I have discussed with my co-lawyers that I must appeal against the judgement.

On 28 March 2019, the full written judgement was notified.

I often say that my important goal is to inform the Cambodians and the world.

Accordingly, I would like to inform Mr. President that I authorise and allow my co-lawyers to make the appeal against the judgement in Case 002/02.

Please be so informed; with my respect.

Nuon Chea

[REDACTED]

II. NUON CHEA’S HEALTH

5. As the Chamber and public are aware, Nuon Chea is almost 93 years old. He is extremely elderly by any standard. Indeed, he has already outlived Cambodia’s current life expectancy for males (which is 67 years old)⁶ by 25 years.

6. [REDACTED]

7. [REDACTED]

⁶ World Health Organisation, ‘Countries: Cambodia’ (Attachment 2).

[REDACTED]

PART 3. APPLICABLE LAW

8. Internal Rules 106(2), (3), and (4), provide:
2. Notices of appeal and immediate appeals shall be filed with the Greffier of the Trial Chamber, and shall be noted in the appeal register of the Trial Chamber.
 3. The Accused may be represented by their lawyers, **who shall have a written authorization from their clients to file an appeal**. The Civil Parties shall be represented by the Civil Party Lead Co-Lawyers.
 4. The notice of appeal or the immediate appeal shall be signed by the appellant or appellant's lawyers, and initialled by the Greffier of the Trial Chamber. **The written authorization shall be attached to the appeal.**⁹
9. Internal Rule 23*bis* (6) and Article 7(1) of the Cambodian Code of Criminal Procedure provide that an Accused person's death extinguishes the criminal and civil actions against him before the ECCC.
10. Internal Rules 79 and 109 provide that hearings before this Chamber and the Supreme Court Chamber shall be public. Similarly, Article 14(1) of the International Covenant on Civil and Political Rights, which is incorporated directly into Cambodian law, provides that "in the determination of any criminal charge against him, [...] everyone shall be entitled to a fair and public hearing".¹⁰

PART 4. ARGUMENTS

I. NUON CHEA IS NOT PRECLUDED FROM FILING HIS AUTHORISATION TO APPEAL AT THIS STAGE

11. Internal Rule 106(4) is ambiguous since it concerns the filing of a "notice of appeal or [an] immediate appeal" but indicates that the written authorisation "shall be attached to the appeal". It would appear from context, however, that the written authorisation is to be attached to the notice of appeal or immediate appeal. However, nothing in the Internal Rules precludes Nuon Chea from separately filing his written authorisation to appeal in addition to attaching it to said notice of appeal.

⁹ Internal Rules (Rev.9), 16 Jan 2015 (emphasis added).

¹⁰ Fair trial protections under the International Covenant on Civil and Political Rights are directly incorporated into Cambodian law through Article 31 of the Constitution of the Kingdom of Cambodia, which provides: "The Kingdom of Cambodia recognizes and respects human rights as enshrined in the United Nations Charter, the Universal Declaration of Human [R]ights and all the treaties and conventions related to human rights, women's rights and children's rights."

II. NUON CHEA'S REQUEST ENSURES HIS RIGHT TO EXPEDIENTLY INFORM THE PUBLIC OF CASE DEVELOPMENTS, DESPITE THE SLOW PROCEEDINGS

12. The Judgement was rendered on 28 March 2019, nearly two years after the Defence's closing submissions in Case 002/02.¹¹ Immediately thereafter, Nuon Chea instructed his lawyers to file an appeal and, as soon as practicable, provided them with the required written authorisation.
13. Considering the length of the Judgement, the complexity of the underlying case file, and the Defence's limited resources, safeguarding Nuon Chea's right to a fair trial compelled the Defence to request an extension of at least 150 days (for a total of 180 days) to file Nuon Chea's notice of appeal.¹²
14. Safeguarding Nuon Chea's right to a fair *and public* trial equally requires that Nuon Chea be given an opportunity to expediently inform the public of his intent to appeal that judgement. This is so notwithstanding the date on which Nuon Chea files his notice of appeal – which is a function above all of the nature of the Judgement itself.
15. Therefore, considering also that nothing in the Internal Rules precludes it, the Defence submits that the attached authorisation should be added to the case file immediately, and thereafter attached to his notice of appeal in accordance with Internal Rule 106(4).

III. NUON CHEA'S REQUEST IS IN THE INTERESTS OF JUSTICE

16. Throughout Case 002/02, medical assessments of Nuon Chea have been conducted on a regular basis.¹³
17. On 28 December 2017, the Chamber assigned two Experts to assess Nuon Chea's fitness to stand trial,¹⁴ continuing its long-established practice. On 31 January 2018, the Experts reported that “Nuon Chea is 91 years old, frail and at risk of ‘deconditioning with a rapid decline of physical function’”.¹⁵

¹¹ E1/523.1, T. 19 Jun 2017, p. 2, ln. 18 to p. 112, ln. 20; E1/524.1, T. 26 Jun 2017, p. 2, ln. 23 to p. 130, ln. 15.

¹² F40/1.1, First Extension Request, para. 1.

¹³ E460/4, ‘Sixth Decision on Fitness of the Accused Nuon Chea to Stand Trial’, 27 Feb 2018, para. 3 (“Sixth Fitness Decision”).

¹⁴ E460, ‘Order Assigning Experts to Assess the Accused’s Fitness to Stand Trial and Scheduling Assessment’, 28 Dec 2017.

¹⁵ E460/4, Sixth Fitness Decision, para. 8.

18. Nuon Chea is now nearly 93 years old. It is obvious that the Experts' above assessment would be even more relevant at this time. [REDACTED]
19. According to Article 7(1) of the Cambodian Code of Criminal Procedure, an Accused person's death extinguishes the criminal action against him before the ECCC. Internal Rule 23*bis* (6) provides that an Accused or Charged person's death extinguishes any civil action against that person. The Trial Chamber faced such circumstances, *e.g.*, following Ieng Sary's death on 14 March 2013¹⁷ and decided to terminate all the proceedings against him.¹⁸
20. Therefore, in the event of Nuon Chea's sudden death, the appellate proceedings would be immediately terminated. If this occurred prior to the filing of Nuon Chea's notice of appeal, his willingness to appeal the Judgement would never be officially disclosed to the public, even if it is implied in the First Request for Extension.
21. Considering Nuon Chea's advanced age, [REDACTED] and the possible lengthy time that may elapse before the filing of his notice of appeal, the Defence submits that it is of the utmost importance and in the interests of justice that Nuon Chea's letter authorising his Co-Lawyers to file an appeal against the Judgement be added to the case file immediately, in addition to being subsequently attached to his notice of appeal in accordance with Internal Rule 106(4).

PART 5. RELIEF

22. For the above reasons, the Defence requests the Trial Chamber to add Nuon Chea's letter authorising his lawyers to file an appeal against the Judgement to the case file, classify it as public, and release it on the ECCC website, prior to the filing of his notice of appeal.

¹⁷ E270/1, 'Termination of the Proceedings against the Accused IENG Sary', 14 Mar 2013, para. 2 ('Termination of Proceedings against Ieng Sary').

¹⁸ E270/1, Termination of Proceedings against Ieng Sary, p. 3.

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