

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

FILING DETAILS

Case No: 001/18-07-2007-ECCC/TC

Party Filing: Co-Lawyers for Civil Parties
(group 2)

Filed to: Trial Chamber

Original Language: English and Khmer
(translation)

Date of Document: 6 September 2010

CLASSIFICATION

Classification of the document suggested by the filing party: PUBLIC

Classification by Chamber:

Classification Status:

Review of Interim Classification:

Records Officer Name:

Signature:

ឯកសារដើម
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/date de reception): 06 / 09 / 2010
ម៉ោង (Time/Heure) : 15 : 30
មន្ត្រីទទួលបន្ទុកសំណុំរឿង / Case File Officer/L'agent chargé du dossier: SANN RADA

**NOTICE OF APPEAL OF CO-LAWYERS FOR CIVIL PARTIES (GROUP 2)
AND GROUNDS OF APPEAL AGAINST JUDGMENT**

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Accused

KAING Guek Eav alias DUCH

ឯកសារច្បាប់ចម្លងត្រឹមត្រូវតាមច្បាប់ដើម
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ថ្ងៃ ខែ ឆ្នាំ ត្រឹមការបញ្ជាក់ (Certified Date/Date de certification): 08 / 09 / 2010
មន្ត្រីទទួលបន្ទុកសំណុំរឿង / Case File Officer/L'agent chargé du dossier: Uch Arun

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I. NOTICE OF APPEAL

1. Co-Lawyers for Civil Parties-Group 2 herewith give notice of appeal, in accordance with Internal Rule (“IR”) 105(3) (Rev.3) and 107(4) (Rev. 3).
2. The Appeal is submitted on behalf of Civil Party Mr. CHUM Sirath and limited to the omission of the name of his sister-in-law, Ms. KEM Sovannary and her child (name unknown) in the Judgment.¹ The omission appears to have occurred by mistake.

II. INTRODUCTION AND PROCEDURAL BACKGROUND

3. On 30 July 2010, Co-Lawyers for Civil Parties requested² the Trial Chamber to correct the Judgment and to add on a reference to Ms. KEM Sovannary and her child page 230 of the Judgment (English version) and the Khmer and French version accordingly.
4. As the Trial Chamber did not decide on this request, Co-Lawyers for Civil Parties herewith appeal the Judgment.
5. The written authorization to file the Appeal is attached.

III. RELEVANT LAW

6. The relevant law and Internal Rules to which this Appeal refers are IR 21, 23, 104, 105, 106 and 107.

IV. STANDARD OF APPEAL

7. Pursuant to IR 104(1)(a) and (b), the standard for the Supreme Court Chamber (“SCC”) regarding the review of an appeal against a judgment or a decision of the TC is either the existence of “(a) an error on a question of law invalidating the judgment or decision; or (b) an error of fact which has occasioned a miscarriage of justice.”
8. The applicable deadline follows IR 105 (3) and 107 (4).

¹ According to the Judgment, Mr. CHUM Sirath lost only his two brothers CHUM Narith and CHUM Sinareth, Judgment, 26 July 2010, Doc.No. E188, para. 650.

² Request for correction letter to Trial Chamber, 30 July 2010, Doc. No. E188/1.

V. ADMISSIBILITY OF THE APPEAL

9. According to IR 105(1) (c), an appeal is admissible for Civil Parties “in respect of their other civil interests”, but only when the Co-Prosecutors have appealed.³ Co-Prosecutors filed a Notice of Appeal against the Judgment.⁴
10. Therefore, this appeal on behalf of Civil Party Mr. CHUM Sirath is admissible.

VI. GROUNDS OF APPEAL

The omission of the name of Mr. CHUM Sirath’s sister-in-law is based on an error of fact which has occasioned a miscarriage of justice and an error of law/Internal Rules by violating IR 21 (1) (a) and (c) invalidating the Judgment

11. According to Cambodian tradition, Ms. KEM Sovannary became like Mr. CHUM Sirath’s sister through her marriage to his brother Mr. CHUM Narith. Thus, being close family members, Ms. KEM Sovannary and her child should have been included into the Judgment as persons for whose loss Mr. CHUM Sirath became a Civil Party. The Trial Chamber accepted immediate family members. In the Cambodian context, this is the case for in-laws who, through marriage, became immediate close family members.
12. Accordingly, the Judgment also lists in-laws of other Civil Parties.⁵ Not mentioning Ms. KEM Sovannary is an unjustified unequal treatment which violates IR 21 (1) (a) and (c).
13. The Judgment even lists extended family members of Civil Parties for information purposes.⁶ At least on this ground Ms. KEM Sovannary and her child should have been included.
14. By not including Mr. CHUM Sirath’s sister-in-law and her child in the Judgment, even if this appears to have occurred by mistake, the Trial Chamber has erred in

³ Emphasis added.

⁴ Co-Prosecutors’ Notice of Appeal against the judgment of the Trial Chamber in the case of Kaing Guek Eav alias Duch, 16 August 2010.

⁵ Ibid., para. 650.

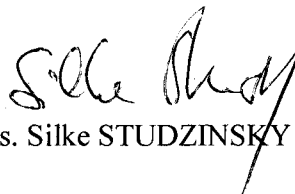
⁶ Ibid., footnote 1123.

fact.

Co-Lawyers for Civil Parties respectfully request:

- To declare the Appeal admissible;
- To correct the Judgment and to include the name of Ms. KEM Sovannary and her child in the Judgment.

Mr. YUNG Phanit



Ms. Silke STUDZINSKY

Signed in Phnom Penh, Kingdom of Cambodia on 6 September 2010.