



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia

Chambres Extraordinaires au sein des Tribunaux Cambodgiens

**ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ**

Kingdom of Cambodia
Nation Religion King

Royaume du Cambodge
Nation Religion Roi

អង្គជំនុំជម្រះតុលាការកំពូល

Supreme Court Chamber

Chambre de la Cour suprême

សំណុំរឿងលេខ: ០០២/១៩-កញ្ញា-២០០៧/អ.វ.ត.ក/អ.ជ.ត.ក

Case File/Dossier N°. 002/19-09-2007/ECCC/SC

Before:

Judge KONG Srim, President

Judge Chandra Nihal JAYASINGHE

Judge SOM Sereyvuth

Judge Agnieszka KLONOWIECKA-MILART

Judge MONG Monichariya

Judge Florence Ndepele MWACHANDE-MUMBA

Judge YA Narin

Date:

31 October 2014

Language(s):

Khmer/English

Classification:

PUBLIC



**DECISION ON MOTIONS FOR EXTENSIONS OF TIME AND PAGE LIMITS FOR
APPEAL BRIEFS AND RESPONSES**

Co-Prosecutors

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Nicholas KOUMJIAN

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SON Arun

Victor KOPPE

Accused

KHIEU Samphân

NUON Chea

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1. **THE SUPREME COURT CHAMBER** of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea between 17 April 1975 and 6 January 1979 (“Supreme Court Chamber” and “ECCC”, respectively) is seized of NUON Chea’s “Second Request for Extension of Time and Page Limits for Filing Appeals against the Trial Judgment in Case 002/01” filed on 2 October 2014 (“NUON Chea’s Request”),¹ and of the “*Demande urgente de la Défense de M. KHIEU Samphân aux fins de prorogation du délai et d’extension du nombre de pages du mémoire d’appel*” filed on 6 October 2014 (“KHIEU Samphân’s Request”).² On 16 October 2014, the Co-Prosecutors filed a consolidated response to NUON Chea’s and KHIEU Samphân’s Requests (“Response”),³ to which NUON Chea and KHIEU Samphân replied on 20 and 21 October 2014, respectively.⁴

BACKGROUND

2. On 7 August 2014, the Trial Chamber issued its judgment in Case 002/01 (“Trial Judgment”),⁵ convicting both KHIEU Samphân and NUON Chea of the crimes against humanity of extermination (encompassing murder), persecution on political grounds, and other inhumane acts (comprising forced transfer, enforced disappearances and attacks against human dignity), and sentencing them each to life imprisonment.⁶

3. On 13 August 2014, both KHIEU Samphân and NUON Chea requested extensions of time and of page limits for the filing of their respective notices of appeal and appeal briefs.⁷ In particular, they requested that the applicable time and page limits for the filing of their notices of appeal be extended to 74 days from the notification of the Trial Judgment and 50 pages in English or French with their equivalent in Khmer, respectively.⁸ They similarly requested that the applicable time and page limits for the filing of the appeal briefs be

¹ Document Number F6.

² Document Number F7.

³ Co-Prosecutors’ Response and Request on Case 002/01 Appeal and Response Brief Extensions, F7/1, 16 October 2014.

⁴ Reply to Co-Prosecutors’ Response Concerning Page and Time Extensions in Connection with Appeal Briefs, F7/1/1, 20 October 2014 (“NUON Chea’s Reply”); *Réplique et réponse de la Défense de M. KHIEU Samphân aux « Co-Prosecutors’ Response and Request on Case 002/01 Appeal and Response Briefs Extensions »*, F7/1/2, 21 October 2014 (“KHIEU Samphân’s Reply”).

⁵ Case 002/01 Judgement, E313, 7 August 2014.

⁶ Trial Judgment, p. 622.

⁷ *Demande urgente de la Défense de M. KHIEU Samphân et de la Défense de M. NUON Chea aux fins de prorogation des délais et d’extension du nombre de pages des conclusions en appel*, F3, 13 August 2014 (“First Request”).

⁸ First Request, paras. 30, 31.

extended to 117 days from the filing of the notices of appeal and 150 pages in English or French with their equivalent in Khmer, respectively.⁹

4. On 29 August 2014, the Supreme Court Chamber granted the requested extension in respect of the notices of appeal (denying the requested page extensions but allowing that they be filed within 30 days of the filing of the decision), but considered the requests in respect of the appeal briefs to be premature in the absence of the parameters of the notices of appeal.¹⁰

5. On 29 September 2014, NUON Chea and KHIEU Samphân filed their notices of appeal against the Trial Judgment, advancing 223 and 148 grounds of appeal, respectively.¹¹ The Co-Prosecutors also filed a notice of appeal on 29 September 2014, but on the sole ground that the Trial Chamber allegedly erred in deciding to exclude consideration of the third form of joint criminal enterprise as a mode of responsibility.¹²

SUBMISSIONS

6. NUON Chea now requests that the Supreme Court Chamber decline to enforce any page limits in respect of his appeal brief, arguing that such restrictions are not contemplated in Cambodian law or in the civil law systems on which it is based.¹³ In the alternative, he requests that the Supreme Court Chamber grant a 500-page limit for his appeal brief.¹⁴ As to time, NUON Chea requests that the deadline for the filing of his appeal brief be set to 90 days after the filing of his notice of appeal, exclusive of the period of time required for translation into Khmer (thus either extending the deadline to the time that the Khmer translation is complete, or permitting to file within 90 days in English only, with the Khmer translation to follow, in which case response times should start running from the filing of the appeal in English only).¹⁵

7. KHIEU Samphân requests that the Supreme Court Chamber grant a 300-page limit for his appeal brief in French with its equivalent in Khmer, arguing that, during the preparation

⁹ First Request, paras. 30, 31.

¹⁰ Decision on Defence Motion for Extension of Time and Page Limits on Notices of Appeal and Appeal Briefs, F3/3, 29 August 2014 (“Decision on Notices”).

¹¹ Notice of Appeal against the Judgment in Case 002/01, E313/1/1, 29 September 2014; *Déclaration d’appel de la Défense de M. KHIEU Samphân contre le jugement rendu dans le procès 002/01*, E313/2/1, 29 September 2014.

¹² Co-Prosecutors’ Notice of Appeal of a Decision in Case 002/01, E313/3/1, 29 September 2014.

¹³ NUON Chea’s Request, paras. 2(i), 3-7, 17(a)(i).

¹⁴ NUON Chea’s Request, paras. 2(ii), 8-12, 17(a)(ii).

¹⁵ NUON Chea’s Request, paras. 2(iii), 13-16, 17(b).

of his notice of appeal, it became apparent from a more thorough reading of the Trial Judgment that far more errors had been committed than seen at first glance, and that these require far deeper elaboration than can be deciphered from a reading of his notice of appeal.¹⁶ For the same reasons, he requests that the deadline for its filing be set to 174 days after the filing of his notice of appeal (*i.e.* 90 days from the filing of the notice of appeal to prepare the appeal brief in French, plus the estimated time required for the Khmer translation thereof).¹⁷

8. The Co-Prosecutors respond that NUON Chea's and KHIEU Samphân's requested page extensions are excessive, unwarranted, and not in the interests of justice; however, the Co-Prosecutors indicate they do not object to an extension of up to 200 pages in French or English per Defence team.¹⁸ In addition, the Co-Prosecutors request a page extension for their response brief not less than the number of pages granted to the Defence teams for their appeal briefs combined (meaning, if NUON Chea and KHIEU Samphân are each granted 200 pages for their respective appeal briefs, the Co-Prosecutors request 400 pages for their combined response).¹⁹

9. As to time, they do not contest NUON Chea's request for 90 days to file in one language only, but they do object to the suggestion that the response time should begin to start running from the time of filing in English only, and they consider KHIEU Samphân's timetable for filing in both French and Khmer to be excessive.²⁰ The Co-Prosecutors accordingly request that the Supreme Court Chamber grant NUON Chea and KHIEU Samphân 90 days from the filing of their notices of appeal to file their appeal briefs in a single language with the Khmer translation to follow, set the filing deadline for the Co-Prosecutors' appeal brief as the same date, and grant the Co-Prosecutors 90 days from the filing of the Khmer translation of the appeal briefs to file their response brief in a single language, with the Khmer translation to follow.²¹

¹⁶ KHIEU Samphân's Request, paras. 6-16, 24. *See also* KHIEU Samphân's Reply, para. 10.

¹⁷ KHIEU Samphân's Request, paras. 17-24. *See also* KHIEU Samphân's Reply, para. 10.

¹⁸ Response, paras. 8-13. *See also ibid.*, para. 25(a).

¹⁹ Response, paras. 14-19, 25(b).

²⁰ Response, para. 21.

²¹ Response, paras. 22-25.

10. In reply, NUON Chea and KHIEU Samphân contend that the Co-Prosecutors' requests in relation to their response brief are excessive and unjustified, and accordingly request that the Supreme Court Chamber reject them.²²

APPLICABLE LAW

11. Rule 105(3) of the Internal Rules²³ states that “[a] party wishing to appeal a judgment shall file a notice of appeal setting forth the grounds”, and that “the appellant shall subsequently file an appeal brief setting out the arguments and authorities in support of each of the grounds”. Rule 107(4) of the Internal Rules specifies that the notice of appeal must be filed within 30 days of the pronouncement of the trial judgment, and that the subsequent appeal brief must be filed within 60 days of the filing of the notice of appeal. Articles 8.3 and 8.4 of the Practice Direction²⁴ provide that responses to any applications or pleadings shall be filed within 10 days of notification, and any replies to such responses shall be filed within 5 days and will only be permitted if there are no oral arguments to be heard on the applications or pleadings. According to Article 5.2 of the Practice Direction, the length of any document filed to the Supreme Court Chamber may not exceed 30 pages in English or French, or 60 pages in Khmer.

12. Rule 39(2) of the Internal Rules foresees that, unless provided otherwise in the Internal Rules, Judges may set time limits for pleadings, written submissions and documents relating to a request or appeal. Rule 39(4) of the Internal Rules also empowers judges to “extend any time limits set by them” or to “recognize the validity of any action executed after the expiration of a time limit prescribed in these [Internal Rules] on such terms, if any, as they see fit.”²⁵ Article 5.4 of the Practice Direction provides that the relevant Chamber may, at the request of a party, extend applicable page limits in exceptional circumstances.

DISCUSSION

13. The Supreme Court Chamber recalls its previous statement that “[w]ith respect to [...] the appeal briefs and responses, the Supreme Court Chamber is cognizant of the fact that extensions will certainly need to be granted in light of the size and complexity of the case and

²² NUON Chea's Reply, paras. 1-7; KHIEU Samphân's Reply, paras. 1-10.

²³ Internal Rules of the ECCC, Revision 8, 3 August 2011 (“Internal Rules”).

²⁴ Practice Direction on the Filing of Documents before the ECCC, Revision 8, 7 March 2012 (“Practice Direction”).

²⁵ See also Article 8.1 of the Practice Direction.

Trial Judgment.”²⁶ Now that the notices of appeal have been filed, the parameters by which to measure necessary extensions are now clearer, and it is apparent that NUON Chea’s and KHIEU Samphân’s appeals will be extensive, requiring sufficient time and space to meaningfully plead.

14. The same does not transpire from the Co-Prosecutors’ 5-page notice of appeal, which deals with one decision and one issue only, and already contains arguments. The only reasons they provide in support of their request to set the deadline of their appeal brief to be the same as that of NUON Chea and KHIEU Samphân are those “of simplicity and uniformity of scheduling of any subsequent briefing or appeal hearings”.²⁷ The Supreme Court Chamber reiterates that “extensions sought for the appeal briefs must be commensurate to the scope of the appeal by the applicant and not merely mirror those requested by other appellants.”²⁸ The Co-Prosecutors’ request for extension of time to file their appeal brief is therefore denied outright.

15. The Supreme Court Chamber similarly rejects NUON Chea’s contention that no page restrictions should apply, either in the context of Cambodian or civil law, or in this particular case.²⁹ The imposition of page limits on filings is not driven by considerations of legal philosophy, but of judicial efficiency. Indeed, nearly all contemporary international or internationalized criminal courts and tribunals, where cases are typically as large and complex as the present one, impose explicit page limits.³⁰ In addition, most of these courts

²⁶ Decision on Notices, para. 10.

²⁷ Response, para. 22.

²⁸ Decision on Notices, para. 10.

²⁹ See *supra*, para. 6.

³⁰ At the International Criminal Court, see Regulations of the Court, ICC-BD/01-03-11, 2 November 2011, Regulation 58(5) (“The document in support of the appeal shall not exceed 100 pages”). At the International Criminal Tribunal for Rwanda (“ICTR”), see Practice Direction on the Length of Briefs and Motions on Appeal, 8 December 2006 (“ICTR Practice Direction”), Section (B) on Typeface (“An average page should contain fewer than 300 words”) and Article 1 (“(a) The brief of an appellant on appeal from a final judgement of a Trial Chamber will not exceed 30,000 words (12,000 where the appeal is restricted to sentencing): (i) provided that, where the Prosecutor, as appellant, files a separate brief in respect of each appellee or a consolidated brief, the total number of words shall not exceed 30,000 in respect of one appellee and a further 10,000 words in respect of each additional appellee; [...] (b) The response of an appellee on an appeal from a final judgement of a Trial Chamber will not exceed 30,000 words (12,000 where the appeal is restricted to sentencing), subject to the proviso in (a) (i) applying *mutatis mutandis* to any brief in response filed by the Prosecutor”). At the International Criminal Tribunal for the former Yugoslavia (“ICTY”), see Practice Direction on the Length of Briefs and Motions, IT/184 Rev. 2, 16 September 2005 (“ICTY Practice Direction”), Section (B) on Typeface and Article 1 (as in ICTR Practice Direction, *verbatim*). At the Special Court for Sierra Leone (“SCSL”), see Practice Direction on Filing Documents before the SCSL, 10 June 2005, Article 6(E)(i) (“The brief of an Appellant against a judgment or a sentence shall not exceed 100 pages or 30,000 words, whichever is greater”). At the Special Tribunal for Lebanon (“STL”), see Practice Direction on Filing of Documents before the STL, STL/PD/2010/01/Rev.2, 14 June 2013, Article 5(1)(h) (“The Appellant’s Brief shall not exceed 30,000 words

specify that, in multiple-accused cases, each appellant is permitted the equivalent to 100 pages to appeal from judgment and the same to respond to such appeals, except the Prosecutor, who is permitted 100 pages to appeal and to respond in respect of the first appellant, and approximately a third of that amount in respect of each additional appellant, whether or not the Prosecutor files the briefs in separate or consolidated form.³¹ In the present context, this would grant NUON Chea and KHIEU Samphân 100 pages each to appeal, and the Co-Prosecutors 133 pages to respond, either by allocating 100 pages to either NUON Chea or KHIEU Samphân, then 33 pages to the other, or by producing a 133-page consolidated response.

16. The Supreme Court Chamber recalls that appellate proceedings before the ECCC differ from those before international or other internationalized criminal courts and tribunals in limiting interlocutory appellate jurisdiction to a set of four defined issues, and reserving examination of any other decisions of the Trial Chamber taken during the proceedings to the stage at which the judgment on the merits is appealed.³² NUON Chea has indicated that his appeal will encompass, in addition to the indicated 223 grounds, 16 distinct Trial Chamber decisions, “many of which involve numerous component oral decisions given over the course of the trial.”³³ KHIEU Samphân accurately points out that, had it been possible to appeal these decisions during the course of the trial, they would have benefitted from a 30-page allowance for each interlocutory appeal.³⁴ The Supreme Court Chamber emphasizes, however, that such appeals from decisions (*i.e.* those that are only permissible at the same time as the judgment on the merits) must demonstrate a lasting *gravamen* on the part of the appellant; as such, they must relate to one or more of permissible grounds of the appeal from the Trial Judgment.

17. As such, although the Supreme Court Chamber trusts that all appellants will strive to be as succinct as possible and say no more than necessary to present their respective cases,³⁵ it considers the imposition of a page limit to be necessary, and finds that a limit of 210 pages each for NUON Chea’s and KHIEU Samphân’s appeal briefs, and a limit of 280 pages for the Co-Prosecutors’ consolidated response, are appropriate in the present circumstances.

(12,000 words where the appeal is limited to sentencing or where the appeal is against a judgment under Rules 60*bis*, 135 or 152”).

³¹ Article 1(a)(i) and 1(b) of the ICTR and ICTY Practice Directions.

³² See Rule 104(4) of the Internal Rules.

³³ NUON Chea’s Request, para. 8.

³⁴ KHIEU Samphân’s Request, para. 15.

³⁵ See NUON Chea’s Request, para. 7 and KHIEU Samphân’s Request, para. 10

18. As to time, the Supreme Court Chamber bears in mind that appellants at *ad hoc* tribunals are statutorily granted 75 days from the filing of the notice of appeal to file their appeal briefs.³⁶ However, considering the unique circumstance that filings before the ECCC must be in two languages as a general rule,³⁷ the Supreme Court Chamber finds that the 60 days provided for by Rule 107(4) of the Internal Rules are insufficient for NUON Chea and KHIEU Samphân to meaningfully appeal against a judgment of the length and complexity as in the present case. The Co-Prosecutors agree that NUON Chea and KHIEU Samphân require 90 days to prepare their appeal briefs in one language only. For these reasons, as well as those indicated above, the Supreme Court Chamber considers that, extensions are due to the defence teams, and that 30 additional days for NUON Chea and KHIEU Samphân to file their appeal briefs are reasonable under the circumstances.

19. The Supreme Court Chamber also considers that the request to file in only one language is reasonable in the light of recently indicated renewed strains on the Interpretation and Translation Unit.³⁸ The Supreme Court Chamber considers such circumstances to warrant the exception provided for at Article 7.2 of the Practice Direction permitting a party “to file a document in French or in English in the first instance, provided however, that a Khmer translation must be filed before the Chamber at the first opportunity.” NUON Chea and KHIEU Samphân may therefore file their respective appeal briefs no later than 90 days after the notification of their notices of appeal, in either English or French only, with the Khmer version to follow as soon as possible thereafter. The Supreme Court Chamber expects, however, that NUON Chea and KHIEU Samphân will optimally use the Khmer language resources available to them within their own teams to work in parallel with ITU so as to more expeditiously produce the Khmer translations of their respective briefs.

20. With respect to the Co-Prosecutors’ response, the Supreme Court Chamber acknowledges that the 10-day time limit provided for by Article 8.3 of the Practice Direction will be insufficient in the present circumstances. However, the Supreme Court Chamber considers that their request for equal time (*i.e.* 90 days) to start running from the filing of the

³⁶ See Rule 111(A) of the ICTR and ICTY Rules of Procedure and Evidence (“An Appellant’s brief setting out all the arguments and authorities shall be filed within seventy-five days of filing of the notice of appeal pursuant to Rule 108.”).

³⁷ See Article 7.1 of the Practice Direction (“All documents shall be filed in Khmer as well as in English or French.”).

³⁸ See, *e.g.*, Memorandum from Judge NIL Nonn, President of the Trial Chamber, entitled “KHIEU Samphan Defence Request to order the Office of Administration to urgently reinforce ITU’s capacity”, E317/1, 16 October 2014.

Khmer translations is excessive and unwarranted. The Supreme Court Chamber bears in mind that the *ad hoc* tribunals normally granted approximately half the time for response briefs as they do for appeal briefs,³⁹ and considers that the Co-Prosecutors would be able to hold discussions and conduct a significant amount of preliminary work on their response upon receiving the appeal briefs in either English or French.

21. Nevertheless, the Supreme Court Chamber rejects NUON Chea's suggestion that any time limit for the response brief should start to run from the time of filing in one language only. Article 7.1 of the Practice Direction states that "[a]ll documents shall be filed in Khmer as well as in English or French." The Supreme Court Chamber recalls that all parties must at all times strive to meet the general requirement of simultaneous bilingual filings before the ECCC, and that the importance of Khmer versions of filings cannot be overstated, particularly in light of Article 8.5 of the Practice Direction, which states that "time limits commence on the first calendar day following the day of service of the [n]otification of the document in Khmer and one other official language of the ECCC."⁴⁰ The Khmer version of any filing before the ECCC is therefore a crucial component of the proceedings at this Court, as international and national elements of each organ must work together to achieve results. The Supreme Court Chamber therefore finds it appropriate to permit the Co-Prosecutors to file their consolidated response brief 30 days from the notification of the Khmer versions of NUON Chea's and KHIEU Samphân's appeal briefs, whichever is notified last.

22. As to any possible replies, the Supreme Court Chamber recalls Article 8.4 of the Practice Direction, which states that "[a] reply to a response shall only be permitted where there is to be no oral argument on the request". In accordance with Rules 108(3) and 109 of the Internal Rules, the Supreme Court Chamber will hold a public hearing to hear oral arguments on the appeal from the Trial Judgment. No replies to any responses are therefore permitted. The date of the date of the appeal hearing will be notified to all parties in due course.

23. For the foregoing reasons, the Supreme Court Chamber:

GRANTS the Requests, in part;

³⁹ See Rule 112(A) of the ICTR and ICTY Rules of Procedure and Evidence ("A Respondent's brief of argument and authorities shall be filed within forty days of filing of the Appellant's brief.").

⁴⁰ See Decision on IENG Sary's Expedited Request to File Appeal in English Only with Khmer Translation to Follow, E254/3/1/1.2, 30 January 2013, para. 4.

ORDERS that the Co-Prosecutors file their appeal brief no later Friday, 28 November, 2014, *i.e.*, 60 days after the notification of their notice of appeal.

ORDERS that NUON Chea and KHIEU Samphân file their respective appeal briefs no later Monday, 29 December 2014, *i.e.*, 90 days after the notification of their notices of appeal;

GRANTS NUON Chea and KHIEU Samphân permission under Article 7.2 of the Practice Direction to file their appeal briefs in either English or French only, with the Khmer versions to follow as soon as possible thereafter;

ORDERS that the Co-Prosecutors file their consolidated response no later than 30 days after the notification of the Khmer versions of NUON Chea's and KHIEU Samphân's appeal briefs, whichever is notified last;

ORDERS that NUON Chea's and KHIEU Samphân's appeal briefs may not exceed 210 pages each in either English or French, with no page restrictions on their Khmer equivalent; and,

ORDERS that the Co-Prosecutors' consolidated response may not exceed 280 pages, with no page restrictions on its Khmer equivalent; and,

DECLARES that no replies to any response briefs shall be permitted.

Phnom Penh, 31 October 2014

President of the Supreme Court Chamber



KONG Srim