



**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:**

**26 December 2014**

**Language(s):**

**Khmer/English**

**Classification:**

**PUBLIC**

## **DECISION ON CIVIL PARTY LEAD CO-LAWYERS' REQUESTS RELATING TO THE APPEALS IN CASE 002/01**

### **Co-Prosecutors**

CHEA Leang

Nicholas KOUMJIAN

### **Co-Lawyers for NUON Chea**

SON Arun

Victor KOPPE

### **Accused**

KHIEU Samphân

NUON Chea

### **Co-Lawyers for KHIEU Samphân**

KONG Sam Onn

Anta GUISSÉ

Arthur VERCKEN

### **Civil Party Lead Co-Lawyers**

PICH Ang

Marie GUIRAUD

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 a motion filed on 24 November 2014 by the Civil Party Lead Co-Lawyers (“Lead Co-Lawyers”) seeking, in essence, permission to make written submissions relating to the other parties’ appellate pleadings (“Request”).<sup>1</sup>

### **BACKGROUND**

2. On 7 August 2014, the Trial Chamber issued its judgment in Case 002/01 (“Trial Judgement”),<sup>2</sup> 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.<sup>3</sup>

3. On 29 September 2014, NUON Chea and KHIEU Samphân filed their notices of appeal against the Trial Judgement, advancing 223 and 148 grounds of appeal, respectively.<sup>4</sup> 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 (“JCE III”) as a mode of liability.<sup>5</sup> The Civil Parties did not lodge any appeal against the Trial Judgement.

4. Following a number of motions from the parties,<sup>6</sup> the Supreme Court Chamber, in short, decided that: (i) NUON Chea and KHIEU Samphân are allowed to file their respective

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<sup>1</sup> Civil Party Lead Co-Lawyers’ Requests Relating to the Appeals in Case 002/01, F10.

<sup>2</sup> Case 002/01 Judgement, E313, 7 August 2014.

<sup>3</sup> Trial Judgement, p. 622.

<sup>4</sup> 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. See also Decision on Defence Motion for Extension of Time and Page Limits on Notices of Appeal and Appeal Briefs, F3/3, 29 August 2014.

<sup>5</sup> Co-Prosecutors’ Notice of Appeal of a Decision in Case 002/01, E313/3/1, 29 September 2014.

<sup>6</sup> Second Request for Extension of Time and Page Limits for Filing Appeals against the Trial Judgment in Case 002/01, F6, 2 October 2014; *Demande urgente de la Défense de M. KHIEU Samphân aux fins de prorogation de délai et d’extension du nombre de pages du mémoire d’appel*, F7, 6 October 2014; Co-Prosecutors’ Response and Request on Case 002/01 Appeal and Response Brief Extensions, F7/1, 16 October 2014; *Demande urgente de la Défense de M. KHIEU Samphân aux fins de prorogation du délai de réponse au mémoire d’appel des co-Procureurs*, F12, 1 December 2014; NUON Chea’s Urgent Request for an Extension of Time to Respond to the Co-Prosecutor[s]’ Appeal against the Case 002/01 Judgement, F14, 2 December 2014; Urgent Request for Reconsideration of Page Limits for Appeals against the Case 002/01 Judgment, F13, 2 December 2014.

appeal briefs (collectively, “Defence Appeal Briefs”) no later than 29 December 2014;<sup>7</sup> (ii) NUON Chea’s and KHIEU Samphân’s appeal briefs may not exceed 270 and 210 pages respectively, in English or French, with no limitation on their Khmer versions;<sup>8</sup> (iii) the Co-Prosecutors are permitted to file a consolidated response of no more than 280 pages, to be submitted within 30 days of the filing of the Khmer versions of NUON Chea’s and KHIEU Samphân’s appeal briefs, whichever is notified last;<sup>9</sup> (iv) the Defence responses to the Co-Prosecutors’ appeal brief are to be filed no later than 28 January 2015, *i.e.* 30 days after the Defence Appeal Briefs are due.<sup>10</sup>

5. The Supreme Court Chamber granted no extension to the Co-Prosecutors to file their appeal brief,<sup>11</sup> which they did, on 28 November 2014 (“Co-Prosecutors’ Appeal Brief”).<sup>12</sup>

### **SUBMISSIONS**

6. The Lead Co-Lawyers contend that the Civil Parties are entitled to respond to the prospective Defence Appeal Briefs due to be filed by the Defence of NUON Chea and KHIEU Samphân.<sup>13</sup> They derive such authorisation, notwithstanding the Internal Rules<sup>14</sup> and Practice Direction on Filing’s<sup>15</sup> silence on the matter, from the fact that Civil Parties are a “distinct rights-bearing party”,<sup>16</sup> whose interests should be represented throughout the proceedings. In particular, the Lead Co-Lawyers observe that a significant number of arguments encapsulated in the Defence Appeal Briefs relate directly to evidence provided by the Civil Parties during the trial stage.<sup>17</sup>

7. The Lead Co-Lawyers further maintain that they “reserve the right” to file a brief intended to clarify the Civil Parties’ position on the Co-Prosecutors’ Appeal Brief.<sup>18</sup>

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<sup>7</sup> Decision on Motions for Extensions of Time and Page Limits for Appeal Briefs and Responses, F9, 31 October 2014 (“Extensions Decision”), para. 23.

<sup>8</sup> Extensions Decision, para. 23; Decision on Defence Motions for Extension of Pages to Appeal and Time to Respond, F13/2, 11 December 2014 (“Second Extensions Decision”), para. 17.

<sup>9</sup> Extensions Decision, para. 23.

<sup>10</sup> Second Extensions Decision, para. 17.

<sup>11</sup> Extensions Decision, para. 14.

<sup>12</sup> Co-Prosecutors’ Appeal against the Judgment of the Trial Chamber in Case 002/01, F11, 28 November 2014.

<sup>13</sup> Request, paras 1, 12.

<sup>14</sup> Internal Rules of the ECCC, Revision 8, 3 August 2011 (“Internal Rules”).

<sup>15</sup> Practice Direction on the Filing of Documents before the ECCC, Revision 8, 7 March 2012 (“Practice Direction on Filing”).

<sup>16</sup> Request, paras 2, 8. *See also* Request, para. 10.

<sup>17</sup> Request, paras 13-18.

<sup>18</sup> Request, paras 2, 20, 21.

8. Finally, they request adequate extensions of time and page limits with permission to file their written submissions in one language only, as this was granted to the other parties in the Supreme Court Chamber's Extensions decision.<sup>19</sup> Specifically, the Lead Co-Lawyers request a 60-page extension for their consolidated response, with leave to file it within 30 days from the notification of the Khmer version of the Defence Appeal Briefs, whichever is notified last.<sup>20</sup>

9. In his Response,<sup>21</sup> NUON Chea takes issue with the Lead Co-Lawyers' "implicit assumption" that Civil Parties are equal to other parties in Case 002,<sup>22</sup> arguing that this position diverges from the applicable legal framework and encroaches upon the fair trial rights of the Accused, who would have to confront an additional prosecutor.<sup>23</sup> NUON Chea thus requests the Supreme Court Chamber to adhere to the Trial Chamber's finding that the role of Civil Parties must be interpreted restrictively and that they are not conferred a "general right of equal participation with the Co-Prosecutors", as implied by Internal Rule 23(1).<sup>24</sup> NUON Chea accordingly avers that the Supreme Court Chamber should dismiss the Request and disallow the envisaged Civil Parties' response.<sup>25</sup> In case a response from the Civil Parties is permitted, NUON Chea postulates that the linguistic element of their Request should be given narrow consideration and the Defence should subsequently be accorded a proportionate extension of time to prepare for its oral arguments.<sup>26</sup>

10. In reply,<sup>27</sup> the Lead Co-Lawyers accept that the role entrusted to Civil Parties differs from that of the Co-Prosecutors, and yet maintain that they hold an "equal standing",<sup>28</sup> by virtue of being qualified as a party by the Internal Rules. In their view, it follows that their right to respond to the Defence Appeal Briefs should be recognised "inasmuch as it affects

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<sup>19</sup> Request, paras 22-35.

<sup>20</sup> Request, paras 27, 32, 34.

<sup>21</sup> Nuon Chea's Response to the Civil Party Lead Co-Lawyers' Requests Relating to the Appeals in Case 002/01, F10/1, 3 December 2014 ("Response").

<sup>22</sup> Response, para. 2.

<sup>23</sup> Response, paras 3, 5.

<sup>24</sup> Response, paras 3, 4 (quoting Trial Chamber's 'Decision on Civil Party Co-Lawyers' Joint Request for a Ruling on the Standing of Civil Party Lawyers to make Submissions on Sentencing and Directions Concerning the Questioning of the Accused, Experts and Witnesses Testifying on Character', E72/3, 12 October 2009 ("Civil Party Standing Decision")).

<sup>25</sup> Request, para. 5.

<sup>26</sup> Request, para. 6.

<sup>27</sup> Civil Party Lead Co-Lawyers Reply to Nuon Chea Defence Response to CPLCL's Requests Relating to Appeals in Case 002/01, F10/1/1, 9 December 2014 ("Reply").

<sup>28</sup> Reply, paras 4, 6.

[Civil Parties'] rights and interests", as further transpiring from their participatory rights in trial proceedings.<sup>29</sup>

## DISCUSSION

### *Request to File a Consolidated Response to the Defence Appeal Briefs*

11. At the outset, the Supreme Court Chamber wishes to emphasise that there is no doubt that "victims before the ECCC have the status of a party".<sup>30</sup> As affirmed in the Appeal Judgement in Case 001, Civil Parties enjoy "the full range of participation rights available to civil parties under the 2007 [Cambodian] Code of Criminal Procedure and the Internal Rules in the pre-trial, trial, and appeal phases of a case".<sup>31</sup> It should be noted, however, that each party – i.e. "the Co-Prosecutors, the Charged Person/Accused and Civil Parties"<sup>32</sup> – is vested with a distinct array of procedural rights tailored to its specific functions and responsibilities in the proceedings.<sup>33</sup>

12. The Supreme Court Chamber recalls that, whereas the Internal Rules specifically provide for a number of participatory rights, they remain silent on whether Civil Parties are entitled to respond to other parties' submissions on appeal. The issue must thus be resolved by analysing general norms on victims' participation at the ECCC as well as special rules attributing specific prerogatives to Civil Parties. In this connection, regard must be paid to Internal Rule 23(1), which determines the purpose of victim participation in the ECCC proceedings as twofold: in general, it is "supporting the prosecution",<sup>34</sup> but it is also "inextricably linked with the civil action".<sup>35</sup> Relevant to the present discussion is the aspect of "supporting the prosecution", which necessarily implies that, first, the Civil Party action is subsidiary – not alternative – to the Co-Prosecutors', and second, that Civil Parties' participatory rights must be interpreted so as to conform and give effect to this goal. At the same time, Internal Rule 21(1)(a) dictates that a balance between the rights of the parties must be guaranteed. In this regard, it is imperative that a broad reading of victims'

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<sup>29</sup> Reply, paras 7, 8.

<sup>30</sup> Appeal Judgement, F28, 3 February 2012 ("Appeal Judgement"), para. 488 (footnotes omitted). *See also* Internal Rule 23(3).

<sup>31</sup> Appeal Judgement, para. 478.

<sup>32</sup> Internal Rules Glossary (Rev. 8), *sub* "Party".

<sup>33</sup> *See* Civil Party Standing Decision, para. 27.

<sup>34</sup> Internal Rule 23(1)(a).

<sup>35</sup> Appeal Judgement, para. 411. *See also* Appeal Judgement, para. 489.

prerogatives not impinge upon the fundamental rights of the Accused, impede the exercise of the function of the prosecution, or undermine the efficient conduct of the proceedings.

13. In line with these postulates, the Internal Rules occasionally identify Civil Parties as holders of a specific prerogative,<sup>36</sup> whereas at other times lay down explicit restrictions on their rights.<sup>37</sup> Among these limitations of note is that, whilst the Internal Rules conferred upon Civil Parties a right to appeal against the Trial Chamber judgment, this right may only be exercised as follows:

“The Civil Parties may appeal the decision on reparations. Where the Co-Prosecutors have appealed, the Civil Parties may appeal the verdict. They may not appeal the sentence.”<sup>38</sup>

Although restricted, such right is still wider than that envisaged by the Cambodian Code of Criminal Procedure and its French progenitor, wherein civil parties may exclusively appeal the “civil matter of the case”.<sup>39</sup>

14. The Supreme Court Chamber considers that where the applicable regulations generically entrust the “parties” with a procedural prerogative, such prerogative should be presumed available to all parties to the trial, provided that it is not functionally party-specific, and has not been explicitly limited. This applies, for example, to the right of audience<sup>40</sup> and the right to question the Accused, witnesses and experts.<sup>41</sup> In the present case, the Supreme Court Chamber agrees with the Lead Co-Lawyers in that their right to rebut the Defence Appeal Briefs, inasmuch as the arguments contained therein affect Civil Parties’ interests, flows logically from the prerogatives afforded to Civil Parties at the investigative, trial and

<sup>36</sup> See e.g. Internal Rules 23(3) and 23 *ter* (right to be represented by lawyers); Internal Rules 23(4), 23 *ter*(2) and 59 (right to be questioned in the presence of their lawyer); Internal Rules 55(10) and 59(5) (right to request investigative actions); Internal Rule 80(2) (right to submit a list of witnesses); Internal Rule 94(1)(a) and (2) (right to make closing statements and rebuttal statements).

<sup>37</sup> See e.g. Internal Rule 74(4) (appeal against orders by the Co-Investigating Judges); Internal Rule 82 (provisional detention and bail); Internal Rule 89 *bis*(2) (opening statement); Internal Rule 105(1)(c) (appeal against the Trial Chamber judgment).

<sup>38</sup> Internal Rule 105(1)(c). The right to appeal against decisions of the Trial Chamber is the only right expressly afforded to victims by the ECCC’s founding instruments: see Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea, 10 August 2001, with inclusion of amendments as promulgated on 27 October 2004 (NS/RKM/1004/006) (“ECCC Law”), Article 36 new.

<sup>39</sup> Code of Criminal Procedure of the Kingdom of Cambodia (“Cambodian Code of Criminal Procedure”), Article 375; Code of Criminal Procedure of the French Republic, Article 497 (“The right to appeal belongs to (...) the civil party, in respect of his civil claims only”). See also Code of Criminal Procedure of the Kingdom of Cambodia, Articles 372, 402. Cf. Law on Criminal Procedure of 1993, 8 March 1993, Article 161 (according to the “plaintiff claiming damages” an unfettered right to appeal).

<sup>40</sup> Internal Rules 88(1) and 91(1) (right of audience); Internal Rule 89(2) (right to respond to preliminary objections); Internal Rule 92 (right to make written submissions).

<sup>41</sup> Internal Rules 90(2), 91(2).

appeal stages. Specifically, it notes that “[t]he parties” are entitled to make written submissions before the competent Chamber up until the closing submissions,<sup>42</sup> as detailed in the Practice Direction on Filing. The authorisation to submit written applications and pleadings reasonably incorporates the right to respond and reply to other parties’ submissions, consistent with the adversarial structure of proceedings. As such, it would be discordant with Civil Parties’ powers relating to their overall role in all phases of proceedings to disavow their right to respond to the Defence Appeal Briefs at this juncture.

15. Addressing NUON Chea’s averment that the Lead Co-Lawyers’ “implicit assumption”<sup>43</sup> that Civil Parties are equal to the other parties in Case 002 “plainly contradicts” the applicable legal framework,<sup>44</sup> the Supreme Court Chamber notes that there is no indication in either the Lead Co-Lawyers’ Request or Reply that their understanding of the victim participation scheme would envision such an equivalence between the Civil Parties’ and Co-Prosecutors’ roles.<sup>45</sup> Their motion is grounded on the argument – already sanctioned *supra* by this Chamber – that their standing as a party to the proceedings implies the entitlement of all rights generically conferred upon a “party” by governing principles and rules, with the evident caveat – readily admitted by the Lead Co-Lawyers<sup>46</sup> – that each party enjoys a distinct set of participatory rights commensurate to its unique function in the dynamics of a criminal trial.

16. Likewise inapposite is the reference to the law and practice of other international criminal tribunals, especially the International Criminal Court (“ICC”).<sup>47</sup> Whereas at the ICC victims do lack a generalised and autonomous right to respond,<sup>48</sup> the Appeal Judgement in Case 001 has already made clear that, given the “fundamental differences” between the victim participation regimes of the ECCC and ICC, little guidance, if any, may be sought in the latter system, wherein “victims do not have the status of a party to the proceedings but have a *sui generis* standing”,<sup>49</sup> in accordance with which, in order to exercise any role in the

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<sup>42</sup> Internal Rules 92, 104 *bis*. See also Cambodian Code of Criminal Procedure, Article 391.

<sup>43</sup> Response, para. 2.

<sup>44</sup> Response, para. 3.

<sup>45</sup> See Request, paras 8-12; Reply, paras 4, 6.

<sup>46</sup> Reply, para. 6.

<sup>47</sup> Response, para. 3 and fn. 8.

<sup>48</sup> Regulations of the [International Criminal] Court (adopted on 26 May 2004, ICC-BD/01-01-04), Regulation 24(1) and (2).

<sup>49</sup> Appeal Judgement, paras 478, 486.

procedure, victims are required to demonstrate, on a case-by-case basis, that their “personal interests” are affected.<sup>50</sup>

17. This said, the Supreme Court Chamber considers that, while there exists no contradiction in principle between the right to respond and the goals of victims’ participation, the right in question must be interpreted so as to tally with the subsidiary function of Civil Parties *vis-à-vis* that of the Co-Prosecutors. Considering, moreover, the need to safeguard the equality of arms and the concerns regarding effective management of the proceedings, the Supreme Court Chamber holds that the exercise of the right to respond to the Defence Appeal Briefs must be subject to limitations. First, the arguments set out in the proposed response must relate to grounds directly affecting Civil Parties’ rights and interests. Second, the Lead Co-Lawyers must endeavour to avoid repetitiveness and overlap with issues already covered by the Co-Prosecutors’ projected response to the Defence Appeal Briefs. To this end, the Supreme Court Chamber decides to set the deadline for the filing of the Civil Parties’ response after the notification of the Co-Prosecutor’s response, as specified below.

18. In the event that the request of submitting a Civil Parties’ response is granted, NUON Chea requests additional time allowance for the preparation of his oral arguments.<sup>51</sup> The Supreme Court Chamber finds that the time allocated to the Defence in the appellate stage should be proportionate to the length and complexity of the case as well as to the scale of the counterarguments the Defence has to confront. Therefore, it shall consider this element after the responses have been filed, when the scheduling of a hearing is to be decided.

*Request for Extension of Time to Respond to Defence Appeal Briefs*

19. The Lead Co-Lawyers request that the Supreme Court Chamber: (i) allow a consolidated response to the Defence Appeal Briefs to be filed no later than 30 days after the notification of the Khmer versions thereof; (ii) grant a 60-page extension for their

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<sup>50</sup> Statute of the ICC, Article 68(3); Rule 89(1) of the Rules of Procedure and Evidence of the ICC. *See also Prosecutor v. Laurent Gbagbo*, ICC-02/11-01/11, “Corrigendum to the Second decision on victims’ participation at the confirmation of charges hearing and in the related proceedings”, Pre-Trial Chamber I, 6 February 2013, para. 59; *Prosecutor v. Katanga and Chui*, ICC-01/04-01/07-2288, “Judgment on the Appeal of Mr Katanga Against the Decision of Trial Chamber II of 22 January 2010 Entitled ‘Decision on the Modalities of Victim Participation at Trial’”, Appeals Chamber, 16 July 2010, para. 39; *Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06-1119, “Decision on victims’ participation”, Trial Chamber I, 18 January 2008, para. 96 (“in order to participate at any specific stage in the proceedings, (...) a victim will be required to show, in a discrete written application, the reasons why his or her interests are affected by the evidence or issue then arising in the case and the nature and extent of the participation they seek. A general interest in the outcome of the case or in the issues or evidence the Chamber will be considering at that stage is likely to be insufficient”).

<sup>51</sup> Response, para. 6(b).



consolidated response in English or French; and, (iii) grant leave to file the consolidated response in English or French only, with Khmer translation to follow as soon as possible thereafter.

20. According to the Extensions Decision, the Co-Prosecutors' consolidated response is due 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.<sup>52</sup> As mentioned, the Supreme Court Chamber intends to give to the Civil Parties the opportunity to prepare a consolidated response that is not repetitive or overlapping with that expected from the Co-Prosecutors. Therefore, in light of the anticipated scope of the Civil Parties' pleadings,<sup>53</sup> and mindful of the complexities inherent in representing a broad and diverse group of victims, the Supreme Court Chamber ponders that the 30 days' timespan proposed by the Lead Co-Lawyers is reasonable, but shall run from the notification of the Co-Prosecutors' response in any ECCC official language.<sup>54</sup>

*Request to File the Response in One Language Only Pursuant to  
Article 7.2 of the Practice Direction on Filing*

21. Turning to the related Lead Co-Lawyers' prayer to file the projected response in one language only, the Supreme Court Chamber stands by its recent holding that, owing to "renewed strains on the Interpretation and Translation Unit",<sup>55</sup> the exceptional circumstances for the application of Article 7.2 of the Practice Direction on Filing are considered to be fulfilled. In this connection, however, it also recalls that the Lead Co-Lawyers shall endeavour to "optimally use the Khmer language resources available to them within their own [team] to work in parallel with ITU so as to more expeditiously produce" the Khmer version of their response.<sup>56</sup>

*Request for Extension of Page Limit to Respond to Defence Appeal Briefs*

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<sup>52</sup> Extensions Decision, para. 23.

<sup>53</sup> Request, paras 13-18.

<sup>54</sup> Internal Rule 39(2) and (4); Practice Direction on Filing, Article 8.5. Since this time limit amply exceeds the one proposed by the Lead Co-Lawyers (*see* Request, para. 27), their request for the deadline to start upon notification of the Khmer versions of the Defence Appeal Briefs becomes moot.

<sup>55</sup> Extensions Decision, para. 19 (referring to '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). *See also* Order on Defence for KHIEU Samphân Request to Reinforce Interpretation and Translation Unit, F8/1, 14 November 2014.

<sup>56</sup> Extensions Decision, para. 19.

22. The Lead Co-Lawyers request a 60-page extension of the statutory 30-page limit, thereby anticipating a consolidated response totalling 90 pages in English. The Supreme Court Chamber notes that, according to the Lead Co-Lawyers, around one third of the appeal grounds raised by the Defence affects the interests of Civil Parties.<sup>57</sup> However, the Lead Co-Lawyers concede that “of these grounds, there are some that overlap”.<sup>58</sup> Moreover, some grounds relating to Civil Parties’ interests are likely to be addressed in the Co-Prosecutors’ response. Therefore, the Supreme Court Chamber deems that a 30-page extension is appropriate in the circumstances.

*Request to Submit a Motion Commenting on the Co-Prosecutors’ Appeal Brief*

23. Lastly, the Supreme Court Chamber moves to examine the Lead Co-Lawyers’ request to “clarify their position” on the Co-Prosecutors’ Appeal Brief. The Supreme Court Chamber takes note of the fact that Civil Parties have not lodged any appeal against the Trial Judgement. If the Civil Parties had intended to dispute the modes of liability along with the Co-Prosecutors, they should have filed a notice of appeal pursuant to Internal Rule 105(1)(c) and (3), in keeping with the time limits established at the relevant time by the Supreme Court Chamber.<sup>59</sup> Furthermore, such anticipated “clarification” could not even be characterised as a response, given that the latter document presupposes the filing party to qualify as a respondent *vis-à-vis* the Co-Prosecutors, that is, as the term itself suggests,<sup>60</sup> an antagonistic – not a “supporting” – party. The power claimed by the Lead Co-Lawyers to submit observations on the Co-Prosecutors Appeal Brief, therefore, cannot be considered to derive from or be warranted by Internal Rule 23(1)(a). This request is accordingly dismissed.

**DISPOSITION**

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

**GRANTS** the Request, in part;

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<sup>57</sup> Request, para. 30.

<sup>58</sup> Request, para. 31.

<sup>59</sup> Decision on Defence Motion for Extension of Time and Page Limits on Notices of Appeal and Appeal Briefs, F3/3, 29 August 2014, para. 11 (“For the foregoing reasons, the Supreme Court Chamber (...) ORDERS that *all* notices of appeal must be filed no later than [30 September 2014]”, emphasis added).

<sup>60</sup> See Black’s Law Dictionary, 9<sup>th</sup> ed., Thomson Reuters, 2009, p. 1426 (defining the term “respondent” as “1. The party against whom an appeal is taken; (...) 2. The party against whom a motion or petition is filed”); Oxford Dictionary of Law, 5<sup>th</sup> ed., Oxford University Press, 2003, p. 431 (identifying a respondent as “[t]he defending party in an appeal or petition to the courts”).

**ALLOWS** the Lead Co-Lawyers to file their consolidated response to the Defence Appeal Briefs no later than 30 days after the notification of the English *or* French *or* Khmer version of the Co-Prosecutors' consolidated response, whichever is notified first;

**GRANTS** the Lead Co-Lawyers permission under Article 7.2 of the Practice Direction on Filing to file their consolidated response in either English or French only, with the Khmer version to follow at the first opportunity;

**DISMISSES** the Lead Co-Lawyers' request to recognise their right to file a brief clarifying their position on the Co-Prosecutors' Appeal Brief;

**DECLARES** that it shall consider, in the scheduling of the appeal hearing, NUON Chea's request for further time allowance for the preparation of his oral arguments.

**Phnom Penh, 26 December 2014**

**President of the Supreme Court Chamber**



**KONG Srim**