



ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា
Extraordinary Chambers in the Courts of Cambodia
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

អង្គជំនុំជម្រះតុលាការកំពូល
Supreme Court Chamber
Chambre de la Cour suprême

សំណុំរឿងលេខ: ០០២/១៩-០៩-២០០៧-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: 16 January 2015
Language(s): Khmer/English
Classification: PUBLIC

**DECISION ON CO-PROSECUTORS' REQUESTS RELATING TO
KHIEU SAMPHÂN'S APPEAL BRIEF**

Co-Prosecutors
CHEA Leang
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SON Arun
Victor KOPPE

Accused
KHIEU Samphân
NUON Chea

Co-Lawyers for KHIEU Samphân
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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):

BEING SEISED of appeals¹ against the Judgement of the Trial Chamber in Case 002/01;²

BEING SEISED of a motion filed on 6 January 2015 by the Co-Prosecutors requesting that the Supreme Court Chamber order the Co-Lawyers for KHIEU Samphân (“Defence”) to cure their allegedly defective appeal brief (“Request”);³

NOTING that the Co-Prosecutors, albeit remarking that “four new substantive paragraphs have been added to the corrected version of the [KHIEU Samphân Appeal Brief]”,⁴ request that the Supreme Court Chamber “accept” such an amended submission, thereby “remov[ing] any doubt that the Parties should respond to this version of the appeal”;⁵

NOTING that the Co-Prosecutors argue that the KHIEU Samphân Appeal Brief – though corrected – is flawed, since it falls short of explicitly identifying “what arguments are being made in support of which grounds of appeal and which grounds of appeal, if any, have been abandoned”;⁶ and that, accordingly, the Co-Prosecutors request this Chamber to instruct the Defence to submit a supplementary document indicating “which paragraphs of [its appeal brief] relate to which ground of appeal contained in [the notice of appeal]”;⁷

NOTING KHIEU Samphân’s Response, in which the Defence observes in the first place that its corrected brief has already been accepted by the Supreme Court Chamber, hence no further clarification is required in this regard;⁸ secondly, the Defence contends that, despite slight displacements and mergers, the arguments of the KHIEU Samphân Appeal Brief may

¹ Co-Prosecutors’ Appeal against the Judgment of the Trial Chamber in Case 002/01, F11, 28 November 2014; NUON Chea’s Appeal against the Judgment in Case 002/01, F16, 29 December 2014; [*Corrigé I*] *Mémoire d’appel de la Défense de M. KHIEU Samphân contre le jugement rendu dans le procès 002/01*, F17, 31 December 2014 (“KHIEU Samphân Appeal Brief”). See also Co-Prosecutors’ Notice of Appeal of a Decision in Case 002/01, E313/3/1, 29 September 2014; 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 (“KHIEU Samphân Notice of Appeal”).

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

³ Co-Prosecutors’ Request to Remedy Defects in KHIEU Samphan’s Submissions on Appeal, F18.

⁴ Request, para. 2.

⁵ Request, p. 3.

⁶ Request, para. 5.

⁷ Request, p. 3.

⁸ *Réponse de la Défense de M. KHIEU Samphân à la « Co-Prosecutors’ Request to Remedy Defects in KHIEU Samphân’s Submissions on Appeal »*, F18/1, 12 January 2015 (“Response”), para. 6.

straightforwardly be correlated to the grounds of appeal set out in the KHIEU Samphân Notice of Appeal;⁹ claiming that its appeal brief does not contravene any applicable regulation, the Defence submits that such submission is not defective, and the Request should thus be denied;¹⁰

NOTING the Annex¹¹ submitted by the Defence with a view to “assist[ing] the Co-Prosecutors [...] [by affording] some indications on the slight displacements and mergers of alleged errors between the notice of appeal and the appeal brief”;¹²

NOTING the Co-Prosecutors’ Reply,¹³ in which it is maintained that the KHIEU Samphân Notice of Appeal and Appeal Brief fail to clearly set out the grounds of appeal, identify their precise content and describe the nature of the alleged errors, thus leaving the parties and this Chamber to address ambiguous and undefined submissions;¹⁴

RECALLING Article 10.1 of the Practice Direction on Filing, according to which the responsibility for verifying the compliance of submitted documents with the regulations concerning lodging documents before the ECCC lies with the “relevant greffier”, as well as Article 3.17 of the mentioned Practice Direction, which specifically dictates that “[c]orrections to original records shall be approved by the greffier”;¹⁵

CONSIDERING, therefore, that the issue of whether a corrected version of a document should be accepted is not open to adversarial debate but is exclusively dealt with by the relevant greffier, and that the Co-Prosecutors – like any other party – are accordingly not entitled to either “object to” or “request that the Supreme Court Chamber accept” any submitted documents;

⁹ Response, paras 9, 10.

¹⁰ Response, paras 7, 9, 12.

¹¹ *Déplacements et fusions intervenus entre la déclaration d’appel et le mémoire d’appel*, F18/1.2, 12 January 2015 (“Annex”).

¹² Response, para. 11 (unofficial translation).

¹³ Co-Prosecutors’ Reply to the Defence Response to the Request to Remedy Defects in KHIEU Samphan’s Submissions on Appeal, F18/2, 15 January 2015 (“Reply”). Leave to submit this document in English only, with the Khmer version to follow at the first opportunity is hereby granted pursuant to Article 7.2 of the Practice Direction on the Filing of Documents before the ECCC, Revision 8, 7 March 2012 (“Practice Direction on Filing”).

¹⁴ Reply, paras 4, 5, 7, 9-11.

¹⁵ *See also* Internal Rules Glossary (Rev. 8), *sub* “Greffier” (stipulating that a greffier is “responsible, in particular, for keeping an official record of all proceedings, receiving all original documents from the parties and ensuring notification of decisions”).

CONSIDERING that no clarification is required as to which version of the KHIEU Samphân Appeal Brief should be taken into consideration by the parties, given that, once the corrected version has been accepted by the greffier, such document immediately replaces the previous version;

CONSIDERING that the greffier of the Supreme Court Chamber did not consider it appropriate to apply Article 3.17 *bis* of the Practice Direction on Filing;

RECALLING that Internal Rule 105(3)¹⁶ provides, as far as relevant, that the appeal brief shall “[set] out the arguments and authorities in support of each of the grounds” laid down in the notice of appeal, and that in respect of each ground of appeal the party is required to specify an alleged error of law or fact and demonstrate how it invalidates the Trial Chamber’s judgment or occasioned a miscarriage of justice;¹⁷

CONSIDERING that an explicit association between the grounds of appeal set forth in the notice of appeal and their respective supportive reasoning set out in the appeal brief is not required under the Internal Rules, which permit that such a connection be drawn by the parties, with the caveat that if any argument in the appeal brief cannot be related to any ground of appeal in the notice of appeal it shall normally not be given consideration unless it is in the interest of justice to do so, and that if any ground of appeal is not further substantiated with supporting reasoning it shall be considered as abandoned;

OBSERVING that the Defence, in its Annex, omits to correlate a conspicuous number of paragraphs included in its appeal brief to corresponding grounds of appeal in its notice of appeal, and yet some of these arguments appear to be covered by some grounds of appeal and are thus validly made;¹⁸

¹⁶ Internal Rules of the ECCC, Revision 8, 3 August 2011 (“Internal Rules”).

¹⁷ See also Internal Rule 105(2)(a) and (c).

¹⁸ See e.g. KHIEU Samphân Appeal Brief, paras 159-164 (which are not included in the table of the Annex, but are evidently correlated to KHIEU Samphân Notice of Appeal, para. 67); KHIEU Samphân Appeal Brief, para. 232 (not included in the table of the Annex, but correlated to KHIEU Samphân Notice of Appeal, para. 80); KHIEU Samphân Appeal Brief, paras 383-387 (not included in the table of the Annex, but correlated to KHIEU Samphân Notice of Appeal, para. 102).

HEREBY

DISMISSES the Request.

Phnom Penh, 16 January 2015

President of the Supreme Court Chamber



KONG Srim