



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-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: 21 April 2015
Language(s): Khmer/English
Classification: PUBLIC

**DECISION ON CO-PROSECUTORS' REQUEST FOR PAGE AND TIME EXTENSIONS
TO RESPOND TO THE DEFENCE APPEALS OF THE CASE 002/01 JUDGMENT**

Co-Prosecutors
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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 the “Co-Prosecutors’ Request for Page and Time Extension to Respond to the Defence Appeals of the Case 002/01 Judgment” filed on 2 April 2015 (“Request”).¹

2. Given the urgency of Request, the Supreme Court Chamber considered it to be in the interests of justice to decide on the matter without awaiting any responses, and provided advance courtesy notice of its disposition to the Co-Prosecutors on 3 April 2015.²

A. BACKGROUND

3. On 7 August 2014, the Trial Chamber issued its judgment in Case 002/01 (“Trial Judgment”),³ convicting 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.⁴

4. 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.⁵ The Co-Prosecutors also filed a notice of appeal on 29 September 2014.⁶

5. On 31 October 2014, the Supreme Court Chamber allowed NUON Chea and KHIEU Samphân to file their respective appeal briefs of no more than 210 pages each, no later than 29 December 2014, *i.e.* 90 days after their notices of appeal, in English or French.⁷ The Supreme Court Chamber also permitted the Co-Prosecutors 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

¹ Document Number F23.

² Electronic mail sent from Legal Officer and Greffier of the Supreme Court Chamber, entitled “Decision on OCP Request for page and time extensions”, on 3 April 2015 at 02:31PM.

³ Case 002/01 Judgement, E313, 7 August 2014.

⁴ Trial Judgment, p. 622.

⁵ 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.

⁶ Co-Prosecutors’ Notice of Appeal of a Decision in Case 002/01, E313/3/1, 29 September 2014.

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

NUON Chea's and KHIEU Samphân's appeal briefs, whichever is notified last.⁸ On 11 December 2014, the Supreme Court Chamber granted an additional 60 pages to NUON Chea for his appeal brief.⁹

6. On 29 December 2014, NUON Chea and KHIEU Samphân filed their appeal briefs in English and French respectively.¹⁰ The Khmer translations of NUON Chea's and KHIEU Samphân's appeal briefs were received on 23 and 25 March 2015, respectively,¹¹ setting the deadline for the filing of the Co-Prosecutors' consolidated response at 24 April 2015.

B. SUBMISSIONS

7. The Co-Prosecutors now request an extension of 20 days and 180 pages to file their consolidated response, thereby asking that their permissible space be raised to 460 pages and their filing deadline be set to 14 May 2015.¹² The Co-Prosecutors argue that since the combined appeal briefs of NUON Chea and KHIEU Samphân total 480 pages, their 280-page limit provides inadequate space for an effective response and would compel them to omit responses to important grounds of appeal.¹³ The Co-Prosecutors also contend that NUON Chea's and KHIEU Samphân's incorporation of arguments from other filings by reference into their appeal briefs effectively extends their length and thereby further justifies the Co-Prosecutors' need for more space to respond.¹⁴ Moreover, the Co-Prosecutors contend that KHIEU Samphân's appeal brief lacks clarity and specificity, and that the arguments therein are too vague and ambiguous to permit focused responses, requiring the Co-Prosecutors to respond lengthily to all potential arguments out of an abundance of caution.¹⁵

8. As to time, the Co-Prosecutors argue that, in addition to having effectively been allocated 25% more time to prepare their appeal briefs than the Co-Prosecutors' time to

⁸ Decision on Appeal Extensions, para. 23.

⁹ Decision on Defence Motions for Extension of Pages to Appeal and Time to Respond, F13/2, 11 December 2014 ("Decision on Defence Motions for Appeal Extensions").

¹⁰ NUON Chea's Appeal Against the Judgment in Case 002/01, F16, 29 December 2014 ("NUON Chea Appeal Brief"); [*Corrigé I*] *Mémoire d'appel de la Défense de M. KHIEU Samphân contre le jugement rendu dans le procès 002/01*, F17, 29 December 2014 (corrected version filed on 31 December 2014) ("KHIEU Samphân Appeal Brief").

¹¹ NUON Chea Appeal Brief, Khmer version filed 23 March 2015; KHIEU Samphân Appeal Brief, Khmer version filed 25 March 2015.

¹² Request, paras. 1, 30.

¹³ Request, paras. 5-7.

¹⁴ Request, paras. 8-13.

¹⁵ Request, paras. 14-20.

respond,¹⁶ NUON Chea and KHIEU Samphân secured an unfair advantage through KHIEU Samphân's boycott of the Case 002/02 proceedings during November and December 2014, ensuring them uninterrupted focus on drafting their appeal briefs during this time.¹⁷ The Co-Prosecutors further contend 30 days' access to the Khmer versions of the appeal briefs provides inadequate time for national and international staff to collaborate on the response.¹⁸

C. DISCUSSION

9. The Supreme Court Chamber recalls that, in determining the sufficiency of 280 pages for the Co-Prosecutors' consolidated response to NUON Chea's and KHIEU Samphân's respective appeal briefs, to which 210 pages each were granted, it rejected the Co-Prosecutors' contention that a combined total number of pages granted to NUON Chea and KHIEU Samphân would be necessary to respond.¹⁹ The Co-Prosecutors' reiterated reference to a combined total page allocation as being an appropriate yardstick for calculation is therefore rejected. As to any arguments by NUON Chea or KHIEU Samphân that may be incorporated by reference to earlier submissions, the Supreme Court Chamber considers this to be an efficient way of avoiding repetition, which is available to the Co-Prosecutors as well. Finally, the Supreme Court Chamber rejects the Co-Prosecutors' contention that vague, ambiguous, and unsubstantiated arguments require lengthier responses, recalling that such arguments, if any, may even be dismissed on this basis alone.

10. Nevertheless, the Supreme Court Chamber is cognisant of the Co-Prosecutors' concerns regarding their inability to address certain allegations in the appeal briefs, and notes that since the decision to grant them 280 pages for their consolidated response, NUON Chea was subsequently granted an additional 60 pages for his appeal brief.²⁰ Based on the criteria set out at paragraph 15 of its Decision on Appeal Extensions, the Supreme Court Chamber therefore considers it appropriate to grant the Co-Prosecutors an additional 30 pages to respond in English. Any issues in their response brief which may require further elaboration may be addressed through oral submissions at the eventual appeal hearing. The Supreme Court Chamber may also subsequently allow the filing of further written submissions should it consider this to be desirable.

¹⁶ Request, para. 21.

¹⁷ Request, paras. 22-26.

¹⁸ Request, paras. 27-29.

¹⁹ Decision on Appeal Extensions, paras. 8, 15-17.

²⁰ Decision on Defence Motions for Appeal Extensions, paras. 16-17.

11. In respect of time, the Co-Prosecutors do not raise circumstances which the Supreme Court Chamber considers to warrant reconsideration of its prior reasoning and calculation of an appropriate time period for the Co-Prosecutors to respond,²¹ one made assuming the Co-Prosecutors' usual adherence to professional standards, including endeavouring to avoid delaying the trial proceedings in Case 002/02 while working on their appeal response. As to the contention that 30 days is insufficient for national and international elements of the Office of the Co-Prosecutors to work together, the Supreme Court Chamber considers it evident that such cooperation should have been taking place from the time of the filing of the appeal briefs in one language only. The fact that the Co-Prosecutors have themselves regularly requested filing documents in one language with Khmer translations to follow is a testament to early cooperation. Accordingly, an extension of time is unwarranted.

E. DISPOSITION

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

DENIES the Request in respect of an extension of time; and

ALLOWS the Request in respect of an extension of pages, in part, permitting the Co-Prosecutors to file a response brief of no longer than 310 pages in English, with its equivalent in Khmer.

Phnom Penh, 21 April 2015

President of the Supreme Court Chamber



KONG Srim

²¹ Decision on Appeal Extensions, para. 20.