

**BEFORE THE SUPREME COURT CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

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**CIVIL PARTY LEAD CO-LAWYER'S RESPONSE TO NUON CHEA'S FIRST
REQUEST FOR AN EXTENSION OF TIME AND PAGE LIMITS FOR FILING HIS
APPEAL BRIEF AGAINST THE TRIAL JUDGEMENT IN CASE 002/02**

Filed by:

Lead Co-Lawyers for Civil Parties

PICH Ang

Co-Lawyers for Civil Parties

CHET Vanly

HONG Kim Suon

KIM Mengkhy

LOR Chunthy

MOCH Sovannary

SIN Soworn

SAM Sokong

VEN Pov

Before:

Supreme Court Chamber

Judge KONG Srim, President

Judge SOM Sereyvuth

Judge Chandra Nihal JAYASINGHE

Judge Phillip RAPOZA

Judge Florence Ndepele MUMBA

Judge MONG Monichariya

Judge YA Narin

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Christine MARTINEAU
Lyma NGUYEN
Nushin SARKARATI
Mahesh RAI

Office of the Co-Prosecutors

CHEA Leang
Brenda J. HOLLIS (Reserve)

The Accused:

NUON Chea
KHIEU Samphân

Co-Lawyers for the Defence:

SON Arun
LIV Sovanna
Doreen CHEN
KONG Sam Onn
Anta GUISSÉ

I. INTRODUCTION

1. The Supreme Court Chamber is seized of a request from NUON Chea for extensions of time and page limits for the filing of his appeal brief in Case 002/02 (“NUON Chea Request”).¹ On 16 November 2018, the Trial Chamber issued the summary of its verdict in Case 002/02 during a public hearing.² On 28 March 2019, the full reasoned judgement was notified to the Parties in Khmer, English, and French.³ Following requests from KHIEU Samphân and NUON Chea, the Supreme Court Chamber ordered that all notices of appeal be filed before 1 July 2019.⁴ The Office of the Prosecutors and both Defence teams filed notices of appeal against the Trial Judgement.⁵ On 10 July 2019, KHIEU Samphân filed a request for extensions of time and page limits for the filing of his appeal brief in Case 002/02 and requested a trial management meeting (“KHIEU Samphân’s Request”).⁶ On 22 July 2019, the Civil Party Lead Co-Lawyer (“Lead Co-Lawyer”) responded to KHIEU Samphân’s Request.⁷ On the same day, the Co-Prosecutors responded to KHIEU Samphân’s Request.⁸ The Lead Co-Lawyer hereby responds to the NUON Chea Request with the same concerns affecting specific rights and interests of Civil Parties arising from the NUON Chea Request as with the KHIEU Samphân’s Request, and defers to the wisdom of the Supreme Court Chamber in deciding the merits of the requests.

II. APPLICABLE LAW

2. Internal Rule 107(4) provides that “[...] The appeal brief shall be filed within 60 (sixty) days of the date of filing the notice of appeal [...].” Internal Rule 105(3) provides “the

¹ **F47** NUON Chea’s First Request for an Extension of Time and Page Limits for Filling his Appeal Brief against the Trial Judgement in Case 002/02, 23 July 2019.

² See **E1/529.1** Transcript of Hearing on the Substance in Case 002/02, 16 November 2018.

³ **E465** Case 002/02 Judgement, 16 November 2018 (full reasoned decision notified 28 March 2019).

⁴ **F43** Decision on NUON Chea and KHIEU Samphân’s Requests for Extensions of Time and Page Limits on Notices of Appeal, 26 April 2019, para. 13.

⁵ **E465/2/1** Co-Prosecutors’ Notice of Appeal of the Trial Judgement in Case 002/02, 21 June 2019 (advancing one ground of appeal); **E465/4/1** KHIEU Samphân’s Notice of Appeal (002/02), 1 July 2019 (identifying 1,824 errors and 355 Trial Chamber decisions); **E465/3/1** NUON Chea’s Notice of Appeal against the Trial Judgement in Case 002/02, 1 July 2019 (advancing 351 grounds of appeal).

⁶ **F45** KHIEU Samphân’s Request for an Extension of Time and Page Limits for Filling his Appeal Brief, 10 July 2019.

⁷ **F45/1** Civil Party Lead Co-Lawyer’s Response to KHIEU Samphân’s Request for Extensions of Time and Page Limits for Appeal Brief, 22 July 2019.

⁸ **F45/2** Co-Prosecutor’s Response to KHIEU Samphân’s Request for Additional Time and Page Limits for Appellate Briefs, 22 July 2019.

appellant shall subsequently file an appeal brief setting out the arguments and authorities in support of each of the grounds, in accordance with the requirements of paragraphs 2(a) and (c) of this Rule.” The Supreme Court Chamber explained that “Internal Rule 39(2) foresees that, unless otherwise provided by the Internal Rules and taking into consideration the circumstances of the case, judges may set time limits for the filing of pleadings, written submissions and documents relating to a request or appeal. Internal Rule 39(4) also empowers judges to extend any time limits set by them.”⁹

3. Civil Parties have a right to the fair and expeditious conduct of proceedings.¹⁰ Internal Rules 21(1)(a) and 21(4) read together provide that the ECCC proceedings shall preserve a balance of rights between the parties and shall be brought to a conclusion within a reasonable time.¹¹ Internal Rules 12 *ter* (1) and (2) mandate that the Lead Co-Lawyers “shall ensure the effective organization of Civil Party representation during the trial stage and beyond, whilst balancing the rights of all parties and the need for an expeditious trial within the unique ECCC context” and are “obliged to promote justice and the fair and effective conduct of proceedings.”

III. STANDING

4. In its Decision on Civil Party Standing in Case 002/01 and the Appeal Judgement in Case 002/01, the Supreme Court Chamber held that Civil Parties enjoy the right to respond to

⁹ **F43** Decision on NUON Chea and KHIEU Samphan’s Requests for Extensions of Time and Page Limits on Notices of Appeal, 26 April 2019, para. 7.

¹⁰ Article 33 new of the ECCC Law as amended provides “[t]he Extraordinary Chambers of the trial court shall ensure that trials are fair and expeditious and are conducted in accordance with existing procedures in force, with full respect for the rights of the accused and for the protection of victims and witnesses...” and Article 37 new provides “[t]he provision of Article 33, 34 and 35 shall apply *mutandis mutandis* in respect of proceedings before the Extraordinary Chambers of the Supreme Court.”; **F26/2/2** Decision on Co-Prosecutors and Civil Party Lead Co-Lawyers’ Request for Additional Time for Examination of SCW-5, 30 June 2015, para. 7 (The Supreme Court Chamber has recognised that Civil Parties “enjoy fair trial rights defined in Article 14(1) of the ICCPR” and “have a specific and limited role in the proceedings, as set out in the ECCC’s Internal Rules.”).

¹¹ See also **E321/2** Decision on the Appointment of Court Appointed Standby Counsel for KHIEU Samphan, 5 December 2014, para. 14 (“The Chamber has an obligation to ensure a fair and expeditious trial, taking into account the interests of justice, including the interests of all the parties. The Chamber notes that the impact of further delays would be particularly significant in view of the age of the witnesses, Civil Parties and Accused in this case. It is accordingly imperative that the ECCC utilise every available day to ensure a final determination of the remaining charges as expeditiously as possible...”).

submissions during the appellate phase of proceedings,¹² provided that the submissions affect Civil Parties' rights and interests.¹³

5. While the Supreme Court Chamber has previously found that a general reference to the balance of rights of parties is too generic to warrant a right of response, it recognized that Civil Parties have a "right to obtain a timely verdict."¹⁴
6. The NUON Chea Request seeks a total of 10.5 months in which to file its appeal brief.¹⁵ As with the KHIEU Samphân Request, the proposed delay would directly affect the Civil Parties' rights and interests to expeditious appellate proceedings and to obtain a timely verdict, particularly considering the advanced age and the poor health condition of many Civil Parties.

IV. SUBMISSION

7. As previously submitted in its responses in relation to notice extensions and KHIEU Samphân's request for additional time in relation to the filing of his appeal brief, Civil Parties began joining the proceedings in 2007. Since then, the Lead Co-Lawyer has informally learned of the deaths of 281 Civil Parties through their Civil Party Lawyers, the Victims Support Section, or through information collected by the Civil Party Lead Co-Lawyers' Section itself.¹⁶ Further, the Lead Co-Lawyer has been informed that many Civil Parties are too unwell – either from sickness or old age – to participate in proceedings or informational forums.

¹² **F10/2** Decision on Civil Party Lead Co-Lawyers' Requests Relating to the Appeals in Case 002/01, 26 December 2014, paras 14 and 17 ("Decision on Civil Party Standing"). The Decision on Civil Party Standing addressed the right to respond to Defence Appeal Briefs specifically. The principles contained in paragraphs 14 and 17 of that decision apply to other responses. *See* **F36** Appeal Judgement, 23 November 2016, para. 81 ("In this respect, it agreed with NUON Chea in that the Civil Party Lead Co-Lawyers had failed to substantiate how their submission complied with the principles set out in its previous jurisprudence, namely, how NUON Chea's requests affected the Civil Parties' rights and interests. Mere reference to the need to guarantee the 'balance of parties' is too generic to meet that requirement, even if understood as a Civil Parties' right to obtain a timely verdict.").

¹³ **F10/2** Decision on Civil Party Standing, 26 December 2014, para. 17.

¹⁴ **F36** Appeal Judgement, 23 November 2016, para. 81.

¹⁵ **F47** NUON Chea's First Request for an Extension of Time and Page Limits for Filing his Appeal Brief against the Trial Judgement in Case 002/02, 23 July 2019, para. 53.

¹⁶ Following the deaths of 43 Civil Parties, successor claims were filed to continue the civil action by relatives. The Lead Co-Lawyers note that most relatives of deceased civil parties have not provided death certificates.

8. The Lead Co-Lawyer does not oppose reasonable extensions of time which may be necessary to ensure the fairness of proceedings, but continues to urge that any such extensions take into account the rights and interests of Civil Parties, particularly in light of their advanced ages and health concerns, and the need for the expeditious conduct of proceedings.
9. The Lead Co-Lawyer leaves to the sound discretion of the Supreme Court Chamber the NUON Chea Request's submissions regarding the extension of page limits.

V. REQUEST

WHEREFORE, the Civil Parties respectfully request that the Supreme Court Chamber:

- (1) **TAKE INTO ACCOUNT** Civil Party rights and interests when deciding the merits of the NUON Chea Request.

Respectfully submitted,

Date	Name	Place	Signature
02 August 2019	PICH ANG Lead Co-Lawyer	Phnom Penh	