

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

FILING DETAIL

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**URGENT REQUEST FOR RECONSIDERATION OF PAGE LIMITS FOR APPEALS
AGAINST THE CASE 002/01 JUDGMENT**

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Pursuant to ECCC Internal Rule 39(4), the Co-Lawyers for Nuon Chea (the ‘Defence’) hereby submit this urgent request for reconsideration of this Chamber’s decision concerning page limits for appeal briefs in connection with the Trial Judgment in Case 002/01:

1. On 7 August 2014, the Trial Chamber issued its judgment in Case 002/01 (‘Judgment’).¹ On 13 August 2014, the Khieu Samphan and Nuon Chea defence teams jointly filed a request for an extension of time and page limits for both notices of appeal and appeal briefs.² On 29 August 2014, the Supreme Court Chamber held that page limits for appeal briefs would be determined once notices of appeal were filed.³ On 29 September 2014, the Defence filed its notice of appeal (‘Notice’).⁴ On 2 October 2014, the Defence filed a renewed request for an extension of page limits, seeking no page limit at all or, in the alternative, a limit of 500 pages.⁵ The Chamber granted an extension up to 210 pages.⁶
2. Since the Supreme Court Chamber set this page limit on 31 October 2014, the Defence has sought in earnest to limit its submissions as far as possible. It has decided to withdraw some of its grounds of appeal, even though the substance of those grounds remain of significance to Nuon Chea’s case. In the absence of a further extension, the Defence will be forced to choose between abandoning additional grounds of appeal and omitting key arguments in support of the appeals it does maintain. As the Co-Prosecutors aptly argued in seeking a second extension in the page limit of their appeal in Case 001:

The Co-Prosecutors have now completed the drafting of the Appeal Brief by thoroughly examining the factual and legal findings in the Judgement to support their grounds of appeal. The final draft, however, runs to sixty-five pages in English including the cover page, table of contents and procedural and substantive submissions. After a detailed evaluation of the Appeal Brief, the Co-Prosecutors have concluded that any reduction from this length would

¹ Document No. **E313**, ‘Judgement’, 7 August 2014

² Document No. **F3**, ‘Demande urgente de la Défense de M. KHIEU Samphân et de la Defense de M. NUON Chea aux fins de prorogation des délais et d’extension du nombre de pages des conclusions en appel’, 13 August 2014.

³ Document No. **F3/3**, ‘Decision on Defence Motion for Extension of Time and Page Limits on Notices of Appeal and Appeal Briefs’, 29 August 2014.

⁴ Document No. **E313/1/1**, ‘Notice of Appeal against the Judgment in Case 002/01’, 29 September 2014.

⁵ Document No. **F6**, ‘Second Request for Extension of Time and Page Limits for Filing Appeals Against the Trial Judgment in Case 002/01’, 2 October 2014.

⁶ Document No. **F9**, ‘Decision on Motions for Extensions of Time and Page Limits for Appeal Brief and Responses’, 31 October 2014.

undermine the integrity of their argument and would not serve the ends of justice.⁷

In response to these reasonable submissions, this Chamber granted the extension.⁸

3. The Defence notes that the Co-Prosecutors have just filed a 30-page brief to address a single ground of appeal on an issue which has been litigated twice before this Tribunal.⁹ By contrast, the Notice raises dozens of legal and procedural issues which have never been addressed by any judicial authority other than the Trial Chamber (or, in respect of which, the decision of the Trial Chamber deviated from past rulings, for instance, the definitions of extermination and persecution and the nexus of crimes against humanity with an armed conflict). The Defence is forced to articulate these arguments – which are of equal complexity to the Co-Prosecutors’ appeal – in as little as two or three pages.
4. The Defence notes this Chamber’s ruling that the ‘imposition of page limits is not driven by considerations of legal philosophy, but of judicial efficiency.’¹⁰ The Defence recalls, however, that the constraints of judicial efficiency do not apply to many of the Co-Prosecutors’ most important submissions. Article 5.5 of the Practice Direction on Filing provides for no page limits in connection with the Introductory, Supplementary and Final Submissions. Pursuant to this rule, the Co-Prosecutors filed an aggregate of 1,149 pages,¹¹ exerting enormous influence over the direction of the judicial investigation. The defendants’ input in this process was almost nil. Only years later, in its final trial brief, did the Defence have a – still limited – opportunity to articulate its own narrative of the case. The appeal submissions at issue in the instant request constitute the second and final such opportunity. The civil law practice of setting no limit on (some) submissions was therefore joined arbitrarily to the common law

⁷ Case 001 No. 001/18-07-2007-ECCC/SC, Document No. **F5/1**, ‘Co-Prosecutors’ Application for a Further Extension of Page Limit to File their Appeal Brief’, 29 September 2010, para. 2.

⁸ Case 001 No. 001/18-07-2007-ECCC/SC, Document No. **F5/2**, ‘Decision on Co-Prosecutors’ Two Applications for Extension of Page Limit for their Appeal Brief’, 18 October 2010.

⁹ Document No. **F11**, ‘Co-Prosecutors’ Appeal against the Judgment of the Trial Chamber in Case 002/01’, 28 November 2014.

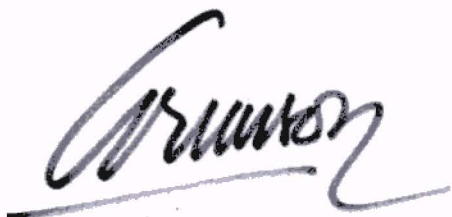
¹⁰ Document No. **F9**, ‘Decision on Motions for Extensions of Time and Page Limits for Appeal Brief and Responses’, 31 October 2014, para. 15.

¹¹ Document No. **D3**, ‘Introductory Submission No 008’, 18 June 2007; Document No. **D83**, ‘Co-Prosecutors’ Supplementary Submission Regarding the North Zone Security Centre’, 26 March 2008 ; Document No. **D196**, ‘Co-Prosecutors’ Supplementary Submission Regarding Genocide of the Cham’, 31 July 2009; Document No. **D390**, ‘Co-Prosecutors’ Rule 66 Final Submission’, 16 August 2010.

practice of limiting the length of (other) submissions, to the overall detriment of the Accused. This practice of cherry-picking procedures from competing legal systems has been a persistent problem throughout the Case 002/01 investigation and trial and underlies many of the grounds of appeal in the Notice.

5. The Defence has now drafted a substantial majority of its appeal brief and is accordingly in a position to assess in concrete terms the space required to lodge an effective appeal against the Judgment. The appeal brief currently stands at 232 pages. Important appeal grounds remain to be drafted and the Defence anticipates that the final page count will reach 280. The Defence is doing and will continue to do its utmost to streamline the argument and reduce the length of the brief. In the event that proves impossible, however, the Defence requests that the Supreme Court Chamber extend the length of its appeal brief by an additional 60 pages to a total of 270. In light of the gross imbalance in the parties' respective opportunities to articulate their theories of the case over the course of Case 002,¹² refusing this discrete 60 pages of argument at the conclusion of the process would violate Nuon Chea's right to a fair trial and in particular the equality of arms.
6. Given the impending deadline for filing appeal briefs, the Defence urgently requests a decision as soon as possible, with reasons to follow if necessary. For this same reason, and given the simplicity of the instant request, the Defence urges the Co-Prosecutors to respond, or indicate their intention not to, as soon as possible.

CO-LAWYERS FOR NUON CHEA



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¹² See para. 4, *supra*.