

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

FILING DETAILS

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**CO-PROSECUTORS' REQUEST TO REMEDY DEFECTS
IN KHIEU SAMPHAN'S SUBMISSIONS ON APPEAL**

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REQUEST

1. On 30 September 2014, the Co-Prosecutors were notified of the notice of appeal (“Notice”) of the Defence for Khieu Samphan (“Defence”) against the Judgment of the Trial Chamber in Case 002/01 (“Trial Judgment”),¹ in which the Defence ostensibly set out 152 grounds of appeal.
2. On 29 December 2014, Khieu Samphan filed his submissions on appeal (“Appeal”) to the Supreme Court Chamber (“Chamber”). On 31 December 2014, two days after the lapse of the deadline this Chamber prescribed,² Khieu Samphan filed a corrected version, attesting that the corrections were exclusively matters of form and not of substance (“*corrections de forme, et non de substance*”).³ While, the Co-Prosecutors note that four new substantive paragraphs have been added to the corrected version of the Appeal,⁴ they have no objection to the Supreme Court Chamber accepting the “corrected version” of the Khieu Samphan appeal against the judgment in Case 002/01.
3. However, the Co-Prosecutors submit that the Appeal, as corrected, is defective. Whilst the original version of the Appeal included 147 parenthetical references in the body of the text which appear to have referred to the grounds of appeal set out in the Notice covered by the arguments that follow, these references have been removed from the corrected version of the Appeal. The paragraph numbering on the corrected version also differs from the original. Thus it is unclear which arguments relate to which grounds of appeal and whether or not all grounds of appeal have been covered or if some have been abandoned.
4. The Co-Prosecutors submit, in accordance with international procedural rules, that the purpose of a notice of appeal is “to focus the mind of the Respondent, right from the day the notice of appeal is filed, on the arguments which will be developed subsequently in the Appeal brief” as well as “to give details of the arguments the parties intend to raise in support of the grounds of appeal”.⁵ By way of illustration, the

¹ **E313/2/1** Déclaration d’appel de la Défense de M. KHIEU Samphân contre le jugement rendu dans le procès 002/01, 29 September 2014.

² **F9** Decision on Motions for Extensions of Time and Page Limits for Appeal Briefs and Responses, 31 October 2014.

³ **F17/Corr. 1** Mémoire d’appel de la Défense de M.KHIEU Samphân contre le jugement rendu dans le procès 002/01, 31 December 2014 at FR 01052205.

⁴ *Ibid.* at paras. 69-73.

⁵ *Ferdinand Nahimana et al v. Prosecutor*, Case No. ICTR-99-52-A, Decision On Appellant Jean-Bosco

Mechanism for International Criminal Tribunals Practice Direction on Requirements and Procedures for Appeals provides that grounds of appeal and the arguments must be set out and numbered in the same order as in the Appellant's Notice of Appeal unless otherwise varied with leave of the Appeals Chamber. In line with international practice, the Defence for Nuon Chea has sought to correlate the content of their submissions on appeal with the grounds set out in their notice of appeal.⁶ Moreover, the appeal brief cannot contain arguments which were not contained in the Notice of Appeal.

5. As filed, the corrected Appeal leaves the Chamber and the Parties unable to correlate its content to the numbered grounds of appeal in the Notice. The objectives of transparency, sufficiency of notice and fairness of the proceedings are significantly impaired without such correlation. In many cases, it leaves the Co-Prosecutors, uncertain as to what complaint they should be responding to and may create some doubt also for this Supreme Court Chamber as to what arguments are being made in support of which grounds of appeal and which grounds of appeal, if any, have been abandoned.


Barayagwiza's Motions For Leave To Submit Additional Grounds Of Appeal, To Amend The Notice Of Appeal And To Correct His Appellant's Brief, 17 August 2006 at fn 139, citing *The Prosecutor v. Ignace Bagilishema*, Case No. ICTR-95-1A-A, Decision on Motion to Have the Prosecution's Notice of Appeal Declared Inadmissible, 26 October 2001 at p. 3.

⁶ Practice Direction on Requirements and Procedures for Appeals, 6 August 2013 (Practice Direction MICT/10), para.(C)(5). See also Regulations 57-59 of the *Regulations of the International Criminal Court*, ICC-BD/01-03-11 (entry into force of amendments 29 June 2012).

For these reasons, the Co-Prosecutors respectfully request that the Chamber:

- (a) **accept** the “correct version” of the Khieu Samphan Appeal filed two days after the deadline and remove any doubt that the Parties should respond to this version of the appeal.
- (b) **order** the Defence to submit, within a reasonable time limit, a supplementary document to their Appeal indicating which paragraphs of the corrected version relate to which ground of appeal contained in their Notice.

Respectfully submitted,

Date	Name	Place	Signature
6 January 2015	CHEA Leang Co-Prosecutor	Phnom Penh	
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