



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia
Chambres extraordinaires au sein des tribunaux cambodgiens

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

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

D381/10.1.1

អង្គបុរេជំនុំជម្រះ

Pre-Trial Chamber
Chambre Preliminaire

~~D360/7~~

In the name of the Cambodian people and the United Nations and pursuant to the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea

Case File N° 004/2/07-09-2009-ECCC/OCIJ

Before: Judge PRAK Kimsan, President
Judge Olivier BEAUVALLET
Judge NEY Thol
Judge Kang Jin BAIK
Judge HUOT Vuthy

Date: 8 November 2018

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CONFIDENTIAL

DECISION ON REQUEST FOR EXTENSION OF TIME AND PAGE LIMIT FOR AO AN'S APPEAL AGAINST THE CLOSING ORDER (INDICTMENT)

Co-Prosecutors

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THE PRE-TRIAL CHAMBER of the Extraordinary Chambers in the Courts of Cambodia is seised of the “Request for Extension of Time and Page Limit for AO An’s Appeal Against the Closing Order (Indictment)” dated 5 October 2018 (“Request”).¹

1. On 16 August 2018, the National Co-Investigating Judge issued his “Closing Order”² in Khmer, dismissing the case against AO An, while the International Co-Investigating Judge issued his “Closing Order (Indictment)”³ in English. On 5 September 2018, the Pre-Trial Chamber ordered the parties to file notices of appeal within fourteen days after notification of translations of both Closing Orders.⁴ On 5 October 2018, the Co-Lawyers for AO An (“Co-Lawyers”) filed a notice of appeal against the International Co-Investigating Judge’s Closing Order (Indictment).⁵ The translations of the Closing Orders were notified on 30 October 2018 and 5 November 2018.

2. On 5 October 2018, the Co-Lawyers for AO An filed the Request. The Co-Prosecutors responded on 26 October 2018⁶ and the Co-Lawyers did not file any reply.

3. The Co-Lawyers request an extension of the time limit for the filing of AO An’s appeal from 30 to 120 days and an extension of the page limit from 30 to 300 pages.⁷ They further ask the Chamber to allow them to file the appeal in English first and that the time limits for filing appeals and responses run respectively from the issuance of the translation of both Closing Orders and from the filing of all appeals in at least one language.⁸ They submit that the requested extensions are consistent with the past practice at the ECCC and international courts, and that they are necessary in order to preserve AO An’s fundamental right to an effective defence.⁹ They rely on the existence of exceptional circumstances such

¹ Case 004/2/07-09-2009-ECCC/OCIJ (“Case 004/2”), Request for Extension of Time and Page Limit for AO An’s Appeal Against the Closing Order (Indictment), 5 October 2018, D360/4 (“Request”).

² Case 004/2, Closing Order, issued on 16 August 2018 in Khmer only, D359.

³ Case 004/2, Closing Order (Indictment), issued on 16 August 2018 in English only, D360.

⁴ Case 004/2, Decision on Co-Prosecutors’ Request for Extension of Deadlines for Notices of Appeal of Closing Orders in Case 004/2, 5 September 2018, D359/2. *See also* Case 004/2, Co-Prosecutors’ Request for Extension of Deadlines for Notices of Appeal of Closing Orders in Case 004/02, 23 August 2018, D359/1.

⁵ Case 004/2, Notice of Appeal Against International Co-Investigating Judges’ [sic] Closing Order (Indictment), 5 October 2018, D360/5.

⁶ Case 004/2, Co-Prosecutors’ Response to AO An’s Request for an Extension of Time and Page Limit for His Appeal Against the Closing Order (Indictment), 26 October 2018, D360/6 (“Response”).

⁷ Request, paras 4, 17-18, 39.

⁸ Request, paras 4, 19-20, 39.

⁹ Request, paras 6, 22, 31-35, 37.



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as the issuance of two separate and opposing Closing Orders, with possible multiple cross-appeals,¹⁰ the length and complexity of the Closing Orders,¹¹ the number of envisaged grounds of appeal,¹² as well as the scheduled issuance of the Case 002/2 judgement.¹³

4. The Co-Prosecutors respond that the requested extensions are excessive, that they would result in unwarranted delay¹⁴ and that the Chamber should rather grant shorter extensions applying equally to all parties and authorise the filing of appeals in one language, with times running from the translation of both Closing Orders.¹⁵ They recall that the scale of extensions previously granted by the Chamber was smaller than those requested and submit that appeals of indictments cannot be compared to appeals of trial judgments.¹⁶ The International Co-Prosecutor anticipates that he will require between 50 and 75 pages and an extension to 60 days for his appeal, while the National Co-Prosecutor will adhere to the 30-day and 30-page limits.¹⁷ They finally oppose the request for a ruling that the time limits for responses run from the filing of all appeals in at least one language.¹⁸

5. Pursuant to Internal Rules 39(2) and (4), the Pre-Trial Chamber may set and/or extend any time limits for the filing of documents relating to an appeal. It may also, based on Article 5(4) of the Practice Direction on Filing of Documents, extend the page limit of a document in exceptional circumstances.

6. In the present case, in light of the existence of two separate Closing Orders and possible cross-appeals, the Pre-Trial Chamber considers it justified to grant all parties reasonable extensions of time and pages to file their appeal(s). It is not convinced, however, that the Closing Orders and envisaged appeals are of such complexity that the Co-Lawyers need ten times the set number of pages or 90 additional days to prepare their submissions on appeal. The Chamber also considers that the issuance of the Case 002/2 judgement has no impact on appeals against the Closing Orders in Case 004/2. The Chamber therefore finds

¹⁰ Request, paras 5, 23, 38.

¹¹ Request, paras 5, 24-26.

¹² Request, paras 5, 27-28.

¹³ Request, paras 5, 29-30.

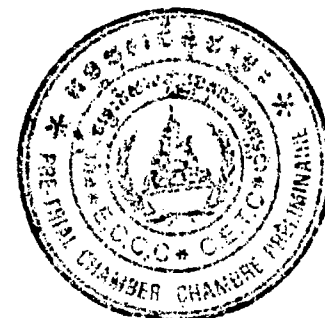
¹⁴ Response, paras 8, 15.

¹⁵ Response, para. 17, 19-20.

¹⁶ Response, paras 9-14.

¹⁷ Response, paras 15-16.

¹⁸ Response, paras 18, 20.



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appropriate, in the interests of justice and in order to balance fair trial rights and efficiency, to grant all parties a limited extension of 70 additional pages and of 15 additional days from the notification of the translations of both Closing Orders on 5 November 2018.

FOR THESE REASONS, THE PRE-TRIAL CHAMBER UNANIMOUSLY HEREBY:

GRANTS the Request in part;

ALLOWS the parties to file appeal(s) against the Closing Orders in Case 004/2 within 45 days from the notification of the translations of both Closing Orders;

ALLOWS the parties to file 100-page submissions on appeal(s);

ALLOWS the parties to file their appeal(s) in one language with translation to follow;

INSTRUCTS the ITU to ensure that requested translations are issued within 30 days from the filing of the appeal(s);

INFORMS that instructions regarding the filing of responses and replies will follow in due course;

DENIES the remainder of the Request.

In accordance with Internal Rule 77(13), this decision is not subject to appeal.

Phnom Penh, 8 November 2018

President

Pre-Trial Chamber



BRAC Kimsan

Olivier BEAUVALLET

NEY Thol

Kang Jin BAIK

HUOT Vuthy