



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

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Case File/Dossier N°. 002/19-09-2007-ECCC/SC

Before: Judge KONG Srim, President
Judge Chandra Nihal JAYASINGHE
Judge SOM Sereyvuth
Judge Florence Ndepele Mwachande MUMBA
Judge MONG Monichariya
Judge Maureen Harding CLARK
Judge YA Narin

Date: 6 December 2019
Language(s): Khmer/English
Classification: PUBLIC

DECISION ON REQUESTS CONCERNING THE CIVIL PARTY LEAD CO-LAWYERS RESPONSE TO KHIEU SAMPHÂN APPEAL

Co-Prosecutors
CHEA Leang
Brenda HOLLIS

Accused
KHIEU Samphân

Civil Party Lead Co-Lawyers
PICH Ang
Megan HIRST

Co-Lawyers for NUON Chea
KONG Sam Onn
Anta GUISSÉ

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” or “Chamber” and “ECCC”, respectively) is seised of the Requests concerning the Civil Party Lead Co-Lawyers’ Response to KHIEU Samphân’s Appeal (“Request”).¹

I. PROCEDURAL BACKGROUND

1. On 16 November 2018, the Trial Chamber pronounced the verdict in Case 002/02, convicting NUON Chea and KHIEU Samphân of crimes against humanity, grave breaches of the Geneva Conventions and genocide, and sentenced them to life imprisonment.² The Trial Chamber provided a summary of its reasons and clarified that the time limit for filing notices of appeal would begin following the notification of the fully reasoned judgement.³ The Trial Chamber subsequently notified the fully reasoned judgement in Khmer, English and French on 28 March 2019.⁴

2. On 3 April 2019, NUON Chea and KHIEU Samphân filed requests for extensions of time and page limits for filing their respective notices of appeal against the written judgment.⁵ The Supreme Court Chamber granted the Defence teams a uniform extension of time and page limits on 26 April 2019.⁶

3. On 1 July 2019, NUON Chea and KHIEU Samphân filed their notices of appeal against the Trial Judgement in Case 002/02.⁷

4. On 10 July 2019, KHIEU Samphân filed his request for extension of time and page limits for filing his appeal brief.⁸ On 22 July 2019, both the Co-Prosecutors and the Civil Party responded.⁹ On 29 July 2019, KHIEU Samphân filed his reply.¹⁰

¹ Requests concerning the Civil Party Lead Co-Lawyer’ Response to KHIEU Samphân’s Appeal, 28 October 2019, F52 (“Request”).

² See Transcript 16 November 2018 (Pronouncement of Judgment in Case 002/02), p. 53 (line 21) to p. 56 (line 17).

³ See Transcript 16 November 2018 (Pronouncement of Judgment in Case 002/02), p. 3 (lines 11-16), p. 57 (lines 18-23).

⁴ Trial Chamber Judgement Case 002/02, 16 November 2018, E465 (“Trial Judgement”). The Supreme Court Chamber determined that since it was filed outside the ECCC’s official filing hours, the notification was effective from the next working day, i.e. 29 March 2019: Decision on NUON Chea and KHIEU Samphân’s Requests for Extensions of Time and Page Limits on Notices of Appeal, 26 April 2019, F43, para. 12.

⁵ NUON Chea’s Urgent First Request for an Extension of Time and Page Limits for Filing his Notice of Appeal against the Trial Judgement in Case 002/02, 3 April 2019, F40/1.1; KHIEU Samphân Defence Request for Extension of Time and Number of Pages to File Notice of Appeal, 3 April 2019, F39/1.1.

⁶ Decision on NUON Chea and KHIEU Samphân’s Requests for Extensions of Time and Page Limits on Notices of Appeal, 26 April 2019, F43.

⁷ NUON Chea’s Notice of Appeal against the Trial Judgement in Case 002/02, 1 July 2019, E465/3/1; KHIEU Samphân’s Notice of Appeal (002/02), 1 July 2019, E465/4/1.

5. On 23 August 2019, the Chamber directed KHIEU Samphân to file his appeal brief, which is not to exceed 750 pages, on or by 27 February 2020 in English or French, with a Khmer translation to follow at the soonest possibility (“KHIEU Samphân Appeal Brief”). It further directed the Co-Prosecutors to file their response, which is not to exceed 350 pages, in one language within 120 days of notification of KHIEU Samphân Appeal Brief (“Co-Prosecutors Response”).¹¹

6. On 28 October 2019, the Civil Party Lead Co-Lawyers (“Civil Parties”) seized the Chamber of the present Request seeking permission to:

- a. file their response to KHIEU Samphân within 60 days after the notification of the Co-Prosecutors Response;
- b. extend the page limit for their response to 320 pages
- c. file their response in English with the Khmer translation to follow.¹²

II. SUBMISSIONS

7. The Civil Parties argue that they have standing to respond to KHIEU Samphân Appeal Brief because it directly affects the “specific rights and interests of Civil Parties”.¹³

8. The Civil Parties request to file their response within 60 days from the notification of the Co-Prosecutors Response. They submit that such period would enable them to eliminate overlap and repetition between the Co-Prosecutors Response and their own Response, without unduly delaying the conclusion of the proceedings.¹⁴

9. For a more efficient use of resources and “to promote the expeditiousness of proceedings”, the Civil Parties request to file in English with the Khmer translation to follow. They submit that this would prejudice neither the national side “owing to the consultation process

⁸ KHIEU Samphân’s Request for an Extension of Time and Page Limits for Filing his Appeal Brief, 10 July 2019, F45.

⁹ Co-Prosecutors’ Response to KHIEU Samphân’s Request for Additional Time and Page Limits for Appellate Briefs, 22 July 2019, F45/2; Civil Party Lead Co Lawyer’s Response to KHIEU Samphân’s Request for Extension of Time and Page Limits for Appeal Brief, 22 July 2019, F45/1.

¹⁰ KHIEU Samphân’s Defence Reply to the Responses to its Request for Extension of Time and Page Limits for Filing his Appeal Brief, 29 July 2019, F45/3.

¹¹ Decision on KHIEU Samphân’s Request for Extensions of Time and Page Limits for Filing his Appeal Brief, 23 August 2019, F49, para. 36.

¹² Request, p. 8.

¹³ Request, paras 2-5, 12, 14.

¹⁴ Request, paras 2, 13-14.

of the Section in formulating the response”, nor the availability of KHIEU Samphân Appeal Brief in Khmer within the relevant timeframe.¹⁵

10. Pointing out the “substantial number of issues on which the Civil Parties have an interest in responding”, they further request an extension of page limit to 320 pages. They explain that such number of pages i) derives from an approximate calculation of the number of issues in KHIEU Samphân Appeal Brief likely to require a response from the Civil Parties, ii) may be reduced in light of the Co-Prosecutors Response, iii) yet represent conservative estimates.¹⁶

III. ADMISSIBILITY

11. The Supreme Court Chamber previously held that Civil Parties have standing to respond to the Defence appeal briefs.¹⁷

12. In order to safeguard the equality of arms and the effective conduct of proceedings, the Chamber set two limitations to the Civil Parties’ right to respond to Defence appeal briefs: first, “the arguments set out in the proposed response must relate to grounds directly affecting Civil Parties’ rights and interests”; second, “Lead Co-Lawyers must endeavour to avoid repetitiveness and overlap with issues already covered by the Co-Prosecutors’ projected response”.¹⁸

13. The Chamber notes that the Civil Parties expressly stated that they intended to respond to KHIEU Samphân Appeal Brief “insofar as it directly affects the specific rights and interests of Civil Parties” and that, “cognisant of the need to preserve the balance of rights amongst the parties during appellate proceedings”, they “will therefore endeavour to avoid repetition” and overlap with the Co-Prosecutors Response.¹⁹

14. The Chamber therefore finds the Request admissible.

¹⁵ Request, paras 2, 15.

¹⁶ Request, paras 2, 10-12, 14.

¹⁷ Decision on Civil Party Lead Co-Lawyers’ Requests Relating to the Appeals in Case 002/01, 26 December 2014, F10/2, paras 11 and 14 (“Decision on Civil Party Standing”).

¹⁸ Decision on Civil Party Standing, para. 17.

¹⁹ Request, paras 2, 13.

IV. DISCUSSION

A. Extensions of Page Limit

i. Applicable Law

15. The Practice Direction on the Filing of Documents (“Practice Direction”) provides that documents filed to the Chamber shall not exceed 30 pages in English or French or 60 pages in Khmer, unless otherwise ordered or extended by the Chamber at the request of a Party in exceptional circumstances.²⁰

ii. Considerations

16. The Civil Parties request an extension of 320 pages.

17. The Chamber recalls that it has already recognised the exceptional nature of the Trial Judgement in terms of magnitude and complexity and that it accordingly found that exceptional circumstances exist which warrant extensions of time and page limits.²¹

18. The Chamber acknowledges that both the “non-exhaustive” content and the format of KHIEU Samphân Notice of Appeal rendered it difficult for the Civil Parties to estimate the scope of their response. It further acknowledges that Civil Party evidence *de facto* underlies many of the factual and legal findings challenged in the KHIEU Samphân Notice of Appeal. The Chamber notes that the Civil Parties identified “over 40 substantive issues, involving over 100 of the paragraphs or decisions listed [...] which appear highly likely to directly affect Civil Party rights and interests” as well as “16 Civil Parties in respect of whose evidence challenges will be made” which will require specific and individualised responses from the Civil Parties. The Chamber also notes that “these numbers represent preliminary minimum estimates” on the basis of the information available in the KHIEU Samphân notice of appeal and annexes.²²

19. In light of the above, the Chamber finds that the Civil Parties appropriately justified their Request for extension of 320 pages and accordingly grants their Request.

²⁰ Practice Direction, art. 5.2 and 5.3.

²¹ Decision on KHIEU Samphân’s Request for Extensions of Time and Page Limits for Filing his Appeal Brief, 23 August 2019, F49, para. 14.

²² Request, paras 11-12.

B. Extension of Time Limit*i. Applicable Law*

20. The Practice Direction provides that responses shall be filed within 10 calendar days of notification of the document to which the party is responding.²³

21. The Internal Rules state that “the judges may set time limits for the filing of pleadings, written submissions and documents relating to a request or appeal, taking into account the circumstances of the case”.²⁴ It further provides that the Chamber “may, at the request of the concerned party [...] extend any time limits set by them”.²⁵

ii. Considerations

22. The Chamber agrees with the Civil Parties that enabling them to review the Co-Prosecutors Response in advance of filing their own response is the most efficient way of preventing overlap and repetition.²⁶ The Chamber therefore finds that Civil Parties should be granted additional time to file their Response after the Co-Prosecutors Response.

23. The Chamber recalls that it granted 120 days to the Co-Prosecutors to file their Response from the notification of KHIEU Samphân Appeal Brief.²⁷ The Chamber notes that during this 120-day period the Civil Parties can conduct a significant amount of preliminary work on their own response.

24. The Chamber is therefore of the view that an extra 60 days from the notification of the Co-Prosecutors Response is somewhat excessive and unwarranted. An extra period of 40 days from the notification of the Co-Prosecutors Response shall be sufficient for the sole purpose of preventing overlaps and repetitions with the Co-Prosecutors Response.

25. Accordingly, and keeping in mind the need to balance the interests of the parties with the need for efficient and expeditious proceedings,²⁸ the Chamber grants to the Civil Parties an extra 40 days from the notification of the Co-Prosecutors Response to file their Response.

C. Filing in one language

²³ Practice Direction, art. 8.3.

²⁴ Internal Rule 39(2).

²⁵ Internal Rule 39(4).

²⁶ Request, para. 13.

²⁷ See *supra* para. 5.

²⁸ Decision on KHIEU Samphân’s Request for Extensions of Time and Page Limits for Filing his Appeal Brief, 23 August 2019, F49, para. 19 and references cited.

i. Applicable Law

26. The Practice Direction provides that “[a]ll documents shall be filed in Khmer as well as in English or French”, but that the Chamber may, in exceptional circumstances, “authorise a party to file a document in French or in English in the first instance, provided however, that a Khmer translation must be filed before the Chamber at the first opportunity”.²⁹

ii. Considerations

27. The Chamber recalls that all parties must at all times strive to meet the general requirement of simultaneous bilingual filings before the ECCC, and that the importance of Khmer versions of filings cannot be overstated, particularly in light of the fact that “time limits commence on the first calendar day following the day of service of the [n]otification of document in Khmer and one other official language of the ECCC”.³⁰

28. In view of those circumstances and having similarly authorised both KHIEU Samphân and the Co-Prosecutors to respectively file his Appeal Brief and their Response in one language,³¹ the Chamber permits the Civil Parties to file their Response in English with a Khmer translation to follow at the earliest opportunity.

29. As previously held, the Chamber reiterates that it expects the Civil Parties, as well as KHIEU Samphân and the Co-Prosecutors, to optimally use the Khmer language resources available within their own teams to work in parallel with ITU so to more expeditiously produce the Khmer translations of their respective brief and responses.³²

²⁹ Practice Direction, art. 7.1, 7.2.

³⁰ Practice Direction, art. 8.5; Case 002/1, Decision on Motions for Extensions of Time and Page Limits for Appeal Briefs and Responses, 31 October 2014, F9, para. 21.

³¹ Decision on KHIEU Samphân’s Request for Extensions of Time and Page Limits for Filing his Appeal Brief, 23 August 2019, F49, paras 17, 36.

³² Decision on KHIEU Samphân’s Request for Extensions of Time and Page Limits for Filing his Appeal Brief, 23 August 2019, F49, para. 19.

V. DISPOSITION

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

DECLARES the Request admissible;

GRANTS the Request in part;

DIRECTS the Civil Parties to file their Response to the KHIEU Samphân's Appeal Brief, which is not to exceed 320 pages, in English or French with a Khmer translation to follow at the soonest opportunity, within 40 days from the notification of the Co-Prosecutors Response.

Phnom Penh, 6 December 2019

President of the Supreme Court Chamber



KONG Srim