

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

**FILING DETAILS**

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**CIVIL PARTY LEAD CO-LAWYERS' RESPONSE TO DEFENCE REQUESTS FOR  
EXTENSIONS OF TIME AND PAGE LIMITS**

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**Filed by:**

**Lead Co-Lawyers for Civil Parties**

PICH Ang  
Marie GUIRAUD

**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

**Distribution to:**

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Lyma NGUYEN  
Nushin SARKARATI  
Mahesh RAI

**The Accused:**

NUON Chea  
KHIEU Samphân

**Co-Lawyers for the Defence:**

SON Arun  
Doreen CHEN  
KONG Sam Onn  
Anta GUISSÉ

## I. INTRODUCTION

1. The Supreme Court Chamber is seized of requests from KHIEU Samphân and NUON Chea for extensions of time and page limits for the filing of notices of appeal in Case 002/02 (“Defence Requests”).<sup>1</sup> On 16 November 2018, the Trial Chamber issued the summary of its verdict in Case 002/02 during a public hearing.<sup>2</sup> On 28 March 2019, the full reasoned judgement was notified to the Parties in Khmer, English, and French.<sup>3</sup> The Civil Party Lead Co-Lawyers (“Lead Co-Lawyers”) hereby respond with concerns affecting specific rights and interests of Civil Parties arising from the Defence Requests and defer 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 a “[n]otice of appeal against a judgement of the Trial Chamber, as provided in Rule 105(3), shall be filed within 30 (thirty) days of the date of pronouncement of the judgement or its notification, as appropriate. The appeal brief shall be filed within 60 (sixty) days of the date of filing the notice of appeal [...].”
3. With respect to Internal Rule 105(3), the Supreme Court Chamber has previously explained that “[t]he notice of appeal is limited to specifying, or merely outlining, the alleged errors of law invalidating the decision and alleged errors of fact which occasioned a miscarriage of justice, and requires no arguments or authorities in support of each of the grounds.”<sup>4</sup>
4. Civil Parties have a right to the fair and expeditious conduct of proceedings.<sup>5</sup> Internal Rules 21(1)(a) and 21(4) read together provide that the ECCC proceedings shall preserve

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<sup>1</sup> **F39/1.1** Demande de la Défense de KHIEU Samphân aux fins d’extension du délai et du nombre de pages de sa déclaration d’appel, 3 April 2019; **F40/1.1** 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.

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

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

<sup>4</sup> **F3/3** Decision on Defence Motion for Extension of Time and Page Limits on Notices of Appeal and Appeal Briefs, 29 August 2014, para. 8 (the Supreme Court Chamber also took into account that grounds may include decisions not subject to immediate appeal during trial, which “require only specifying the alleged errors”).

<sup>5</sup> 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-CPLCL Response to Defence Requests related to Case 002/02 Notices of Appeal

a balance of rights between the parties and shall be brought to a conclusion within a reasonable time.<sup>6</sup> 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

5. 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 submissions during the appellate phase of proceedings,<sup>7</sup> provided that the submissions affect Civil Parties’ rights and interests.<sup>8</sup>
6. 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.”<sup>9</sup>
7. The Defence Requests seek 6 month and 8 month periods to file the notices of appeal for NUON Chea and KHIEU Samphân, respectively.<sup>10</sup> The proposed delays would directly affect the Civil Parties’ rights and interests to expeditious appellate proceedings and to

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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.”).

<sup>6</sup> 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...”).

<sup>7</sup> 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.”).

<sup>8</sup> F10/2 Decision on Civil Party Standing, 26 December 2014, para. 17.

<sup>9</sup> F36 Appeal Judgement, 23 November 2016, para. 81.

<sup>10</sup> F40/1.1 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, para. 61; F39/1.1 Demande de la Défense de KHIEU Samphân aux fins d’extension du délai et du nombre de pages de sa déclaration d’appel, 3 April 2019, para. 44.

obtain a timely verdict, particularly considering the advanced age and the poor health condition of many Civil Parties.

#### IV. SUBMISSION

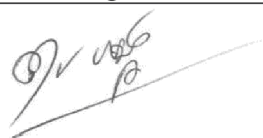
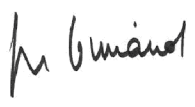
8. Civil Parties began joining the proceedings in 2007. Since then, the Lead Co-Lawyers have informally learned of the deaths of 281 Civil Parties through their Civil Party Lawyers, the Victims Support Section, or through information collected by the Civil Party Lead Co-Lawyers' Section itself.<sup>11</sup> Further, the Lead Co-Lawyers have been informed that many Civil Parties are too unwell – either from sickness or old age – to participate in proceedings or informational forums.
9. The Lead Co-Lawyers do not oppose reasonable extensions of time which may be necessary to ensure the fairness of proceedings, but 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.
10. The Lead Co-Lawyers leave to the sound discretion of the Supreme Court Chamber the Defence Requests' submissions regarding the extension of page limits.

#### III. 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 Defence Requests.

Respectfully submitted,

| Date          | Name                            | Place      | Signature   |
|---------------|---------------------------------|------------|---|
| 12 April 2019 | PICH ANG<br>Lead Co-Lawyer      | Phnom Penh |  |
|               | Marie GUIRAUD<br>Lead Co-Lawyer | Phnom Penh |  |

<sup>11</sup> 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.