



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

អង្គជំនុំជម្រះតុលាការកំពូល

Supreme Court Chamber

Chambre de la Cour suprême

សំណុំរឿងលេខ: ០០២/១៩-កញ្ញា-២០០៧-អ.វ.ត.ក/អ.ជ.ត.ក

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 Phillip RAPOZA

Judge YA Narin

Date:

26 April 2019

Language(s):

Khmer/English

Classification:

PUBLIC

DECISION ON NUON CHEA AND KHIEU SAMPHÂN’S REQUESTS FOR EXTENSIONS OF TIME AND PAGE LIMITS ON NOTICES OF APPEAL

Co-Prosecutors

CHEA Leang

Nicholas KOUMJIAN

Co-Lawyers for NUON Chea

SON Arun

Doreen CHEN

Accused

KHIEU Samphân

NUON Chea

Co-Lawyers for KHIEU Samphân

KONG Sam Onn

Anta GUISSÉ

Civil Party Lead Co-Lawyers

PICH Ang

Marie GUIRAUD

1. **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” and “ECCC”, respectively) is seised of “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” (“NUON Chea’s Request”),¹ and of the “*Demande de la Défense de KHIEU Samphân aux fins d’extension du délai et du nombre de pages de sa déclaration d’appel*” (“KHIEU Samphân’s Request”),² both filed on 3 April 2019. The Co-Prosecutors and Civil Party Lead Co-Lawyers respectively filed their responses on 11 and 12 April 2019.³ KHIEU Samphân filed his replies on 23 and 25 April 2019.⁴

2. On 16 November 2018, the Trial Chamber pronounced the verdict in Case 002/02 against NUON Chea and KHIEU Samphân, convicting them of crimes against humanity, grave breaches of the Geneva Conventions and genocide, and sentenced them to life imprisonment. The Trial Chamber provided a summary of its reasons and indicated that the authoritative account of its findings would be made available in the written judgment in due course.⁵ The Trial Chamber subsequently notified the written judgment in Khmer, English and French on 28 March 2019.⁶

3. NUON Chea and KHIEU Samphân signify their intention to appeal the Trial Judgement and seek leave to file 100-page notices of appeal in English and French, representing an extension of 70 pages.⁷ NUON Chea requests an extension of 150 days to file his notice of appeal (*i.e.* 180 days from the date of the Trial Judgement’s notification),⁸

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, F40/1.1.

² *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, F39/1.1.

³ Co-Prosecutors’ Response to Defence Requests for Additional Time and Page Limits for Notice of Appeal, 11 April 2019, F41 (notified on 18 April 2019) (“Co-Prosecutors’ Response”); Civil Party Lead Co-Lawyers’ Response to Defence Requests for Extensions of Time and Page Limits, 12 April 2019, F42 (notified on 23 April 2019) (“Lead Co-Lawyers’ Response”).

⁴ *Réplique et réponse de KHIEU Samphân à l’Accusation sur l’extension du délai et du nombre de pages des déclarations d’appel*, 23 April 2019 (notified on 24 April 2019), F41/1; KHIEU Samphân’s Reply to Civil Party Lead Co-Lawyers’ Response to Defence Requests for Extensions of Time and Page Limits, 25 April 2019, F42/1.1.

⁵ See Transcript 16 November 2018 (Pronouncement of Judgment in Case 002/02), E1/529.1, p. 3.

⁶ Trial Chamber, Case 002/02 Judgement, 16 November 2018, E465 (“Trial Judgement”).

⁷ NUON Chea’s Request, para. 1; KHIEU Samphân’s Request, para. 40; see also Practice Direction on Filing of Documents before the ECCC, Art. 5.2.

⁸ NUON Chea’s Request, para. 58.

whereas KHIEU Samphân seeks to file his notice of appeal 240 days from the notification of the Trial Judgement (*i.e.* an extension of seven months, including one month for translation into Khmer).⁹ Both advance several common grounds in seeking the proposed time and page extensions, namely: the size and complexity of Case 002/02 proceedings and the length of the Trial Judgement (especially in comparison to Case 002/01);¹⁰ staffing shortages;¹¹ and the advanced age and declining health of the accused.¹² NUON Chea adds that the quantity of Trial Chamber decisions hitherto not open to interlocutory appeal¹³ will, atop the novelty of legal issues litigated in Case 002/02,¹⁴ necessitate an extension of time and page limits to furnish meaningful responses in his notice of appeal.

4. In response, the Co-Prosecutors argue that the extensions sought by NUON Chea and KHIEU Samphân are “patently excessive” in that they are not supported by international practice, and that “extensions of [such] extraordinary length” would “unnecessarily delay the proceedings” in Case 002/02.¹⁵ The Co-Prosecutors assert that that both defence teams are adequately staffed to prepare an appeal and have had ample time to identify the Trial Chamber decisions they wish to appeal.¹⁶ The Co-Prosecutors request that no extension to the page limit be granted, but that all parties receive a 45-day extension to file their notices of appeal (*i.e.* a total of 75 days).¹⁷

5. The Lead Co-Lawyers do not oppose reasonable extensions of time being granted to allow the filing of the notices of appeal 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”.¹⁸

6. KHIEU Samphân’s reply to Civil Party Lead Co-Lawyers’ response, mostly, repeats the original submissions which the Chamber has already assessed.¹⁹

⁹ KHIEU Samphân’s Request, paras 36, 42.

¹⁰ NUON Chea’s Request, paras 32-43; KHIEU Samphân’s Request, paras 17-23.

¹¹ NUON Chea’s Request, paras 50-54; KHIEU Samphân’s Request, paras 28-32.

¹² NUON Chea’s Request, para. 33; KHIEU Samphân’s Request, paras 26-27.

¹³ NUON Chea’s Request, paras 48-49.

¹⁴ NUON Chea’s Request, para. 44.

¹⁵ Co-Prosecutors’ Response, paras 6-8, 15-19, 22.

¹⁶ Co-Prosecutors’ Response, paras 9-13.

¹⁷ Co-Prosecutors’ Response, paras 22-23.

¹⁸ Lead Co-Lawyers’ Response, para. 9.

¹⁹ KHIEU Samphân’s Reply to Civil Party Lead Co-Lawyers’ Response to Defence Requests for Extensions of Time and Page Limits, 25 April 2019, F42/1.1.

7. Internal Rule 105(3) states that “[a] party wishing to appeal a judgment shall file a notice of appeal setting forth the grounds”, and that “the appellant shall subsequently file an appeal brief setting out the arguments and authorities in support of each of the grounds”. Internal Rule 107(4) specifies that the notice of appeal “shall be filed within 30 (thirty) days of the date of pronouncement of the judgment or its notification, as appropriate”, and that the subsequent appeal brief must be filed within 60 days of the filing of the notice of appeal. According to Article 5.2 of the Practice Direction on the Filing of Documents before the ECCC, the length of any document filed to the Supreme Court Chamber must not exceed 30 pages in English or French, or 60 pages in Khmer. Internal Rule 39(2) foresees that, unless otherwise provided by the Internal Rules and taking into consideration the circumstances of the case, judges may set time limits for the filing of pleadings, written submissions and documents relating to a request or appeal. Internal Rule 39(4) also empowers judges to extend any time limits set by them.

8. The Supreme Court Chamber recognizes that the Trial Judgement – at 4,101 pages in Khmer, 2,387 pages in English and 2,828 pages in French – is the longest judgment issued by the ECCC and is comparable in length to the trial judgments of some of the most complex criminal proceedings litigated before other international(ized) tribunals.²⁰ The unprecedented size and complexity of the Case 002/02 proceedings is underscored by various factors including the duration of the trial proceedings,²¹ the number of witnesses, experts and civil parties who gave evidence at trial,²² the number of exhibits put before and considered by the Trial Chamber,²³ the geographic and temporal scope of the charges,²⁴ and the novelty of certain issues litigated at trial for the first time at the ECCC.²⁵

²⁰ See e.g., *Prosecutor v. Karadžić*, IT-95-5/18-T, “Judgement”, Trial Chamber, 24 March 2016 (2,590 pages); *Prosecutor v. Taylor*, SCSL-03-01-T, “Judgement”, Trial Chamber II, 18 May 2012 (2,532 pages); *Prosecutor v. Mladić*, IT-09-92-T, “Judgement”, Trial Chamber, 22 November 2017 (2,478 pages); *Prosecutor v. Šainović et al.*, IT-05-87-T, “Judgement”, Trial Chamber, 26 February 2009 (6 accused, 1,724 pages); *Prosecutor v. Nyiramasuhuko et al.*, ICTR-98-42-T, “Judgement and Sentence”, Trial Chamber, 24 June 2011 (6 accused, 1,548 pages); *Prosecutor v. Stanišić and Župljanin*, IT-08-91-T, “Judgement”, Trial Chamber, 27 March 2013 (1,474 pages). See also, *Prosecutor v. Katanga*, ICC-01/04-01/07, “Judgment pursuant to Article 74 of the Statute”, Trial Chamber, 7 March 2014 (867 pages); *International Military Tribunal for the Far East Judgement of 4 November 1948*, 4 November 1948 (28 accused, 1,077 pages); *Trial of the Major War Criminals Before the International Military Tribunal*, 14 November 1945 – 1 October 1946, Vols I-XXII (22 accused, 196 pages).

²¹ 274 hearing days between 8 January 2015 and 11 January 2017.

²² 114 fact witnesses, 63 civil parties and eight experts.

²³ A total of 10,804 exhibits were put before the Chamber and assigned E3 designations during the course of Case 002.

9. In addition to the foregoing factors, the Supreme Court Chamber considers that the recent appointment of International Co-Counsel to NUON Chea in late January 2019,²⁶ and the advanced age and health concerns of the accused immediately impact the defence's ability to furnish sufficiently informed submissions in accordance with the modalities envisaged by Internal Rule 107(4). The Supreme Court Chamber is satisfied that just cause has been shown warranting additional time to be granted beyond the statutory period of 30 days.

10. However, the Supreme Court Chamber considers that NUON Chea and KHIEU Samphân's requests for five and seven additional months respectively to file their notices of appeal are excessive. The Chamber also considers that KHIEU Samphân's request for a month solely for translation purposes is not appropriate and rejects the proposition that the translation process can only begin once the notice of appeal has been finalized.²⁷ It is established practice at the ECCC that voluminous documents are submitted to the Interpretation and Translation Unit ("ITU") progressively in order to expedite the translation, revision and filing process. Judicial economy requires the Supreme Court Chamber to balance several factors including available resources and the efficient management of proceedings. In this regard, the Chamber notes that the advanced age and health of the accused are factors which will continue to affect future proceedings in Case 002/02, and it is incumbent upon all parties to employ conscientious work practices which are conducive to judicial efficacy. All parties are therefore urged to maximise the efficient use of translation resources by progressively submitting their drafts to ITU.

11. In view of the foregoing, the Chamber considers that a uniform extension of page limits by 30 pages in English and French (to a maximum of 60 pages) and an extension of two months is sufficient to allow all parties to properly read the Trial Judgement, understand the Trial Chamber's findings and briefly outline the alleged errors of law invalidating the

²⁴ Certain facts were limited to discrete crime sites (e.g. cooperatives, worksites, security centres and the treatment of Buddhists) and/or timeframes (e.g. the treatment of the Vietnamese and Cham), whereas other facts encompassed events nationwide between 17 April 1975 and 6 January 1979 (e.g. the regulation of marriage).

²⁵ Including the crime of genocide against the Cham and Vietnamese populations, and the nationwide arrangement of marriage as the crime against humanity of other inhumane acts through conduct characterized by the Closing Order as "forced marriage" and "rape".

²⁶ Assignment of New Foreign Co-Lawyer to Represent Mr. Nuon Chea in Case 002/02, 23 January 2019, E464.

²⁷ See KHIEU Samphân's Request, para. 25; see also Co-Prosecutors' Response, para. 21.

Trial Chamber's findings and/or alleged errors of fact which occasioned a miscarriage of justice.²⁸

12. The Supreme Court Chamber observes that the Trial Chamber notified the Trial Judgement at 8.37 p.m. on Thursday, 28 March 2019, placing it outside the official filing hours of the ECCC.²⁹ In accordance with Article 2.6 of the Practice Direction on Filing Documents before the ECCC, the Trial Judgement shall be deemed to have been filed during the next official filing day: Friday, 29 March 2019. The abovementioned extension of time will therefore run from this date.

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

GRANTS NUON Chea's and KHIEU Samphân's Requests in part; and

ORDERS that the parties file their notices of appeal in English and/or French to a maximum of 60 pages, along with a Khmer translation, on or before 1 July 2019.

Phnom Penh, 26 April 2019

President of the Supreme Court Chamber



²⁸ See Decision on Defence Motion for Extension of Time and Page Limits on Notices of Appeal and Appeal Briefs, 29 August 2014, F3/3, paras 7-8 (referring to Internal Rule 105(3)).

²⁹ See Practice Direction on Filing Documents before the ECCC, Article 2.3.