



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

ឯកសារដើម
ORIGINAL/ORIGINAL
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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: 29 January 2020
Language(s): Khmer/English
Classification: PUBLIC

DECISION ON KHIEU SAMPHÂN’S REQUEST TO REJECT THE CIVIL PARTIES SUBMISSION

Co-Prosecutors

CHEA Leang
Brenda HOLLIS

Accused

KHIEU Samphân

Civil Party Lead Co-Lawyers

PICH Ang
Megan HIRST

Co-Lawyers for KHIEU Samphân

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 KHIEU Samphân Defence Request to Reject the Civil Party “Submissions” (F50/1/1) pursuant to the Practice Direction on the Filing of Documents (“Request”).¹

I. 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 On 28 March 2019, the full judgement was notified to the parties in Khmer, English and French (“Trial Judgement”).³

2. The Supreme Court Chamber ordered that all notices of appeal be filed before 1 July 2019.⁴ On 21 June 2019, the Co-Prosecutors filed their notice of appeal against the Trial Judgement.⁵ On 20 August 2019, the Co-Prosecutors filed their appeal brief (“Co-Prosecutors’ Appeal Brief”).⁶

3. On 23 September 2019, after having been granted 30 days from the notification of the Chamber’s decision on the Defence request for extension,⁷ KHIEU Samphân filed his response to the Co-Prosecutors’ Appeal Brief (“KHIEU Samphân’s Response”).⁸ On 7 October 2019,

¹ KHIEU Samphân Defence Request to Reject the Civil Party “Submissions” (F50/1/1) pursuant to the Practice Direction on the filling of Documents, 11 October 2019, F50/1/1/1 (“Request”).

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

³ 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.

⁴ 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. 13.

⁵ Co-Prosecutors’ Notice of Appeal of the Trial Judgement in Case 002/02, 21 June 2019, E465/2/1.

⁶ Co-Prosecutors’ Appeal Against the Case 002/02 Trial Judgement, 20 August 2019, F50 (“Co-Prosecutors Appeal Brief”).

⁷ Decision on Khieu Samphân’s Request for Extensions of Time and Page Limits for Filing his Appeal Brief, 23 August 2019, F49, paras 28 and 36.

⁸ KHIEU Samphân Defence Response to the Prosecution’s Appeal in Case 002/02, 23 September 2019, F50/1 (“KHIEU Samphân’s Response”).

the Civil Party Lead Co-Lawyers filed submissions relating to KHIEU Samphân's Response ("Civil Parties Submission" or "Submission").⁹

4. On 11 October 2019, KHIEU Samphân filed the Request seeking rejection of the Civil Parties Submission.¹⁰

5. The Lead Co-Lawyers did not file a response.

II. SUBMISSIONS

Civil Parties Submission

6. In their Submission (wherein they request the Chamber to take this into account in its determination of the Co-Prosecutors' Appeal), the Lead Co-Lawyers acknowledge that the timing is "unusual in that they address a response made to another party's submissions".¹¹ They argue that the Submission is permissible for two cumulative reasons. Firstly, because they exclusively address matters which directly affect Civil Parties' rights and interests – namely the credibility, reliability and relevance of Civil Party evidence. Secondly, because they do not cover matters addressed in the Co-Prosecutors' Appeal Brief.¹² The Lead Co-Lawyers refute KHIEU Samphân's characterisation of Civil Party EM Oeun's evidence as lacking credibility and reliability.¹³ Noting KHIEU Samphân's argument relating to the limited scope of Civil Party EM Oeun's questioning in Case 002/01, they reserve their right to respond in the context of KHIEU Samphân's appeal.¹⁴

KHIEU Samphân's Request to Reject the Civil Parties Submission

7. In his Request, KHIEU Samphân argues that the Civil Parties Submission "respond[s] to a response and [is] therefore in reality a reply".¹⁵ The Defence submits that not only was the Civil Parties Submission filed 10 days after the notification of their Response, but also that the Chamber notified the parties that there will be oral arguments on replies to appeal

⁹ Civil Party Lead Co-Lawyers' Submissions relating to KHIEU Samphân's Response to the Co-Prosecutors' Appeal, 7 October 2019, F50/1/1 ("Civil Parties Submission"), notified in English and Khmer on 8 October 2019 and in French on 10 October 2019.

¹⁰ Request, para. 9.

¹¹ Civil Parties Submission, para. 10.

¹² Civil Parties Submission, para. 8.

¹³ Civil Parties Submission, para. 12.

¹⁴ Civil Parties Submission, para. 13.

¹⁵ Request, para. 4.

submissions.¹⁶ The Defence concludes that the Civil Parties were formally not allowed to file the Civil Parties Submission and requests the Chamber to reject it.¹⁷

III. APPLICABLE LAW

8. The Practice Directions state at Article 8.3 that “[a]ny response to an application or pleading shall be filed together with any list of authorities within 10 calendar days of notification of the document to which the participant is responding”.¹⁸ Article 8.4 provides that “a reply to a response shall only be permitted where there is to be no oral argument on the request, and such reply shall be filed within 5 calendar days of notification of the response to which the participant is replying”.¹⁹

9. According to Internal Rule 39(1), “[a]ll time limits set out in [...] the applicable Practice Directions and, where appropriate, by decision of the judges, must be respected. Subject to this Rule, failure to do so shall lead to the invalidity of the action in question”.²⁰ Internal Rule 39(4)(b) provides that the Chamber may, at the request of the concerned party or on their own motion, “recognise the validity of any action executed after the expiration of a time limit prescribed in these IRs on such terms, if any, as [it] see[s] fit”.²¹ The Internal Rules further provide that “ECCC proceedings shall be fair and adversarial and preserve a balance between the rights of the parties”.²²

IV. DISCUSSION

10. The Chamber has previously found that the Civil Parties enjoy the right to respond to Defence submissions including at the appellate phase of the proceedings as long as the submissions “relate to grounds directly affecting Civil Parties rights and interests” and that they “endeavour to avoid repetitiveness and overlap with issues already covered by the Co-Prosecutors projected response”.²³ The Chamber is satisfied that the arguments contained in

¹⁶ Request, paras 5-7; Decision on Khieu Samphân’s Request for Extensions of Time and Page Limits for Filing his Appeal Brief, 23 August 2019, F49, para. 36, last subparagraph.

¹⁷ Request, paras 7 and 9.

¹⁸ Practice Direction, Article 8.3.

¹⁹ Practice Direction, Article 8.4.

²⁰ Internal Rules, Rule 39(1).

²¹ Internal Rules, Rule 39(4).

²² Internal Rules, Rule 21(1)(a).

²³ Decision on Civil Party Lead Co Lawyers’ Requests Relating to the Appeals in Case 002/01, 26 December 2014, F10/2, para. 17: “This said the Supreme Court Chamber considers that while there exists no contradiction in principle between the right to respond and the goals of victims participation the right in question must be interpreted so as to tally with the subsidiary function of Civil Parties *vis-à-vis* that of the Co-Prosecutors. Considering moreover the need to safeguard the equality of arms and the concerns regarding effective management of the proceedings the Supreme Court Chamber holds that the exercise of the right to respond to the

KHIEU Samphân's Response affect the Civil Parties' interests to the extent that they challenge the credibility and reliability of Civil Party evidence. It is further satisfied that the two specific points regarding the use of Civil Party EM Oeun's evidence discussed by the Lead Co-Lawyers avoid repetition and overlap with the Co-Prosecutors' Appeal. As such, the Chamber considers that the Civil Parties Submission respects the two limitations set out above.

11. However, the Chamber further recalls that:

“parties are entitled to make written submissions before the competent Chamber up until the closing submissions, as detailed in the Practice Direction on Filing. The authorisation to submit written applications and pleadings reasonably incorporates the right to respond and reply to other parties' submissions, consistent with the adversarial structure of proceedings.”²⁴ (emphasis added)

12. In this respect, the Chamber observes that the Lead Co-Lawyers merely acknowledge that the timing and nature of their Submission is “unusual”²⁵ and that it “do[es] not fall within the pleading framework envisioned by the Internal Rules and Practice Direction”.²⁶ The Chamber notes that the ECCC legal framework does not accommodate “unusual” filings. The Chamber will not provide reasoning for, or description of, any filing by the Parties and finds that submissions filed outside of the ECCC legal framework are inadmissible. Parties shall avoid making ambiguous filings.

13. The Chamber informs the Lead Co-Lawyers that they may, in the interests of justice, be invited to make oral submissions at the Co-Prosecutors' appeal hearing. The right to respond may be granted accordingly.

14. This decision is filed without prejudice to the determination by the Special Panel of Judges of the Khieu Samphân application to disqualify the six judges of the Supreme Court Chamber who adjudicated Case 002/01.

Defence Appeal Briefs must be subject to limitations. First the arguments set out in the proposed response must relate to grounds directly affecting Civil Parties rights and interests. Second the Lead Co-Lawyers must endeavour to avoid repetitiveness and overlap with issues already covered by the Co-Prosecutors projected response to the Defence Appeal Briefs. To this end the Supreme Court Chamber decides to set the deadline for the filing of the Civil Parties response after the notification of the Co-Prosecutors response as specified below”.

²⁴ Decision on Civil Party Lead Co Lawyers' Requests Relating to the Appeals in Case 002/01, 26 December 2014, F10/2, para. 14.

²⁵ Civil Parties Submission, para. 10.

²⁶ Civil Parties Submission, para. 7.

V. DISPOSITION

15. For the above reasons, the Supreme Court Chamber:

GRANTS the Request;

REJECTS the Civil Parties Submission.

Phnom Penh, 29 January 2020

President of the Supreme Court Chamber



KONG Srim