

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

**FILING DETAIL**

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**REPLY TO CO-PROSECUTORS' RESPONSE TO THE KHIEU SAMPHAN AND  
NUON CHEA DEFENCE REQUEST FOR EXTENDED DEADLINES AND PAGE  
LIMITS IN REGARDS TO CASE 002/01 JUDGMENT APPEALS**

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The Co-Lawyers for Nuon Chea and the Co-Lawyers for Khieu Samphân (the ‘Defence’) hereby submit this reply to the Co-Prosecutors’ Response to the Khieu Samphân and Nuon Chea Defence Request for Extended Deadlines and Page Limits in Regards to Case 002/01 Judgment Appeals:

1. On 13 August 2014, the Khieu Samphân and Nuon Chea defence teams jointly filed a request for an extension of the page limits and deadlines for both the notice of appeal and the appeal brief in regards to the trial judgment in Case 002/01 (‘Extension Request’).<sup>1</sup> The Extension Request sought an increase in the page limit for the notice of appeal from 30 to 50 pages in English or French; an increase in the page limit for the appeal brief from 30 to 150 pages in English or French; an extension in the deadline for filing the notice of appeal from 30 to 60 days, plus an additional 14 days for translation; and an extension in the deadline for filing the appeal brief from 60 to 75 days, plus an additional 42 days for translation.<sup>2</sup> On 21 August 2014, the Co-Prosecutors filed a response (‘Response’).<sup>3</sup> The Co-Prosecutors did not object to the proposed page limits, subject to a concomitant increase in the page limit for their joint response to 300 pages – the combined length of the two defence appeal briefs. The Co-Prosecutors objected to the proposed extension for the notice of appeal, and suggested instead a single 30-day extension in the time for filing the appeal brief, to 90 days from filing of the notice. The Co-Prosecutors furthermore requested an equivalent 90 days from the filing of appeal briefs to file a response.<sup>4</sup> Pursuant to Article 8.4 of the Practice Direction on Filing, the Defence hereby submits the instant reply to the Co-Prosecutors’ Response.<sup>5</sup>

#### **A. Page Limits for Co-Prosecutors’ Response**

2. The Co-Prosecutors do not support their request to file a joint response brief equivalent to the combined length of the defence appeal briefs by reference to any authority. Pursuant to international practice, the page limit of a joint prosecution response to

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<sup>1</sup> Document No. F3, ‘Demande urgente de la Défense de M. KHIEU Samphân et de la Defense de M. NUON Chea aux fins de prorogation des délais et d’extension du nombre de pages des conclusions en appel’, 13 August 2014 (‘Extension Request’).

<sup>2</sup> Extension Request, para. 31.

<sup>3</sup> Document No. F3/1, ‘Co-Prosecutors’ Response to the Khieu Samphân and Nuon Chea Defence Request for Extended Deadlines and Page Limits in Regards to Case 002/01 Judgment Appeals’, 21 August 2014 (‘Response’).

<sup>4</sup> Response, para. 7.

<sup>5</sup> Practice Direction on Filing Documents before the ECCC, Practice Direction ECCC/01/2007/Rev.7 (‘Practice Direction on Filing’), Art. 8.4 (permitting replies within 5 calendar days where no oral argument on the original request is contemplated).



multiple defence appeal briefs is granted a modest increase over the length of each individual appeal brief. The ICTR and ICTY Practice Direction on the Length of Briefs and Motions of Appeal provide for a 30,000 word maximum for any one defence appeal brief, a baseline prosecution response of 30,000 words in respect of one defendant, and a further 10,000 words for each additional defendant.<sup>6</sup> Should the Chamber choose to grant the Defence request for an allowance of 150 pages for each defendant, the Co-Prosecutors' joint response should accordingly be limited to 200 pages. This limit would take account of the substantial overlap in the issues likely to arise in both appeals, including the definitions of crimes and modes of liability, procedural and evidentiary issues, and factual and legal findings concerning the alleged common purpose and joint criminal enterprise.

### **B. Deadlines for Co-Prosecutors' Response**

3. The Co-Prosecutors similarly fail to support their request for an extension of the period for their response to the same length as the Defence's briefing period. ECCC Rules and Practice Directions uniformly contemplate shorter time periods for responses to appeals than for appeal filings.<sup>7</sup> A similar approach was adopted by this Chamber during the Case 001 proceedings.<sup>8</sup> The ICTR and the ICTY RPEs, which provide for a 75-day deadline for appeal briefs from the filing of the notice of appeal – the same period sought by the Defence in this case, prior to translation – require responses to be filed within 40 days of the appellant's brief.<sup>9</sup> The Co-Prosecutors' response should be subject to the same limitations in this case.

### **C. Extension of the Deadline for the Notice of Appeal**

4. Finally, the Co-Prosecutors offer no authority or reasoning in support of their view that an extension of the deadline for the notice of appeal is 'not necessary'. If the complexity of the issues on appeal warrants an extension of both the period for the

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<sup>6</sup> ICTR and ICTY Practice Direction on the Length of Briefs and Motions of Appeal, (C)(1)(a),(b). *See also, Mugenzi and Mugiraneza v. The Prosecutor*, ICTR-99-50-A, 'Decision on the Prosecution's Motion for an Extension of the Word Limit for its Respondent's Briefs', 25 April 2012 (denying Prosecution request for a deviation from the guidelines of the Practice Direction).

<sup>7</sup> *See e.g.*, Rules 71(2), 77bis(2), 107(1), (4); Practice Direction on Filing, Art. 8.3.

<sup>8</sup> Case File No. 001/18-07-2007-ECCC-SC, Document No. **F14/3**, 'Decision on Co-Prosecutors' Application for Extension of Time to Respond to the Accused Appeal Brief', 7 December 2010 (granting Co-Prosecutors 30 days to respond to the defence appeal brief, as against a 90 day deadline for the defence brief).

<sup>9</sup> *See* ICTR and ICTY Rules and Procedure and Evidence, Rules 111(A), 112(A).

appeal brief and the length of the notice of appeal, it follows equally that an extension is warranted in regard to the deadline for the notice, which establishes the boundaries of each party's appeal and accordingly presupposes an analysis of the full judgment and each potential ground of appeal. The 60-day period for the notice of appeal proposed in the Extension Request (prior to translation) is well within the parameters of international practice.<sup>10</sup>

5. The Defence notes that the time required for translation of the Defence's proposed 50-page notice (to which the Co-Prosecutors do not object) is roughly half the present 30-day period for filing the notice, and would have required submission to ITU on or prior to the date of the instant reply. As an alternative to the 74-day period for the notice of appeal proposed in the Extension Request, the notice could be filed in 60 days in English or French with Khmer to follow as soon as possible. In that case, the time for the appeal brief would begin from the moment the notice is filed in one language, rather than the date on which it is formally notified, and would accordingly reduce the overall schedule by 14 days.
6. For these reasons, the Defence respectfully requests that the Chamber:
  - a. Set the limit of the Co-Prosecutors' joint response to the Khieu Samphân and Nuon Chea appeal briefs to a length roughly one-third longer than each individual defence appeal brief;
  - b. Set the response time for the Co-Prosecutors' joint response to the Khieu Samphân and Nuon Chea appeal briefs to a period roughly half the time granted for the appeal brief from the filing of the notice of appeal; and
  - c. Extend the deadline for filing of notices of appeal against the Case 002/01 trial judgment to 60 days from the issuance of the judgment, with a further 14 days for translation, or alternatively, permission to file in one language.

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<sup>10</sup> See *Prosecutor v. Dordevic*, IT-05-87/I-A, 'Decision on Vlastimir Dordevic's Motion for an Extension of Time to File a Notice of Appeal', 16 March 2011 (granting a 90 day period to file a notice of appeal 'considering that it is in the interests of justice to ensure that the parties have sufficient time to prepare meaningful notices of appeal in full conformity with the applicable provisions').

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