

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

Case No.: 002/19-09-2007-ECCC/SC

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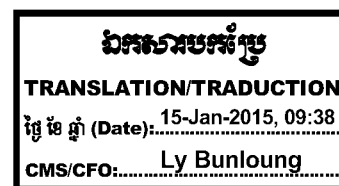
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**Response by Mr KHIEU Samphân's Defence to
the Co-Prosecutors' Request to Remedy Defects in KHIEU Samphân's Submissions on
Appeal**

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Before:

The Supreme Court Chamber
Judge KONG Srim
Judge Agnieszka KLONOWIECKA-
MILART
Judge SOM Sereyvuth
Judge Chandra Nihal JAYASINGHE
Judge MONG Monichariya
Judge YA Narin
Judge Florence Ndepele MUMBA

The Co-Prosecutors
CHEA Leang
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All Civil Party Lawyers

NUON Chea's Defence

MAY IT PLEASE THE SUPREME COURT CHAMBER

1. On 29 September 2014, Mr KHIEU Samphân's Defence (the "Defence") filed its Notice of Appeal against the Judgement in Case 002/01 (the "Notice of Appeal").¹
2. On 29 December 2014, the Defence filed its Appeal Brief against the Judgement in Case 002/01 (the "Brief").²
3. On 31 December 2014, the Defence filed a request for correction of its Brief to remedy errors of form caused by computer problems. That request was granted by the Supreme Court Chamber (the "Supreme Court") and the corrected version of the Brief was notified to the parties on 2 January 2015.³
4. On 6 January 2015, the Co-Prosecutors requested the Supreme Court to accept the corrected version of the Brief and to order the Defence to file a supplementary document indicating which paragraphs of the corrected version of the Brief relate to which grounds of appeal contained in the Notice of Appeal (the "Request").⁴
5. The Defence hereby objects to this unjustified and pointless Request.
6. First, the corrected version of the Brief has already been accepted by the Supreme Court. Therefore, there is no doubt that this version has annulled and replaced the previous one and it is indeed the one to which parties should respond.
7. Furthermore, contrary to the Co-Prosecutors' assertion, the corrected version of the Brief is not "defective". It does not violate any instrument applicable before the ECCC.
8. The Co-Prosecutors complain about the lack of references to the paragraphs of the Notice of Appeal in the corrected version of the Brief, arguing that this prevents them from correlating

¹ *Déclaration d'appel de la Défense de M. KHIEU Samphân contre le jugement rendu dans le procès 002/01*, 29 September 2014, **E313/2/1**.

² *Mémoire d'appel de la Défense de M. KHIEU Samphân contre le jugement rendu dans le procès 002/01*, 29 December 2014, **F17**.

³ *Demande de rectificatif du document F17*, 31 December 2014, **F17/Corr-1**; [Corrigé 1] *Mémoire d'appel de la Défense de M. KHIEU Samphân contre le jugement rendu dans le procès 002/01*, 29 December 2014, **F17**. Notified on 2 January 2015, at 11.04 a.m.

⁴ Co-Prosecutors' Request to Remedy Defects in KHIEU Samphân's Submissions on Appeal, 6 January 2015, **F18**.

the grounds of appeal raised in the Notice of Appeal and those developed in the Brief.⁵ They cite the case law and practice directions of other international criminal tribunals according to which 1) a notice of appeal is supposed to enable the respondent to know what will be developed in the brief, and to provide details of the arguments raised, and 2) the grounds of appeal and arguments raised in the appeal brief should be set out and numbered in the same order as in the notice of appeal.⁶

9. Already, the Co-Prosecutors are mixing up paragraph numbering in the notice of appeal and grounds of appeal. In fact, the paragraphs of a notice of appeal deal with one or several alleged errors whereas grounds of appeal are categories of alleged errors.⁷ Furthermore, the Supreme Court pointed out that in the notice of appeal, parties should “only specify” the alleged errors.⁸ Moreover, no instrument applicable before ECCC provides that the grounds of appeal and arguments raised in the appeal brief shall be set out and numbered in the same order as in the notice of appeal.

10. In any event, in its Appeal Brief, the Defence has followed the same plan, and therefore the same order for its grounds of appeal and arguments as that set out in its Notice of Appeal. The Defence has even given a detailed breakdown of the plan with headings covering the ideas set out in the paragraphs of the Notice of Appeal. Despite some slight shifting or mergers of alleged errors for reasons of logic and conciseness, it is therefore extremely easy to correlate both documents and make the comparisons that the Co-Prosecutors wish to make. Moreover, the Co-Prosecutors have several months to file their response.⁹

⁵ Request, paras. 3 and 5.

⁶ Request, para. 4.

⁷ For example, the ICTR Appeals Chamber identified nine grounds of appeal raised in paragraphs 8 to 110 of Rukundo’s Notice of Appeal (*Rukundo v. The Prosecutor*, ICTR-2001-70-A, Appeal Judgement, 20 October 2010, para. 4; Emmanuel Rukundo’s Notice of Appeal against the Judgement rendered on 27 February 2009, ICTR-2001-70-A, 5 November 2009). Generally, even in the big trials before the *ad hoc* tribunals, accused persons who plead acquittal on appeal raise no more than twenty grounds of appeal. For example: *Prosecutor v. Dordevic*, IT-05-87/1-A, Appeal Judgement, 27 January 2014, para. 5 (19 grounds of appeal).

⁸ Decision on Defence Motion for Extension of Time and Page Limits of Notices of Appeal and Appeal Briefs, 29 August 2014, **F3/3**, para. 8.

⁹ Decision on Motions for Extension of Time and Page Limits for Appeal Briefs and Responses, 31 October 2014, **F9**, para. 23; Decision on Defence Motions for Extension of Pages to Appeal and Time to Respond, 11 December 2014, **F13/2**, para. 17.

11. To assist the Co-Prosecutors and avoid any further delays in the appeals proceedings, the Defence indicates, in the annex to this Response, the slight shifting and mergers of alleged errors between the Notice of Appeal and Appeal Brief.¹⁰

FOR THESE REASONS

12. Mr KHIEU Samphân's Defence requests the Supreme Court Chamber to REJECT the Co-Prosecutors' Request.

	KONG Sam Onn	Phnom Penh	[signed]
	Anta GUISSÉ	Phnom Penh	[signed]
	Arthur VERCKEN	Paris	[signed]

¹⁰ Annex titled « *Déplacements et fusions intervenus entre la Déclaration d'appel et le mémoire d'appel* ».

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Response by Mr KHIEU Samphân's Defence to the Co-Prosecutors' F18 Request