



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

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 Agnieszka KLONOWIECKA-MILART

Judge MONG Monichariya

Judge Florence Ndepele MWACHANDE-MUMBA

Judge YA Narin

Date:

30 June 2015

Language(s):

Khmer/English

Classification:

PUBLIC

**DECISION ON CO-PROSECUTORS AND CIVIL PARTY LEAD CO-LAWYERS’
REQUEST FOR ADDITIONAL TIME FOR EXAMINATION OF SCW-5**

Co-Prosecutors

CHEA Leang

Nicholas KOUMJIAN

Co-Lawyers for NUON Chea

SON Arun

Victor KOPPE

Accused

KHIEU Samphân

NUON Chea

Co-Lawyers for KHIEU Samphân

KONG Sam Onn

Anta GUISSÉ

Arthur VERCKEN

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 seized of the “Co-Prosecutors’ and Civil Party Lead Co-Lawyers’ Request for Additional Time for Examination for SCW-5” filed on 24 June 2015 (“Request”).¹

2. Given that the Request was filed very shortly before the scheduled date of the hearing, the Supreme Court Chamber considered it to be in the interest of justice to decide on the matter without awaiting any responses.²

3. On 29 May 2015, the Supreme Court Chamber ordered that witnesses SCW-3, SCW-4, and SCW-5 appear to give testimony before the Supreme Court Chamber on a date to be scheduled in due course.³ On 2 June 2015, the Supreme Court Chamber issued its Order Scheduling a Hearing, in which it set out the dates for the examination of these witnesses and invited the parties to file observations on the annexed tentative timetable for the hearing by 5 June 2015.⁴ On 4 June 2015, NUON Chea filed his observations, requesting, *inter alia*, an extension of one hour’s time (in addition to the hour already allotted to him) for the examination of SCW-5.⁵ On 5 June 2015, KHIEU Samphân similarly requested an extension of 30 minutes’ time (in addition to the 30 minutes already allotted to him) for the examination of SCW-5.⁶ On 17 June 2015, the Supreme Court Chamber granted NUON Chea’s and KHIEU Samphân’s requests for more time to question SCW-5, and accordingly issued a revised timetable for the hearing.⁷

4. The Co-Prosecutors and Civil Party Lead Co-Lawyers now request that the Supreme Court Chamber grant them an extension of one and a half hours’ time (in addition to the one

¹ F26/2.

² The Supreme Court Chamber takes note that, shortly before the present decision was to be issued, KHIEU Samphân filed a response opposing the Request, and moving the Supreme Court Chamber to change the order of questioning such that the Defence questions the witnesses last, or in the alternative, that the Defence be permitted to re-examine the witnesses at the end of the Co-Prosecutors and Civil Party Lead Co-Lawyers’ questioning period. *See Réponse de la Défense de M. KHIEU Samphân à la demande des co-Procureurs et des Parties civiles de temps supplémentaire pour interroger SCW-5*, 30 June 2015, F26/2/1, para. 11.

³ Decision on Part of NUON Chea’s Requests to Call Witnesses on Appeal, 29 May 2015, F2/5, para. 26.

⁴ Order Scheduling a Hearing, 2 June 2015, F24; Annex – Timetable for the Hearing, 2 June 2015, F24.1.

⁵ NUON Chea’s Observations on Hearing Schedule for the Examination of Witnesses SCW-3, SCW-4 and SCW-5, 4 June 2015, F24/8, para. 3.

⁶ *Observations de la Défense de M. KHIEU Samphân sur le calendrier des audiences consacrées à la déposition de SCW-3, SCW-4 et SCW-5*, 5 June 2015, F24/9, para. 3.

⁷ Directions on the Conduct of the Hearing, 17 June 2015, F26; Annex – Timetable for the Hearing, 17 June 2015, F26.1.

and a half hours already allotted to them) to question SCW-5.⁸ They argue that “without commensurate extension of the time allocated to the Co-Prosecutors and Civil Parties, the Accused combined [now] have twice the amount of time to question SCW-5 as the Co-Prosecutors and Civil Parties combined”,⁹ which they contend is inconsistent with the balance that must be kept between the parties and with the equality of arms.¹⁰ They add that “the more time the Accused have to elicit evidence from SCW-5, the greater amount of time the Co-Prosecutors and Civil Parties will need to question the witness in order to fully explore the quality of that evidence as well as other relevant topics”.¹¹ The Co-Prosecutors and Civil Party Lead Co-Lawyers also point out that the invitation for observations on the original timetable did not provide for responses to the other parties’ observations.¹²

5. The Supreme Court Chamber notes that it invited the Co-Prosecutors and the Civil Party Lead Co-Lawyers to file observations on the tentative time table for the hearing. Moreover, NUON Chea’s observations were notified to all parties one full day in advance of the 5 June submission deadline. The Co-Prosecutors and the Civil Party Lead Co-Lawyers therefore had sufficient opportunity to request a time allocation commensurate with their interest in the witness concerned, but declined to seek an extension then.

6. The Supreme Court Chamber considers that the Request does not substantiate the concrete legal interest in affording the Co-Prosecutors and Civil Parties more time to question SCW-5, but rather merely seeks to mirror the time allocated to the Defence, apparently based on the incorrect assumption that the principle of equality of arms requires that time be allotted to the parties mechanically in the sense that equal time must always be given to the Defence on the one hand, and to the Co-Prosecutors and Civil Party Lead Co-Lawyers on the other hand.¹³ In this respect, the Supreme Court Chamber recalls that there is a fundamental difference between the position of the accused in a criminal trial, whose liberty is at stake and who enjoys the fair trial rights set out, in particular, in Article 14(2) and (3) of the International Covenant on Civil and Political Rights (“ICCPR”),¹⁴ and that of the prosecution,

⁸ Request, paras 6-7.

⁹ Request, para. 5.

¹⁰ Request, paras 4-5.

¹¹ Request, para. 5.

¹² Request, para. 2.

¹³ See e.g. Decision on Defence Motion for Extension of Time and Page Limits on Notices of Appeal and Appeal Briefs, 29 August 2014, F3/3, para. 10.

¹⁴ Opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

which is representing the public interest that justice be done in accordance with the law.¹⁵ For this purpose, the prosecution has available to it the powers, competences and authorisations defined by the law and the Supreme Court Chamber is aware of its role in ensuring that the exercise of them be not impeded by any significant imbalance among authorisations granted to the parties,¹⁶ including in time allocation.

7. Civil Parties, on the other hand, who do enjoy fair trial rights defined in Article 14(1) of the ICCPR, have a specific and limited role in the proceedings, as set out in the ECCC's Internal Rules,¹⁷ which is consistent with international standards.¹⁸

8. In the Supreme Court Chamber's view, the Co-Prosecutors and Civil Party Lead Co-Lawyers do not demonstrate at this point that the one and a half hours' time allocated to them (combined) places them at a substantial disadvantage *vis-à-vis* the three hours' time allocated to NUON Chea and KHIEU Samphân (also combined). The Request therefore fails to satisfy the requirement of establishing good cause for an extension of time.

¹⁵ Article 4 of the Code of Criminal Procedure of the Kingdom of Cambodia, 7 June 2007.

¹⁶ See e.g. *Prosecutor v. Duško Tadić*, Case No. IT-94-1-A, "Judgment", Appeals Chamber, 15 July 1999, para. 48, and references cited therein.

¹⁷ See e.g. Decision on Civil Party Lead Co-Lawyers' Requests Relating to the Appeals in Case 002/01, 26 December 2014, F10/2, paras 11-18. See also Case 001 Appeal Judgement, F28, 3 February 2012, paras 409-421.

¹⁸ At the international and regional levels, there is agreement that specific participatory rights of victims in criminal proceedings are to be principally determined at the municipal level. See *Case of Perez v. France*, Application no. 47287/99, "Judgment", European Court of Human Rights ("ECtHR"), 12 February 2004, para. 57. See also United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (adopted and proclaimed by General Assembly Resolution 60/147 of 16 December 2005) and Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (14 November 2012, L 315/57). In particular, it is firmly established in the case law of the ECtHR that the principle of equality of arms is modulated by the different roles and objectives of civil parties as opposed to those of the other parties, with the caveat, however, that civil parties must not be put at an "undue" or "substantial" disadvantage *vis-à-vis* their opponent(s), including the prosecuting authorities. See *Case of Stankiewicz v. Poland*, Application no. 46917/99, "Judgment", ECtHR, 6 April 2006, para. 69; *Case of Guigüe and SGEN-CFDT v. France*, Application no. 59821/00, "Décision", 6 January 2004, pp. 6-8; *Case of Berger v. France*, Application no. 48221/99, "Judgment", ECtHR, 3 December 2002, para. 38.

9. For the foregoing reasons, the Supreme Court Chamber **DENIES** the Request.

Phnom Penh, 30 June 2015

President of the Supreme Court Chamber



KONG Srim