



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
ថ្ងៃ ខែ ឆ្នាំ (Date): 05-Oct-2015, 09:09
CMS/CFO: Sann Rada

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 Agnieszka KLONOWIECKA-MILART
- Judge MONG Monichariya
- Judge Florence Ndepele MWACHANDE-MUMBA
- Judge YA Narin

Date:

5 October 2015

Language(s):

Khmer/English

Classification:

PUBLIC

**DECISION ON THE CO-PROSECUTORS' REQUEST FOR PAGE EXTENSION FOR
THEIR PROSPECTIVE RESPONSE TO NUON CHEA'S SIXTH REQUEST FOR
ADDITIONAL EVIDENCE**

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

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);

BEING SEIZED of the “Co-Prosecutors’ Request for Additional Pages and to File in One Language in Response to NUON Chea’s Sixth Additional Evidence Request” (“Request”);¹

NOTING that the Co-Prosecutors indicate that they intend to file a response to NUON Chea’s Sixth Additional Evidence Request² and seek the Supreme Court Chamber’s leave for this document to exceed the 30-page statutory limit, mandated under Article 5.2 of the Practice Direction on Filing,³ by up to 15 additional pages, submitting that “exceptional circumstances” warrant the application of Article 5.4 of the Practice Direction on Filing;⁴

NOTING that, in support of their pleading, the Co-Prosecutors note that NUON Chea was granted, in respect of his Sixth Additional Evidence Request, a page extension which doubled the normally applicable page limit, and that NUON Chea declared his request to be “highly densely formulated” and resulting from the merging of three separate motions for additional evidence;⁵ and that the Co-Prosecutors submit that the page extension sought, which is for “only half as much” in length as previously approved for NUON Chea’s Sixth Additional Evidence Request, is accordingly warranted to prepare a properly reasoned response, “given the scope” of NUON Chea’s request;⁶

RECALLING that the Supreme Court Chamber decided to abbreviate the time limit for the filing of eventual responses to the Request,⁷ and that no responses have been received within the amended deadline;

¹30 September 2015, F2/8/2.

² NUON Chea’s Sixth Request to Consider and Obtain Additional Evidence in Connection with the Appeal Against the Trial Judgement in Case 002/01, 11 September 2015, F2/8 (“Sixth Additional Evidence Request”).

³ Practice Direction on Filing of Documents Before the ECCC, ECCC/01/2007/Rev.8, 7 March 2012 (“Practice Direction on Filing”).

⁴ Request, paras 1, 3, 4. The Co-Prosecutors’ request to file their prospective response in one language only (Request, paras 1, 2, 4) has been subsequently retracted: Electronic mail sent from Office of the Co-Prosecutors to Greffiers of the Supreme Court Chamber, entitled “Amendment to F2/8/2”, 30 September 2015 at 03:03PM, on file with the Supreme Court Chamber.

⁵ Request, para. 3.

⁶ Request, para. 3.

⁷ Decision Pursuant to Internal Rule 39(2), 1 October 2015, F2/8/3.

RECALLING that Article 5.2 of the Practice Direction on Filing prescribes a 30-page limit for documents filed in English or French before the Supreme Court Chamber, unless stipulated otherwise;

RECALLING that Article 5.4 of the Practice Direction on Filing permits the relevant Chamber to extend the statutory page limits, subject to the moving party demonstrating the existence of exceptional circumstances;

CONSIDERING that page limits “however necessary, are to be tailored according to the needs of the parties in balance with the tenets of judicial efficiency”;⁸ and that, in this regard, the requesting party must establish “just cause” by demonstrating a “concrete legal interest” warranting the page extension sought;⁹

CONSIDERING that previous decisions on requests for time or page extension sanctioned the scope and complexity of the moving party’s upcoming filing as just cause satisfying the test under Article 5.4 of the Practice Direction on Filing, whereas indicating that the mere reliance on other parties’ requests to the same effect is inapposite, for this element alone does not show the “concrete legal interest” that must underpin the moving party’s demand;¹⁰

CONSIDERING that, in the present case, the Co-Prosecutors, notwithstanding the Supreme Court Chamber’s consolidated view on this issue, obdurately justified the relief sought by making reference to the other party’s request for page extension and attendant outcome, while offering as indication of the existence of “exceptional circumstances” under Article 5.4 of the Practice Direction on Filing what NUON Chea believes to be the significance of his own filing, without taking a position on the “scope” and complexity thereof¹¹ – which would certainly be necessary to convince this Chamber that the Request is well grounded;

CONSIDERING nevertheless that, in spite of its poor substantiation, the Request is, in the Supreme Court Chamber’s view, reasonable, assuming that the Co-Prosecutors intend to

⁸ Decision on Defence Motions for Extension of Pages to Appeal and Time to Respond, 11 December 2014, F13/2 (“Second Extension Decision”), para. 15.

⁹ Decision on Defence Motion for Extension of Time and Page Limits on Notices of Appeal and Appeal Briefs, 29 August 2014, F3/3 (“Extension Decision”), para. 10.

¹⁰ Decision on Motions for Extensions of Time and Page Limits for Appeal Briefs and Responses, 31 October 2014, F9, para. 14; Extension Decision, para. 10; Decision on Co-Prosecutors’ Request for Page and Time Extensions to Respond to the Defence Appeals of the Case 002/01 Judgment, 21 April 2015, F23/1, para. 9. *See also* Second Extension Decision, para. 11.

¹¹ Request, para. 3.

“properly respond”¹² not only to the admissibility of each proposed piece of evidence, but also as to the accuracy and relevance of the extensive presentation of the historical circumstances that NUON Chea considers to be the “root cause[s] and consequence[s]” “of the events that occurred during the Democratic Kampuchea period”,¹³ which alone numbers nearly 30 pages;

HEREBY:

GRANTS the Request;

ALLOWS the Co-Prosecutors a total of 45 pages to file their prospective response to NUON Chea’s Sixth Additional Evidence Request in English or French, with its equivalent in Khmer.

Phnom Penh, 5 October 2015

President of the Supreme Court Chamber



KONG Srim

¹² Request, para. 3.

¹³ Sixth Additional Evidence Request, para. 17.