

F16/1

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

**FILING DETAILS**

**Case No:** 001/18-07-2007-ECCC/SC

**Party Filing:** Co-Prosecutors

**Filed to:** Supreme Court Chamber

**Original language:** English

**Date of document:** 26 November 2010

**CLASSIFICATION**

**Classification of the document  
suggested by the filing party:** Public

**Classification by  
the Chamber:**

**Classification Status:**

**Review of Interim Classification:**

**Records Officer Name:**

**Signature:**

<b>ឯកសារដើម</b>	
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL	
ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/Date de reception): 26 / 11 / 2010	
ម៉ោង (Time/Heure): 15:30	
មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé du dossier: Ratanak	

**CO-PROSECUTORS' APPLICATION FOR EXTENSION OF TIME TO FILE  
THEIR RESPONSE TO THE APPEAL BRIEF BY THE CO-LAWYERS FOR  
KAING GUEK EAV ALIAS "DUCH" AGAINST THE TRIAL CHAMBER  
JUDGEMENT OF 26 JULY 2010**

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## I. INTRODUCTION

1. On 19 November 2010, the Co-Prosecutors received notification in English and Khmer of Kaing Guek Eav *alias* Duch's Appeal Brief against the Trial Chamber Judgement of 26 July 2010 ("Appeal").<sup>1</sup> Pursuant to Articles 8.3 and 8.5 of the Practice Directions on the Filing of Documents Before the ECCC ("Practice Directions"), the time limit of 15 days to respond commences at the time of notification in the languages requested by the Co-Prosecutors. Accordingly, the estimated last date for filing the Co-Prosecutors' response to the Appeal is 3 December 2010.
2. However, pursuant to Rule 39 of the Internal Rules, the Chambers may extend any time limits for filing of documents.<sup>2</sup> Thus, in consideration of: (A) the public holiday period; (B) the complicated nature of the Appeal which contains arguments not reasonably referenced in the Appellant's Notice of Appeal; (C) the fact that international tribunals trying cases of similar magnitude and complexity provide more time for responses to appeals of a trial judgment; (D) the length of the Appeal, which exceeds the page limit set out in the Practice Directions on the Filing of Documents; and (E) fairness to both parties regarding the allotted time to file their submissions, the Co-Prosecutors respectfully and in a timely manner request a 15-day extension of the time to file their response.

## II. ARGUMENT

### A. The Co-Prosecutors Request Additional Time to Respond to the Appeal.

3. The Co-Prosecutors received the Appeal on 19 November 2010, on the eve of the Water Festival, an official ECCC holiday.<sup>3</sup> Given the importance of this holiday

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<sup>1</sup> Appeal Brief by the Co-Lawyers for Kaing Guek Eav *alias* "Duch" Against the Trial Chamber Judgement of 26 July 2010, Case File No. 001/18-07-2007-ECCC/SC, Supreme Court Chamber, 18 November 2010, F14 ("Appeal").

<sup>2</sup> Internal Rules, Rev.6, 17 September 2010 ("Rules"), Rule 39.

<sup>3</sup> Notice of Appeal by the Co-Lawyers for Kaing Guek Eav *alias* Duch Against the Trial Chamber Judgement of 26 July 2010, Case File No. 001/18-07-2007-ECCC/TC, Trial Chamber, 24 August 2010, E188/8 ("Notice of Appeal").

and the closure of the ECCC for the holiday period, time was lost from the 15-day time limit for drafting and translating a response to the Appeal.

4. The Co-Prosecutors request that the time spent honouring the holiday and respecting the national day of mourning for the associated tragedy on Koh Pich not be counted against their time to respond, and therefore request additional time to respond to the Appeal.

**B. The Appeal Contains Arguments That Are Not Reasonably Referenced In the Appellant's Notice of Appeal That Therefore Could Not Be Anticipated and Require Additional Time For Response.**

5. On 24 August 2010, the Defence filed its Notice of Appeal of the Trial Chamber Judgement of 26 July 2010 ("Trial Judgement").<sup>4</sup> The Notice alleged two errors of law as grounds for appeal: (1) error regarding the Trial Chamber's personal jurisdiction over the Accused; and (2) error concerning the determination of a single prison sentence of 35 years.<sup>5</sup>
6. The Co-Prosecutors submit that the text of the Notice of Appeal provided insufficient notice of the Appellant's subsequent arguments in the Appeal. On preliminary review of the Appeal, a number of the Appellant's submissions appear to fall outside of—or, at best, were vaguely referenced in—the Notice of Appeal.<sup>6</sup> Other important points are summarily asserted with no specific references or argumentation.<sup>7</sup> One prominent example is where the Appellant repeatedly refers

<sup>4</sup> Notice of Appeal.

<sup>5</sup> Notice of Appeal.

<sup>6</sup> Appeal, paras. 34-38 (alleging that the Trial Chamber failed to consider that the 1956 Penal Code does not allow for prosecution of individuals who acted on orders from the upper echelons); Appeal, para. 70 (alleging a failure to consider Article 290(6) of the Code of Criminal Procedure of the Kingdom of Cambodia); Appeal, paras. 68-69 (apparently claiming that the Trial Chamber was required to apply the standard of "beyond reasonable doubt" in assessing jurisdiction); Appeal, paras. 62, 65 (objecting to the purported unauthorized "self-expansion of authority" by the ECCC Trial Chamber); Appeal, paras. 23, 27, 40-42, 66-92 (alleging that the Trial Chamber failed to consider specific documents purportedly containing "exculpatory" evidence).

<sup>7</sup> See, e.g. paras. 4-6 (referring generally, without any specific reference or citation, to "supporting evidence" and "exculpatory evidence" allegedly raised by the Appellant during the proceedings); para. 22 (referring generally, without any specific reference or citation, to "significant national legal instruments" defining the Appellant's role and status); para. 25 (referring generally, without any specific reference or citation, to "the legal theory of defining the most responsible persons" whereby one defines such persons by looking at their willpower in the hierarchy and volition compared to other prison secretaries); paras. 46-50 (claiming, with no specific reference or

to raising the issue of jurisdiction “during the proceedings” but fails to indicate a specific document or page of the trial transcript where such a submission was made.<sup>8</sup> The tenuous link to the grounds set out in the Notice of Appeal and the lack of specificity in the Appellant’s pleading makes it difficult and time-consuming for the Co-Prosecutors to construct a meaningful response. Thus, Because of the additional time and analysis required to respond to the Appeal, the Co-Prosecutors submit that an extension of time is fair and appropriate.

**C. International Tribunals Trying Cases of Similar Magnitude and Complexity Provide Additional Time for Response to Appeals Against Trial Judgements.**

7. The Supreme Court Chamber previously took note of the practice of international tribunals in considering whether to grant an extension of page limit for appeals against judgements.<sup>9</sup> International practice also provides guidance here in considering a request for additional time to respond to the Appeal. The Co-Prosecutors note that the ad hoc international criminal tribunals allot a period of 40 days for responding to trial judgment appeals<sup>10</sup> while the International Criminal Court allows 60 days.<sup>11</sup> The issues raised by the Appellant are of no less magnitude and complexity as those routinely raised on appeal in other tribunals, and they similarly demand sufficient time for detailed and thorough analysis and response.

**D. The Appeal Exceeds the Page Length Limitations Proscribed By the Practice Directions and Requires Additional Time for Review.**

8. The Co-Prosecutors also note that the Appellant filed a brief of 35 pages in English (41 pages in Khmer) in contravention of the Practice Directions on the

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citation, that a particular group of 10 people attacked Phnom Penh and Battambang and thereafter implemented their criminal plan); para. 90 (referring generally, with no specific reference or citation, to evidence allegedly showing that Duch had no power to make decisions independently).

<sup>8</sup> See, e.g. Appeal, paras. 4, 5, 66-71.

<sup>9</sup> Decision on Co-Prosecutors' Two Applications for Extension of Page Limit for their Appeal Brief, Case File No. 001/18-07-2007-ECCC/SC, Supreme Court Chamber, 18 October 2010, F5/2, para. 7.

<sup>10</sup> ICTY Rules of Procedure and Evidence, IT/32/Rev.44, 10 December 2009, Rule 112(A); ICTR Rules of Procedure and Evidence, 14 March 2008, Rule 112(A).

<sup>11</sup> Regulations of the International Criminal Court, ICC-BD/01-01-04, 26 May 2004, Regulation 59.

Filing of Documents Before the ECCC (“Practice Directions”). Article 5.2 of the Practice Directions provides that documents filed to the Supreme Court Chamber must not exceed 30 pages in English and 60 pages in Khmer.<sup>12</sup> Unlike the Co-Prosecutors, who requested and received an extension of page limit for their appeal to the Trial Judgement,<sup>13</sup> the Appellant failed to request an extension pursuant to Article 5 of the Practice Directions. This unauthorized departure from the clearly articulated procedural framework constitutes grounds for the Supreme Court Chamber to reject the Appeal.<sup>14</sup> However, in preparing its response, the Co-Prosecutors cannot assume that the Appeal will be found inadmissible and must respond carefully and substantively to all arguments. Therefore, the extra length of the brief constitutes an additional reason why it would be fair and appropriate for the Supreme Court Chamber to grant the Co-Prosecutors’ request for a reasonable extension of time.

**E. Because the Defence was Granted a 30-Day Extension to File this Appeal, an Extension of 15 Days is Fair and Does Not Prejudice the Defence.**

9. Under Rule 107(4) of the Rules, an appeal brief shall be filed within 60 days of the filing of the notice of appeal.<sup>15</sup> On 10 September 2010, the Appellant filed a request for extension of time of 30 additional days to file its appeal brief.<sup>16</sup> This request was granted.<sup>17</sup>
10. The Co-Prosecutors did not oppose the Appellant’s request for an extension of time to file his Appeal and submit that an extension of 15 days to file their

<sup>12</sup> Practice Directions on Filing of Documents Before the ECCC, Rev.5, 17 September 2010 (“Practice Directions”), Article 5.2.

<sup>13</sup> Decision on Co-Prosecutors’ Two Applications for Extension of Page Limit for their Appeal Brief, Case File No. 001/18-07-2007-ECCC/SC, Supreme Court Chamber, 18 October 2010, F5/2.

<sup>14</sup> Rules, Rule 111(2) (stating that the Supreme Court Chamber may declare an appeal inadmissible if it was “filed late, or was *otherwise procedurally defective*”) (emphasis added).

<sup>15</sup> Rules, Rule 107(4).

<sup>16</sup> Request of the Co-Lawyers for Kaing Guek Eav *alias* Duch to Extend the Time Limit for Filing of an Appeal Brief Against the Judgement of the Trial Chamber Issued on 26 July 2010, Case File No. 001/18-07-2007-ECCC/SC, Supreme Court Chamber, 10 September 2010, F6.

<sup>17</sup> Decision on Request of the Co-Lawyers for Kaing Guek Eav *alias* Duch to Extend the Time Limit for Filing of an Appeal Brief against the Judgement of the Trial Chamber of 26 July 2010, Case File No. 001/18-07-2007-ECCC/SC, Supreme Court Chamber, 18 October 2010, F6/2.

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Case File No. 001/18-07-2007-ECCC/SC

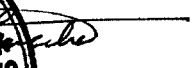
response is appropriate given the 30 additional days granted to the Appellant to file the Appeal.

11. Applying a conservative approach that includes the day that the Appeal was filed, the last date for the filing of the Co-Prosecutors' Response is 3 December 2010. The Co-Prosecutors are filing this Application well before that date.

### III. CONCLUSION

12. For the foregoing reasons, the Co-Prosecutors respectfully request that the Supreme Court Chamber extend the time period for the filing of their response to the Appeal by 15 days, so that the Co-Prosecutors may file their response within 30 calendar days of this notification of the Appellant's appeal.

Respectfully submitted,

Date	Name	Place	Signature
26 November 2010	CHEA Leang Co-Prosecutor	Phnom Penh	
	Andrew CAYLEY Co-Prosecutor		