

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

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**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**

Filed by

Co-Lawyers for
Kaing Guek Eav alias Duch
KAR Savuth
KANG Ritheary

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I. INTRODUCTION

1. On 24 August 2010, the Co-Lawyers for Kaing Guek Eav alias Duch (“the Accused”) filed a notice of appeal against the Trial Chamber judgement of 26 July 2010 convicting and sentencing the Accused to 35 years imprisonment.¹
2. According to ECCC Internal Rule 107(4), an appeal brief shall be filed within 60 days of filing a notice of appeal against a Trial Chamber judgement. Rule 39(4) bestows judicial chambers with the authority, either in *proprio motu* or at the request of a concerned party, to extend any time limits for filing documents. Considering the size and complexity of the case, the novelty of issues raised, and the structure of the Accused’s legal team, the Co-Lawyers request that the Supreme Court Chamber extend by 30 days the time limit for filing the Defence appeal brief in this Case.

II. GROUNDS FOR REQUEST

3. According to Article 35(b)(new) of the ECCC Statute, accused are entitled to ‘adequate time and facilities for the preparation of their defence.’ This right is imported directly from article 14.3(b) of the International Covenant on Civil and Political Rights. It is widely understood to apply to the entirety of criminal proceedings.² As the European Court of Human Rights has stated, such fair trial protection ‘does not cease with the decision at first instance;’ rather, it extends to appellate proceedings and must be upheld until a final, enforceable judgement is rendered.³ In the interests of preserving the Accused’s right to adequate time to prepare his defence, the Co-Lawyers present this request to extend the time limit for filing their appeal brief, for the following reasons:
 - i. The size and complexity of this Case necessitate an extended time for preparation of an appeal brief. The Accused’s trial spanned nearly a year, with many pages of case filings. The Trial Chamber judgement is more than 400

¹ Case no. 001/18-07-2007/TC, Notice of Appeal of the Co-Lawyers for Kaing Guek Eav alias Duch Against the Judgement of the Trial Chamber Issued on 26 July 2010, E188/8

² *Delcourt v. Belgium*, ECHR, 17 January 1970

³ *Monnell & Morris v. United Kingdom*, ECHR, 2 March 1987, para. 54.

pages in length in Khmer. Significant further research and deliberation is necessary for the Defence to craft an adequate response to this volume of material.

- ii. In determining what amounts to ‘adequate time’ the Chamber should consider the specific circumstances of the Case. In its judgement, the Trial Chamber made a number of novel pronouncements on questions of fact and law. The novelty of this case, the first to be tried by the ECCC, presents unique challenges to the Co-lawyers and weighs in favour of extending the time limit for filing a Defence appeal brief.
- iii. Extending the time limit for filing a Defence appeal brief will offer some measure of remedy to the disparity of facilities available to parties to this Case. The Accused’s legal team consists of only four individuals: two Co-Lawyers, a case manager and a legal consultant. It was apparent at trial that the Office of the Co-Prosecutor operates with 3-4 times as many legal officers in its employ. This places heavy demands on the Co-Lawyers when crafting a defence on behalf of the Accused. The Co-Lawyers must also devote substantial time to considering the interventions of 17 Civil Party lawyers in this Case. Extending the time limit for filing a Defence appeal brief can be justified in light of these imbalances in legal resources.
- iv. Shortly after the release of the verdict on 26 July 2010, the Accused hired Dr. Kang Ritheary to act as his Co-Lawyer for the purposes of an appeal. As newly-appointed counsel Dr. Ritheary requires additional time to review the trial proceedings and study the judgement.

It is worth noting that other courts hearing appeals of comparable size and complexity to this Case offer more generous time limits for filing appeal briefs. At the ICTY, the ICTR, and the Special Tribunal for Lebanon, appellants are

afforded 75 days to complete this same task.⁴ The ICTR empowers its chambers to extend the time limit further in exceptional circumstances. Extensions are often granted in recognition of the novelty or complexity of legal issues on appeal, both conditions apparent in the present Case.⁵ At all three tribunals, parties may also submit briefs in reply to cross-appellants within fifteen days of opposing counsel filing an initial appeal brief.⁶ The ECCC rules do not include this right, which strengthens the case for the Court resorting alternatively to a generous exercise of its discretion to extend time limits pursuant to rule 39(4).

III. CONCLUSION

4. For these reasons, the Co-Lawyers request the Supreme Court Chamber to extend the time limit for submission of the Defence appeal brief by an additional 30 days.

	National Co-Lawyers		
10-9-2010	Kar Savuth Kang Ritheary	Phnom Penh	
Date	Name	Place	Signatue

⁴Rule 111(A) ICTY RPE; Rule 111(A) ICTR RPE; Rule 182(A)STL RPE.

⁵ Rule 116 (A) ICTR RPE

⁶ Rule 113 ICTY RPE; Rule 113 ICTR RPE; Rule 184 STL RPE