

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

Filing Details

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

Filing Party: MKHIEU Samphan

Filed to: Supreme Court Chamber

Original language: French

Date of document: 21 August 2019

Classification

Classification of the document

Suggested by the filing party: Public

Classification by Chamber:

Classification Status:

Review of Interim Classification:

Records Officer's Name:

Signature:



**KHIEU Samphan Defence's Response to the Prosecution's Amendment of the Request
Concerning Its Response to the Defence's Appeal Brief**

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MAY IT PLEASE THE SUPREME COURT CHAMBER

1. On 10 July 2019, the KHIEU Samphan Defence (“the Defence”) requested the Supreme Court Chamber to extend the time and pages limits for filing its appeal brief, and to extend the time limits for filing its response to the Prosecution’s appeal brief.¹
2. On 22 July 2019, the Prosecution opposed the extensions sought for filing the appeal brief, and requested that any extensions accorded to the Defence be “extended [to it] proportionately” for filing its response brief.²
3. On 2 August 2019, while the Prosecution opposed NUON Chea’s request for extensions,³ it requested to be granted “70% of the combined total of pages and 50% of the combined time afforded to the Defence” for filing its response brief.⁴
4. On 7 August 2019, the Defence requested the Supreme Court Chamber to deny the Prosecution’s request on the ground that it was untimely, lacked substantiation and was unreasonable, and to make a ruling on all the requests, as a matter of urgency.⁵
5. On 13 August 2019, the Supreme Court Chamber pronounced the termination of the proceedings against NUON Chea, who had died nine days earlier on.⁶
6. On 19 August 2019, the Defence emailed the Supreme Court Chamber requesting it to urgently notify the parties of its decision on the Defence’s request of 10 July 2019, prior to notification of the Prosecution’s appeal brief, which was due to be filed on 20 August 2019.⁷

¹ KHIEU Samphan’s Request for an Extension of Time and Page Limits for Filing His Appeal Brief, 10 July 2019, **F45**.

² Co-Prosecutors’ Response to KHIEU Samphan’s Request for Additional Time and Page Limits for Appellate Briefs, 22 July 2019, **F45/2** (notified on 23 July 2019), paras. 17, 18 and 22.

³ Co-Prosecutors’ Response to NUON Chea Request for Additional Time and Page Limits for His Appeal Briefs, 1 August 2019, **F47/1**.

⁴ Response/Request **F47/1**, paras. 25-26(ii).

⁵ KHIEU Samphan Defence Reply to the Prosecution’s Request Concerning its Response to the Appeal Briefs [F47/1, paras. 25-26(ii)], 7 August 2019, **F47/3** (“Reply **F47/3**”).

⁶ Decision to Terminate Proceedings against NUON Chea, 13 August 2019, **F46/3**.

⁷ Defence’s email to the Greffiers of 19 August 2019 at 1238 hours, entitled: “*Demande très urgente de décision sur la demande F45 / កម្មវត្ថុ៖ សំណើសុំជាបន្ទាន់ខ្លាំងអោយចេញសេចក្តីសម្រេចលើសំណើលេខ F45*”.[very urgent request for a decision on Request F45] Annexed hereto.

7. On 20 August 2019, the parties received notification of an “amendment” of the Prosecution’s Request concerning its response to the Defence’s appeal brief.⁸
8. The Defence hereby replies to the Prosecution’s third request. It has done so in a timely manner so as to ensure that the new Request does not cause further delay to the Supreme Court’s decision concerning the appellate time limits.
9. The Prosecution claims that it has amended its request for extensions because NUON Chea has died, and responding to him is now a moot point⁹ However, the truth of the matter is that it is once again requesting to be granted the same extensions as any afforded to the Defence.¹⁰ The only real amendment to its request is that the filing deadline should fall no earlier than 25 (and not 45) days after the Khmer version the Defence appeal brief has been notified.¹¹
10. As a matter of fact, since NUON Chea’s death and the termination of the proceedings against him, the Prosecution has, opportunistically, been biding its time in a bid to lend substance its request.
11. As regards page limits, it cites the ECCC Practice Direction and the regulations of the other international criminal tribunals.¹² Its request is in line with the Supreme Court Chamber’s jurisprudence in Case 002/01, which the Defence has requested it to apply.¹³
12. However, as regards time limits, the Prosecution’s new arguments still fail to demonstrate that its request is reasonable, and are specious. It cites decisions from two cases of the international criminal tribunals, but omits to mention that they were based on the need to maintain a synchronised briefing schedule (appeal briefs and responses thereto), and not that of affording the respondent the same time limits as the appellant.¹⁴ In this instance, granting the Prosecution equal

⁸ Co-Prosecutors’ Amendment of Request for Additional Time and Pages for Appeal Response Brief, 19 August 2019, F48, notified on 20 August 2019 (“Amendment” of Request F48”). The Defence worked on the basis of a first unfinished draft translation into French received from ITU, as it [ITU] was unable to translate the document in a timely fashion.

⁹ “Amendment” of Request F48, paras. 1 and 7.

¹⁰ “Amendment” of Request F48, paras .2, 11, 12; Reply F47/3, paras. 8-12.

¹¹ “Amendment” of Request F48, paras. 11-12 and footnote 28.

¹² “Amendment” of Request F48, para. 8.

¹³ Reply F47/3, para. 9 and footnote 13, para. 24.

¹⁴ “Amendment” of Request F48, para. 9 and footnote 25 (the reasoning in the two *Karadžić* decisions is as follows: “it in the interest of justice and effective case management to maintain a synchronized briefing schedule”. That consideration is echoed in the *Mladić* decision, which cites the two decisions).

time limits (whereas the Defence has already replied to its appeal brief) would only cause undue delay to the proceedings.

13. The Prosecution then attempts to “justify” its request by making the presumption that it could be “obliged to attempt to interpret and respond to” “incomplete” and “unclear” grounds of appeal which the Defence will raise in its appeal brief.¹⁵ Yet, the Prosecution is well aware of the position of the Supreme Court Chamber (and the international criminal tribunals) in that regard, which is that submissions that are “obscure, contradictory or vague” are not considered.¹⁶ The Prosecution is therefore well aware that it need not address them and hence that it does not require additional time in such a scenario, quite the contrary.
14. Accordingly, the Defence maintains all of the arguments it articulated in response to the earlier Prosecution request, according to which the Prosecution should file its response in both languages no earlier than 15 after notification after the Khmer version of the Defence appeal brief. The Defence expressly refers to those arguments so as not to repeat itself.¹⁷
15. Further, the Defence reiterates its request to be notified at the earliest opportunity of the Supreme Court Chamber’s decision on its request of 10 July 2019, as it is crucial to enabling it to make optimal use of the meagre resources at its disposal, especially in view of the imminent notification of the Prosecution’s appeal brief.¹⁸
16. **FOR THESE REASONS**, the Defence requests the Supreme Court Chamber to:

- GRANT the Prosecution proportionate extensions for filing its response, pursuant to its 002/01 jurisprudence;
- MAKE AN URGENT RULING on the Defence’s request of 10 July 2019, even if this means rendering the disposition first (even via email) and then articulating the reasons thereafter.

¹⁵ “Amendment” of Request F48, para. 10.

¹⁶ Case 002/01 Appeal Judgement, 23 November 2016, F36, paras. 101-102; Decision on Co-Prosecutors’ Request for Page and Time Extensions to Respond to the Defence Appeals of the Judgment [Case 002/01], 21 April 2015, F23/1, para. 9 (in which the Supreme Court Chamber expressly rejects this type of argument as already raised by the Prosecution).

¹⁷ Reply F47/3, paras. 8-22.

¹⁸ Reply F47/3, paras. 23-24; email of 19 August 2019 (see footnote 7, *supra*).

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