

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

FILING DETAILS

Case No: 002/19-09-2007-ECCC/TC

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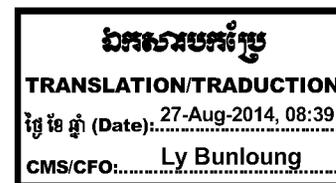
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**Urgent Application for Extension of Time and Page Limits for Submissions on Appeal by
the Defence for Mr KHIEU Samphân and the Defence for Mr NUON Chea**

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Before:

The Supreme Court Chamber

Judge KONG Srim
Judge Agnieszka KLONOWIECKA-
MILART
Judge SOM Sereyvuth
Judge Chandra Nihal JAYASINGHE
Judge MONG Monichariya
Judge YA Narin
Judge Florence Ndepele MUMBA

The Co-Prosecutors

CHEA Leang
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All Civil Party Lawyers

MAY IT PLEASE THE SUPREME COURT CHAMBER

1. On 7 August 2014, the Trial Chamber delivered its judgement in Case 002/01, finding Mr KHIEU Samphân and Mr NUON Chea guilty of crimes against humanity and sentenced them to life imprisonment.¹ On the same day, the parties were notified of the written judgement in all three working languages of the ECCC.²

2. The Defence for Mr KHIEU Samphân and the Defence for Mr NUON Chea (the “Defence”), who intend to appeal the judgement,³ hereby request, pursuant to the applicable legal instruments, an extension of time to file their notices of appeal and their appeal briefs, in addition to an extension of the page limit of these filings.

I. Applicable law on the filing of notices of appeal and appeal briefs

3. According to Rule 105(3) of the ECCC Internal Rules (the “Internal Rules”):

A party wishing to appeal a judgment shall file a notice of appeal setting forth the grounds. The notice shall, in respect of each ground of appeal, specify the alleged errors of law invalidating the decision and alleged errors of fact which occasioned a miscarriage of justice. The appellant shall subsequently file an appeal brief setting out the arguments and authorities in support of each of the grounds (...).

4. The time limits are set forth in Internal Rule 107(4):

Notice of appeal against a judgment of the Trial Chamber, as provided in Rule 105(3), shall be filed within 30 (thirty) days of the date of pronouncement of the judgment or its notification, as appropriate. The appeal brief shall be filed within 60 (sixty) days of the date of filing the notice of appeal.

5. Internal Rule 39(1) stipulates that all time limits set out in the applicable laws, the Internal Rules, the applicable Practice Directions and, where appropriate, by decision of the judges, must be respected. However, Internal Rule 39(4) specifies that the Chambers may, at the request of the concerned party or on their own motion extend any time limits.

¹ Transcript of the Hearing of 7 August 2014, **E1/241.1**.

² Case 002/01 Judgement, 7 August 2014, **E313** (the “Judgement”).

³ Rule 104 et seq. of the Internal Rules.

6. The point at which time limits begin to run is governed by article 8.5 of the Practice Direction on Filing of Documents before the ECCC (the “Practice Direction”):

Except as otherwise directed by the Co-Investigating Judges or a Chamber of the ECCC, time limits commence on the first calendar day following the day of service of the Notification of the document in Khmer and one other official language of the ECCC. Exceptionally, the Co-Investigating Judges or a Chamber may decide that the time limits commence on the first calendar day following the day of filing in all three languages.

7. The official working languages of the ECCC are Khmer, English and French.⁴ According to Article 7 of the Practice Direction, “[a]ll documents shall be filed in Khmer as well as in English or French.”

8. According to Article 5.2 of the Practice Direction, a document filed to the Supreme Court Chamber of the ECCC “shall not exceed 30 pages in English or French or 60 pages in Khmer”. Article 5.4 specifies that the judges “may, at the request of a participant, extend the page limit in exceptional circumstances”.

II. Importance of this request

9. An appeal is the sole avenue of recourse against the judgement of 7 August 2014. Indeed, “[d]ecisions of the [Supreme Court] Chamber are final, and shall not be sent back to the Trial Chamber”.⁵

10. While the appeal phase is comprised of several procedural steps (notice of appeal, appeal brief,⁶ possible responses and/or replies,⁷ pleadings⁸), the first of these steps (notice of appeal) is decisive.

11. Indeed, the notice of appeal must set out each ground of appeal, whether it is one of law or of fact. The grounds of appeal, so identified and set out, are then articulated in the appeal brief (“setting out the arguments and authorities in support of each of the grounds”).⁹

⁴ Article 45 new of the Law on the Establishment of the ECCC.

⁵ Rule 104(3) of the Internal Rules.

⁶ Rule 105(3) of the Internal Rules.

⁷ Articles 8.3 and 8.4 of the Practice Direction.

⁸ Rule 109 of the Internal Rules.

12. Unlike other international tribunals,¹⁰ there is no provision in any of the legal instruments that are applicable before the ECCC which allows for an amendment of the grounds of appeal initially set forth in the notice of appeal.

13. Moreover, the Internal Rules states that “[t]he parties may not raise any matters of fact or law during a hearing that were not previously set out in their submissions on appeal.”¹¹

14. Above all, it is clearly stated that “*the scope of the appeal shall be limited to the issues raised in the notice*”¹² [of appeal].

15. As such, a ground of appeal that is not identified and set forth in the notice of appeal cannot be raised at a later stage and, *a fortiori*, cannot be considered by the Supreme Court Chamber, whose decisions are final. Therefore, the notice of appeal must be exhaustive.

16. It is clear that the notice of appeal is a critical process which justifies the Supreme Court in extending the time limits and the number of pages for both the notice of appeal and the ensuing appeal brief. This process is all the more important because the Trial Chamber has found Mr KHIEU Samphân and Mr NUON Chea guilty of all the charges against them in Case 002/01 and sentenced to life imprisonment, the heaviest possible sentence.

III. Justification of the extension of the time and page limits of the notice of appeal and appeal brief

17. It is quite clear that in the particular case of an appeal against judgement, the prescribed time limits (30 days and then 60 days) and the page limits of the notice of appeal and appeal brief (30 pages per document) are insufficient.

18. It should be noted that before the other international criminal tribunals, an appellant has 30 days¹³ to file a notice of appeal, and 75¹⁴ or even 90¹⁵ days to file a 100-page¹⁶ appeal brief

⁹ Rule 105(3) of the Internal Rules (emphasis added).

¹⁰ Rule 108 of the Rules of Procedure and Evidence (“RPE”) of the ICTR and the ICTY; Regulation 61 of the ICC Regulations of the Court; Rule 177(C) of the RPE of the STL.

¹¹ Rule 109(6) of the Internal Rules.

¹² Rule 110(1) of the Internal Rules (emphasis added).

¹³ Rule 108 of the RPE of the ICTR and the ICTY; Rule 150 of the RPE of the ICC; Rule 177(A) of the RPE of the STL.

(with the possibility of amending the grounds of appeal). Furthermore, these filings may be made in only one language.

19. This last clarification is crucially important because the compulsory filing of submissions in two working languages before the ECCC results in further shortening the time limits as the documents have to be translated before they are submitted. Accordingly,¹⁷ it will take approximately 6 working days (not including weekends) to translate a 30-page French document into another language. Meanwhile, it will take 20 working days (that is 4 weeks) to translate a 100-page document. It is also important to emphasize that the complexity of drafting an appeal brief entails amendments and additions up to the end of the time limit, which does not therefore allow for translation of the brief while it is being drafted.

20. Accordingly, even without dealing with the arguments that may be made before the ECCC on the basis of the specific need to deduct the time for translation from the time limits as indicated above, the Appeals Chambers of the international tribunals, on considering the particular circumstances of each case, allow extensions of time and page limits of filings where they find that it is in the interest of justice to ensure that the appellants are afforded sufficient time and/or page limits “*to prepare meaningful notices of appeal*”¹⁸ and/or “*meaningful appeal briefs.*”¹⁹

¹⁴ Rule 111 of the RPE of the ICTR and the ICTY; Rule 182(A) of the RPE of the STL.

¹⁵ Regulation 58 of the ICC Regulations of the Court.

¹⁶ Regulation 58 of the ICC Regulations of the Court; C) 1. (a) of the Practice Direction on the Length of Briefs and Motions on Appeal (ICTR); I. C) 1. (a) of the Practice Direction on the Length of Briefs and Motions (ICTY); Article 5(1) of the Practice Direction on Filing of Documents Before the STL (before the ICTR, the ICTY and the STL, the limit is 30,000 words, or approximately 100 pages).

¹⁷ Based on an average of 5 pages per day when the Interpretation and Translation Unit’s is not overworked.

¹⁸ *Prosecutor v. Stanasic and Zupljanin*, IT-08-91-A, *Decision on Joint Defence Motion Seeking Extension of Time to File Notice of Appeal*, 16 April 2013 (“*Stanasic and Zupljanin Decision of April 2013*”), p. 2; *Prosecutor v. Dordevic*, IT-05-87/1-A, *Decision on Vlastimir Dordevic’s Motion for an Extension of Time to File a Notice of Appeal*, 16 March 2011 (“*Dordevic Decision*”), p. 2.

¹⁹ *Prosecutor v. Stanasic and Simatovic*, IT-03-69-A, *Decision on Stanasic’s Urgent Request for Extension of Word Limit*, 31 October 2013 (“*Stanasic and Simatovic Decision*”), p. 3; *Prosecutor v. Stanasic and Zupljanin*, IT-08-91-A, *Decision on Mico Stanasic and Stojan Zupljanin’s Motions Seeking Variation of Time and Word Limits to File Appeal Briefs*, 4 June 2013 (“*Stanasic and Zupljanin Decision of June 2013*”), p. 2 and p. 4; *Prosecutor v. Tolimir*, IT-05-88/2-A, *Decision on Motion for Setting a Time Limit for Filing an Appellant’s Brief and for an Extension of Word Limit*, 17 May 2013 (“*Tolimir Decision*”), p. 3; *Prosecutor v. Dordevic*, IT-05-87/1-A, *Judgement*, 27 January 2014, Annex A – *Procedural History*, para. 3, p. 414.

21. That is justified, in view of the size and complexity of the case (number of testimonies, documentary evidence, decisions rendered...),²⁰ the length and complexity of the judgement²¹ and/or the nature and extent of the grounds of appeal.²² Accordingly, in *Lubanga*, the ICC Appeals Chamber found that “*in light of the fact that this is the first appeal directed against a decision under article 74 of the Statute, which might raise complex and novel issues, and the length of the Conviction Decision, there are ‘exceptional circumstances’ [...] that justify the extension of the page limit for Mr Lubanga’s document in support of the appeal.*”²³

22. Before the ECCC, the Supreme Court Chamber has generated only a very small volume of case law. In fact, the judges of the Supreme Court Chamber have so far heard only one appeal against judgement (in *Duch*) and only a handful of immediate appeals (in the present case). Indeed, this is the ECCC’s second case and there is no provision for interlocutory appeals before the ECCC (there are only four possible grounds for immediate appeals).²⁴

23. Nevertheless, the Supreme Court has already granted extensions of prescribed limits. In this case, the Supreme Court has granted them in immediate appeals on account of the complexity of the legal and factual issues raised,²⁵ or of “*the length, complexity and importance of the issues arising.*”²⁶ Thus, in *Duch*, the Supreme Court granted the Defence a 30-day extension of the time for filing its appeal brief on account of the size and complexity of the case, “*the number of novel pronouncements on questions of fact and law*” by the Trial Chamber and the “*novelty of [the] case*”, and the recent appointment of a second counsel.²⁷ Furthermore, the

²⁰ *Karemera and Ngirumpatse v. The Prosecutor*, ICTR-98-44-A, *Decision on Motions for Extension of Time for the Filing of Appeal Submissions*, 17 February 2012 (“*Karemera Decision*”), para. 9.

²¹ *Stanisic and Simatovic Decision*, p. 3; *Stanisic and Zupljanin Decision* of June 2013, p. 2 and p. 4; *Tolimir Decision*, p. 3 and p. 4; *Stanisic and Zupljanin Decision* of June 2013, p. 2-3; *Karemera Decision*, para. 9; *Dordevic Decision*, p. 2.

²² *Stanisic and Simatovic Decision*, p. 3.

²³ *The Procureur v. Lubanga*, ICC-01/04-01/06 A5, *Decision on Mr Lubanga’s Request for an Extension of the Page Limit*, 28 November 2012, para. 5. It bears noting that the extension of the page limit concerned the appeal brief relating to the Conviction Decision only. Briefs on the sentence and victims reparations were filed separately.

²⁴ Rule 104(4) of the Internal Rules.

²⁵ *Decision on Co-prosecutors’ Request for Extension of Time to Respond to NUON Chea’s Immediate Appeal under Internal Rule 104 (4) (D)*, 18 October 2011, **E116/1/2/1**, para. 6.

²⁶ *Decision on Request by Co-Lawyers for KHIEU Samphan for Extension of Time to Respond to Co-Prosecutors’ Immediate Appeal of Decision Concerning the Scope of Trial in Case 002/01*, **E163/5/1/2/1**, 20 November 2012, para. 7.

²⁷ *Duch Case*, *Decision on Request of the Co-Lawyers for Kaing Guek Eav, alias Duch, to Extend the Time Limit*

Supreme Court also allowed the Co-Prosecutors to develop three grounds of appeal in a 65-page brief in English.²⁸

24. It is worth noting that in *Duch*, the Co-Prosecutors raised three grounds of appeal (sentence, cumulative convictions and crime of enslavement),²⁹ while the Defence only raised two (personal jurisdiction and sentence).³⁰ Consequently, the Supreme Court Chamber has not yet ruled on any of the issues of which it will probably be seised in Case 002/01.

25. However, the ECCC, being mandated to try crimes committed between 1975 and 1979 while the Supreme Court Chamber has yet to rule on all jurisdictional issues and on the issue of the contemporaneous definition of the crimes or modes of responsibility in this case, nor even on the principles of admissibility and assessment of evidence in a hybrid judicial system, there is no doubt that many complex issues will be raised for the first time in the appeal against the 7 August 2014 judgement.³¹ In fact, the legal issues and number of factual allegations in Case 002/01 cannot be compared with those in *Duch*.

26. Similarly, the severance of Case 002 has raised novel and complex issues regarding, *inter alia*, the divisibility of the case and the findings of individual personal responsibility.³²

27. Furthermore, in view of the length of the judgement (777 pages in French, 981 pages in Khmer, not including annexes, 3,298 footnotes) and the size of the trial record (92 testimonies,³³ 237 hearing days,³⁴ 5,824 pieces of documentary evidence,³⁵ more than 250 interlocutory

for Filing of an appeal Brief Against the Judgement of the Trial Chamber of 26 July 2010, 18 October 2010, **F6/2**, paras. 8 and 10.

²⁸ *Duch* Case, Decision on Co-Prosecutors' Two Applications for Extension of Page Limit for their Appeal Brief, 18 October 2010, **F5/2**, paras. 5 to 8.

²⁹ *Duch* Case, Co-Prosecutors' Appeal Against the Judgement of the Trial Chamber in the Case of Kaing Guek Eav *alias* Duch, 18 October 2010, **F10** (the French translation of this brief is 75 pages).

³⁰ *Duch* Case, Appeal Brief by the Co-Lawyers for Kaing Guek Eav *alias* "Duch" Against the Trial Chamber Judgement of 26 July 2010, 18 November 2010, **F14**.

³¹ Specifically because of the absence of an interlocutory appeals mechanism. See for example: Dissenting Opinion of Judges KLONOWIECKA-MILART and JAYASINGHE, 20 March 2012, **E51/15/1/2.1**, para. 5.

³² *Decision on KHIEU Samphân's Immediate Appeal Against the Trial Chamber's Decision on Additional Severance of Case 002 and Scope of Case 002/02*, 29 July 2014, **E301/9/1/1/3**, paras. 77-85.

³³ Judgement, para. 32.

³⁴ Until the final day of closing arguments, 31 October 2013, **E1/237.1**.

³⁵ Judgement, para. 33.

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decisions³⁶), the prescribed limits will not allow the Defence to prepare quality and meaningful submissions on appeal.

28. In this context, there are therefore exceptional circumstances and valid reasons that justify an extension of the prescribed time and page limits.

29. The Defence is very mindful of the fact that “*the quality and effectiveness of an appeal brief do not depend on its length, but on the clarity and cogency of the arguments presented.*”³⁷

30. Taking into account translation constraints, the importance of the notice of appeal (see part II *supra*), the size and complexity of the judgement and case file, the Defence submits that it is very reasonable that it be granted:

- a 74-day time limit to file a 50-page notice of appeal in French or in English and the required equivalent in Khmer (14 days being required for translation),³⁸ followed by
- a 117-day time limit to file a 150-page appeal brief in French or in English and the required equivalent in Khmer (42 days being required for translation).³⁹

FOR THESE REASONS

31. The Defence requests the Supreme Court Chamber to:

- **ALLOW** the Defence to file a 50-page notice of appeal in French or in English and the required equivalent in Khmer within 74 days of the date of notification of the judgement in the three languages;
- **ALLOW** the Defence to file a 150-page appeal brief in French or in English and the required equivalent in Khmer within 117 days of the date of filing of the notice of appeal.

³⁶ Transcript of the Trial Proceedings of 31 October 2013, **E1/237.1**, p. 74 L. 19-20, at about [14.11.55].

³⁷ *Stanisic and Simatovic* Decision, p. 2.

³⁸ The translation into Khmer of a 50-page document will require approximately 10 working days, or 14 calendar days.

³⁹ The translation into Khmer of a 150-page document will require approximately 30 working days, or 42 calendar days.

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