

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

**FILING DETAIL**

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**REPLY TO CO-PROSECUTORS' RESPONSE CONCERNING PAGE AND TIME  
EXTENSIONS IN CONNECTION WITH APPEAL BRIEFS**

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Pursuant to Article 8.4 of the Practice Direction on Filing, the Co-Lawyers for Nuon Chea (the ‘Defence’) hereby submit this reply to the Co-Prosecutors’ response to Nuon Chea’s and Khieu Samphan’s requests for an extension of time and page limits for appeal briefs in connection with the judgment in Case 002/01:

1. On 29 September 2014, the Defence filed its notice of appeal against the judgment in Case 002/01 (‘Notice’).<sup>1</sup> On 2 October 2014, the Defence filed a request for extensions of time and page limits in connection with appeals against the judgment in Case 002/01 (‘Nuon Chea Request’).<sup>2</sup> On 6 October 2014, the defence for Khieu Samphan filed a similar request seeking slightly different relief (‘Khieu Samphan Request’).<sup>3</sup> On 16 October 2014, the Co-Prosecutors filed a response (‘Response’).<sup>4</sup>
2. The Co-Prosecutors characterize the arguments in the Nuon Chea Request as ‘frivolous’.<sup>5</sup> According to the Co-Prosecutors, one of these ‘frivolous’ arguments is that the Defence intends to seek review of decisions which it ‘admits’ are beyond the scope of this Chamber’s appellate jurisdiction.<sup>6</sup> Not only is this assertion false, the Defence seeks review of the decisions in question on the very same basis as the sole ground included in the Co-Prosecutors’ notice of appeal.<sup>7</sup> Two other ‘frivolous’ arguments are that this Cambodian court should base its decision on Cambodian law.<sup>8</sup> A fourth argument is ‘frivolous’ because, according to the Co-Prosecutors, the Defence seeks longer appeal briefs as a ‘remedy’ for unsubstantiated ‘errors’ during the trial and

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<sup>1</sup> Document No. **E313/1/1**, ‘Notice of Appeal Against the Judgment in Case 002/01’, 29 September 2014 (‘Notice’).

<sup>2</sup> Document No. **F6**, ‘Second Request for Extension of Time and Page Limits for Filing Appeals Against the Trial Judgment in Case 002/01’, 2 October 2014 (‘Nuon Chea Request’).

<sup>3</sup> Document No. **F7**, ‘Demande urgente de la Defense de M. KHIEU Samphan aux fins de prorogation du delai du nombre de pages du memoire d’appel’, 6 October 2014 (‘Khieu Samphan Request’).

<sup>4</sup> Document No. **F7/1**, ‘Co-Prosecutors’ Response and Request on Case 002/01 Appeal and Response Brief Extensions’, 16 October 2014 (‘Response’).

<sup>5</sup> Response, paras 9-10.

<sup>6</sup> Nuon Chea Request, para. 11.

<sup>7</sup> Document No. **E313/3/1**, ‘Co-Prosecutors’ Notice of Appeal of a Decision in Case 002/01’, 29 September 2014, paras 5 (appeal is admissible because it concerns an issue of general significance to the jurisprudence of the Tribunal), 10 (the error alleged does not concern any ‘factual or legal findings’ in the Judgment); *cf.* Nuon Chea Request, para. 11 (some errors alleged would still be subject to review even if the Chamber found that they did not cause a miscarriage of justice or invalidate the Judgment), fns 15, 34; Notice, paras 2, 4. The Defence notes further that it asserts that almost all of these errors invalidate a portion of the Judgment or another decision of the Trial Chamber and that these decisions concern issues of general significance in the alternative.

<sup>8</sup> See Nuon Chea Request, paras 3, 6, 12. One of these arguments, that the Chamber should reconsider its prior holding concerning factual review *de novo*, furthermore affects a single one of the 223 grounds in the Notice. See Notice, Ground, 44.

investigative stage.<sup>9</sup> The Co-Prosecutors misunderstand this argument: the Defence does not seek a ‘remedy’ for an ‘error’, but to highlight the fact that defence teams do not have the same opportunity for confrontation as exists in common law systems from which page limits are derived, or even to some large extent in civil law systems where they do not exist. These facts are uncontested, and hold true whether or not the Co-Investigating Judges and the Trial Chamber erred within the procedural context of this Tribunal. The Co-Prosecutors fail to contest two of the Defence’s arguments at all.<sup>10</sup>

3. The Co-Prosecutors’ suggestion that the Notice was a cynical ploy to extract more pages for appellate briefing amounts to an unfounded and inappropriate allegation of ethical misconduct.<sup>11</sup> The Defence needs more pages for the same reason that it filed an extensive notice of appeal: because the judgment is deeply flawed. The Defence assures the Supreme Court Chamber that it fully intends to substantiate all (or nearly all) of the appeal grounds set out in the Notice. The Defence fails to comprehend the Co-Prosecutors’ complaint that the Notice lists ‘factual findings or legal rulings with which [the Defence] disagree[s]’.<sup>12</sup> Pursuant to this Chamber’s jurisprudence, the Defence is entitled to appeal any unreasonable finding of fact which leads individually or cumulatively to a miscarriage of justice. The connection of each and every one of these errors to convictions wrongly entered by the Trial Chamber will be proven in the Defence’s appeal brief. The only potential impediment in that regard is whether the Defence will have an adequate opportunity to do so.
4. The Co-Prosecutors’ Response chides Defence counsel as to what they ‘certainly know’ about how to file a ‘serious appeal’.<sup>13</sup> For the second time in barely a week, the Co-Prosecutors advise the Chambers of this Tribunal that the Defence has ‘a lack of confidence in the legitimacy of any of their arguments’ and lecture their opponent in an adversarial process about how to formulate a ‘credible’ argument.<sup>14</sup> This sanctimonious tone is an unwarranted and unprofessional response to serious submissions about serious issues. The Notice is long because the judgment is a farce. Disqualification was

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<sup>9</sup> Nuon Chea Request, paras 4-5.

<sup>10</sup> Nuon Chea Request, paras 9-10.

<sup>11</sup> Response, para. 10.

<sup>12</sup> Response, para. 11.

<sup>13</sup> Response, para. 11.

<sup>14</sup> Response, para. 11; Document No. **E314/9**, ‘Co-Prosecutors’ Response to Nuon Chea’s Disqualification Application’, 10 October 2014, para. 28.

sought because the judges of the Trial Chamber are biased. Unlike the Co-Prosecutors, the Defence will refrain from hypothesizing about the intentions of opposing counsel, but it is confident that it is not the weakness of the Defence's arguments which concerns them.

5. For perspective, the Defence furthermore notes that in Case 001, the Co-Prosecutors sought and obtained a 65-page brief to address the definition of a single crime, cumulative convictions and sentencing – about 22 pages per ground – in a trial involving a single crime site and a defendant who functionally pled guilty.<sup>15</sup> Obviously, not all of the Defence's 223 grounds require this level of analysis; however the definitions of numerous crimes and modes of liability, and many other complex legal and factual questions are at issue. The Defence would submit that the legal issues raised in the first four sections of the Notice, together with the definitions of crimes and modes of liability, are by themselves many times more complex than the Co-Prosecutors' appeal in Case 001.
6. With regard to time limits, the Defence reiterates that the Co-Prosecutors' proposed briefing schedule is not one day shorter than those proposed by Nuon Chea and Khieu Samphan.<sup>16</sup> The Co-Prosecutors ask that defence teams be required to file 200-page briefs within 90 days, that more than two months should pass before the Co-Prosecutors' time for responding even begins,<sup>17</sup> and that a further 90 days should pass before their responses are due. The Defence recalls that standard international practice, which the Co-Prosecutors do not contest and supply no reason to disregard, is that time periods in connection with responses to appeals are considerably *shorter* than those for the appeals themselves.<sup>18</sup> Accordingly, the Co-Prosecutors' willingness to 'conce[de]' a 'disadvantage' is a transparent smokescreen for their effort to add months to the period

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<sup>15</sup> See Case 001/18-07-2006-ECCC/SC, Document No. **F5/2**, 'Decision on Co-Prosecutors' Two Applications for Extension of Page Limits for their Appeal Brief', 18 October 2010.

<sup>16</sup> Nuon Chea Request, paras 15-16. The Co-Prosecutors proposal is shorter than Khieu Samphan's in the limited sense that Khieu Samphan seeks a longer brief which will require a longer time for translation.

<sup>17</sup> This two-month period is calculated based on ITU's standard four page per business day rate of translation.

<sup>18</sup> Document No. **F3/2**, 'Reply to Co-Prosecutors' Response to the Khieu Samphan and Nuon Chea Defence Request for Extended Deadlines and Page Limits in regards to Case 002/01 Judgment Appeals', 25 September 2014, paras 2-3. The Defence notes further that the National Co-Prosecutor responded without difficulty to defence closing briefs before the Trial Chamber prior to the completion of the translation of those briefs into Khmer. The Co-Prosecutors did not object to this arrangement before the Trial Chamber.

of their response and create a grossly disproportionate briefing schedule.<sup>19</sup> Their feigned tone of self-sacrifice is pathetic.

7. Finally, the Defence seeks an urgent preliminary ruling on the Requests with reasons to follow. While preparation of appeal briefs is ongoing, the uncertainties surrounding page limits and deadlines is a major impediment to that process. This is especially true as to page limits, as it is impossible to gauge the appropriate level of detail in light of the wide range of proposals put forth by the parties.

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<sup>19</sup> Nuon Chea Request, paras 15-16.