

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

FILING DETAILS

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

Party Filing: Mr KHIEU Samphân

Filed to: The Supreme Court Chamber

Original Language: French

Date of Document: 6 October 2014

CLASSIFICATION

Classification of the Document Suggested by the Filing Party: Public

Classification by the Trial Chamber: Public

សាធារណៈ/Public

Classification Status:

Records Officer's Name:

Signature:

ឯកសារបកប្រែ TRANSLATION/TRADUCTION ថ្ងៃ ខែ ឆ្នាំ (Date): 30-Oct-2014, 09:58 CMS/CFO: Ly Bunloun
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**Mr KHIEU Samphân's Defence Urgent Application for Extensions of Time and Page
Limits for the Appeal Brief**

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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

The Defence for Mr NUON Chea

MAY IT PLEASE THE SUPREME COURT CHAMBER

1. On 7 August 2014, the Trial Chamber (the “Chamber”) delivered its judgement in Case 002/01.¹
2. On 13 August 2014, the Defence for Mr KHIEU Samphân and the Defence for Mr NUON Chea requested extensions of time and page limits for their notices of appeal and appeal briefs (the “First Application”).²
3. On 29 August 2014, the Supreme Court Chamber (the “Supreme Court”) partly granted the Defence application, allowing the Defence teams to file their notices of appeal within 30 days of its decision. The Supreme Court considered that a 30-page limit was sufficient for the parties since the notice of appeal is limited to “*specifying, or merely outlining, the alleged errors*”, and the parties need not present any arguments or sources in support of each ground of appeal.³ The Supreme Court added that:

With respect to all submissions in relation to the extension of time and page limits on the appeal briefs and responses, the Supreme Court Chamber is cognizant of the fact that extensions will certainly need to be granted in light of the size and complexity of the case and Trial Judgement. At this time nonetheless, in the absence of the parameters to be supplied in the notices of appeal, it considers that it is premature to determine the amount of extra time and pages that will be required.⁴
4. On 29 September 2014, the Defence for Mr KHIEU Samphân (the “Defence”) filed its Notice of Appeal (the “Notice of Appeal”).⁵
5. Today, the Defence again seeks an extension of time and page limits for its Appeal Brief.

¹ Case 002/01 Judgement, 7 August 2014, **E313** (“Judgement”).

² Urgent Application for Extension of Time and Page Limits for Submissions on Appeal by the Defence for Mr KHIEU Samphan and the Defence for Mr NUON Chea, 13 August 2014, **F3**. (“First Application”).

³ Decision on Defence Motion for Extension of Time and Page Limits for Notices of Appeal and Appeal Briefs, 29 August 2014, **F3/3**, paras. 8 and 9.

⁴ *Ibidem*, para. 10.

⁵ Mr KHIEU Samphân’s Defence Notice of Appeal against the Judgement in Case 002/01, 29 September 2014, **E313/2/1** (“Notice of Appeal”).

Mr KHIEU Samphân’s Defence Urgent Application for Extensions of Time and Page Limits for the Appeal Brief

I. Justification for the extension of the page limit

6. The Defence expressly refers to all the arguments articulated in its First Application.⁶ It now submits, however, that the extension of page limit requested at the time was patently inadequate.

7. In fact, in drafting its Notice of Appeal following a more thorough reading of the Judgement, the Defence realised that the number of errors committed by the Chamber was even higher than it had reckoned on first reading.

8. Furthermore, the Defence was only able to identify those errors succinctly and generally in its Notice of Appeal.⁷ Accordingly, it is difficult for the reader to gauge the number of pages required to set out the submissions and sources in support of each ground of appeal.

9. Thus, for example, some errors taking up two lines in the Notice of Appeal would need to be articulated in three paragraphs in the Appeal Brief whereas other errors also taking up two lines in the Notice of Appeal would need to be articulated over several pages in the Appeal Brief (in particular, this will be the case in all sections relating to Mr KHIEU Samphân's responsibility).

10. As it has already indicated,⁸ the Defence is very mindful of the fact that the quality and effectiveness of its Appeal Brief will not depend on its length. It is well awake to the fact that it is in its interest to be concise, as it has already shown, for example, by not automatically using the 30-page limit allowed for immediate appeals before the Supreme Court whenever that was not warranted.⁹

⁶ First Application, paras. 17-29.

⁷ Notice of appeal, para. 2.

⁸ First Application, para. 29.

⁹ Appeal Against the Decision on the Application for Immediate Release, 3 March 2011, **E50/3** (8 pages); Mr KHIEU Samphân's Immediate Appeal Against the Decision Issued in the Form of an Email sent from Ms LAMB on 21 February 2013, **E264/1/2/1** (12 pages); Appeal Against the Decision on Mr KHIEU Samphân's Application for Immediate Release on Bail, 14 May 2013, **E275/2/1** (17 pages); Mr KHIEU Samphân's Immediate Appeal Against the Decision on Additional Severance of Case 002 and Scope of Case 002/02, 5 May 2014, **E301/9/1/1/1** (19 pages).

Mr KHIEU Samphân's Defence Urgent Application for Extensions of Time and Page Limits for the Appeal Brief

11. The Defence is aware of the high standards of appellate review, but it also knows that the Supreme Court will not consider its submissions if they are “obscure” or “vague”.¹⁰

12. Furthermore, the Defence emphasises the three major features, previously highlighted by it, which distinguish this appeal before the ECCC from appeals before international criminal courts.¹¹

13. First, decisions of the ECCC Supreme Court are “*final, and shall not be sent back to the Trial Chamber*”.¹² The Defence must therefore submit to the Supreme Court sufficient evidence to enable it to make the most informed ruling possible, including with respect to the factual errors on which the Trial Chamber relied to convict.

14. Secondly, the Supreme Court will have to decide several complex, novel, if not unique issues, including jurisdiction, contemporaneous definition of the impugned crimes or modes of responsibility, principles of admissibility and assessment of evidence in a hybrid judicial system, issues relating to the divisibility of the case and findings of individual criminal responsibility...¹³

15. Thirdly, the Supreme Court will also have to decide appeals from several decisions that are only open to appeal at the same time as an appeal against the judgment on the merits.¹⁴ The Defence wishes to point out that if interlocutory appeals were available before the ECCC, it would have been possible to file a 30-page appeal for each decision open to such interlocutory appeal. Moreover, while this may not be the case for all decisions rendered during the trial by the Trial Chamber, the appeal from some of these decisions will have an impact on the conduct of the proceedings in Case 002/02. For example, the Prosecution which is appealing “*in the interest of law*” a decision rendered during trial, is allowed 30 pages to set out its arguments in support of a single point of law.¹⁵

¹⁰ *Duch*, Appeal Judgement, 3 February 2012, **F28**, para. 20.

¹¹ First Application, paras. 9, 19, 22-26.

¹² Internal Rule 104(3); First Application, para. 9.

¹³ First Application, paras. 24-26; see also: Judgement, para. 20.

¹⁴ First Application, paras. 22 and 27.

¹⁵ Co-Prosecutors’ Notice of Appeal of a Decision in Case 002/01, 29 September 2014, **E313/3/1**.

Mr KHIEU Samphân’s Defence Urgent Application for Extensions of Time and Page Limits for the Appeal Brief

16. For all these reasons, although it is difficult to make an accurate estimate at this stage, the Defence reasonably considers that it needs 300 pages in French to support the grounds of appeal identified in its Notice of Appeal.

II. Justification for the extension of the time limit

17. As with the estimate of the number of pages it considers necessary, the Defence has revised upwards its first estimate of the time required for filing its Appeal Brief.¹⁶

18. The increase is justified not only for the reasons given above, but also on account of the awful lot of factual distortions made by the Chamber in the Judgement. It is beyond dispute that it is on the basis of these distortions that the Chamber made findings which are prejudicial to Mr KHIEU Samphân. The Defence cited some examples of such distortions in its Notice of Appeal;¹⁷ however, it could not list all of them because, on top of everything else, crosschecking the footnotes in the Judgement takes a significant amount of time.

19. Accordingly, the Defence now considers that it needs 90 days of full-time work, excluding the time required for translation, to draft its Appeal Brief. Considering the time required for translation of a 300-page French document into Khmer,¹⁸ the Defence therefore requests a total of 174 days from the filing of its Notice of Appeal to file its Appeal Brief in both of its working languages.

20. The Supreme Court has noted on several occasions the importance of filing submissions in both working languages simultaneously. First, because that would “*allow both national and international components of the relevant organs of the ECCC to properly examine and address filings*”,¹⁹ but also because it affects when the time limit for responses and replies starts to run.²⁰

¹⁶ First Application, paras. 19 and 30.

¹⁷ Notice of appeal, paras. 36 and 37.

¹⁸ First Application, para. 19; for translation into Khmer of a 300-page document, approximately 60 working days, that is 84 calendar days (if ITU is not overwhelmed).

¹⁹ Decision on Immediate Appeal against the Trial Chamber’s Decision on KHIEU Samphân’s Application for Immediate Release, 22 August 2013, **E275/2/3**, para. 13.

²⁰ Decision on IENG Sary’s Expedited Request to File Appeal in English Only with Khmer Translation to Follow, 30

Mr KHIEU Samphân’s Defence Urgent Application for Extensions of Time and Page Limits for the Appeal Brief

21. The Defence is fully aware of the length of time it is seeking for the filing of its Appeal Brief in both of its working languages. However, that length of time is not attributable to the Defence and the Defence would like, even more than anyone, to have its appeal from the Judgement concluded as expeditiously as possible. The Defence hereby informs the Supreme Court that it will very shortly file before the Supreme Court an application requesting that it direct the Tribunal Administration to reinforce the capacity of the Translation Unit.

22. The Defence stresses that if, contrary to its request, the Supreme Court were to exceptionally order the parties to file their appeal briefs first in a single language, 1) that would give the Prosecution a considerable advantage in the preparation of its response, 2) without any saving of time in the overall length of the appeals proceedings.

23. On the even more debatable assumption that the Supreme Court would consider, on a very exceptional basis, allowing single language filings to trigger the time limits for responses/replies, the Defence should also exceptionally be allowed to respond/reply to the Prosecution after it has filed its submissions in French. As a matter of fact, French is the only language that Mr KHIEU Samphân shares with almost all members of his Defence team.

FOR THESE REASONS

24. The Defence for Mr KHIEU Samphân requests the Supreme Court Chamber to:

- **ALLOW** the Defence to file a 300-page Appeal Brief in French and the required equivalent in Khmer within 174 days of the date of filing of its Notice of Appeal.

Mr KONG Sam Onn	Phnom Penh	[Signed]
Ms Anta GUISSÉ	Paris	[Signed]
Mr Arthur VERCKEN	Paris	[Signed]

January 2013, E254/3/1/1.2, para. 4.

Mr KHIEU Samphân's Defence Urgent Application for Extensions of Time and Page Limits for the Appeal Brief