



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

F1413

អង្គជំនុំជម្រះតុលាការកំពូល

Supreme Court Chamber
Chambre de la Cour suprême

សំណុំរឿងលេខ: ០០១/១៨ កក្កដា ២០០៧-អ.វ.ត.ក/អ.ជ.ត.ក

Case File/Dossier N°. 001/18-07-2007-ECCC/SC

ឯកសារដើម
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/Date de reception): 07 / 12 / 2010
ម៉ោង (Time/Heure): 11:00
មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé du dossier: Ratanak

Before: Judge KONG Srim, President
 Judge Motoo NOGUCHI
 Judge SOM Sereyvuth
 Judge Agnieszka KLONOWIECKA-MILART
 Judge SIN Rith
 Judge Chandra Nihal JAYASINGHE
 Judge YA Narin

Date: 07 December 2010

Classification: PUBLIC

DECISION ON CO-PROSECUTORS' APPLICATION FOR EXTENSION OF TIME TO RESPOND TO THE ACCUSED APPEAL BRIEF

dm

Co-Prosecutors

CHEA Leang
Andrew CAYLEY

Accused

KAING Guek Eav alias
'DUCH'

Lawyers for the Accused

KAR Savuth
KANG Ritheary

Lawyers for Civil Parties

Group 1

TY Srinna
Karim KHAN
Alain WERNER
Brienne McGONIGLE

Lawyers for Civil Parties

Group 2

KONG Pisey
HONG Kimsuon
YUNG Phanit
Silke STUDZINSKY

Lawyers for Civil Parties

Group 3

KIM Mengkhy
MOCH Sovannary
Martine JACQUIN
Annie DELAHAIE
Philippe CANONNE
Elizabeth RABESANDRATANA
Fabienne TRUSSES-NAPROUS
Christine MARTINEAU



THE SUPREME COURT CHAMBER of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) is seized of an application by the Co-Prosecutors for an extension of time to file their response to the appeal brief of the Accused, KAING Guek Eav alias “Duch” (“Application”).¹

I. PROCEDURAL HISTORY

1. On 26 July 2010, the Trial Chamber of the ECCC issued its Judgement against the Accused (“Judgement”).² The Co-Prosecutors, Accused, and Civil Parties Groups 1, 2, and 3 have appealed to the Supreme Court Chamber against the Judgement.³
2. On 19 November 2010, the Accused Appeal Brief was notified to the parties. On 26 November 2010, three full working days after notification, the Co-Prosecutors filed the Application. In the Application, the Co-Prosecutors request an extension of 15 calendar days to file their response to the Accused Appeal Brief.

II. REASONING

A. Applicable Law

3. The Internal Rules provide as follows:

[T]he Chambers may, at the request of the concerned party or on their own motion:

- (a) extend any time limits set by them.⁴

4. The relevant parts of the Practice Direction on Filing of Documents before the ECCC (“the Practice Direction on Filing”) are the following:

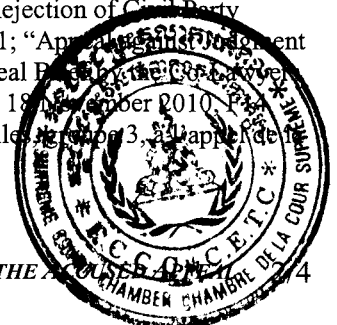
Unless otherwise provided in the Internal Rules or this Practice Direction or ordered by a Chamber of the ECCC, pleadings and applications shall be filed with the greffier of the Chamber hearing the case together with the relevant authorities in accordance with the

¹ Co-Prosecutors’ Application for Extension of Time to File their Response to the Appeal Brief by the Co-Lawyers for KAING Guek Eav alias “Duch” against the Trial Chamber Judgement of 26 July 2010, 26 November 2010, F14/1.

² E188 (as corrected).

³ “Group 1-Civil Parties’ Co-Lawyers’ Immediate Appeal of Civil Party Status Determinations from the Final Judgement,” 16 September 2010, F8; “Appeal of the Co-Lawyers for the Group 3 Civil Parties against the Judgement of 26 July 2010,” 6 October 2010, F9; “Co-Prosecutors’ Appeal against the Judgement of the Trial Chamber in the Case of KAING Guek Eav alias Duch,” 18 October 2010, F10; “Notice of Appeal of Co-Lawyers for Civil Parties (Group 2) and Grounds of Appeal against Judgment,” 6 September 2010, E188/12; “Appeal against Rejection of Civil Party Applicants in the Judgment Co-Lawyers for Civil Parties – Group 2,” 22 October 2010, F11; “Appeal against Judgment on Reparations by Co-Lawyers for Civil Parties – Group 2,” 2 November 2010, F13; “Appeal Brief of the Co-Prosecutors for KAING Guek Eav alias ‘Duch’ against the Trial Chamber Judgement of 26 July 2010,” 18 November 2010, F14/1 (“the Accused Appeal Brief”); and Mémoire en réponse du groupe d’avocats de parties civiles, 3 December 2010, F14/2.

⁴ Internal Rule 39(4)(a) (Rev. 6).



F14/3

following timetable, subject to the right in Rule 39 of the Internal Rules to request an extension of time limits.

...

Any response to pleadings shall be filed together with any list of authorities within 15 calendar days of notification, in the ECCC official language which the party has elected under Article 2.2, of the document to which the participant is responding.⁵

B. Merits

5. The Co-Prosecutors provide the following five reasons for why they need an additional 15 days to respond to the Accused Appeal Brief:

- A) To compensate for the approximately 2.5 days that the ECCC was closed for the annual Water Festival (19, 22-23 November 2010), and the unspecified time spent respecting the national day of mourning on 25 November 2010;⁶
- B) It is “difficult and time-consuming . . . to construct a meaningful response” due to the “tenuous link” of certain submissions in the Accused Appeal Brief to the Accused Notice of Appeal, and the “lack of specificity” in the Accused Appeal Brief;⁷
- C) International criminal tribunals and courts trying cases of similar magnitude and complexity provide between 40 and 60 days to respond to an appeal against a trial judgment;⁸
- D) The English translation of the Accused Appeal Brief exceeds the page limit established by the Practice Direction on Filing;⁹ and
- E) An additional 15 days to file the Co-Prosecutors’ response is appropriate given the 30 additional days granted by the Chamber to the Accused to file his Appeal Brief.¹⁰

6. The Supreme Court Chamber considers that reason E) provided by the Co-Prosecutors is not a valid reason for which to grant the Application because the Co-Prosecutors do not demonstrate why the extension of time granted to the Co-Lawyers to file the Accused Appeal Brief requires an extension of time for the Co-Prosecutors to file their response to the Accused Appeal Brief.

7. The Supreme Court Chamber considers that reason D) provided by the Co-Prosecutors is based on an incorrect interpretation of the Practice Direction on Filing. The original language of the

⁵ ECCC/01/2007/Rev.5, Articles 8.1, 8.3.

⁶ Application, paras. 3-4.

⁷ Application, paras. 5-6.

⁸ Application, para. 7 (e.g., ICTY Rules of Procedure and Evidence, IT/32/Rev.44 (10 December 2009), Rule 120 and the International Criminal Court, Regulations of the Court, ICC-BD/01-02-07, 26 May 2004 (as amended), Regulation 59(1)).

⁹ Application, para. 8.

¹⁰ Application, paras. 9-10.



Accused Appeal Brief is determinative for the purposes of Article 5.2 of the Practice Direction on Filing.¹¹ The original Khmer version of the Accused Appeal Brief is 43 pages, which is well under the 60 page limit. The Accused cannot be expected to shorten the otherwise compliant original Khmer version of his Appeal Brief in order not to exceed 30 pages in the English translation.

8. Concerning reason B) provided by the Co-Prosecutors, the Supreme Court Chamber reminds the Co-Prosecutors that the 15 day time limit prescribed by Article 8.3 of the Practice Direction on Filing does not assume that the admissibility of the pleadings will be uncontested. In the normal course of litigation, a party should anticipate potential issues with the admissibility of pleadings to which the party wishes to respond. For these reasons, the Chamber finds that reason B) is not a valid reason for which to grant the Application.
9. The Supreme Court Chamber finds that reasons A) and C) provided by the Co-Prosecutors constitute good cause¹² to grant the Application. The response of the Co-Prosecutors to the Accused Appeal Brief must be filed by Monday, 20 December 2010, which is 30 full calendar days from notification of the Accused Appeal Brief.

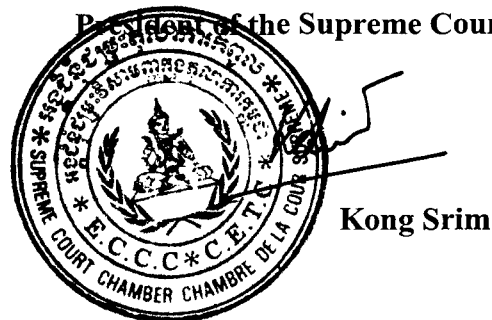
III. DISPOSITION

FOR THE FOREGOING REASONS, THE SUPREME COURT CHAMBER DECIDES:

1. The Application is admissible;
2. The Application is granted.

Phnom Penh, 07 December 2010

President of the Supreme Court Chamber *sm*



Kong Srim

¹¹ "A document filed to the . . . Supreme Court Chamber of the ECCC shall not exceed 30 pages in English . . . or 60 pages in Khmer."

¹² International Criminal Court, Regulations of the Court, ICC-BD/01-02-07, 26 May 2004 (as amended), Regulation 35(2).