



**UNAKRT**

**United Nations Assistance to the Khmer Rouge Trials**

**UNITED NATIONS ADMINISTRATIVE CASE**

**Case File:** UNAKRT/UNAJ/TC/2016/1  
UNAKRT/UNAJ/TC/2016/2

**Before:** Judge Martin G. KAROPKIN

**Greffier:** Matthew J. McCARTHY

**Date:** 3 June 2016

**Language:** English

**Classification:** PUBLIC

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**DECISION ON INTERNATIONAL CO-LAWYER VICTOR KOPPE'S APPEALS OF DEFENCE  
SUPPORT SECTION FEE CLAIM DECISIONS**

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**Co-Lawyer for NUON Chea**  
Victor KOPPE

**UNAKRT Coordinator**  
Knut ROSANDHAUG

**Chief of Defence Support Section**  
Isaac ENDELEY

1. I, Martin G. KAROPKIN, Reserve Judge of the Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia, have been nominated by the UNAKRT Coordinator, Knut ROSANDHAUG, to serve as the United Nations Administrative Judge in Case No. UNAKRT/UNAJ/TC/2016/1 (“First Appeal”) and Case No. UNAKRT/UNAJ/TC/2016/2 (“Second Appeal”). In both cases, Mr. Victor KOPPE (“appellant”), International Co-Lawyer for NUON Chea, appeals decisions made by Mr. Isaac ENDELEY (“respondent”), in his capacity as Chief of the Defence Support Section (“DSS”), with respect to the payment of his attorney fees.

2. In the First Appeal, relating to appellant’s attorney fees for February 2016, appellant initially contests respondent’s decision to reduce payment to appellant based on appellant’s absence from Supreme Court Chamber proceedings in Case 002/01 and Trial Chamber proceedings in Case 002/02. Secondly, appellant challenges respondent’s enforcement of a provision of the ECCC Legal Assistance Scheme limiting his compensation to 150 hours of work per month. In the Second Appeal, relating to appellant’s attorney fees for March 2016, appellant again challenges the contractual provision limiting his monthly payable work to 150 hours. I herein issue a single decision on both appeals.

### 1. ADMISSIBILITY

3. The Legal Services Contract between the United Nations and appellant (“Legal Services Contract”) states:

#### **11. Dispute resolution [...]**

**11.2 Request for review of fee disputes.** If any dispute, controversy or claim arises out of the payment of a fee under paragraph 9 of this Contract, the Contracting Co-Lawyer may request the Head of the DSS to review a fee claim decision within 14 days of receiving the decision from the DSS. Any request for review shall be made in writing, shall state why the fee claim decision was incorrect, and shall be accompanied by any documents that support the request for review. The Head of the DSS shall endeavour to make a decision on the request for review within 14 days of receiving it.

**11.3 Judicial appeal of fee claim decision.** In the event that the Head of the DSS decides to maintain the original fee claim decision, in whole or in part, the Contracting Co-Lawyer has the right to appeal such a decision, in whole or in part, to the international judge nominated by the Coordinator of UNAKRT as the UN Administrative Judge, referred to in paragraph 11.1 above, within 7 days of receiving the review decision of the Head of the DSS.

## **1.1. First Appeal**

4. On 29 March 2016, appellant forwarded a letter to the UNAKRT Coordinator, addressed to the “UN Administrative Judge” in which appellant stated his intention to appeal respondent’s February 2016 Fee Claim Decision.<sup>1</sup> In his original February 2016 fee claim, appellant sought payment for 160.5 hours of work.<sup>2</sup> The February 2016 Fee Claim Decision both reduced appellant’s claim to 150 hours and further reduced the amount payable by 26.25 hours based on appellant’s absences from trial proceedings. Consequently, appellant appeals both the 150-hour fee cap and respondent’s decision to reduce payment “[d]ue to [appellant’s] refusal to participate in courtroom proceedings on 16, 17, 18, 23, 24, 26 and 29 February 2016”.<sup>3</sup> Appellant asked respondent to review his decision, which respondent issued on 25 March 2016.<sup>4</sup> Appellant then made a request to the UNAKRT Coordinator to appoint an administrative judge to hear the First Appeal and attached an initial letter to the administrative judge on 29 March 2016.<sup>5</sup>

5. Because “the Head of the DSS decide[d] to maintain the original fee claim decision”, by the terms of the Legal Services Contract, appellant has a contractual right to appeal.<sup>6</sup> In accordance with provision 11.3 of the Legal Services Contract, appellant filed the First Appeal “within 7 days of receiving the review decision of the Head of the DSS.”<sup>7</sup>

6. The First Appeal is therefore **ADMISSIBLE**.

## **1.2. Second Appeal**

7. On 8 April 2016, respondent issued his fee claim decision for March 2016.<sup>8</sup> In the March 2016 Fee Claim Decision, respondent paid appellant for 150 hours of work performed instead

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<sup>1</sup> Letter from Appellant to UN Administrative Judge, “Appeal of Chief of Defence Support Section’s Review Decision in Respect of My February 2016 Fee Claim” (“Appellant’s First Appeal Submission”), 29 March 2016, para. 4; *see also* Form 28: Fee Claim Decision For February 2016 (“February 2016 Fee Claim Decision”), 8 March 2016.

<sup>2</sup> February 2016 Fee Claim Decision, para. 2.

<sup>3</sup> February 2016 Fee Claim Decision, paras. 3-5.

<sup>4</sup> Letter from Respondent to Appellant, “Re: Your Request for Reconsideration of the February 2016 Fee Claim Decision” (“February 2016 Reconsideration Decision”), 25 March 2016.

<sup>5</sup> Letter from Appellant to Knut ROSANDHAUG, “Appeal of Chief of Defence Support Section’s Review Decision in Respect of My February 2016 Fee Claim”, 29 March 2016, paras. 1-2; Appellant’s First Appeal Submission, para. 4.

<sup>6</sup> Legal Services Contract, para. 11.3.

<sup>7</sup> Legal Services Contract, para. 11.3.

<sup>8</sup> Form 28: Fee Claim Decision For March 2016 (“March 2016 Fee Claim Decision”), 8 April 2016; Form 24: Fees Claim, 8 April 2016.

of the 243 hours of work claimed by appellant.<sup>9</sup> On 6 May 2016, in response to appellant's request for reconsideration,<sup>10</sup> respondent upheld the 150-hour fee cap.<sup>11</sup> Pursuant to paragraph 11.3 of the Legal Services Contract, appellant filed the Second Appeal on 11 May 2016.<sup>12</sup>

8. Again, appellant has a right to appeal respondent's decision to maintain the March 2016 Fee Claim Decision and timely filed his appeal.<sup>13</sup>

9. The Second Appeal is therefore **ADMISSIBLE**.

## 2. FACTS

10. The essential facts of the First Appeal and Second Appeal are not in dispute.

### 2.1. First Appeal

11. Appellant represents his client before the Trial Chamber in Case 002/02 and before the Supreme Court Chamber in the appeal of Case 002/01. He and Mr. SON Arun, National Co-Lawyer, share responsibility for defending their client – “there is no ‘lead’ or ‘primary’ lawyer”.<sup>14</sup> Appellant did not appear before the Supreme Court Chamber during its proceedings on 16, 17 and 18 February 2016. Appellant was also absent from the courtroom during Trial Chamber proceedings on 23, 24, 26 and 29 February 2016.

12. Appellant submitted a claim for 160.5 hours of services performed in February 2016.<sup>15</sup> This fee claim included the aforementioned seven days in which respondent did not appear before either the Supreme Court Chamber or the Trial Chamber. Respondent is responsible for approving monthly payment to defence counsel. In his Fee Claim Decision for February 2016, respondent noted that according to the Legal Assistance Scheme, “[c]o-Lawyers may be paid for a maximum of 150 hours per month”.<sup>16</sup> He therefore reduced appellant's claim to 150

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<sup>9</sup> March 2016 Fee Claim Decision.

<sup>10</sup> Letter from Appellant to Respondent, “Request to Review March 2016 Fee Claim Decision” (“Request to Review March 2016 Decision”), 29 April 2016.

<sup>11</sup> Letter from Respondent to Appellant, “Your Request for Reconsideration of the March 2016 Fee Claim Decision”, 6 May 2016.

<sup>12</sup> Letter from Appellant to UN Administrative Judge, “Appeal of Chief of Defence Support Section's Review Decision in Respect of My March 2016 Fee Claim” (“Appellant's Second Appeal Submission”), 11 May 2016, para. 7.

<sup>13</sup> Appellant's Second Appeal Submission, para. 7.

<sup>14</sup> ECCC Legal Assistance Scheme – Amended December 2014 (“Legal Assistance Scheme”), p. 1.

<sup>15</sup> February 2016 Fee Claim Decision, para. 2.

<sup>16</sup> February 2016 Fee Claim Decision, para. 3; Respondent's Brief, para. 14.

hours.<sup>17</sup> As a result of the appellant's absences, respondent further reduced appellant's payable hours of work and paid him for 126.25 hours.<sup>18</sup>

13. In his brief, respondent cites Internal Rules 11(2) and 22(4), DSS Administrative Regulations,<sup>19</sup> the Legal Services Contract<sup>20</sup> and the Legal Assistance Scheme in support of his position.<sup>21</sup> Respondent further explains:

Section A of the ECCC's Legal Assistance Scheme [...] provides an overview of the policies DSS applies in managing the limited public funds entrusted to its care. This is not a confidential document and it has always been made available to all Defence Team Members at the ECCC.

Moreover, pursuant to Section E, paragraph 4 of [the Legal Assistance Scheme], the maximum number of hours of work for which a Co-Lawyer can be remunerated each month is 150 even if the Co-Lawyer actually works for more hours in any given month. Therefore, that was the starting point for the reductions resulting from [appellant's] unauthorized absence from the court hearings.

It was on the basis of these provisions that DSS decided to exercise its **inherent discretion** by reducing [appellant's] remuneration by one-half only for those days on which he failed to attend the ongoing court proceedings **without authorization or justification**. [Emphasis added.]

DSS does not dispute [appellant's] assertion that he has continued to provide effective legal representation to Mr. Nuon Chea even when [he] is not in the courtroom. In fact, that is the reason why DSS still authorized payment of one-half of [appellant's] daily fee for the dates when he was absent from the court hearings. By the same token, the deduction of the other half of [appellant's] remuneration is justified by his absence from the courtroom on those dates without prior notification to, or authorization from, DSS.

Because DSS usually remunerates a Co-Lawyer for 7.5 hours for a full day of work, it deducted a total of 26.25 hours (or seven half-days) for the seven days during which [respondent] was absent from the court hearings in February 2016. That left him with a balance of 123.75 hours out of a possible maximum of 150 hours, which is what he was paid for.<sup>22</sup>

14. Appellant argues that he should have received \$17,866.10 for February 2016.<sup>23</sup> Respondent authorized payment of \$13,889.75.<sup>24</sup> In the First Appeal, appellant seeks an additional \$3,976.35 in payment,<sup>25</sup> challenging both the reduction to the 150-hour monthly

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<sup>17</sup> February 2016 Fee Claim Decision, para. 3; Respondent's Brief, para. 14.

<sup>18</sup> February 2016 Fee Claim Decision, para. 4.

<sup>19</sup> DSS Administrative Regulations, paras. 11.2, 13.1-2.

<sup>20</sup> Legal Services Contract, paras. 6.8, 7.1, 9.2.

<sup>21</sup> Respondent's Brief, paras. 3-14.

<sup>22</sup> Letter from Respondent to the Honourable Martin G. KAROPKIN, "Submission Regarding [Appellant]'s Appeal Against the February 2016 Fee Claim Decision" ("Respondent's Brief"), 5 May 2016, paras. 13-17.

<sup>23</sup> Appellant's First Appeal Submission, para. 1.

<sup>24</sup> Form 24: Fees Claim, 8 March 2016.

<sup>25</sup> Appellant's First Appeal Submission, para. 1.

limit and respondent's further reduction of appellant's payable hours to 123.75 hours. The challenge to respondent's decision to reduce appellant's fees due to his absences from the courtroom is hereinafter referred to as the "First Cause of Action".

## **2.2. Second Appeal**

15. In the Second Appeal, appellant notes that he submitted a fee claim for 243 hours of work for the month of March 2016 and that respondent paid him for 150 hours of work.<sup>26</sup> Appellant challenges the 150-hour fee cap.<sup>27</sup>

16. The challenge to the 150-hour fee cap is common to both the First Appeal and the Second Appeal.<sup>28</sup> Appellant therefore requested that both appeals be considered together.<sup>29</sup> These challenges to the 150-hour fee cap are considered jointly as the "Second Cause of Action", below.

## **3. MERITS**

### **3.1. First Cause of Action**

#### **3.1.1. Whether appellant's absences were justified**

17. As a preliminary matter, there is no indication that appellant's non-appearance during proceedings before either the Supreme Court Chamber or the Trial Chamber reflected an abandonment of his client's defence, nor is there any claim or suggestion that appellant is not a capable and dedicated advocate for his client. To the contrary, respondent states that appellant has "continued to provide effective legal representation" for his client.<sup>30</sup>

18. Appellant asserts that he did not appear in court on the days in question because his preparation for upcoming trial segments in Case 002/02 was more important than his appearance in court.<sup>31</sup> During appellant's absence from hearings before the Supreme Court Chamber on 16, 17, and 18 February 2016, Mr. SON Arun, National Co-Lawyer for NUON

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<sup>26</sup> Appellant's Second Appeal Submission, para. 3.

<sup>27</sup> Appellant's Second Appeal Submission, para. 3.

<sup>28</sup> Appellant's First Appeal Submission, para. 1; Appellant's Second Appeal Submission, para. 3.

<sup>29</sup> Appellant's Second Appeal Submission, para. 8.

<sup>30</sup> Respondent's Brief, para. 16.

<sup>31</sup> Letter from Appellant to the Honourable Martin G. KAROPKIN, "Appeal of Chief of Defence Support Section's Review Decision in Respect of My February 2016 Fee Claim: Additional Written Submissions" ("Appellant's Brief"), 5 May 2016, paras. 3, 6.

Chea, was present in court, although he did not actively participate in the proceedings.<sup>32</sup> Similarly, on 23, 24 and 26 February 2016, the National Co-Lawyer was present before the Trial Chamber for the key document presentation hearings, but did not actively participate in the proceedings.<sup>33</sup> On 29 February 2016, the National Co-Lawyer, along with Mr. LIV Sovanna, appeared before the Trial Chamber for victim impact statements and actively represented their client by questioning civil parties.<sup>34</sup>

19. Crucially, none of appellant's absences from the proceedings on the dates at issue obstructed either the Supreme Court Chamber's or the Trial Chamber's work. Their hearings moved forward as scheduled.

20. As appellant notes in his brief, he has both a professional and contractual obligation to provide effective legal advice and representation to his client.<sup>35</sup> The Legal Assistance Scheme, set forth later in this decision, recognizes that an attorney in trial has responsibilities that involve both trial appearances and preparation. It does not mandate how an attorney's time is to be allotted. Respondent's conclusion that appellant's absence from the courtroom on the days in question was unjustified is without basis.

### 3.1.2. Whether the applicable rules permitted the reduction of appellant's fees

21. In his brief, respondent states that he reduced payment to appellant based on appellant's failure to notify him in advance and obtain permission for his absences from the courtroom in February 2016.<sup>36</sup> However, in the February 2016 Fee Claim Decision, respondent stated that he reduced appellant's fee for the seven days in question because appellant did not appear for court proceedings.<sup>37</sup> Appellant acknowledges first discussing his

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<sup>32</sup> See Transcript of appeal hearing in Case 002/01 – 16 February 2016, F1/5.1 (“T. 16 February 2016”), 23 February 2016; Transcript of appeal hearing in Case 002/01 – 17 February 2016, F1/6.1, 23 February 2016; Transcript of appeal hearing in Case 002/01 – 18 February 2016, F1/7.1, 24 February 2016; *see specifically*, T. 16 February 2016, pp. 6-7.

<sup>33</sup> See Transcript of hearing on the substance in Case 002/02 – 23 February 2016, E1/390.1, 1 March 2016, pp. 5-6; Transcript of hearing on the substance in Case 002/02 – 24 February 2016, E1/391.1, 1 March 2016; Transcript of hearing on the substance in Case 002/02 – 26 February 2016, E1/392.1 (“T. 26 February 2016”), 3 March 2016.

<sup>34</sup> See Transcript of hearing on the substance in Case 002/02 – 29 February 2016, E1/393.1, 7 March 2016, pp. 32-42, 76-81. The defence's lack of participation in the Supreme Court proceedings and in the Trial Chamber proceedings during the key document presentation hearings is mentioned only in the interest of the completeness of this decision. The respondent has never offered this lack of participation as a reason for the reduction in payment. Indeed, respondent treated the days in which national counsel actively participated in the same manner as those days in which national counsel did not actively participate.

<sup>35</sup> Appellant's Brief at paras. 4-5, 9; *see also* Legal Services Contract, para. 6.8.

<sup>36</sup> Respondent's Brief, paras. 15-17.

<sup>37</sup> February 2016 Fee Claim Decision, para. 4.

absences with respondent after the fact.<sup>38</sup> Appellant argues that he was under no legal obligation to notify respondent of his absences.<sup>39</sup> Respondent argues that the appellant was so obliged.<sup>40</sup>

22. In support of this position, respondent cites paragraph 6.8 of the Legal Service Contract, which states:

**6.8 Availability.** The Contracting Co-Lawyer must be available to provide effective legal advice and representation to the Accused. To that end the Contracting Co-Lawyer:

- a. Shall disclose to the DSS full details of any other case that may substantially affect availability;
- b. Shall confirm that any other case will have been completed prior to the commencement of proceedings before the Trial Chamber of the ECCC, or if they are not completed, that such cases will not substantially affect availability;
- c. Shall not accept assignment to any other case that may substantially affect availability;
- d. Shall immediately inform the Head of the DSS of any obligations to any other case that may substantially affect availability;
- e. Shall be present at the ECCC where necessary for the effective representation of the Accused and whenever given reasonable notice to do so.

Of these provisions, subsections a., b. and d. require notice to DSS and are inapplicable to this situation. Subsection c. is equally inapplicable. Although subsection e. is arguably applicable, it includes no notice requirement. In any event, this provision does not address appearances in the courtroom specifically, but instead, presence at the ECCC generally. Thus, the plain language of paragraph 6.8 of the Legal Services Contract does not support respondent's assertion that appellant was required to immediately inform him of his pending absences.

23. Respondent also cites as support paragraphs 7.1<sup>41</sup> and 9.2<sup>42</sup> of the Legal Services Contract, which describe the workings of the "Action Plan" the contracting Co-Lawyer would

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<sup>38</sup> Appellant's Brief, para. 7; *see also* E-mail from Trial Chamber Senior Legal Officer to Respondent, "Absence of [appellant] from trial proceedings" ("E-mail from Trial Chamber"), 1 March 2016.

<sup>39</sup> Appellant's Brief, paras. 5-6.

<sup>40</sup> Respondent's Brief, paras. 7-12.

<sup>41</sup> In part, paragraph 7.1 of the Legal Services Contract reads: "**Action Plan.** The Contracting Co-Lawyer together with any other Co-Lawyer assigned to the case shall submit a joint Action Plan outlining in detail the tasks to be completed in order to provide effective legal advice and representation to the Accused [...]. The proposed Action Plan shall be completed in accordance with the time limits, work limits and task restrictions that may be imposed by the DSS."

<sup>42</sup> In part, paragraph 9.2 reads: "Only tasks that were outlined in the proposed Action Plan and, if applicable, Transfer Plan and were approved by the DSS pursuant to paragraphs 7.1 and 8.6 of this Contract shall be

ordinarily be required to submit.<sup>43</sup> Respondent, however, notes that DSS has waived the action plan requirement for those Co-Lawyers whose case is currently on trial<sup>44</sup> – Case 002/02 is currently on trial.

24. Respondent claims that the action plan is waived “because [DSS] understands that [defence counsel] will be in the courtroom actively participating in the proceedings and it remunerates them on that basis.”<sup>45</sup> This alleged purpose for the waiver is not articulated in the Legal Services Contract or any of the documents in the record. On the contrary, the Legal Assistance Scheme specifically states the reason for the waiver:

From the month of the commencement of the trial proper [...], until the end of the trial, no Action Plan will be required. [...] This is meant to simplify the administration of the [Legal Assistance Scheme], as it is anticipated that from that moment, Co-Lawyers will be working full time on the case, either preparing the trial or at trial.”<sup>46</sup>

As has been noted, appellant asserts that he used the time to prepare for other segments of the trial which are more relevant to his client’s defence than the court appearances at issue herein.<sup>47</sup> His conduct appears to fall squarely within the purpose of the action plan waiver.

25. Respondent also stated that he reduced appellant’s payment “[d]ue to [his] refusal to participate in courtroom proceedings”.<sup>48</sup> However, respondent offered no evidence that appellant refused a direction to participate in the proceedings.

26. Respondent further asserts that “[w]here a lawyer whose case is on trial fails to attend the court proceedings and fails to obtain the prior approval of DSS for his or her absence, he or she will not be remunerated for the dates of the court hearings from which he or she was absent, or will have his or her fee reduced accordingly”.<sup>49</sup> Nothing in the record contains this language or anything of similar substance. Respondent did not provide any writing or prior notice to appellant of this purported requirement and the potential consequences of a failure to comply.

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compensated under this Contract, save that unforeseen, necessary and reasonable tasks will be paid if justified by the Contracting Co-Lawyer.”

<sup>43</sup> Respondent’s Brief, para. 12.

<sup>44</sup> Respondent’s Brief, para. 8.

<sup>45</sup> Respondent’s Brief, para. 12.

<sup>46</sup> Legal Assistance Scheme, para. E.3.

<sup>47</sup> Appellant’s Brief, paras. 3, 6.

<sup>48</sup> February 2016 Fee Claim Decision, para. 4.

<sup>49</sup> Respondent’s Brief, para. 12.

27. Respondent reasonably complains that appellant did not notify him of his absences from court and this is not the first time that has happened.<sup>50</sup> Respondent notes that such notification is common practice with other defence counsel.<sup>51</sup> When respondent received inquiries about appellant's whereabouts, respondent found himself in the unenviable position of being unable to provide the information requested.<sup>52</sup> Similarly, an inquiry by the Trial Chamber indicated that it too was not notified of at least some of appellant's absences from the courtroom.<sup>53</sup> However, a failure of courtesy is distinguishable from a violation of rules.

28. In sum, because Case 002/02 was on trial, no action plan was required. There is no evidence that appellant was on notice that a failure to notify DSS of his decision not to attend a court session would constitute a violation of the Legal Services Contract or any related rules. There is no evidence that any such rule existed.<sup>54</sup>

### **3.2. Second Cause of Action**

29. In the First Appeal, appellant submitted a claim for 160.5 hours, 10.5 hours over the 150-hour fee cap.<sup>55</sup> In the Second Appeal respondent has submitted a claim for 243 hours, 93 hours over the 150-hour fee cap.<sup>56</sup>

30. The Legal Assistance Scheme requires that "[t]he maximum number of hours that each Co-Lawyer can be paid [...] per month is normally 150 hours or 20 days."<sup>57</sup> Appellant asserts that this limitation does not apply to him, citing the Legal Services Contract, which provides that

[t]he present document constitutes the entire agreement between the parties with regard to the subject matter of the contract and supersedes all prior agreement, understanding, communication and representations, whether oral or written, concerning the subject matter of this contract.<sup>58</sup>

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<sup>50</sup> Respondent's Brief, para. 19.

<sup>51</sup> February 2016 Reconsideration Decision, para. 12; *see also* Respondent's Brief, para. 20.

<sup>52</sup> Respondent's Brief, para. 18.

<sup>53</sup> E-mail from Trial Chamber; T. 26 February 2016, p. 2.

<sup>54</sup> Another issue that merits discussion is the manner in which respondent calculated the deduction from appellant's fees. Respondent explained that he deducted 26.25 hours or the equivalent of 7 half days from the 150 hour cap. Respondent's Brief, paras. 15-17. This left 123.75 hours for which appellant was paid. There is no assertion that appellant did not perform all the hours claimed. Nonetheless, respondent offered no explanation as to why he did not deduct the 26.25 hours from the total 160.5 hours that appellant claimed.

<sup>55</sup> February 2016 Fee Claim Decision.

<sup>56</sup> March 2016 Fee Claim Decision.

<sup>57</sup> Legal Assistance Scheme, para. E.4.

<sup>58</sup> Legal Services Contract, para. 3.

Appellant argues that the Legal Services Contract makes no specific reference to the Legal Assistance Scheme or the 150-hour fee cap.<sup>59</sup> He therefore concludes that the Legal Assistance Scheme is not part of his contract.<sup>60</sup>

31. However, the Legal Services Contract incorporates a number of other documents by reference, including the Internal Rules and the DSS Administrative Regulations:

**Legal Framework.** The Contracting Co-Lawyer shall abide by the Law on the Establishment of the Extraordinary Chambers 2001, **the Internal Rules, the DSS Administrative Regulations**, this Contract, the Code of Professional Conduct and Ethics of the Bar of which the Contracting Co-Lawyer is a member, and the Code of Ethics for Lawyers Licensed with the Bar Association of the Kingdom of Cambodia.<sup>61</sup> [Emphasis added.]

Internal Rule 11(2), which establishes the DSS, also refers to the DSS Administrative Regulations:

2. The Defence Support Section shall: [...]

g) Enter into contracts with defence lawyers for any indigent Suspects, Charged Persons, Accused or other persons entitled to a defence lawyer under these IRs;

h) Monitor and assess the fulfilment of all contracts referred to in paragraph (g) above, and authorize corresponding remuneration in accordance with **Defence Support Section administrative regulations**; [Emphasis added.] [...]

32. The DSS Administrative Regulations state:

D – FEES

11 The Determination of Means [...]

11.4 If the suspect, charged person or accused is determined to lack sufficient means to pay for his defence, the Defence Support Section shall assign the Co-Lawyers chosen by the suspect, charged person, or accused from the list. [...]

11.6 If the suspect, charged person or accused is determined to have sufficient means to pay in part for his defence, the Defence Support Section shall determine the proportion of costs that will be born [sic] by the ECCC and will assign the Co-lawyers [sic] chosen by the suspect, charged person, or accused from the list. **The Co-Lawyers will be paid under the Legal Assistance Scheme** and it will be for the ECCC to recover the determined costs against the accused in the event of a conviction. [...]

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<sup>59</sup> Appellant's Brief, para. 11; Letter from Appellant to Respondent, "Request to Review February 2016 Fee Claim Decision", 21 March 2016 ("Request to Review February 2016 Decision"), paras. 17-18.

<sup>60</sup> Appellant's Second Appeal Submission, para. 3; Appellant's Brief, paras. 9-11; Request to Review March 2016 Decision, paras. 8-9; Request to Review February 2016 Decision, paras. 17-18.

<sup>61</sup> Legal Services Contract, para. 6.2.

11.10 During the determination of means and any appeal against a decision of the Defence Support Section, a Co-Lawyer who has been provisionally assigned **shall be fully remunerated under the ECCC Legal Assistance Scheme**. [Emphasis added.]

33. Although paragraph 11.4 is silent on the manner in which appellant is to be paid, section 11, read in its entirety, provides that all payments to the Co-Lawyer are governed by the Legal Assistance Scheme. That document is properly incorporated into the Legal Services Contract by reference. Payment methods set forth therein cover all of the circumstances under that section in which a Co-Lawyer is to be paid by the ECCC.

34. The conduct of the parties also supports respondent on this issue. Appellant notes that in “35 of the past 39 fee claim decisions” he accepted and “did not contest” the 150-hour fee cap.<sup>62</sup> He acknowledged that respondent paid him for a maximum of 175 hours in four of these monthly fee claim decisions, ostensibly pursuant to an exception found in the Legal Assistance Scheme.<sup>63</sup> Thus, by his own conduct, appellant demonstrated that he understood that this limitation on the number of hours of work for which a Co-Lawyer can be paid was part of the overall agreement between the parties.

35. Appellant also cites as support the International Covenant on Economic, Social and Cultural Rights and the UN Human Rights Commission’s General Comment No. 23 on the covenant.<sup>64</sup> However, these are not applicable to the present appeals. The International Covenant on Economic, Social and Cultural Rights, a treaty among nation-states, is not governing law to the Legal Services Contract.<sup>65</sup>

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<sup>62</sup> Request to Review March 2016 Decision, paras. 6-7.

<sup>63</sup> Request to Review March 2016 Decision, para. 6.

<sup>64</sup> Appellant’s Brief, para. 11, *citing* International Covenant on Economic, Social and Cultural Rights, No. 14531 (16 December 1966) (“ICESCR”), Art. 7(a)(i); Committee on Economic, Social and Cultural Rights, General Comment No. 23 (2016) on the Right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights) (Advance Unedited Version), E/C.12/GC/23 (8 March 2016).

<sup>65</sup> Even if the International Covenant on Economic, Social and Cultural Rights were applicable here, the provision cited by appellant, to the extent that it applies to all workers, provides for “equal remuneration for work of equal value.” ICESCR, Art. 7(a)(i). No evidence was submitted to establish that anyone at the ECCC was performing “work of equal value” for greater remuneration than that received by appellant.

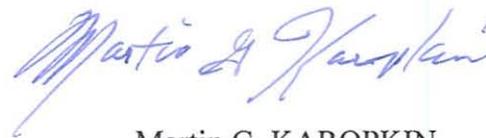
#### 4. **FINDINGS AND ORDERS**

36. For the forgoing reasons, on the First Appeal, I, as Administrative Judge, **FIND** that respondent's decision to reduce appellant's payment by 26.25 hours was without legal or factual basis. I therefore **ORDER**

1. That DSS calculate the difference between the amount appellant would have been paid for 150 hours of work in February 2016 and the amount actually paid to appellant for 123.75 hours of work in February 2016; and
2. That DSS promptly pay this difference to appellant.

37. In both the First Appeal and Second Appeal, I, as Administrative Judge, **FIND** that the provision of the Legal Assistance Scheme establishing the maximum number of hours payable is incorporated into the Legal Services Contract and is binding.

Phnom Penh, 3 June 2016



Martin G. KAROPKIN  
United Nations Administrative Judge