

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

FILING DETAILS

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

Party Filing: Co-Prosecutors

Filed to: Supreme Court Chamber

Original Language: English

Date of Document: 30 November 2018

CLASSIFICATION

**Classification of the document
suggested by the filing party:** PUBLIC

Classification by Supreme Court Chamber: សាធារណៈ/Public

Classification Status:

Review of Interim Classification:

Records Officer Name:

Signature:



**CO-PROSECUTORS' RESPONSE TO KHIEU SAMPHAN'S APPEAL AGAINST
THE JUDGMENT PRONOUNCED ON 16 NOVEMBER 2018**

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I. INTRODUCTION

1. The Co-Prosecutors hereby respond to Khieu Samphan's Appeal against the Judgment pronouncement on 16 November 2018 ("Appeal"),¹ in which he asks the Supreme Court Chamber ("SCC") to annul the Trial Chamber's verdict for procedural defect and lack of reasoning,² and to declare invalid any future attempts by the Trial Chamber to provide their written judgment.³ For the reasons set out below, the Co-Prosecutors submit that this Appeal is inadmissible at this stage of proceedings. In any event, the Appeal has no merit. Nothing in the Internal Rules or international practice prohibits Chambers from announcing decisions or judgments before the full written reasons are released. Khieu Samphan ascribes nefarious motives⁴ to the Trial Chamber's delivery of a summary of the Judgment on 16 November 2018, when in fact the early pronouncement of the Judgment did not prejudice the rights of any Case 002/02 Party. Rather, the early release of a summary of the Judgment before appeal deadlines begin to run benefits the appeal preparation of all parties, including Khieu Samphan.

II. PROCEDURAL HISTORY

2. On 26 September 2018, the Trial Chamber issued a Scheduling Order for the pronouncement of the Judgment, in English, French and Khmer, announcing that, pursuant to Internal Rule⁵ 102(1), it would "announce a summary of the findings and the disposition of the Judgement for Case 002/02 concerning the Accused, Nuon Chea and Khieu Samphan, on Friday, 16 November 2018 in the main courtroom of the ECCC" and informed the Parties that "full written reasons for its Judgement [would] be notified in due course".⁶ On 5 November 2018, the Trial Chamber issued a summons to Nuon Chea and Khieu Samphan to attend the hearing on the pronouncement of the Judgment.⁷
3. On 16 November 2018, the Trial Chamber pronounced its verdict and sentence, and provided an oral summary of the Judgment, highlighting key findings. It stated: "The

¹ **E463/1** KHIEU Samphan's Urgent Appeal against the Judgement Pronounced on 16 November 2018, 19 November 2018 (notified in French and Khmer on 20 November 2018, and in English on 30 November 2018) ("Appeal").

² **E463/1** Appeal, paras 3-5, 54-64, 70, 73.

³ **E463/1** Appeal, paras 36-54, 73.

⁴ **E463/1** Appeal, paras 51-52.

⁵ Internal Rules of the Extraordinary Chambers in the Courts of Cambodia, Revision 9, 16 January 2015 ("Internal Rule(s) or Rule(s)").

⁶ **E462** Scheduling Order for Pronouncement of the Judgement in Case 002/02, 26 September 2018 (notified in English, French and Khmer on 26 September 2018) ("Scheduling Order"), p. 2 (capitalisation and emphasis omitted).

⁷ **E202/340** Summons – Accused, 5 November 2018 ("Summons").

Chamber would like to inform the parties and the general public that at this moment, the Chamber pronounces only a summary of the Trial Chamber's Judgment. The only authoritative account of the findings is contained in the full written Judgment which will be made available in Khmer, English, and French in due course."⁸

4. The hearing concluded with the Trial Chamber's confirmation that "[t]his Judgment is publicly pronounced in the ECCC main courtroom on 16 November, 2018, and subject to appeal according to the Internal Rules."⁹ The Chamber further clarified that "in accordance with Internal Rule 107 (4) and Article 8.5 of the Practice Direction on the Filing of Documents before the ECCC, the time limit for filing a notice of appeal, if any, will commence on the first calendar day following the day of service of the notification of the fully reasoned, written Judgement in Khmer and one of the other official languages of the ECCC as selected by each Party pursuant to Article 2.2 of the Practice Direction."¹⁰
5. On 19 November 2018, Khieu Samphan filed his Appeal in French and Khmer, which was notified to the Parties on 20 November 2018. On 27 November 2018, the Co-Prosecutors submitted their request to file this response on 30 November 2018 in English only, with the Khmer translation to follow at the earliest opportunity.¹¹

III. SUBMISSIONS

a. Admissibility

6. The Appeal is out of time. The entirety of Khieu Samphan's complaint is that a summary of the Judgment was delivered before the full written reasons for the Judgment have been notified. However, on 26 September 2018, all parties were notified, in all three of the Court's languages, of the Trial Chamber's decision to pronounce a summary of the Judgment on 16 November 2018 with full written reasons to follow.¹² Khieu Samphan made no complaint to the Trial Chamber concerning this procedure and did not file an appeal of that decision within the 30-day deadline¹³ (which expired on 26 October 2018). The present Appeal, filed on 19 November 2018, is out of time.
7. Further, in an unconvincing search for a theory as to why his Appeal would be admissible before the SCC at this stage, Khieu Samphan proffers three alternative grounds: (1)

⁸ **E1/529.1** Pronouncement of Judgement in Case 002/02, T. 16 November 2018, 09.34.35-09.36.02.

⁹ **E1/529.1** Pronouncement of Judgement in Case 002/02, T. 16 November 2018, 11.37.57-11.40.00.

¹⁰ **E1/529.1** Pronouncement of Judgement in Case 002/02, T. 16 November 2018, 11.37.57-11.40.00.

¹¹ **E463/1/1** Co-Prosecutors' Request to File Their Response to Khieu Samphan's Appeal Dated 19 November 2018 in One Language, 27 November 2018.

¹² **E462** Scheduling Order.

¹³ Internal Rule 107(1).

Internal Rules 104(4)(a) and 105(2) (an immediate appeal against a decision terminating proceedings); (2) Rule 105(1)(b) (an appeal by the Accused against a trial judgment); or (3) the SCC's inherent jurisdiction.¹⁴ As discussed below, the Appeal is not admissible on any of these grounds at this stage of the proceedings.

Immediate Appeal under Rules 104(4)(a) and 105(2)

8. Khieu Samphan argues that the Appeal is admissible under Rule 104(4)(a) as a decision which has the effect of terminating the proceedings because the pronouncement of 16 November 2018 put an end to Case 002/02 without there being an appealable judgment.¹⁵
9. Contrary to Khieu Samphan's premise, it is patently clear that the public pronouncement of the Judgment on 16 November 2018 did not have "the effect of terminating the proceedings". The SCC has confirmed that it has "limited jurisdiction for immediate appeals under Internal Rule 104(4)"¹⁶ and noted on a number of occasions that the rationale for Internal Rule 104(4)(a) is to "ensure[] that an avenue of appeal exists where the proceedings are terminated *without arriving at a judgement* and therefore without an opportunity to appeal against it" (emphasis added).¹⁷ For example, a bar on arriving at a judgment on the merits becomes a ground for immediate appeal whenever, as a result of a first instance decision, proceedings have been terminated or suspended in respect of a discrete aspect of the indictment.¹⁸
10. A procedural decision regarding the respective timings of the pronouncement of the judgment and the subsequent written judgment has no effect in terminating the proceedings in respect of the indictment, in whole or in part. The judgment milestone has been reached, and as Khieu Samphan himself concedes,¹⁹ a judgment simply concludes the trial phase but not the judicial proceedings for Case 002/02.

¹⁴ **E463/1** Appeal, para. 9.

¹⁵ **E463/1** Appeal, paras 21-26.

¹⁶ **E51/6/1/1/2** Decision on Two Notices of Appeal Filed by Ieng Sary, 8 April 2011, p. 2.

¹⁷ **E95/8/1/4** Decision on Ieng Sary's Appeal Against Trial Chamber's Decision on Co-Prosecutors' Request to Exclude Armed Conflict Nexus Requirement from the Definition of Crimes Against Humanity, 19 March 2012, para. 9; **E163/5/1/13** Decision on the Co-Prosecutors' Immediate Appeal of the Trial Chamber's Decision Concerning the Scope of Case 002/01, 8 February 2013 ("Decision on Appeal Against First Severance"), para. 22; **E284/4/8** Decision on Immediate Appeals Against Trial Chamber's Second Decision on Severance of Case 002, 25 November 2013 ("Decision on Appeal Against Second Severance"), para. 21; **E301/9/1/1/3** Decision on Khieu Samphan's Immediate Appeal Against the Trial Chamber's Decision on Additional Severance of Case 002 and Scope of Case 002/02, 29 July 2014 ("Decision on Additional Severance and Scope"), para. 17.

¹⁸ **E301/9/1/1/3** Decision on Additional Severance and Scope, para. 18.

¹⁹ **E463/1** Appeal, para. 48.

Appeal of the Judgment under Rule 105(1)(b)

11. Under Rule 104(4), “[o]ther decisions may be appealed only at the same time as an appeal against the judgment on the merits.”²⁰ Indeed, the SCC has confirmed that challenges to decisions of a procedural nature taken by the Trial Chamber during trial are correctly raised in the course of appealing a judgment on the merits under Rules 104(1) and 105(1).²¹ Khieu Samphan’s current Appeal challenging the Trial Chamber’s procedural choice is premature. For the reasons set out below, appeals against the trial judgment are admissible only following the issuing of the written judgment, and Khieu Samphan’s arguments to the contrary are entirely without merit.²²

Inherent Jurisdiction

12. Finally, contrary to Khieu Samphan’s assertion,²³ this is not a situation in which the SCC has “inherent jurisdiction” to intervene. The SCC and Pre-Trial Chamber (“PTC”) have previously found that, in instances where statutory provisions do not expressly or by necessary implication contemplate their power to pronounce on a matter, they possess inherent jurisdiction “to determine *incidental issues which arise as a direct consequence of the procedures of which [they are] seized* by reason of the matter falling under [their] primary jurisdiction”.²⁴ This jurisdiction is therefore only “ancillary or incidental to the primary jurisdiction [when] rendered necessary by the imperative need to ensure a good and fair administration of justice.”²⁵ It is often used, for example, to order interim measures.²⁶
13. Therefore, for the present Appeal to fall within the purview of the SCC’s inherent jurisdiction, Khieu Samphan must establish that failure to annul the 16 November 2018 verdict and sentence, or allowing the Trial Chamber to issue its written reasons in due course, will have a direct impact on appellate proceedings of which the SCC is already seized, for example by rendering a right to appeal ineffective or affecting the fairness of

²⁰ Internal Rule 104(4).

²¹ **F36** Case 002/01 Appeal Judgement, 23 November 2016 (“Case 002/01 Appeal Judgment”), para. 96.

²² *See infra*, para. 22 and fn. 59.

²³ **E463/1** Appeal, para. 28.

²⁴ **SCC: E284/2/1/2** Decision on Co-Prosecutors’ Request for Clarification, 26 June 2013 (“SCC Decision on Clarification Request”), para. 12; **PTC: Case 003-D14/1/2** Order Suspending the Enforcement of the “Order on International Co-Prosecutor’s Public Statement regarding Case File 003”, 13 June 2011 (“PTC Suspension Order”), para. 4.

²⁵ **E284/2/1/2** SCC Decision on Clarification Request, para. 12; Case 003-D14/1/2 PTC Suspension Order, para. 4.

²⁶ **E284/2/1/2** SCC Decision on Clarification Request, para. 12 and citations therein.

an existing appellate process.²⁷ Since there are currently no live proceedings before the SCC, such a situation does not arise here.

b. Merits

14. Khieu Samphan's Appeal is based upon the premise that the Trial Chamber has committed a procedural error by pronouncing the Case 002/02 Judgment, with a summary judgment and disposition, on 16 November 2018, but failing to publish the full written judgment the same day. He argues that this was a violation of Rules 101 and 102 and impermissible practice for the publication of trial judgments.²⁸ Moreover, he avers that, since no written judgment was issued that day, the summary and disposition constitute the entire "judgment" in the sense of Internal Rules 98 and 101,²⁹ which (i) is void for procedural defect and lack of reasoning;³⁰ (ii) causes confusion regarding the form and time limits for appeals;³¹ and (iii) renders the Trial Chamber *functus officio*, such that it no longer has the jurisdiction to publish the written judgment.³² As a result, Khieu Samphan claims to have been deprived of various procedural rights, including his rights to appeal the substance of the judgment against him, to transparency of proceedings, to legal certainty, and to have his case heard, and thereby suffered severe prejudice.³³

The Trial Chamber committed no error of law

15. Khieu Samphan's arguments are flawed for several reasons. First, the plain meaning and purpose of Rules 101 and 102, when read together, are to set out the required form and content of the written judgment³⁴ and to provide for its public pronouncement,³⁵ including the oral delivery of a summary of the Trial Chamber's findings and the disposition.³⁶ By doing so, the Trial Chamber protects all the fundamental rights of the accused, including the right to a public trial, a reasoned judgment, and the right to appeal, as well as ensuring transparency of proceedings and public access to the judicial process. There is nothing in these Rules or elsewhere prohibiting the Trial Chamber from fulfilling the *obligation to pronounce the judgment publicly* earlier than the publication of the written reasons, nor

²⁷ **E284/2/1/2** SCC Decision on Clarification Request, para. 12; Case 003-**D14/1/2** PTC Suspension Order, paras 3-4.

²⁸ **E463/1** Appeal, paras 3-4, 5-7, 39-47.

²⁹ **E463/1** Appeal, paras 10-11, 37.

³⁰ **E463/1** Appeal, paras 3-5, 54-64, 70, 73.

³¹ **E463/1** Appeal, paras 4, 8-27, 34-35.

³² **E463/1** Appeal, paras 36-54, 73.

³³ **E463/1** Appeal, paras 4, 26, 33-34, 60-69.

³⁴ Internal Rule 101.

³⁵ Internal Rule 102.

³⁶ Internal Rule 102(1).

do the Rules provide that doing so renders the judgment invalid.

16. As Khieu Samphan recites in considerable detail in his Appeal,³⁷ the SCC,³⁸ PTC,³⁹ and Trial Chamber⁴⁰ have all followed this practice when publishing their judgments and decisions. The SCC has already confirmed that a delay between the issuing of a summary and disposition on the one hand, and written reasons on the other, does not in itself constitute a procedural breach.⁴¹ Moreover, article 33^{new} of the ECCC Law⁴² expressly allows the Trial Chamber to look for guidance from international procedural rules and standards if the existing procedure does not deal with a particular matter, or if there is a question regarding the consistency with international standards. The Rules of Procedure and Evidence (“RPE”) at the ICTY, ICTR, MICT and STL expressly allow for this procedure,⁴³ and trial chambers at the ICTY, ICTR and SCSL have all pronounced verdicts, together with a judgment summary, before the written judgment was published.⁴⁴ It is clear the Trial Chamber’s procedure was consistent with the

³⁷ **E463/1** Appeal, paras 39-47.

³⁸ *See, for example*, **E284/4/7** Decision on Immediate Appeals Against Trial Chamber’s Second Decision on Severance of Case 002 – Summary of Reasons, 23 July 2013, followed by **E284/4/8** Decision on Appeal Against Second Severance. *See further*, **E463/1** Appeal, fns 18-19.

³⁹ *See, for example*, **D427/1/26** Decision on Ieng Sary’s Appeal Against the Closing Order, 13 January 2011, followed by **D427/1/30** Decision on Ieng Sary’s Appeal Against the Closing Order, 11 April 2011. *See further*, **E463/1** Appeal, fns 20-22.

⁴⁰ *See, for example*, **E367/7** Decision on Nuon Chea’s Requests for Admission of Documents Relevant to the Testimony of 2-TCE-95, 8 February 2016, followed by **E367/8** Decision on Nuon Chea’s Rule 87(4) Requests for Admission of 29 Documents Relevant to the Testimony of 2-TCE-95, 5 May 2016. *See further*, **E463/1** Appeal, fn. 24.

⁴¹ **E50/1/1/4** Decision on Immediate Appeals by Nuon Chea and Ieng Thirith on Urgent Applications for Immediate Release, 3 June 2011, paras 31, 38 [“If [...] both the Final Disposition and the reasons were delivered within the time allowed, then the question of their separation becomes moot.” The SCC found that, before the expiration of the four-month time limit in Internal Rule 68(2), the PTC had filed its fully reasoned decision and therefore complied with the procedural obligation in Internal Rules]. *See also* **E50/3/1/4** Decision on Immediate Appeal by Khieu Samphan on Application for Release, 6 June 2011, para. 22.

⁴² Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea *as amended on* 27 October 2004.

⁴³ ICTY RPE, Rule 98^{ter}(A), (C); ICTR RPE, Rule 88(A), (C) [“(A) The judgement shall be pronounced in public, on a date of which notice shall have been given to the parties and counsel and at which they shall be entitled to be present [...] (C) [...] It shall be accompanied or followed as soon as possible by a reasoned opinion in writing”]; MICT RPE, Rule 122(A), (C) [“(A) The judgement shall be pronounced in public by the Trial Chamber [...] on a date of which notice shall have been given to the Parties and Counsel and at which they shall be entitled to be present [...] (C) [...] It shall be accompanied or followed as soon as possible by a reasoned opinion in writing”]; STL RPE, Rule 168(A)-(B) [“(A) The judgement shall be pronounced in public, on a date of which notice shall have been given to the Parties and victims participating in the proceedings, and at which they shall be entitled to be present [...] (B) [...] It shall be accompanied or followed as soon as possible by a reasoned opinion, in writing”].

⁴⁴ *See, e.g.* **ICTR**: (1) *Ngirabatware*, Trial Chamber, Judgement and Sentence, 20 December 2012, filed in writing on 21 February 2013 (*see Ngirabatware*, Appeals Chamber, Judgement, 18 December 2014, para. 1); (2) *Ndindiliyimana et al.*, Trial Chamber, Judgement and Sentence, 17 May 2011, filed in writing on 17 June 2011 (*see Ndindiliyimana et al.*, Appeals Chamber, Judgement, 11 February 2014, para. 1); (3) *Ndahimana*, Trial Chamber, Judgement and Sentence, 17 November 2011, signed on 30 December 2011 and filed in writing on 18 January 2012 (*see Ndahimana*, Appeals Chamber, Judgement, 16 December

international standards of courts dealing with cases of a similar magnitude and severity.

17. Khieu Samphan's remaining arguments all flow from his assertion that, in the absence of a written judgment issued on 16 November 2018, the oral summary and disposition necessarily constitute "the Case 002/02 judgment". This is false and deliberately misrepresents the purpose and status of the 16 November 2018 judgment pronouncement. As the Trial Chamber set out in its Scheduling Order,⁴⁵ and Summons to the Accused,⁴⁶ the public hearing on 16 November 2018 was conducted in fulfilment of the Trial Chamber's obligation, under Rule 102(1) to pronounce the judgment publicly, giving a "summary of the findings and the disposition",⁴⁷ with binding verdicts and sentences. The Trial Chamber was equally clear that the written reasoned version would follow in due course,⁴⁸ thereby fulfilling the procedural requirements for a written judgment in accordance with Internal Rule 101.
18. Khieu Samphan's reliance on the PTC's Considerations on the International Co-Prosecutor's Appeal of the Closing Order (Reasons) in Case 004/1⁴⁹ - in which the PTC found that the "approach [of delivering reasons at a later date] cannot apply to closing orders"⁵⁰ - is therefore inapposite. The issue there related to the Co-Investigating Judges' ("CIJs") decision to first issue a written but unreasoned Closing Order, which, due to the

2013, fn. 1); (4) *Nzabonimana*, Trial Chamber, Judgement and Sentence, 31 May 2012, filed on 25 June 2012 (see *Nzabonimana*, Appeals Chamber, Judgement, 29 September 2014, fn. 1); (5) *Nyiramasuhuko et al.*, Trial Chamber, Judgement and Sentence, 24 June 2011, issued in writing in English on 14 July 2011 (see *Nyiramasuhuko et al.*, Appeals Chamber, Judgement, 14 December 2015, para. 1); (6) *Hategekimana*, Trial Chamber, Judgement and Sentence, 6 December 2010, filed in writing on 14 February 2011 (see *Hategekimana*, Appeals Chamber, Judgement, 8 May 2012, para. 1); (7) *Muhimana*, Trial Chamber, Judgement and Sentence, 28 April 2005, filed in writing in English on 26 May 2005 (see *Muhimana*, Appeals Chamber, Judgement, 21 May 2007, Annex A, para. 2 (p. 92)); **ICTY**: (1) *Aleksovski*, Trial Chamber, Judgement, 25 June 1999, with the oral summary read on 7 May 1999 (see *Aleksovski*, Appeals Chamber, Judgement, 24 March 2000, para. 2); (2) *Rašić*, Trial Chamber, Written Reasons for Oral Sentencing Judgement, 6 March 2012, para. 1 ("Herein, the Trial Chamber sets out the written reasons for the Oral Sentencing Judgement delivered on 7 February 2012"); **SCSL**: *Taylor*, Trial Chamber, Judgement, 18 May 2012, with the oral summary read on 26 April 2012 (see *Taylor*, Appeals Chamber, Judgment, para. 12).

⁴⁵ **E462** Scheduling Order, p. 2 ["NOTIFIES the Parties that, pursuant to Internal Rule 102(1), it will announce a summary of the findings and the disposition of the Judgement for Case 002/02 concerning the Accused, Nuon Chea and Khieu Samphan, on Friday, 16 November 2018 in the main courtroom of the ECCC"].

⁴⁶ **E202/340** Summons, p. 1 [Summoning Nuon Chea and Khieu Samphan to the ECCC courtroom on 16 November 2018 "to attend the hearing on the pronouncement of the judgment in Case 002/02"].

⁴⁷ Internal Rule 102(1) ["All judgments shall be issued and announced during a public hearing. A summary of the findings and the disposition shall be read aloud by the President or any other judge of the Chamber."]

⁴⁸ **E462** Scheduling Order, p. 2 ["INFORMS the Parties that the full written reasons for its Judgement will be notified in due course"]; **E1/529.1** Pronouncement of Judgement in Case 002/02, T. 16 November 2018, 09.34.35-09.36.02 ["The only authoritative account of the findings is contained in the full written Judgment which will be made available in Khmer, English, and French in due course."].

⁴⁹ **E463/1** Appeal, paras 44-46.

⁵⁰ Case 004/1-**D308/3/1/20** Considerations on the International Co-Prosecutor's Appeal of Closing Order (Reasons), 28 June 2018 ("PTC Considerations on Appeal of Case 004/1 Closing Order"), para. 33.

lack of reasoning, did not comply with the specific requirements of Internal Rule 67(4).⁵¹ In Case 002/02, as already stated, the Trial Chamber is simply fulfilling, at two separate time points, the two *mandatory* requirements for the issuing of a trial judgment. In any event, Khieu Samphan misstates the PTC decision, claiming that the PTC wrongly failed to draw consequences from the procedural breach.⁵² In fact, the PTC's conclusion was abundantly clear: whilst the first (summary) Closing Order did not comply with the procedural requirements of Internal Rule 67(4), the CIJs' decision to issue it did not invalidate the second, reasoned, Closing Order. Indeed, the PTC held that "delivering reasons at a later date may in certain circumstances fulfil the obligation to issue reasoned decisions".⁵³

Khieu Samphan has suffered no prejudice

19. It is notable that nowhere in his Appeal does Khieu Samphan demonstrate that the oral pronouncement of the summary of the Judgment on 16 November 2018 in three languages before the full written judgment is initially released in two languages prejudiced any of his interests. No annulment of the verdict and sentence is merited where any error was harmless. The SCC has previously held that the only procedural errors that will lead to a reversal of the judgment are those that resulted in a "grossly unfair outcome in judicial proceedings", taking into account all phases of the proceedings, including measures that were taken in the course of the appeals phase.⁵⁴ The SCC has noted that the Trial Chamber often enjoys discretion with respect to procedural matters,⁵⁵ and has adopted a deferential approach to the review of discretionary decisions, intervening in the Trial Chamber's exercise of that discretion only if it is tainted by a discernible error which resulted in prejudice to the appellant.⁵⁶
20. Khieu Samphan has not demonstrated *any* infringement of his rights by the error he alleges. Indeed, were his concerns genuine, he would have acted as soon as the Trial Chamber issued its Scheduling Order on 26 September 2018, rather than waiting until

⁵¹ Case 004/1-**D308/3/1/20** PTC Considerations on Appeal of Case 004/1 Closing Order, para. 33.

⁵² **E463/1** Appeal, para. 46.

⁵³ Case 004/1-**D308/3/1/20** PTC Considerations on Appeal of Case 004/1 Closing Order, para. 33.

⁵⁴ **F36** Case 002/01 Appeal Judgment, para. 100.

⁵⁵ **F36** Case 002/01 Appeal Judgment, para. 97, *citing* **E189/3/1/8** Decision on Nuon Chea's "Immediate Appeal Against Trial Chamber Decision on Application for Immediate Action Pursuant to Rule 35", 25 March 2013, paras 21, 26; **E163/5/1/13** Decision on Appeal Against First Severance, para. 30; **E116/1/7** Decision on Immediate Appeal by Nuon Chea Against the Trial Chamber's Decision on Fairness of Judicial Investigation, 27 April 2012, para. 33.

⁵⁶ **F36** Case 002/01 Appeal Judgment, para. 97.

after the 16 November 2018 Judgment pronouncement.

21. Khieu Samphan suggests that he has been subjected to public disgrace by his conviction in front of a national and international audience, without the ability to appeal his conviction on the merits.⁵⁷ However, as set out above, the public pronouncement of the trial judgment is not only mandated by the ECCC Internal Rules, but is an intrinsic aspect of any criminal trial guaranteeing the transparency of proceedings and public participation in the judicial process. This important event would have occurred whether or not the written judgment was delivered on the same day.
22. Similarly, Khieu Samphan has not been deprived of his right to a written judgment or to appeal, and ignores the fact that the Trial Chamber unequivocally and publicly stated, in accordance with Rules 101(6)(i),⁵⁸ 107(4),⁵⁹ and 39(1) and (4),⁶⁰ that the time for launching any appeal would only begin to run after the fully reasoned decision was notified in two languages.⁶¹ Incongruously, by this Appeal, Khieu Samphan seeks to annul or delay the very document - the fully reasoned judgment - which even on his own argument, would cure the defect he alleges. In fact, by providing a summary of the judgment, the Trial Chamber has provided Khieu Samphan with *more* time to begin his preparation for the appellate stage of proceedings. If Khieu Samphan wished either to seek clarification of or to extend the applicable deadlines for appeal, he could have simply applied to the SCC to do so pursuant to Rule 39(4), just as he did in Case 002/01.⁶²

⁵⁷ **E463/1** Appeal, paras 66-68.

⁵⁸ Internal Rule 101(6)(i) [The trial judgment is required to include a statement as to “the appellate rights of the parties and the conditions and time limits for appeals.”].

⁵⁹ 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.”]. *See further* Internal Rule 108(1) [“Where an appeal is filed against a judgment of the Trial Chamber, the Greffier of the Trial Chamber shall forward the case file to the Greffier of the [SCC] together with certified copies of the judgment and each notice of appeal.”].

⁶⁰ Rules 39(1) and (4) provide that a Chamber may set and extend time limits on their own motion.

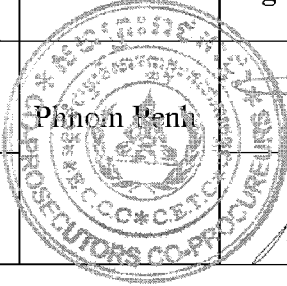

⁶¹ **E1/529.1** Pronouncement of Judgement in Case 002/02, T. 16 November 2018, 11.37.57-11.40.00.

⁶² **F3** 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, paras 5, 31.

IV. CONCLUSION

23. For the reasons set forth above, the Co-Prosecutors respectfully request that the Supreme Court Chamber dismiss Khieu Samphan's Appeal in its entirety.

Respectfully submitted,

Date	Name	Place	Signature
30 November 2018	CHEA Leang Co-Prosecutor	Phnom Penh 	
	Nicholas KOUMJIAN Co-Prosecutor		