

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

FILING DETAILS

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

Filing Party: Mr KHIEU Samphan

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**KHIEU Samphan Defence Request for Extension of Time and Number of Pages to File
Notice of Appeal**

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Before:

The Supreme Court Chamber
Judge KONG Srim
Judge Chandra Nihal JAYASINGHE
Judge SOM Sereyvuth
Judge Florence Ndepele MWACHANDE-MUMBA
Judge MONG Monichariya
Judge Phillip RAPOZA
Judge YA Narin

The Co-Prosecutors

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NUON Chea's Defence

MAY IT PLEASE THE SUPREME COURT CHAMBER

1. On 16 November 2018, in open session, the Trial Chamber (the “Chamber”) found KHIEU Samphan guilty of genocide (of the Vietnamese), crimes against humanity and grave breaches of the Geneva Conventions, and sentenced him to life imprisonment.¹ The Chamber noted that the complete reasons for its Judgment would be notified in writing “in due course”.²
2. On 19 November 2018, the KHIEU Samphan Defence (the “Defence”) appealed against the Judgment and requested the Supreme Court Chamber (the “Supreme Court”) to quash it on the grounds that it contained procedural defects and was not reasoned (the “Appeal of 19 November 2018”).³ On 13 February 2019, the Supreme Court ruled the appeal inadmissible.⁴ On 20 March 2019, the Defence requested that the decision be set aside on the grounds that the panel of judges that issued it was not properly formed at the time.⁵
3. On 28 March 2019, the parties were notified of the complete reasons for the Case 002/02 Judgment in the three official languages of the ECCC, dated 16 November 2018.⁶
4. The Defence hereby requests an extension of time and number of pages to file its notice of appeal.

I. CRUCIAL IMPORTANCE OF THE NOTICE OF APPEAL

5. The appeal is KHIEU Samphan's sole and exclusive remedy against his conviction in Case 002/02. The Internal Rules (“IR”) provide that “Decisions of the Chamber are final, and shall not be sent back to the Trial Chamber.”⁷

¹ Trial Transcript (“T”), 16 November 2018, **E1/529.1**, pp. 64-68, between 11:28 am and 11:38 am.

² T. 16 November 2018, **E1/529.1**, p.3, at about 9:35 am.

³ KHIEU Samphan’s Urgent Appeal against the Judgment pronounced on 16 November 2018, 19 November 2018, **E463/1**, notified on 20 November 2018 (“Appeal of 19 November 2018”).

⁴ Decision on KHIEU Samphan’s Urgent Appeal against the Judgment pronounced on 16 November 2018, 13 February 2019, **E463/1/3** (“Decision **E463/1/3**”). On 14 February 2019, the Defence requested the translation into French of the Decision notified on 27 February 2019.

⁵ KHIEU Samphan’s Application for Annulment of Decision E463/1/3 on the Urgent Appeal against the Judgment pronounced on 16 November 2018, 20 March 2019. That application was filed on 20 March 2019 at 11:52 am but had not yet been notified at the time the present request was sent for translation.

⁶ Judgment in Case 002/02, 16 November 2018, **E465** (“Reasons for the Judgment in Case 002/02 **E465**”).

⁷ IR 104(3).

6. Although the appeal phase consists of several procedural steps (notice of appeal followed by the appeal brief,⁸ responses,⁹ closing arguments¹⁰), the first of these stages (the notice of appeal) is decisive.
7. In fact, the notice of appeal must set forth the grounds of appeal raised, whether *de jure* or *de facto*. The grounds of appeal thus set forth and “specified” are then developed in the appeal brief (“setting out the arguments and authorities in support of each of the grounds”).¹¹ The Internal Rules provide that “[p]arties may not raise any matters of fact or law during a hearing that were not previously set out in their submissions on appeal.”¹² Above all, it is clearly stated that “[t]he scope of the appeal shall be limited to the issues raised in the notice or in the immediate appeal.”¹³
8. Unlike other international tribunals,¹⁴ there is no provision in the texts applicable before the ECCC that allows for an amendment of the grounds of appeal initially set out in the notice of appeal.
9. Consequently, a ground of appeal which has not been set out and specified at the stage of the notice of appeal cannot be raised at a later stage, let alone considered by the Supreme Court, whose ruling is final. The notice of appeal must be complete and the Defence cannot afford to err.
10. The Defence must therefore be able to have the time and resources required for the preparation of its notice of appeal in order to exercise its right of appeal in a realistic and effective manner.

II. NEED FOR EXTENSION OF TIME LIMIT

A. APPLICABLE LAW

11. Internal Rule 107(4) provides that any “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.” According to Rule 102(2),

⁸ IR 105(3).

⁹ Article 8(3) of the Practice Direction on Filing Documents before the ECCC (the “Practice Direction”).

¹⁰ IR 109.

¹¹ IR 105(3) (emphasis added).

¹² IR 109(6).

¹³ IR 110(1) (emphasis added).

¹⁴ Rule 108 of the Rules of Procedure and Evidence (“RPE”) of ICTR and ICTY; Regulation 61 of the ICC Regulations; Rule 177(C) of the RPE of the STL ; Rule 133 of the RPC of the MICT.

the period of appeal starts at notification of the judgment “if the Accused is absent when the judgment is announced”. In other words, as in Cambodian law,¹⁵ if the accused is present when the judgment is pronounced, the period of appeal starts from the date of pronouncement of the judgment.

12. Internal Rule 39(2) provides that “the judges may set time limits for the filing of pleadings, written submissions and documents relating to a request or appeal, taking into account the circumstances of the case.” Pursuant to Internal Rule 39(4), the judges “may, at the request of the concerned party or on their own motion: a) extend any time limits set by them; or b) recognize the validity of any action executed after the expiration of a time limit prescribed in these IRs on such terms, if any, as they see fit”.

B. STARTING POINT OF THE TIME LIMIT

13. On 16 November 2018, the Chamber ruled that the judgment delivered in open session was subject to appeal in accordance with the provisions of the Internal Rules.¹⁶ It then “clarified” or “pointed out” the starting point of the time limit for filing the appeal as the “[day of service of the notification of the fully reasoned, written Judgment]”.¹⁷ While it invoked Internal Rule 107(4), it omitted Internal Rule 102(2), which provides that the time limit starts to run from the date of notification of the judgment, and not from its pronouncement, only when the accused is absent. Moreover, it did not invoke Internal Rules 39(2) and 39(4). Consequently, the Chamber simply wished to clarify or point out the starting point of the time limit to file the appeal, by misreading the Internal Rules. It did not intend to set the time limit, which it could not do. Indeed, judges can only set time limit in the context of proceedings before them. It is the appellate court hearing the appeal which is competent to set the time limit for appeal. The Pre-Trial Chamber does not appear to interpret Rule 39 differently.¹⁸
14. The Internal Rules are very clear on the fact that, since KHIEU Samphan was present at the time of the pronouncement of the Judgment on 16 November 2018, his appeal time limit began to run from that date. His appeal of 19 November 2018, filed within the prescribed time limit,

¹⁵ Articles 381, 382, 360 paras 1 and 361 para. 1 of the Cambodian Code of Criminal Procedure.

¹⁶ T. 16 November 2018, **E1/529.1**, at 11:38 am: “This Judgment is publicly pronounced in the ECCC main courtroom on 16 November, 2018, and is subject to appeal according to the Internal Rules.” (this sentence only appears in the Khmer and English transcripts, but not in the French).

¹⁷ T. 16 November 2018, **E1/529.1**, at 11:38 am (p. 57 in English, pp. 68-69 in French).

¹⁸ Decision on applications for extension of time and page limits for responses and replies relating to the appeals against the closing orders in Case 004/2, 22 January 2019, **004/2-D359/3/3**, para.4: “Pursuant to Internal Rules 39(2) and (4), the Pre-Trial Chamber may set and/or extend any time limits for the filing of documents **relating to an appeal.**” (emphasis added).

was found inadmissible by the (irregularly formed) panel of Supreme Court Judges after the expiry of the time limit. The Supreme Court found that “the procedural challenge regarding the timing of the pronouncement of the summary of the judgment and findings before notification of the fully reasoned, written judgment is premature”,¹⁹ which supports the argument that the starting point of the time limit is the notification of the fully reasoned, written Judgment. However, the Supreme Court paradoxically acknowledged that “the pronouncement of the disposition on 16 November 2018” (which was precisely and clearly the purpose of the appeal and not the summary)²⁰ “concluded the trial phase”,²¹ which supports the argument that the starting point of the appeal time limit is the date of pronouncement of the Judgment.

15. Considering the decision on the inadmissibility of its appeal, which was lodged within the time limit set out in Internal Rules 107(4) and 102(2), the Defence understood that the Supreme Court intended to use its exclusive power under Internal Rules 39(2) and 39(4) to postpone the starting point of KHIEU Samphan's appeal time limit after the expiry of the time limit set out in the Internal Rules, that is, when the judgment is pronounced, and to ensure it starts exceptionally on 28 March 2019, the day after notification of the fully reasoned, written Judgment rendered on 16 November 2018. Insofar as the fully reasoned written Judgment, though notified on 28 March 2019, bears the date of 16 November 2018, the Defence is all the more so entitled to request the Supreme Court to formally confirm that it is postponing the starting point of the time limit to 29 March 2019.

C. EXTENT OF THE TIME LIMIT

16. The 30-day time limit for filing the notice appeal, prescribed by the Internal Rules is inadequate and very insufficient in the present case, due to the specificities of the Case 002/02 Judgment and trial (1), the advanced age of KHIEU Samphan (2), his Defence team's limited means (3), and the parallel preparation of an application for disqualification (4).

1. Specificities of the Case 002/02 Judgment and trial

¹⁹ Decision E463/1/3, para. 12.

²⁰ See Appeal of 19 November 2018 and KHIEU Samphan's reply to the Prosecution's Response to his Urgent Appeal against the Judgment pronounced on 16 November 2018, 20 December 2018, E463/1/2/1, where it is still a question of appealing against the disposition and never against the summary. Moreover, on the two occasions when the Defence referred to the summary, it noted that it had no legal value since it was not even authentic, and therefore had no authority (Appeal, para. 61 and Response, para. 52).

²¹ Decision E463/1/3, para.14.

17. On 16 November 2018, KHIEU Samphan was found guilty of practically all of the numerous crimes for which he was prosecuted in Case 002/02 and sentenced to life imprisonment, the heaviest sentence.²² The fully reasoned written Judgment notified on 28 March 2019 are 2,828 pages long in French, 4,101 pages in Khmer and 2,387 pages in English (including annexes), with 14,446 footnotes. This situation is unprecedented before the ECCC.
18. Although appellants before other international criminal tribunals (“ICTs”) also have 30 regulatory days to file their notices of appeal,²³ the comparison with the extensions of time granted is of limited relevance. Indeed, as the Supreme Court has pointed out, “appellate proceedings before the ECCC differ [...] in limiting interlocutory appellate jurisdiction to a set of four defined issues, and reserving examination of any other decisions of the [...] Chamber taken during the proceedings to the stage at which the judgment on the merits is appealed”.²⁴ Furthermore, as noted *supra*,²⁵ Appellants before the ECCC cannot be allowed to change their grounds of appeal once their notice of appeal has been filed. Moreover, account must be taken of the “unique circumstance that filings before the ECCC must be in two languages as a general rule”.²⁶ Furthermore, while ICTs are sometimes called upon to hear very complex cases, they remain incomparable, given the complexity and uniqueness of the issues before the ECCC. This is especially the case with the law applicable between 1975 and 1979, or the severance of the proceedings in Case 002, which raised new and complex questions concerning, in particular, the divisibility of the case and the findings determining individual criminal liability.²⁷
19. As a result, appellants before the ECCC must be able to have much longer time extensions than appellants before the ICTs in situations that may appear similar. For example, if two appellants before the MICT were given **4 months** to file their notice of appeal on account of the length of the judgment (2,541 pages and 2,607 pages in English, including annexes) and the complexity of their case,²⁸ KHIEU Samphan should therefore have well over 4 months to file his notice of appeal.

²² T. 16 November 2018, **E1/529.1**, pp. 64-68, between 11:28 am and 11:38 am.

²³ Rule 108 of the RPE of ICTR and ICTY; Rule 150 of the RPE of the ICC; Rule 177(A) of the RPE of STL; Rule 133 of the RPE of MICT.

²⁴ Decision on applications for extension of time and pages to file appeal briefs and responses thereto, 31 October 2014, **F9** (“Decision **F9**”), para. 16, referring to IRs 32 to 104(4).

²⁵ See *supra*, paras 7-9.

²⁶ Decision **F9**, para. 18, referring to Fn 37 and to Article 7.1 of the Practice Direction.

²⁷ 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, **E301/9/1/1/3**, paras 77-85.

²⁸ *The Prosecutor v. Ratko Mladić*, MICT-13-56-A, Decision on Motion for Extension of Time to File Notice of Appeal, 21 December 2017, p. 2 (see Fn 9 reference to *Karadžić*, (MICT-13-55-A)).

20. This is clearly buttressed by the fact that in Case 002/01 (where the Judgment was 695 pages long in English, including annexes), KHIEU Samphan had almost 2 months (53 days) to file his notice of appeal in only one language at first.²⁹ Above all, Case 002/02 is out of proportion with Case 002/01, as shown in the following comparative table:

	Case 002/01	Case 002/02
Paragraphs of the Closing Order ³⁰	425	963
Series of facts under consideration ³¹	4	15
Persons heard ³²	92	185
Documentary evidence ³³	5,824	More than 10,800 (i.e., more than 304,000 pages)
Decisions issued at trial ³⁴	More than 250 written <u>and</u> oral decisions	More than 295 written decisions, <u>not including</u> oral decisions
Time for drafting the Judgment ³⁵	9 months and one week	21 months and one week
Pages of the Judgment (including annexes)	854 FR 1,106 KH 695 EN	2,828 FR 4,101 KH 2,387 EN
Footnotes in the Judgment	3,298	14,446
Convictions of KHIEU Samphan ³⁶	13	78

21. The Defence must therefore have the time it needs to: 1) very carefully read and analyze the fully reasoned written Judgment, which is **3.5 times longer** than Case 002/01 Judgment;³⁷ 2)

²⁹ Decision on Applications for Extension of Time and Authorized Number of Pages to File the Notice of Appeal and Appeal Briefs, 29 August 2014, **F3/3** (“Decision F3/3”), paras 9 and 11 (para. 9: “[T]he length of the Trial Judgment [...] requires additional time to read through thoroughly and discuss the contents thereof within defence teams and with the Accused”); Sheila PAYLAN’s email dated 16 September 2014 at 1:54 pm titled “Re: Request to file notices of appeal in one language”.

³⁰ **Case 002/01**: Annex to the Severance Order **E124/7.3**; **Case 002/02**: Annex to the Severance Order **E301/9/1.1**.

³¹ *Idem*. In addition to the historical background, administrative structures, the communication structure, the military structure and the role of the accused: **Case 002/01**: Phase 1 of the Movement of Population (“MP”), Phase 2 of the MP, Tuol Po Chrey, treatment of former officials of the Khmer Republic (“ex-KR”); **Case 002/02**: Armed Conflict, Phase 2 of the MP limited to the treatment of the Cham, Tram Kok Cooperative, Trapeang Thma Dam and 1st January Dam, Kampong Chnnang Airport, S-21, Kraing Ta Chan, Au Kanseng, Phnom Kraol Security Centres, treatment of Buddhists, the Cham, Vietnamese, former Khmer Republic officials, regulation of marriage.

³² **Case 002/01**: Case 002/01 Judgment, 7 August 2014, **E313**, para. 32; **Case 002/02**: T. 16 November 2018, **E1/529.1**, at about 9;41.

³³ **Case 002/01**: Case 002/01 Judgment, 7 August 2014, **E313**, para. 33; **Case 002/02**: not including admitted documents not assigned an E3 number, the last document bearing that number is E3/10804, see also T. 16 November 2018, **E1/529.1**, at about 9;42.

³⁴ **Case 002/01**: T. 31 October 2013, **E1/237.1**, at about 14h12; **Case 002/02**: T. 23 June 2017, **E1/528.1**, at about 11:06.

³⁵ **Case 002/01**: Closing of the trial on the merits on 31 October 2013, Judgment pronounced on 7 August 2014; **Case 002/02**: Closing of the trial on the merits on 23 June 2017, fully reasoned written Judgment notified on 28 March 2019.

³⁶ Case 002/01 Judgment, 7 August 2014, **E313**, paras 1053-1054; Reasons for the Judgment in Case 002/02 **E465**, paras 4306, 4307 and 4318.

³⁷ 3.31 times more than in French; 3.71 more than in Khmer; 3.43 more than in English. Average: 3.48.

identify and specify the legal and factual grounds of appeal, and appeal against decisions on preliminary objections issued at trial in relation to these grounds; 3) draft and have translated its notice of appeal. The Defence must discuss this internally and with KHIEU Samphan.

22. KHIEU Samphan intends to appeal against each of his 78 convictions (*i.e.* **6 times more** than in Case 002/01) and cannot afford not to identify a single ground of appeal in the notice of appeal.³⁸
23. It should be noted that the identification of errors of fact and law in the thousands of pages of the reasons for the Judgment and interlocutory decisions impacting convictions is tedious. In particular, the identification of factual errors is a huge and time-consuming task involving the verification of the evidence on which the Chamber relied, referenced in 14,446 footnotes (**4.4 times more** than in Case 002/01). In addition to the French, the Defence often has to verify the original Khmer version of the evidence. Indeed, while errors between the different language versions of documentary evidence and trial transcripts have already been corrected, it is impossible that they have all been corrected in the more than 304,000 pages of documentary evidence³⁹ and the 161,416 pages of trial transcripts.⁴⁰ Moreover, it is important to recall that the amount of evidence in Case 002/02, which was much greater than that in Case 002/01, had a strong impact on the time taken to pronounce the Judgment. Indeed, during its deliberations, the Chamber noted on two occasions in a quarterly provisional administrative document (the Completion Plan) that it had “previously underestimated the time necessary to assess and deliberate on the huge amount of evidence in this very complex case”.⁴¹
24. It should also be stressed that it is only after having identified and specified all the errors to be raised that the Defence can start drafting its notice of appeal. Indeed, it is only from then that it can know how to coherently organize and arrange them in a document that is both understandable and within the limit of the authorized number of pages.
25. Finally, it is only from the moment the notice of appeal is written that it can be translated. Indeed, compliance with the page limit requires constant revisions of the document until the end of the drafting process. While translating a document with no page limit (such as a

³⁸ See *supra*, Part I. Crucial Importance of the Notice of Appeal.

³⁹ T. 16 November 2018, E1/529.1, at about 9:42.

⁴⁰ 43,662 pages in Khmer, 61,434 pages in French and 56,320 pages in Khmer (numbers provided courtesy of the Archives Section).

⁴¹ Completion Plan, revision 17, 30 June 2018, para. 31; Completion Plan, revision 18, 30 September 2018, para. 32.

judgment) is manageable and effective over time (albeit still within certain limits), this is not the case with the translation of a constantly changing document in progress. Constant toing and froing between the Defence and the Translation Unit generates more work and requires more time for both the Defence and the translators, which is totally counterproductive.

2. KHIEU Samphan's advanced age

26. KHIEU Samphan has been very involved in his defence since the beginning of the trial. At almost 88 years of age, however, he reads the thousands of pages of the fully reasoned written Judgment more slowly than his Defence. Moreover, due to the sharp deterioration of his hearing in addition to his health status in recent years, oral communication with his team is very difficult, hence the need to communicate with him in writing instead, which is more time consuming.
27. As consultations with KHIEU Samphan are obviously essential for the preparation of his notice of appeal, it is necessary to take into account the time constraints occasioned by his advanced age.

3. Defence team's limited means

28. In Case 002/02, given the mass introduction of evidence during the trial, the Defence was granted a budget extension that allowed it to hire 2 additional legal consultants. After the Closing arguments in June 2017 and the filing of the amended brief in September 2017, the team was reduced from 7 to 2 consultants (in order to ensure the presence on appeal of persons with knowledge of the case).
29. Since 2018, as a result of various revisions to the Completion Plan and changes in the forecast for the delivery of the judgment, the Defence has submitted three requests to the Defence Support Section ("DSS") for the same budget extension on appeal as at the trial stage. Each of these requests was made with the aim of limiting the negative impact, on appeal time limits, of the drastic reduction of the team and the consequent need to recruit new people for the final phase of the proceedings against KHIEU Samphan. The first request (15 May 2018) was considered premature and subject to notification of the order setting the date of delivery of the judgment. The second request (1 October 2018), made after this notification, was first subject to the approval of the court's budget for the year 2019. Once approved, it was made conditional (in February 2019) on the issuance of the reasoned written Judgment, or even on the Supreme

Court's decision on the time limit for appeal. In the third request (19 March 2019), the Defence attempted to explain why the recruitment of new persons after the issuance of the reasoned written Judgment (and even less after the decision on the time limit for appeal) would not limit the impact on time limit for appeal.⁴² The latter request was rejected the following day on the grounds that the Defence had been able to recruit 3 consultants since 15 November and 1 December 2018 and that the reasoned written Judgment had still not been issued....

30. Admittedly, the Defence was able to recruit 3 consultants (one old, two new) the day before the Judgment was pronounced and then on 1 December 2018. At that time, the issuance of the reasoned written Judgment was scheduled for... December 2018. Accordingly, in order to ensure that the new consultant recruited in December would be minimally operational before the issuance of the reasons, the Defence has chosen to recruit a more experienced consultant, who is better paid than a less experienced consultant. As a result, given its current budget for 2019, the Defence will not even be able to keep all 5 current consultants up to the end of the year. In its third request to the DSS, the Defence therefore requested, in addition to an extension of the budget for the recruitment of 2 additional consultants as at the trial stage, an extension of the budget allowing it to keep the 5 current consultants until the appeal pleadings. While the first was expressly rejected, the latter has remained unanswered.
31. In any event, although the delay in issuing the reasoned written Judgment allowed the two new consultants to familiarize themselves somewhat with the case (to the detriment of being able to keep them all year round), they are still far from being as operational as the old ones, particularly as regards the identification of the grounds for appeal. Moreover, it does not solve the problem of a reduced defence team compared to Case 002/02 trial and in worse conditions than in the Case 002/01 appeal, as illustrated in the following table:

<u>Case 002/01</u>		<u>Case 002/02</u>	
Trial	Appeal	Trial	Appeal
5 consultants	5 consultants	5 and then 7 consultants	5 (including 2 new consultants) then 4 consultants

32. The Defence has been as diligent as possible in raising these budgetary issues since 2018 and making very reasonable requests to limit the negative impact of the reduction of its team during

⁴² This is due in particular to the lengthy search and recruitment process, followed by the incompressible time required for the consultants to become familiar with the case file and procedures before becoming operational.

the deliberations on appeal time limits. That notwithstanding, the Defence is now at the appellate stage in Case 002/02 under conditions that are more unfavourable than ever. It goes without saying that under these conditions, the Defence is not in a position to provide the same amount of work and to be as efficient as it was during the Case 002/01 appeal, whereas it must face the Case 002/02 appeal with, in particular, a fully reasoned written Judgment that is 3.5 times longer than in Case 002/01. Consequently, although it has done everything possible to avoid it, the Defence is forced to request additional time due to the limited resources it has.

33. While the Administration's rejections of the Defence's requests were most certainly motivated by the Tribunal's financial difficulties, the Supreme Court must take no account of these difficulties when making its decisions on the appeal time limit. The Supreme Court itself stated:

“While Judges are at all times certainly obligated to be mindful of the efficiency of proceedings, they must always act within the *sacrum* sphere of the law, the tenets of which cannot be overridden by the *profanum* of budgetary savings. [...] If there is insufficient funding to guarantee a trial driven by law, all ECCC proceedings must be terminated and the court must close down. Barring this, proceedings must go on without individual decisions on matters of law and fact being unduly influenced by financial considerations.”⁴³

34. The Supreme Court must therefore not be guided by such considerations and must give KHIEU Samphan a decent time limit for his appeal while respecting his right to have adequate time and facilities for the preparation of his defence.

4. Preparation of Application for Disqualification

35. Furthermore, and in order to be perfectly transparent, the Defence intends to file an application to disqualify the Supreme Court Judges on various grounds, in particular because they heard Case 002/01. The Defence intends to show the real or apparent bias of the Judges who adjudicated Case 002/01 on issues similar to those they will have to consider in 002/02. To this end, the Defence must establish a clear nexus between the findings reached by the appellate Judges in Case 002/01 and the grounds of appeal it intends to raise in Case 002/02, which it can only do once it has identified them. This is a substantial and time-consuming task, which the Defence would like to be able to carry out as it prepares its notice of appeal. This will enable it to file its application for disqualification as soon as possible (as soon as an appeal is pending),⁴⁴

⁴³ Decision on Immediate Appeal against Trial Chamber's Second Decision on Severance of Case 002, 25 November 2013, E284/4/8, para.75.

⁴⁴ A party who files an application for disqualification of a judge shall clearly indicate the grounds and shall provide

in order that its procedural consequences⁴⁵ do not cause any undue delay in the appeal proceedings (which are already necessarily longer than in Case 002/01). It is in the interests of justice that the application for disqualification be filed as soon as possible after KHIEU Samphan's appeal becomes pending, that is, at the earliest opportunity after the Supreme Court has received his notice of appeal.⁴⁶ Enabling the Defence to prepare its application for disqualification while preparing its notice of appeal will benefit everyone.

36. **In conclusion**, if a simple mathematical comparison makes it possible to calculate a time limit that is 3.5 times longer than the time granted in Case 002/01, that is, a minimum of 6 months, it is necessary to take into account the exceptional scale and complexity of Case 002/02 Judgment and case file (in both factual and legal terms), the advanced age of KHIEU Samphan, the limited means of his team and the preparation of an application for disqualification. For all these reasons, the Defence requests the Supreme Court to grant it a **7-months** time limit to file the notice of appeal **without counting the time required to translate the document** into Khmer. This time limit depends on the number of pages, which must also be extended.

III. NEED TO EXTEND THE NUMBER OF PAGES

37. Article 5.2 of the Practice Direction provides that a document filed before the ECCC Supreme Court “shall not exceed 30 pages in English or French or 60 pages in Khmer”. Article 5.4 specifies that “the relevant Chamber” may, at the request of a participant, “extend the page limit in exceptional circumstances”.
38. In Case 002/01, the Supreme Court was not persuaded that the 50 pages requested by the Defence teams were necessary because the notice of appeal must be “limited to specifying, or merely outlining, the alleged errors”.⁴⁷ The Defence therefore “specif[ied]” the alleged errors on 30 pages.⁴⁸

supporting evidence (IR 34(3)). It is the applicant who bears the particularly heavy burden of reversing the presumption of impartiality enjoyed by judges (Decision on IENG Thirith’s Application to Disqualify Judge SOM Sereyvuth for Lack of Independence, 3 June 2011, 1/4 (“Decision 1/4”), para.10). The application to disqualify the Supreme Court Judges must be filed “at the beginning of the appellate proceedings; or concerning matters arising during the appellate proceedings or of which the parties were unaware before the start of the appeal” (IR 34(4)(d)). Therefore the applicant “must have an appeal pending” (Decision 1/4, para. 4).

⁴⁵ If, due to multiple disqualification applications, it is impossible to convene a Chamber to hear the applications, the Judicial Administration Committee shall choose additional judges from amongst the ECCC judges (IR 34(6)). If the Chamber decides to disqualify a Judge, a reserve Judge shall be appointed to sit in his or her place (IR 34(10)).

⁴⁶ IR 108(1) and IR 110(1).

⁴⁷ Decision F3/3, para.8.

⁴⁸ IR105(3).

39. In this case, still at the stage of reading the thousands of pages of the fully reasoned written Case 002/02 Judgment, the Defence has not yet identified and counted the errors it will raise. That said, it is clear that this number will be much higher than in Case 002/01.
40. Accordingly, based on the comparison between Case 002/01 and Case 002/02, detailed above,⁴⁹ and the very first days of reading the thousands of pages of the fully reasoned written Judgment, the Defence estimates that it needs **100 pages** in French and the equivalent in Khmer to point out the errors it will allege.
41. The crucial importance of the notice of appeal and the specificities of Case 002/02 Judgment and case file highlighted above constitute exceptional circumstances justifying this significant increase in the authorized number of pages.

CONCLUSION

42. For all these reasons, the Defence considers it very reasonable to be granted a time limit of **8 (7 + 1) months**, or 240 (210 + 30) days, to file a **100-page** notice of appeal in French and the required equivalent in Khmer (**1 month being necessary for translation**).⁵⁰
43. Furthermore, the Defence announces forthwith that it will file an application for an extension of the time limit and number of pages to file the appeal brief after filing its notice of appeal.⁵¹
44. **FOR THESE REASONS**, the Defence requests the Supreme Court to:
- CONFIRM that it is POSTPONING the starting point of KHIEU Samphan appeal time limit to the day after the notification, on 28 March 2019, of the fully reasoned written Judgment pronounced on 16 November 2018,
 - AUTHORIZE the Defence to file a 100-page notice of appeal in French and the required equivalent in Khmer within 8 months (240 days) of such notification.

⁴⁹ See *supra*, paras 20-23.

⁵⁰ On average, a document is translated at a rate of about 5 pages per day. For the translation of a 100-page document, it takes about 20 working days, or 30 calendar days.

⁵¹ In Case 002/01, the Defence had requested these extensions at the same time as those requested for the notice of appeal. The Supreme Court had noted that it was “cognizant of the fact that extensions will certainly need to be granted in light of the size and complexity of the case and Trial Judgment”. But it considered this to be premature, “in the absence of the parameters to be supplied in the notices of appeal” (Decision F3/3, para.10).

Respectfully submitted,

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	Anta GUISSÉ	Paris	