ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

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

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

អង្គជំនុំជម្រះតុលាការកំពូល
Supreme Court Chamber
Chambre de la Cour suprême

សំណុំរឿងលេខ: ០០២/១៩-កញ្ញា-២០០៧-អ.វ.ត.ក/អ.ជ.ត.ក
Case File/Dossier N°. 002/19-09-2007-ECCC/SC

Before: **Judge KONG Srim, President**
Judge Chandra Nihal JAYASINGHE
Judge SOM Sereyvuth
Judge Florence Ndepele Mwachande MUMBA
Judge MONG Monichariya
Judge Maureen Harding CLARK
Judge YA Narin

Date: **23 August 2019**
Language(s): **Khmer/English**
Classification: **PUBLIC**

DECISION ON KHIEU SAMPHÂN'S REQUEST FOR EXTENSIONS OF TIME AND PAGE LIMITS FOR FILING HIS APPEAL BRIEF

Co-Prosecutors
CHEA Leang
Brenda HOLLIS (Reserve)

Accused
KHIEU Samphân

Civil Party Lead Co-Lawyer
PICH Ang

Co-Lawyers for KHIEU Samphân
KONG Sam Onn
Anta GUISSÉ

THE SUPREME COURT CHAMBER of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea between 17 April 1975 and 6 January 1979 ("Supreme Court Chamber" and "ECCC", respectively) is seised of the "KHIEU Samphân's Request for an Extension of Time and Page Limits for Filing his Appeal Brief" ("KHIEU Samphân's Request") filed on 10 July 2019.[1] On 23 July 2019, the Civil Party Lead Co-Lawyer and the Co-Prosecutors filed their responses to KHIEU Samphân's Request.[2] KHIEU Samphân filed his reply on 29 July 2019.[3]

I. PROCEDURAL HISTORY

1. On 16 November 2018, the Trial Chamber pronounced the verdict in Case 002/02, convicting NUON Chea and KHIEU Samphân ("the Accused") of crimes against humanity, grave breaches of the Geneva Conventions and genocide, and sentenced them to life imprisonment.[4] The Trial Chamber provided a summary of its reasons and clarified that the time limit for filing notices of appeal would begin following the notification of the fully reasoned judgement.[5] The Trial Chamber subsequently notified the fully reasoned judgement in Khmer, English and French on 28 March 2019.[6]

2. On 19 November 2018, KHIEU Samphân filed an "urgent appeal" against the pronouncement of the Trial Judgement, requesting that the Supreme Court Chamber annul the summary delivered on 16 November 2018 for lack of form and declare the (subsequent) written judgement invalid.[7] On 13 February 2019, the Supreme Court Chamber found the "urgent appeal" to be inadmissible.[8]

3. On 3 April 2019, KHIEU Samphân and NUON Chea filed requests for extensions of time

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[1] KHIEU Samphân's Request for an Extension of Time and Page Limits for Filing his Appeal Brief, 10 July 2019, F45 ("KHIEU Samphân's Request").
[2] Civil Party Lead Co-Lawyer's Response to KHIEU Samphân's Request for Extensions of Time and Page Limits for Appeal Brief, 22 July 2019, F45/1 ("Lead Co-Lawyer's Response"); Co-Prosecutors' Response to Khieu Samphan's Request for Additional Time and Page Limits for Appellate Briefs, 22 July 2019, F45/2 ("OCP Response").
[3] KHIEU Samphân's Defence Reply to the Responses to its Request for Extension of Time and Page Limits for Filing his Appeal Brief, 29 July 2019, F45/3 ("KHIEU Samphân's Reply").
[4] *See* Transcript 16 November 2018 (Pronouncement of Judgment in Case 002/02), p. 53 (line 21) to p. 56 (line 17).
[5] *See* Transcript 16 November 2018 (Pronouncement of Judgment in Case 002/02), p. 3 (lines 11-16), p. 57 (lines 18-23).
[6] Trial Chamber Judgement Case 002/02, 16 November 2018, E465 ("Trial Judgement"). The Supreme Court Chamber determined that since it was filed outside the ECCC's official filing hours, the notification was effective from the next working day, i.e. 29 March 2019: Decision on NUON Chea and KHIEU Samphân's Requests for Extensions of Time and Page Limits on Notices of Appeal, 26 April 2019, F43, para. 12.
[7] KHIEU Samphân's Urgent Appeal against the Judgement Pronounced on 16 November 2018, 19 November 2019, E463/1.
[8] Decision on KHIEU Samphân's Urgent Appeal against the Summary of Judgement Pronounced on 16 November 2018, 13 February 2019, E463/1/3.

and page limits for filing their respective notices of appeal against the written judgment.[9] KHIEU Samphân requested eight months (including one month for translation into Khmer) to file a 100-page notice. NUON Chea requested a total of 180 days to file a 100-page notice in English. On 26 April 2019, the Supreme Court Chamber granted the parties a uniform extension of two months to a maximum of 60 pages in French or English, along with a Khmer translation.

4. On 1 July 2019, KHIEU Samphân and NUON Chea filed their notices of appeal against the Trial Judgement in Case 002/02.[10] In his notice, KHIEU Samphân outlined 1,824 alleged errors of fact and/or law committed by the Trial Chamber and identified 355 interlocutory Trial Chamber decisions for possible appeal.

5. On 23 July 2019, NUON Chea filed a request for the extension of time and page limits for his appeal brief,[11] to which the Co-Prosecutors and Civil Party Lead Co-Lawyer responded on 1 and 2 August 2019, respectively.[12] On 7 August 2019, KHIEU Samphân responded to the Co-Prosecutors' submissions relevant to him.[13] The Co-Prosecutors filed an amended request on 19 August 2019.[14] On 21 August 2019, KHIEU Samphân filed a response to the Co-Prosecutors' amended request.[15]

6. NUON Chea passed away on 4 August 2019.[16] The Supreme Court Chamber terminated proceedings against him on 13 August 2019.[17]

II. DISCUSSION

7. KHIEU Samphân's Request raises several issues, which the Supreme Court Chamber shall

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[9] NOUN Chea's Urgent First Request for an Extension of Time and Page Limits for Filing his Notice of Appeal against the Trial Judgement in Case 002/02, 3 April 2019, F40/1.1; KHIEU Samphan Defence Request for Extension of Time and Number of Pages to File Notice of Appeal, 3 April 2019, F39/1.1.
[10] KHIEU Samphân's Notice of Appeal (002/02), 1 July 2019, E465/4/1, para. 15 ("KHIEU Samphân's Notice of Appeal"); NUON Chea's Notice of Appeal against the Trial Judgement in Case 002/02, 1 July 2019, E465/3/1.
[11] NUON Chea's First Request for an Extension of Time and Pages Limits for Filing his Appeal Brief Against the Trial Judgement in Case 002/02, 23 July 2019, F47.
[12] Co-Prosecutors' Response to NUON Chea's Request for Additional Time and Page Limits for his Appeal Brief, 1 August 2019, F47/1 ("OCP Response"); Civil Party Lead Co-Lawyer's Response to NUON Chea's First Request for an Extension of Time and Page Limits for Filing his Appeal Brief against the Trial Judgement Case 002/02, 2 August 2019, F47/2 ("Lead Co-Lawyer's Response").
[13] KHIEU Samphân Defence Response to the Prosecution's Request concerning its Appeal Brief (F47/1, paras. 25-26(ii)), 7 August 2019, F47/3 ("KHIEU Samphân's Response to the Co-Prosecutors").
[14] Co-Prosecutors' Amendment of Request for Additional Time and Pages for Appeal Response Brief, 19 August 2019, F48 ("Amended Request").
[15] "Réponse de la Défense de KHIEU Samphân à la demande amendée de l'Accusation concernant sa réponse au mémoire d'appel", 21 August 2019, F48/1 ("Response to the Amended Request").
[16] NUON Chea Death Certificate, 4 August 2019, F46/1.1.
[17] Decision to Terminate Proceedings against NUON Chea, 13 August 2019, F46/3.

address in turn.

Extensions of Time and Page Limits

Submissions

8. KHIEU Samphân requests the Supreme Court Chamber to grant him an extension of 8.5 months to file a 950-page appeal brief in one language only, with a Khmer translation to follow.[18] He submits that the time and page limits set by the Internal Rules and the Practice Direction are "inadequate and extremely insufficient" as they do not allow him to "set[] out the arguments and authorities in support of each of [his] grounds".[19] KHIEU Samphân asks the Chamber to take into account the extensions granted in Case 002/01, and requests that an extension in the present case be granted in consideration of the size and complexity of the Trial Judgment.[20] He argues that resource constraints compelled him to identify errors cursorily in his notice of appeal, and he accordingly requires more time and space to adequately review the legal and factual authorities supporting the Trial Chamber's conclusions.[21] He avers that his request represents "nothing more and nothing less" than the "strict minimum" to plead meaningfully in the circumstances.[22]

9. In their response, the Co-Prosecutors "acknowledge that an extension to the page and time lime limits to file appeal briefs is warranted in this case" but submit that the extensions proposed by KHIEU Samphân are excessive[23] and that a period of five months and 300 pages for each Defence team to file an appeal brief in one langage is reasonable.[24] The Co-Prosecutors submit that KHIEU Samphân's "inadequate" notice of appeal is not a legitimate basis for extension requests, noting that parties to criminal proceedings are always granted a finite period to fulfil their obligations.[25] The Co-Prosecutors argue that KHIEU Samphân's notice of appeal contains several overlapping grounds which necessitates less pages rather than more.[26] Lastly, the Co-Prosecutors refute KHIEU Samphan's contention that his request is consistent with the practice of international(ized) tribunals.[27] In reply, KHIEU Samphân reasserts that the requested extensions are reasonable, have been formulated taking into account relevant considerations and refers to the Chamber's jurisprudence that comparison with the practices of international(ized) tribunals "is of

[18] KHIEU Samphân's Request, para. 19.
[19] KHIEU Samphân's Request, para. 13.
[20] KHIEU Samphân's Request, paras14-17.
[21] KHIEU Samphân's Request, paras 17-18.
[22] KHIEU Samphân's Request, para. 28.
[23] OCP Response, para. 6.
[24] OCP Response, para. 17.
[25] OCP Response, para. 9.
[26] OCP Response, para. 10.
[27] OCP Response, paras 15-16.

limited relevance to an appeal before the ECCC, except to show that appellants […] must have more time and space".[28]

10. The Civil Party Lead Co-Lawyer does not oppose reasonable extensions of time but urges that "any such extensions take into account the rights and interests of Civil Parties, particularly in light of their advanced ages and health concerns".[29] The Lead Co-Lawyer defers to the Chamber's discretion on an extension of page limits.[30]

Applicable Law

11. Internal Rule 107(4)[31] provides that "appeal brief[s] shall be filed within 60 (sixty) days of the date of filing the notice of appeal". Internal Rule 105(3) requires the appeal brief to "set[] out the arguments and authorities in support of each of the grounds". Article 5.2 of the Practice Direction on Filing Documents before the ECCC ("Practice Direction")[32] states that documents filed to the Supreme Court Chamber "shall not exceed 30 pages in English or French or 60 pages in Khmer, unless otherwise provided in the Internal Rules or this Practice Direction or ordered by the ECCC".

12. Internal Rule 39(2) permits judges to set time limits for the filing of written submissions and documents relating to an appeal, taking into account the circumstances of the case, especially where an accused is in detention. Internal Rule 39(4) provides that "the Chambers may, at the request of the concerned party or on their own motion […] extend any time limits set by them". Article 5.4 of the Practice Directions allows the Chamber to "extend the page limit in exceptional circumstances" at the request of a participant.

13. Finally, Article 7.1 of the Practice Direction requires all documents to be filed in Khmer as well as in English or French.

Considerations

14. KHIEU Samphân seeks 8.5 months and 920 pages in addition to the time and page limits respectively set by the Internal Rules and Practice Direction. In general, the parties do not contest the need for extensions. The Supreme Court Chamber has already recognized the exceptional nature of the Trial Judgment in terms of its magnitude and complexity – both at the ECCC and

[28] KHIEU Samphân's Reply, paras 7-14.
[29] Lead Co-Lawyer's Response, para. 8.
[30] Lead Co-Lawyer's Response, para. 9.
[31] *See* The Internal Rules of the ECCC, Revision 9, 16 January 2015 (as revised) ("Internal Rules").
[32] *See* Practice Direction on Filing of Documents before the ECCC, Revision 8.

compared to larger trials before other international(ized) tribunals. In particular, the Chamber has noted the voluminous trial record in Case 002/02, the large number of witnesses heard and exhibits tendered at trial, the wide geographic and temporal scope of the charges, and the novelty of issues which arose.[33] The Supreme Court Chamber accordingly finds that exceptional circumstances exist which warrant extensions of time and page limits.

15. The Supreme Court Chamber nevertheless considers that KHIEU Samphân's Request is unduly excessive. It is apparent from the errors alleged in KHIEU Samphân's notice of appeal that his grounds of appeal will be numerous and extensive, and will require sufficient time and space to plead meaningfully.[34] However, it bears emphasizing that the cogency of an appeal brief will neither depend on its overall length nor the number of grounds raised therein; the quality of the brief will depend on the clarity of arguments and the substantiation of grounds to the requisite standard.[35] For this reason, the Supreme Court Chamber is not convinced that KHIEU Samphân's calculus – which is based on a rudimentary comparison of the time and pages granted for appeal briefs in Case 002/01[36] – is particularly apt or appropriate.

16. A survey of international practice reveals the tendency of international(ized) tribunals to grant substantially less time and space to appellants to set out submissions on appeal than is presently sought by KHIEU Samphân.[37] While the Supreme Court Chamber finds such examples

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[33] Decision on NUON Chea and KHIEU Samphân's Requests for Extensions of Time and Page Limits on Notices of Appeal, 26 April 2019, F43, para. 8.
[34] *See* Decision on Motions for Extensions of Time and Page Limits for Appeal Briefs and Responses, 31 October 2014, F9, para. 13.
[35] *See e.g. Prosecutor v. Šainović et al.*, IT-05-87-A, "Decision on Defence Motions for Extension of Word Limit", Appeals Chamber, 8 September 2009, p. 4; *Prosecutor v. Šainović et al.*, IT-05-87-A,"Decision on Nikola Šainović's and Dragoljub Ojdanić's Joint Motion for Extension of Word Limit", Appeals Chamber, 11 September 2009, p. 4; *Prosecutor v. Šainović et al.*, IT-05-87-A, "Decision On Streten Lukić's Motion to Reconsider Decision on Defence Motions for Extension of Word Limit", Appeals Chamber, 14 September 2009, p. 3;; *Prosecutor v. Stanišić and Župljanin*, IT-08-91-A, "Decision on Mićo Stanišić's and Stojan Župljanin's Motions Seeking Variation of Time and Word Limits to File Appeal Briefs", Appeals Chamber, 04 June 2013, p. 4; *Prosecutor v. Prlić et al.*, IT-04-74-A, "Decision on Motions for Extension of Time to File Appeal Briefs and for Authorization to Exceed Word Limit", Appeals Chamber, 22 August 2013, para. 16; *Prosecutor v. Karadžić*, MICT-13-55-A, "Decision on a Motion for an Extension of a Word Limit", Appeals Chamber, 8 September 2016, p. 2.
[36] Khieu Samphân's Request, para. 16 (discussing the overall length, number of footnotes, facts and convictions entered in the Trial Judgement comparative to the Case 002/01 Trial Judgement). *See also* KHIEU Samphan Defence Request for Extension of Time and Number of Pages to File Notice of Appeal, 3 April 2019, F39/1.1, paras 17-23; Decision on Motions for Extensions of Time and Page Limits for Appeal Briefs and Responses, 31 October 2014, F9 (allowing Khieu Samphân and Nuon Chea to file appeal briefs against a 623 page judgement 90 days after their notice of appeal); Decision on Defence Motions for Extension of Pages to Appeal and Time to Respond, 11 December 2014, F13/2 (holding that Nuon Chea could file a 270 page appeal brief).
[37] *See e.g.*, *Prosecutor v. Karadžić*, MICT-13-55-A, "Decision on a Motion for an Extension of a Word Limit", Appeals Chamber, 8 September 2016 (allowing Karadžić to file a 75,000 word or approximately 250 page appeal brief against a 2,590 page judgement); *Prosecutor v. Karadžić*, MICT-13-55-A, "Decision on a Joint Motion for Extension of Time to File Appeal and Response Briefs", Appeals Chamber, 9 August 2016 (authorizing Karadžić to file an appeal brief against a 2,590 page judgement within 135 days of his notice of appeal); *Prosecutor v. Taylor*, SCSL-03-01-A, "Decision on Prosecution and Defence Motions for Extension of Time and Page Limits for Written Submissions Pursuant to Rules 111, 112 and 113", Appeals Chamber, 7 August 2012 (deciding that Taylor could file an appeal and

illustrative, it is not bound by the practices of other judicial fora. Appellate proceedings before the ECCC differ from other international(ized) tribunals in limiting interlocutory appellate jurisdiction to four distinct categories and deferring examination of any other decisions of the Trial Chamber made during the proceedings to the stage at which the judgment on the merits is appealed.[38] In addition to 1,824 alleged errors in the Trial Judgement (some of which KHIEU Samphân acknowledges may overlap[39]), KHIEU Samphân identifies 355 "non-exhaustive" Trial Chamber decisions for possible appeal.[40] The Chamber reminds KHIEU Samphân that he must demonstrate a *lasting* gravamen relating to one or more permissible grounds of the appeal from the Trial Judgement,[41] and that the appeal process is intended to correct legal errors and verify whether the

response brief totalling 400 pages against a 2,532 page judgement); *Prosecutor v. Taylor*, SCSL-03-01-A, "Decision on Defence Motion for Reconsideration or Review of 'Decision on Prosecution and Defence Motions for Extension of Time and Page Limits Pursuant to Rules 111, 112 and 113' and Final Order on Extension of Time for Filing Submissions", Appeals Chamber, 21 August 2012 (concluding that Taylor could file his appeal brief within 74 days of his notice of appeal); *Prosecutor v. Mladić*, MICT-13-56-A, "Decision on Ratko Mladić's Motion for Extensions of Time and Word Limits", Appeals Chamber, 22 May 2018 (holding that Mladić could file a 75,000 word or approximately 250 page appeal brief against a 2,478 page judgement within 135 days of his notice of appeal); *Prosecutor v. Šainović et al.*, IT-05-87-A, "Decision on Joint Defence Motion Seeking Extension of Time to File Appeal Briefs", Appeals Chamber, 29 June 2009 (allowing the five Co-Accused to each file an appeal brief against a 1,724 page judgement within 120 days of their notices of appeal); *Prosecutor v. Šainović et al.*, IT-05-87-A, "Decision on Defence Motions for Extension of Word Limit", Appeals Chamber, 8 September 2009 (holding that Pavkokić and Lazarević could file a 45,000 word or approximately 150 page appeal brief against a 1,724 page judgement and Lukić could file a 60,000 word or approximately 200 page appeal brief against the same); *Prosecutor v. Šainović et al.*, IT-05-87-A, "Decision on Nikola Šainović's and Dragoljub Ojdanić's Joint Motion for Extension of Word Limit", Appeals Chamber, 11 September 2009 (granting Šainović and Ojdanić leave to file a 45,000 word or approximately 150 page appeal brief against a 1,724 page judgement); *Prosecutor v. Prlić et al.*, IT-04-74-A, "Decision on Appellants' Requests for Extension of Time and Word Limits", Appeals Chamber, 9 October 2014 (allowing the six appellants to file 50,000 word or approximately 165 page appeal briefs against a 2,700 page judgement, deciding that Pušić could file his appeal brief within 564 days of his notice of appeal, concluding that Praljak could file his appeal brief within 563 days of his notice of appeal, granting Ćorić, Stojić, and Petković an extension to file their appeal briefs within 161 days of their notices of appeal, and allowing Prlić an extension to file his appeal brief within 160 days of his notice of appeal); *Prosecutor v. Nyiramasuhuko et al.*, ICTR-98-42-A, "Decision on Nyiramasuhuko's, Ntahobali's, Kanyabashi's, and Ndayambaje's Motions for Extensions of the Word Limit for their Appeal Briefs", Appeals Chamber, 13 December 2012 (authorizing Ntahobali and Nyiramasuhuko to file a 80,000 word or approximately 275 page appeal brief against a 1,468 page judgement, allowing Ndayambaje to file a 50,000 or approximately 165 page appeal brief against the same, and permitting Kanyabashi to file 40,000 words or approximately 130 pages). *See also Prosecutor v. Lubanga*, ICC-01/04-01/06 A5, "Decision on Mr Lubanga's Request for an Extension of the Page Limit", Appeals Chamber, 28 November 2012 (granting Lubanga's request to file a 120 page appeal brief against a conviction decision of 593 pages); *Prosecutor v. Bemba*, ICC-01/05-01/08 A, "Decision on Mr Bemba's Request for an Extension of Time for the Filing of his Document in Support of the Appeal", Appeals Chamber, 15 April 2016 (allowing Bemba to file his appeal brief against a 364 page conviction decision 180 days after the notification of the decision); *Prosecutor v. Bemba*, ICC-01/05-01/08 A, "Decision on Mr. Bemba's Request for an Extension of Page Limit for his Document in Support of the Appeal", Appeals Chamber, 11 July 2016 (holding that Bemba may file a 200 page appeal brief against a 364 page conviction decision).

[38] Decision on Motions for Extensions of Time and Page Limits for Appeal Briefs and Responses, 31 October 2014, F9, para. 16. *See also*, Internal Rule 104(4).

[39] KHIEU Samphân's Notice of Appeal (002/02), para. 12 ("[T]he errors identified were not presented according to a plan that could have been used as a plan for the appeal brief, but simply in the sequence of the written judgement. It is therefore possible that some errors may overlap, but the Defence did not have the time to do this cross-checking work."); Khieu Samphân's Reply, para. 12 (fn. 24).

[40] KHIEU Samphân's Notice of Appeal, para. 15.

[41] Decision on Motions for Extensions of Time and Page Limits for Appeal Briefs and Responses, 31 October 2014, F9, para. 16.

evidentiary standard was met; not to relitigate trial issues *de novo*.[42]

17. Accordingly, the Chamber considers that an appeal brief not exceeding 750 pages will be sufficient for KHIEU Samphân to furnish his grounds of appeal in a clear and consolidated fashion. In view of the circumstances, the Chamber accepts that filing the appeal brief in French or English, with a Khmer translation to follow at the earliest possibility, is acceptable.

Expeditiousness of Proceedings

18. KHIEU Samphân argues that the Supreme Court Chamber "disregards" his rights "in favour of giving priority to the need to ensure *expeditious* proceedings". He avers that the right to expeditious proceedings is not one which is guaranteed by either the ECCC framework or international standards, and that concerns about "expeditiousness" should in no way deprive him of adequate time and facilities to prepare his defence.[43]

19. The Supreme Court Chamber and other ECCC chambers[44] have consistently emphasized that they must balance the interests of the parties with the need for efficient and expeditious proceedings.[45] This balancing exercise is enshrined in Articles 14 and 15 of the International Covenant on Civil and Political Rights (to which Cambodia is a party), was imported into the ECCC framework through the UN-RGC Agreement,[46] is legally mandated by the ECCC Law[47]

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[42] Case 002/01 Appeal Judgement, 23 November 2016, F36, para. 94 (noting that "In the ECCC context, the unavailability of a further [appellate] recourse precludes pronouncing a conviction and sentence on appeal, which […] signifies focus on expeditiousness of proceedings, where the corrective function of the appellate process is limited and *disposed to protect the interest of the defence*") (emphasis added).
[43] Khieu Samphân's Request, paras 23-25.
[44] *See e.g.* Decision on Ieng Sary's Appeal against the Closing Order, 11 April 2011, D427/1/30, para. 50 (holding that "one of the rights enjoyed by the Appellants is the right to an expeditious trial"); Trial Chamber Memorandum "Co-Prosecutors' Request for Extended Deadline for Closing Briefs and Delayed Start of Closing Statements in Case 002/02" 28 June 2017, E457/6, para. 11 (noting that the Chamber had an obligation "to ensure that proceedings in Case 002/02 […] be concluded expeditiously and in the timeliest manner).
[45] *See e.g.* Decision on Additional Severance of Case 002 and Scope of Case 002/02, 4 April 2014, E301/9/1, para. 36 (noting that "[t]he Chamber is faced with the difficult task of balancing the interests to an efficient and expeditious proceeding while at the same time taking into consideration the stated interests of the parties); Decision on Defence Motions for Extension of Pages to Appeal and Time to Respond, 11 December 2014, F13/2, para. 15 (holding that procedural limits must "be tailored according to the needs of the parties in balance with the tenets of judicial efficiency); Decision on NUON Chea and KHIEU Samphân's Requests for Extensions of Time and Page Limits on Notices of Appeal, 26 April 2019, F43, para. 10 (considering that "[j]udicial economy requires the Supreme Court Chamber to balance several factors including available resources and the efficient management of the proceedings"); Decision on KHIEU Samphân's Application for Review of Decision on Requests for Extensions of Time and Page Limits on Notices of Appeal, 7 June 2019, F44/1, p. 3 (stating that the Chamber was "[c]ognizant of the need to ensure expeditious proceedings in accordance with the ECCC's legislative framework and international standards").
[46] Agreement Between the United Nations and the Royal Government of Cambodia Concerning the Prosecution under Cambodia Law of Crimes Committed During the Period of Democratic Kampuchea, signed 6 June 2003 and entered into force on 29 April 2005, Article 12(2).
[47] Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea, 10 August 2001 with inclusion of amendments as promulgated on 27 October 2004 ("ECCC Law"), Article 33 *new* (the trial court "shall ensure that trials are fair and expeditious … with full respect for the rights of the accused and for the protection of victims and witnesses"). *See also*

and has been accepted as a fundamental principle of the ECCC's procedure.[48] Other international(ized) tribunals have adopted similar approaches when deciding on motions to extend time and/or page limits to file submissions on appeal.[49] The Chamber accordingly rejects KHIEU Samphân's contentions insofar as they claim that expeditious proceedings are not a legitimate judicial consideration.

20. The practical effect of granting an extension of 8.5 months would be the filing of appeal briefs in one language only in mid-May 2020, with a translation of the voluminous brief to follow at an indeterminate time thereafter. Even in the absence of any extensions to responses and replies, this period is unduly lengthy, particularly as the time for filing would only commence after translations of the appeal brief or responses are notified. In view of the factors outlined above[50] as well as the advanced age of the appellant, the resources available to his defence team[51] and the rights of civil parties to obtain a timely verdict,[52] the Chamber considers that close to (if not more than) one year to fully brief an appeal is inordinately excessive.

21. The Chamber is of the view that 240 days, counted from date of the filing of notices of appeal, will be sufficient for KHIEU Samphân to file his appeal brief.

22. The Chamber notifies the parties that in accordance with Article 8.4 of the Practice Direction, it shall permit oral arguments on appeals against the Trial Judgement during an appeal hearing.[53] Written replies will accordingly not be accepted. The date of the appeal hearing will be

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ECCC Law, Article 37 *new* ("The provisions of Article 33 […] shall apply *mutatis mutandis* in respect of proceedings before the Extraordinary Chambers of the Supreme Court").

[48] *See e.g.* Internal Rule 21(4) ("Proceedings before the ECCC shall be brought to a conclusion within a reasonable time"); Internal Rule 79(7) ("In order to facilitate the fair and expeditious conduct of the proceedings, the Chamber may […] hold[] a trial management meeting").

[49] *See e.g. Prosecutor v. Karadžić*, MICT-13-55-A, "Decision on a Joint Motion for Extension of Time to File Appeal and Response Briefs", Appeals Chamber, 9 August 2016, p. 2; *Prosecutor v. Mladić*, MICT-13-56-A, "Decision on Ratko Mladić's Motion for Extensions of Time and Word Limits", Appeals Chamber, 22 May 2018, p. 3. *See also Prosecutor v. Šainović et al.*, IT-05-87-A, "Decision on Joint Defence Motion Seeking Extension of Time to File Appeal Briefs", Appeals Chamber, 29 June 2009, p. 3 (noting "that the Tribunal's deadlines for filing of briefs pursuant to Rule 111(A) of the Rules are *essential to ensure the expeditious preparation of the case"*) (emphasis added); *Prosecutor v. Stanišić and Župljanin*, IT-08-91-A, "Decision on Mićo Stanišić's and Stojan Župljanin's Motions Seeking Variation of Time and Word Limits to File Appeal Briefs", Appeals Chamber, 04 June 2013, p. 2 (considering "that a Chamber must ensure the proceedings before it are *fair and expeditious*) (emphasis added); *Prosecutor v. Taylor*, SCSL-03-01-A, "Decision on Prosecution and Defence Motions for Extension of Time and Page Limits for Written Submissions Pursuant to Rules 111, 112 and 113", Appeals Chamber, 7 August 2012, para. 10.

[50] *See above*, para. 14.

[51] Khieu Samphân's Request, paras 17-18.

[52] Supreme Court Chamber Judgement Case 002/01(NUON Chea and KHIEU Samphân), 23 November 2016, F36 ("Case 002/01 Appeal Judgement"), para. 81. The Civil Party Lead Co-Lawyer has informed the Supreme Court Chamber that 281 civil parties have died since 2007 and that "many civil parties are too unwell – either from sickness or old age – to participate in proceedings or international forums". *See* Lead Co-Lawyer's Response, para. 6. *See also* OCP Response, para. 13.

[53] *See* Internal Rule 108(3).

notified by the President of the Chamber in due course.

Timing of KHIEU Samphân's Response to the Co-Prosecutors' Appeal Brief

Submissions

23. KHIEU Samphân seeks leave to file his response to the Co-Prosecutors' appeal brief within 40 days after the filing of his own appeal brief.[54] He submits that the Co-Prosecutors' notice of appeal signifies their intention to appeal "a complex and novel question of law and fact which has never been raised before the Supreme Court [Chamber] (or before other international or internationalized courts or tribunals)".[55] The Chamber recalls that the Co-Prosecutors propose to raise a single ground of appeal, namely that the Trial Chamber's finding that male victims of forced marriage who were coerced to have sexual intercourse without their free consent were not victims of the crime against humanity of other inhumane acts occasioned an error of law and/or fact.[56] KHIEU Samphân states that since he has not been convicted on this point, his defense team must be allowed to focus on their grounds of appeal first before addressing the ground of appeal proposed by the Co-Prosecutors.[57]

24. The Co-Prosecutors do not oppose a reasonable extension for KHIEU Samphân to respond, but request that any extensions granted to the defense be granted to the Co-Prosecutors in a proportionate manner for filing their response briefs.[58] In their supplementary request (filed in response to Nuon Chea's request for extensions of time and page limits), the Co-Prosecutors sought at least 70% of the combined total of pages and at least 50% of the combined time afforded to defense.[59] KHIEU Samphân responded that the Co-Prosecutors failed to explain why they should be granted the requested page allowance or the same time limits given to the parties in Case 002/01,[60] that the Co-Prosecutors' request is unreasonable because, *inter alia*, the submissions of the defence teams "were bound to overlap to a large extent",[61] and that in any event their "evolving" request is untimely.[62] In their amended request, the Co-Prosecutors acknowledge that their supplementary request is moot following the Supreme Court Chamber's termination of

[54] KHIEU Samphân's Request, paras 32, 38.
[55] KHIEU Samphân's Request, para. 35.
[56] Co-Prosecutors' Notice of Appeal of the Trial Judgement in Case 002/02, 21 June 2019, E465/2/1, para. 2.
[57] KHIEU Samphân's Request, paras 36-37.
[58] OCP Response, para. 18.
[59] Co-Prosecutors' Response to Nuon Chea's Request for Additional Time and Page Limits for his Appeal Brief, 1 August 2019, F47/1, para. 25 (referring to the extensions cumulatively granted to KHIEU Samphân and NUON Chea).
[60] KHIEU Samphân's Response to the Co-Prosecutors, paras 8-13.
[61] KHIEU Samphân's Response to the Co-Prosecutors, paras 14-22.
[62] KHIEU Samphân's Response to the Co-Prosecutors, para. 23 (querying why the Co-Prosecutors did not make the request earlier).

proceedings against NUON Chea,[63] but request that they be granted 300 pages and five months to file their response in one language, with time to start running 25 days from the date of notification of KHIEU Samphân's appeal brief in Khmer.[64] In response to the Co-Prosecutors' amended request, KHIEU Samphân submits that the Co-Prosecutors should be directed to file their response in accordance with the Supreme Court Chamber's Case 002/01 jurisprudence, and in both languages within 15 days of the notification of the Defense's appeal brief in Khmer. KHIEU Samphân maintains his arguments developed in response to the Co-Prosecutors' previous submissions.[65]

25. The Civil Party Lead Co-Lawyer did not specifically respond but generally requested that the Superme Court Chamber take into account the rights and interests of civil parties when deciding the merits of KHIEU Samphân's Request.[66]

Applicable Law

26. Article 8.3 of the Practice Direction states that responses to applications or pleadings shall be filed within 10 calendar days of notification of the document to which the participant is responding. As discussed above,[67] a chamber may extend time limits for the filing of submissions on appeal.

Considerations

27. The Supreme Court Chamber agrees with KHIEU Samphân that the Co-Prosecutors' proposed ground of appeal entails questions of law and fact which have not been the direct focus of ECCC or international(ized) tribunals' jurisprudence, and it is accordingly a subject of relative importance which warrants informed submissions. However, the Supreme Court Chamber is not convinced that KHIEU Samphân will require additional time to address the Co-Prosecutors' submissions. The Chamber notes that KHIEU Samphân has identified at least 86 alleged errors of law and/or fact pertaining to the charges which are expected to underly the Co-Prosecutors' appeal (*i.e.* section 14 of the Trial Judgment: Regulation of Marriage).[68] Five of the ostensible errors identified by him concern the "impact on victims" of forced marriages,[69] while two concern the

[63] Amended Request, para. 7.
[64] Amended Request, para. 11.
[65] Response to the Amended Request, paras 11, 14.
[66] Lead Co-Lawyer's Response, Section V; CPLCL Response, Section V.
[67] *See above*, para. 12.
[68] KHIEU Samphân's Notice of Appeal, para. 29.
[69] KHIEU Samphân's Notice of Appeal, para. 29 (14.80-14.84).

"legal characterization of the facts" related to the regulation of marriage.[70] In addition, two alleged errors concern the legal framework applied by the Trial Chamber in characterizing the crimes against humanity of "other inhumane acts through conduct characterised as forced marriage", and "rape within the context of forced marriage"[71] – crimes which are not addressed elsewhere in the Trial Judgement.

28. Unless KHIEU Samphân decides to not pursue these matters in his appeal brief, the Supreme Court Chamber considers that there will be considerable overlap between the appellant's preparation of his appeal brief on grounds relating to the regulation of marriage and a subsequent response on the selfsame subject area. There is accordingly no cogent reason at this time to defer KHIEU Samphân's response to the Co-Prosecutors' brief by more than nine months. The Chamber nevertheless grants KHIEU Samphân 30 days from the notification of the decision to file his response to the Co-Prosecutor's appeal brief.

29. The Supreme Court Chamber is cognizant of the Co-Prosecutors' relative ability to refocus their resources to Case 002/02 when the time comes, and is of the view that a 350-page submission filed within 120 days of the notification of KHIEU Samphân's appeal brief in a second language will be sufficient for the Co-Prosecutors to respond to the grounds raised therein.

Trial Management Meeting

Submissions

30. KHIEU Samphân requests that "[i]f the Supreme Court [Chamber] were to consider granting less time and space than what is requested herein, it should consider holding a trial management meeting at a public hearing" to make the process "more humane and concrete". In particular, he suggests that the Supreme Court Chamber could ensure that convening representatives of the Office of Administration and the Interpretation and Translation Unit would enable the Chamber to "ensure that the material constraints mentioned by the Defence are quite real".[72]

31. Neither the Co-Prosecutors nor the Civil Party Lead Co-Lawyer oppose the holding of a trial management meeting,[73] however the Co-Prosecutors submit that KHIEU Samphân fails to

[70] KHIEU Samphân's Notice of Appeal, para. 29 (14.85-14.86).
[71] KHIEU Samphân's Notice of Appeal, para. 24 (9.15, 9.17). *See* Trial Judgement, paras 728-732, 740-749.
[72] KHIEU Samphân's Request, para. 40.
[73] OCP Response, para. 21; Lead Co-Lawyer's Response, para. 9.

justify his request in the present circumstances.[74] KHIEU Samphân did not reply on this point.

Applicable Law

32. Internal Rule 79(7) states: "In order to facilitate the fair and expeditious conduct of the proceedings, the [Trial] Chamber may confer with the parties or their representatives, as applicable, by holding a trial management meeting. […] The purpose of this meeting will *inter alia* be to allow exchanges between the parties to […] review the status of the case by allowing the Accused to raise issues in relation thereto". The Chamber may invite representatives of the Office of Administration, including representatives of the different sections or units of the court to attend the meeting.[75] Internal Rule 104 *bis* provides that "[i]n the absence of any specific provision, the rules that apply to the Trial Chamber shall, *mutatis mutandis*, also apply to the Supreme Court Chamber.

Considerations

33. The Supreme Court Chamber is not convinced that a trial management meeting is required at this time. As discussed above,[76] the declared resource constraints of KHIEU Samphân's defense team[77] have duly been taken into consideration in determining an appropriate extension. Short of circumstances which demonstrably jeopardize (or have the potential to jeopardize) an accused's right to fair proceedings or an effective defense, the Chamber is not empowered to adjudicate the appropriateness of resources allocated to defense teams. This falls within the administrative ambit of the Defense Support Section ("DSS") which, under Internal Rule 11, is bestowed with autonomy as concerns substantive defense matters. DSS is required to adopt regulations concerning the assignment of defense lawyers and must provide basic legal assistance to indigent persons entitled to representation before the ECCC.[78] The Chamber considers that a trial management meeting convened in the presence of the parties, their representatives and Office of the Administration personnel is neither the appropriate forum to ventilate resource issues nor is likely to "facilitate the fair and expeditious conduct of the proceedings" in the manner suggested by KHIEU Samphân.

34. Further, KHIEU Samphân's assertion that "the resources of the [Interpretation and] Translation Unit ("ITU") are much more limited before" is wholly unsubstantiated.[79] The latest

[74] OCP Response, para. 21.
[75] Internal Rule 79(8).
[76] *See above*, para. 20.
[77] *See also* KHIEU Samphan Defence Request for Extension of Time and Number of Pages to File Notice of Appeal, 3 April 2019, F39/1.1, paras 28-34.
[78] Internal Rules 11(1), 11(2)(a), (g), (h), (j).
[79] KHIEU Samphân's Request, para. 19.

ECCC completion plan indicates that: "The Office of Administration retained the services of a number of additional linguistic personnel to support the judicial offices, to ensure timely translation and transcription services".[80]

35. Should the need for a trial management meeting arise in future, the Chamber will confer with the parties or their representatives at the relevant time.

III. DISPOSITION

36. For the foregoing reasons, the Supreme Court Chamber:

GRANTS KHIEU Samphân's Request in part;

DIRECTS KHIEU Samphân to file his appeal brief, which is not to exceed 750 pages, on or by 27 February 2020 in English or French, with a Khmer translation to follow at the soonest possibility;

DENIES the remainder of KHIEU Samphân's Request;

DIRECTS KHIEU Samphân to file his response to the Co-Prosecutors' appeal brief within 30 days from the notification of the decision;

DIRECTS the Co-Prosecutors to file their response, which is not to exceed 350 pages, in one language within 120 days of notification of KHIEU Samphân's appeal brief; and

NOTIFIES the parties that replies to appeal submissions shall be heard on a date to be set and communicated in due course.

Phnom Penh, 23 August 2019

President of the Supreme Court Chamber

KONG Srim

[80] Extraordinary Chambers in the Courts of Cambodia, "ECCC Completion Plan", Revision 21, 30 June 2019, para. 17, https://www.eccc.gov.kh/en/completion-plan-revision-21.