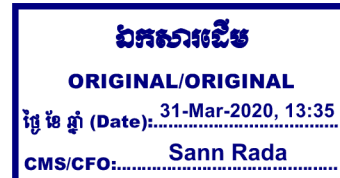


**BEFORE THE SUPREME COURT CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

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CO-PROSECUTORS' REPLY TO KHIEU SAMPHAN'S RESPONSE TO THE CO-PROSECUTORS' REQUEST FOR ADDITIONAL PAGES TO RESPOND TO KHIEU SAMPHAN'S APPEAL OF THE CASE 002/02 JUDGMENT

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I. INTRODUCTION

1. The Co-Prosecutors hereby reply to Khieu Samphan's response¹ to their request² for additional pages to respond to his expanded appeal³ of the Case 002/02 Trial Judgment.⁴ Khieu Samphan's opposition to the Co-Prosecutors' request should be dismissed to the extent he has misrepresented the significance of Annex A to his appeal brief, which is entitled "Summary of Khieu Samphan's Grounds of Appeal".⁵ Additionally, Khieu Samphan's response should be dismissed as it (i) ignores the fact that his prior submissions through incorporation by reference in his appeal brief require the Co-Prosecutors to provide specific responses for the purpose of the *present* proceedings, which are in the appeal phase and *after* the Trial Judgment has been issued, and (ii) erroneously assumes that an extension of pages to the Co-Prosecutors' response brief will delay the appeal process. For these reasons, elaborated below, Khieu Samphan's request for the Co-Prosecutors' application to be dismissed is without merit.

II. SUBMISSION

A. Khieu Samphan's Annex A Either Does Not Substantively Contribute to His Appeal Brief and Should Be Dismissed as Exceeding the Page Limit, or Substantively Contributes to His Appeal Brief and Warrants an Extension of Pages for the Co-Prosecutors' Response

2. If the Supreme Court Chamber ("SCC") accepts the argument that Khieu Samphan is apparently advancing, *i.e.*, that Annex A adds nothing substantively to his appeal brief,⁶ then the Chamber should dismiss Annex A because it exceeds the prescribed page limit by 76 pages.⁷
3. If, in the alternative, the Chamber considers that Annex A *does* substantively add to Khieu Samphan's appeal brief, the Co-Prosecutors must be given the requested additional pages to respond to the Annex. Annex A provides concrete guidance of the content of Khieu

¹ F55/1 Réponse de la Défense de Khieu Samphan à la Demande de Pages Supplémentaires de l'Accusation, 26 Mar. 2020 ("Khieu Samphan's Response").

² F55 Co-Prosecutors' Request for Additional Pages to Respond to Khieu Samphan's Appeal of the Case 002/02 Judgment, 20 Mar. 2020 ("Co-Prosecutors' Request").

³ F54 Mémoire d'Appel de Khieu Samphan (002/02), 27 Feb. 2020 ("Defence Appeal Brief"); F54.1.1 Annex A – Résumé des Motifs d'Appel de Khieu Samphan (002/02), 27 Feb. 2020 ("Annex A to Defence Appeal Brief").

⁴ E465 Case 002/02 Judgement, 28 Mar. 2019.

⁵ F54.1.1 Annex A to Defence Appeal Brief (unofficial translation).

⁶ F55/1 Khieu Samphan's Response, paras 4-5.

⁷ See F49 Decision on Khieu Samphan's Request for Extensions of Time and Page Limits for Filing His Appeal Brief, 23 Aug. 2019 ("Decision on Khieu Samphan's Request for Extensions"), para. 36 (disposition).

Samphan's appeal grounds and crystallises what he is alleging in his appeal of the Trial Judgment. In this document, he clarifies the content of his appeal brief, including any oversights or discrepancies contained therein. Additionally, the document supplements the arguments in his brief by identifying, for example, how the Trial Chamber's alleged errors meet the standard of appellate review in terms of the consequence and impact of those errors. Khieu Samphan therefore sets out in 76 pages in Annex A a summary of the arguments that he intended to make in his 750-page appeal brief.

4. Annex A in effect provides a roadmap of Khieu Samphan's appeal, substantially clarifying and assisting the parties to effectively respond to the appeal and the Chamber to efficiently resolve it. Logically, it would have been expected that this information would have been included in the 750 pages allocated to him for his appeal brief. It would appear that this was not done to avoid exceeding the SCC's page limit. Nonetheless, Khieu Samphan's choice to provide this information in an annex as opposed to his appeal brief should not be allowed to disadvantage the parties opposing his appeal. Denying the Co-Prosecutors' request for additional pages does just that, disadvantages them by not allowing them adequate pages to be heard, to present their response to the matters raised in the Annex.
5. Therefore, to ensure equal treatment to the Co-Prosecutors in this appeal, the Co-Prosecutors' request an additional 35 pages to respond to Annex A. This would be proportionate to the 350 pages the Co-Prosecutors were allocated to respond to Khieu Samphan's 750-page appeal brief.⁸

B. Specific Responses Are Required to Khieu Samphan's Incorporation of Prior Submissions by Reference in His Appeal Brief

6. Khieu Samphan erroneously assumes that the Co-Prosecutors can respond to his incorporation of prior submissions by reference in his appeal brief in the same manner.⁹ This assumption is incorrect for two reasons. First, Khieu Samphan fails to acknowledge that submissions made *prior* to the Trial Judgment will likely have been made for purposes that are now different to the current appeal. Appellate proceedings have a standard for review and unique jurisprudence¹⁰ for which the Co-Prosecutors must have regard when responding to submissions incorporated by reference.

⁸ F49 Decision on Khieu Samphan's Request for Extensions, para. 36 (disposition).

⁹ F55/1 Khieu Samphan's Response, para. 6.

¹⁰ E.g. F49 Decision on Khieu Samphan's Request for Extensions, para. 16.

7. Second, Khieu Samphan fails to acknowledge that the Co-Prosecutors will not have necessarily responded to all of his prior submissions for various reasons or to the extent that is now required for appellate proceedings. Consequently, it cannot be assumed that the Co-Prosecutors have already responded to the prior submissions on which Khieu Samphan now seeks to rely for the purpose of his appeal.
8. Khieu Samphan's incorporation of a minimum of 236 pages of prior submissions¹¹ necessitates that the Co-Prosecutors be granted an additional 110 pages, which fairly mirrors the proportion that the SCC gave the Co-Prosecutors for responding to Khieu Samphan's appeal brief.

C. No Undue Delay Will Occur If the Additional Pages Are Granted

9. Khieu Samphan's complaint that granting additional pages to the Co-Prosecutors will cause delay to the appeal process is unfounded.¹² He has failed to demonstrate how the additional pages will violate his right "[t]o be tried without *undue* delay"¹³ or prevent proceedings from being "brought to a conclusion within a *reasonable* time."¹⁴ There simply should be no concern that the number of extra pages requested would unduly delay the proceedings. This Chamber has already noted that "[t]he Office of Administration [has] retained the services of a number of additional linguistic personnel to support the judicial offices, to *ensure timely translation* [...] services".¹⁵
10. Should the SCC consider denying the Co-Prosecutors' request to avoid delay, the Co-Prosecutors respectfully suggest that refusing additional pages and, instead, allowing the Co-Prosecutors the opportunity to respond to Annex A and Khieu Samphan's incorporated submissions by reference at the appeal hearing¹⁶ is not efficient case management for the following reasons. First, it would not allow the Co-Prosecutors to

¹¹ See **F55** Co-Prosecutors' Request, para. 9.

¹² **F55/1** Khieu Samphan's Response, para. 6.

¹³ International Covenant on Civil and Political Rights, 16 Dec. 1966, 999 UNTS 171, art. 14(3)(c) (emphasis added), which is recognised in Agreement Between the United Nations and the Royal Government of Cambodia Concerning the Prosecution Under Cambodian Law of Crimes Committed During the Period of Democratic Kampuchea, 6 June 2003, arts 12(2), 13(1) and 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 Oct. 2004, arts 33 new, 35 new.

¹⁴ Extraordinary Chambers in the Courts of Cambodia, Internal Rules (Rev. 9), as revised on 16 Jan. 2015, Rule 21(4) (emphasis added).

¹⁵ **F49** Decision on Khieu Samphan's Request for Extensions, para. 34 (emphasis added). See also Extraordinary Chambers in the Courts of Cambodia, "ECCC Completion Plan", Revision 23, 31 Dec. 2019, para. 17, at <https://www.eccc.gov.kh/sites/default/files/Completion%20Plan%20Rev.%202023.pdf>.

¹⁶ See **F23/1** Decision on Co-Prosecutors' Request for Page and Time Extensions to Respond to the Defence Appeals of the Case 002/01 Judgment, 21 Apr. 2015, para. 10.



fully develop their response to the alleged matters in their response brief, thus denying the SCC the opportunity to fully assess that response before oral argument. Second, it would deprive the Chamber the benefit of the Civil Parties knowing the Co-Prosecutors' full response before filing their response brief. As this Chamber has held, the "sole purpose" of allowing the Civil Parties to review the Co-Prosecutors' response brief before they file theirs is to prevent overlap and repetition.¹⁷ Forcing the Co-Prosecutors to address the material in Annex A and Khieu Samphan's incorporated references in oral argument would undermine this purpose.

11. The Co-Prosecutors submit, therefore, that their request for extra pages should be allowed to ensure their ability to file a comprehensive response to all matters raised by Khieu Samphan in the most efficient manner. In addition, their request should be allowed to ensure equal treatment.

III. REQUESTED RELIEF

12. For the foregoing reasons, the Co-Prosecutors' request the SCC to:
- a. dismiss Annex A, should it find the Annex does not substantively contribute to Khieu Samphan's appeal brief or, in the alternative, authorise an additional 35 pages to respond to the Annex, beyond the current 350-page limit for the response to Khieu Samphan's expanded appeal; and
 - b. authorise an additional 110 pages to respond to the matters incorporated by reference, beyond the current 350-page limit for the response to Khieu Samphan's expanded appeal.

Respectfully submitted,

Date	Name	Place	Signature
31 March 2020	CHEA Leang National Co-Prosecutor	Phnom Penh	
	Brenda J. HOLLIS International Co-Prosecutor		



¹⁷ F52/1 Decision on Requests Concerning the Civil Party Lead Co-Lawyers Response to Khieu Samphan Appeal, 6 Dec. 2019, para. 24. *See also* para. 22.