

**BEFORE THE TRIAL CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

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**CO-PROSECUTORS' RESPONSE TO REQUEST BY DEFENSE COUNSEL FOR
KHIEU SAMPHAN REGARDING DEADLINES AND PAGE LIMITS FOR FINAL
TRIAL BRIEFS**

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I. INTRODUCTION

1. On 13 November 2012, defence counsel for Khieu Samphan filed the “Demande de ré-examen portant sur l’exigence posée par le Mémoire E163/5 d’un dépôt par les parties avant le 21 décembre 2012 de leurs écritures sur le droit applicable”¹ (“Khieu Samphan Request”) in which they request the Trial Chamber to reconsider paragraph 4 of its Memorandum entitled “Notification of Decision on Co-Prosecutors’ Request to Include Additional Crime Sites within the scope of Trial in Case 002/01 (163) and deadline for submission of applicable law portion of Closing Briefs” (“Memorandum”).²
2. In the Memorandum, the Trial Chamber requested the parties to submit the “portions of the Closing Briefs concerning the applicable law...in advance of the conclusion of the hearing of evidence in Case 002/01” and directed the parties to limit those submissions to no more than 20 pages in length in English or French, or 40 pages in Khmer. The Trial Chamber set the deadline of 21 December 2012 for the filing of these portions of the Final Trial Briefs, but indicated that it will entertain requests for extension of this deadline.³
3. The Khieu Samphan Request asks the Chamber to suspend the 21 December 2012 deadline until after the end of the hearing of evidence in this case. It also requests the Chamber to postpone any decisions on the length or timing of Final Trial Briefs until clarity can be obtained on the scope of the same, and the evidence to be heard at trial.⁴

II. RESPONSE

A. Timing and Modality of Submission of Final Trial Briefs

4. While the Co-Prosecutors appreciate that the Trial Chamber’s instructions are directed at facilitating an expeditious completion of the trial, they agree with the Defence that allowing the parties to file Final Trial Briefs in their entirety (including submissions as to the applicable law) following the closure of the evidentiary proceedings would facilitate a more streamlined and efficient analysis by the parties of all legal, factual and evidential issues to

¹ E163/5/2 “Demande de ré-examen portant sur l’exigence posée par le Mémoire E163/5 d’un dépôt par les parties avant le 21 décembre 2012 de leurs écritures sur le droit applicable,” 13 November 2012 (“Khieu Samphan Request”).

² E163/5 Notification of Decision on Co-Prosecutors’ Request to Include Additional Crime Sites within the scope of Trial in Case 002/01 (163) and deadline for submission of applicable law portion of Closing Briefs, 8 October 2012 (“Memorandum”).

³ E163/5 Memorandum, at para. 4.

⁴ E163/5/2 Khieu Samphan Request, para. 24.

be addressed in the briefs. There will likely be significant difficulty in addressing the applicable law prior to a final assessment of the evidence and the legal characterisation of the offences alleged against the Accused.

5. The Co-Prosecutors also submit that, in any event, an overall page limit should be allocated to each party's Final Trial Brief, which will enable the parties to use their individual allocations in the most effective and economical manner. Filing separate legal and factual briefs will inevitably lead to a degree of overlap. Furthermore, a page limit of 20 pages for submissions on applicable law may prove insufficient for the Co-Prosecutors to address all of the applicable criminal offences, modes of liability, sentencing principles and rules governing the assessment of evidence in this case. Working within a single larger brief, it would be possible to absorb an analysis of these issues more effectively, avoid overlaps and use the Co-Prosecutors' overall page allocation in a more efficient manner.

B. Overall Page Limits

6. The Co-Prosecutors recall that the issue of overall page limits for the Final Trial Briefs is currently under consideration by the Chamber. In the interests of facilitating an expeditious conclusion of this trial, the Co-Prosecutors have reduced drastically the estimate of the required page length for their Final Trial Brief. Both in their written filing prior to the Trial Management Meeting (TMM), and at the TMM on 27 August 2012, the Co-Prosecutors proposed a limit of 180 pages (in English) for their Final Trial Brief and 60 pages for each of the Accused.⁵ The Co-Prosecutors recall that, in Case 001, a case dealing with one accused who had accepted many of the facts alleged against him, their Final Trial Brief was 158 pages long in English and 250 pages in Khmer.⁶ The proposed page limit in this case represents a significant compromise by the Co-Prosecutors to accommodate the Trial Chamber's expressed desire to keep the briefs succinct.
7. The Co-Prosecutors note that the Memorandum allocates the same number of pages to each party for their submissions on the applicable law. The Co-Prosecutors are concerned that this approach may lead to a disproportionate allocation of overall page limits and an inequality of

⁵ **E1/114.2** Transcript, Trial Management Meeting, 27 August 2012 at ERN 00843675 and **E218/2** Notice of the Co-Prosecutors' Position on Key Issues to be Discussed at 17 August 2012 Trial Management Meeting, 15 August 2012, at para. 32.

⁶ **Case 001, E159/9** Co-Prosecutors' Final Trial Submission, 11 November 2009.
Co-Prosecutors' Response to Khieu Samphan's Request Regarding Deadlines and Page Limits For Final Trial Briefs

arms between the parties. The Co-Prosecutors bear the onus of proving the guilt of each of the Accused beyond a reasonable doubt, in relation to all of the allegations they are facing. Even in the context of legal submissions, this necessarily requires a more expansive examination of the relevant principles of substantive law than may be required by any individual defence team. Therefore, to allow each defence team the same number of pages for their submissions as the totality of pages allocated to the Co-Prosecutors would place the Co-Prosecutors at an unfair disadvantage. This inequality would be even more pronounced if it were to be applied to the overall page limits for the Final Trial Briefs. The Co-Prosecutors will need to examine and make submissions on a far greater amount of evidential and factual material than any individual Defence team.

8. As the Co-Prosecutors have submitted previously, the Trial Chamber should impose limits on Final Trial Briefs in a proportionate manner, as is its practice in terms of time allocations for witness questioning. The Co-Prosecutors incorporate by reference their previous submissions on the issues of the overall length, proportional allocation of page limits and timing of Final Trial Briefs.⁷
9. The Co-Prosecutors note that the Khieu Samphan Request accepts that the Co-Prosecutors would need a higher number of pages than the Defence due to the fact that they are addressing allegations against multiple Accused.⁸ International Defence Counsel for Ieng Sary, Mr Michael Karnavas, has also recognised the different burdens on the prosecution and the defence when he stated, at the TMM: “I think for - 180 for the Prosecution is sufficient, but I don’t think that simply because they get 180, we should get 60. We believe that 100 to 120 pages would be more adequate.”⁹

⁷ **E218/2** Notice of the Co-Prosecutors’ Position on Key Issues to be Discussed at 17 August 2012 Trial Management Meeting dated 15 August 2012, paras 29-39.

⁸ **E163/5/2** Khieu Samphan Request, para. 20.

⁹ **E1/114.2** Transcript, Trial Management Meeting, 27 August 2012, at EN ERN 00843681.


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III. CONCLUSION

10. In conclusion, the Co-Prosecutors:

- 1) Agree that a single deadline should be set for the filing of Final Trial Briefs (including legal submissions), allowing sufficient time for each party to examine all relevant legal and factual issues following the conclusion of the evidentiary proceedings;
- 2) Respectfully request the Chamber to ensure that the principles of proportionality and equality of arms, as well as the Co-Prosecutors' obligation to meet the burden of proof in relation to three Accused, are reflected in the allocation of page limits for the Final Trial Briefs; and
- 3) Agree that the deadline of the 21 December 2012 should be suspended until the end of the trial, or at least until the Chamber's decision on these issues.

Respectfully submitted,

Date	Name	Place	Signature
22 November 2012	YET Chakriya Deputy Co-Prosecutor	Phnom Penh	
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