

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

FILING DETAILS

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

Party Filing: Co-Prosecutors

Filed to: Trial Chamber

Original Language: English

Date of Document: 21 October 2016

CLASSIFICATION

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



Classification by Trial Chamber: សាធារណៈ/Public

Classification Status:

Review of Interim Classification:

Records Officer Name:

Signature:

**CO-PROSECUTORS' RESPONSE TO NUON CHEA'S REQUEST REGARDING
THE PAGE LIMIT, TIME LIMIT, AND CONTENT OF HIS CLOSING BRIEF**

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I. Introduction

1. The Co-Prosecutors hereby respond to the request filed by Nuon Chea regarding the page limit, time limit, and content of his closing brief, which was notified on 11 October 2016 (“Nuon Chea’s Request”).¹
2. Nuon Chea has requested that the Chamber (a) “extend the time limit provided to the Defence to file its Closing Brief by one month to three months in total, to begin from January 2017 at the earliest”; (b) “amend its Notice of Deadlines and provide that the parties can either file an applicable law brief in advance of their closing briefs, and/or include such discussion into their closing briefs”; (c) “allow the Defence to file a 600-page closing brief inclusive of footnotes and excluding annexes and appendices”; and (d) schedule a Trial Management Meeting to be held as soon as possible and prior to 23 November 2016 to discuss the abovementioned requests and associated issues raised”.²
3. Khieu Samphan has requested the Chamber to schedule a trial management meeting to discuss all questions relating to the final stages of the Case 002/02 trial (“Khieu Samphan’s Observations”).³
4. The deadline for filing the present response in two languages, in accordance with Articles 7.1 and 8.3 of the Practice Direction on the Filing of Documents before the ECCC (“the Practice Direction”), is 21 October 2016. On that date, pursuant to Article 7.2 of the Practice Direction, the Chamber granted a request by the Office of the Co-Prosecutors (“OCP”) to file its response in English with Khmer to follow.⁴

II. Extension of time limit and page limit is warranted

5. The Co-Prosecutors agree with Nuon Chea’s argument that an extension of time for the filing of closing briefs is warranted and that “the scope and complexity of the case, as well as the quantity of evidence (including witnesses) require that additional pages be

¹ E421/5 Nuon Chea’s Request Regarding the Page Limit, Time Limit, and Content of his Closing Brief in Case 002/02, 11 October 2016.

² E421/5 Nuon Chea’s Request, para. 51.

³ E421/5/1 Observations de la Défense de KHIEU Samphân en réponse à la requête de NUON Chea concernant son mémoire final, 14 October 2016, para. 6.

⁴ Email from the Trial Chamber to the parties, 21 October 2016, 12:47 p.m.

granted”.⁵ Case 002/02 is, by the standards of any previous trial before any international or hybrid court, an unusually large case. It concerns a wide range of allegations of serious crimes committed in many different geographical locations over an extended period of time, involves an exceptionally large volume of documentary and testimonial evidence and will require complex legal and factual argument by all parties.

6. In particular, unlike Case 002/01, Case 002/02 concerns allegations of genocide against two targeted groups. As the Co-Prosecutors have the burden of proving the criminal responsibility of both Nuon Chea and Khieu Samphan in respect of all crimes charged beyond reasonable doubt, it is reasonable to allocate to the Co-Prosecutors a greater number of pages than that allocated to either of the two Accused individually. Nuon Chea and Khieu Samphan have presented quite different defences at trial, with Khieu Samphan denying knowledge or power to influence DK policies while Nuon Chea has largely relied on a defence that DK’s policies were justified.
7. The Co-Prosecutors are conscious of the need to ensure that the proceedings in the trial of Case 002 – which began nearly five years ago – are brought to a fair and expeditious conclusion. Equally important is the need to ensure that the parties’ submissions are, to the greatest extent possible, focused, concise and relevant.
8. For these reasons, the Co-Prosecutors submit that it is in the interest of justice to permit Nuon Chea and Khieu Samphan each to file a final brief of 500 pages and the Co-Prosecutors to file a final brief of 750 pages. Should the Trial Chamber be minded to permit each of the Accused to file a brief of 600 pages, the Co-Prosecutors request that they be permitted to file a brief of up to 900 pages. These suggested page limits include footnotes and exclude annexes and appendices, on the understanding that annexes and appendices will not contain arguments. The Co-Prosecutors anticipate that, as with the final briefs in Case 002/01, footnotes will be extensive as they believe that the Chamber will benefit from thorough citations to evidence proving the parties’ assertions.

⁵ E421/5 Nuon Chea’s Request, para. 33.

III. Impact of Judgement on the appeal of Case 002/01

9. The Co-Prosecutors submit that the argument that the parties' submissions will be impacted by the content of the judgement on the appeal of Case 002/01 of the Supreme Court Chamber⁶ – currently scheduled for 23 November 2016 – is premature. It is as yet unclear what impact, if any, the Supreme Court Chamber's judgement will have on the time necessary for the parties to prepare their closing briefs in Case 002/02. After the parties have read the judgement of the Supreme Court Chamber, they will be in a position to make informed submissions before the Trial Chamber concerning the impact, if any, of that judgement on the timeline for preparation of closing briefs in Case 002/02. The Co-Prosecutors submit that the filing of such submissions should not in itself unduly delay the completion of the proceedings. Should the Trial Chamber believe that such filings would be beneficial, the Co-Prosecutors suggest a deadline of 7 December 2016.

IV. Submissions concerning applicable law

10. The Co-Prosecutors agree with Nuon Chea's arguments that "the question of applicable law is inseparable from the discussion on the facts and [...] that it may ultimately be more efficient and streamlined to integrate its applicable law submissions into its closing brief".⁷ The Co-Prosecutors therefore support Nuon Chea's request that the parties be permitted to include their applicable law submissions in their closing briefs.⁸

V. Trial Management Meeting

11. The Co-Prosecutors do not oppose the request by both Accused that the Trial Chamber hold a trial management meeting.

VI. Conclusion

12. For these reasons, the Co-Prosecutors submit that it is in the interests of justice for the Trial Chamber to permit:

⁶ E421/5 Nuon Chea's Request, para. 46; E421/5/1 Khieu Samphan's Observations, para. 4.

⁷ E421/5 Nuon Chea's Request, para. 50.

⁸ E421/5 Nuon Chea's Request, para. 50.

- (a) the Co-Prosecutors, Nuon Chea and Khieu Samphan to file their closing briefs no later than three months from the date of conclusion of hearing oral evidence in the present trial;
- (b) the parties to make submissions concerning the applicable law in their closing briefs;
- (c) the Co-Prosecutors to file a final brief of 750 pages and Nuon Chea and Khieu Samphan each to file a final brief of 500 pages, including footnotes and excluding annexes and appendices. Should the Trial Chamber be minded to permit each of the Accused to file a final brief of 600 pages, the Co-Prosecutors request that they be permitted to file a final brief of 900 pages, including footnotes and excluding annexes and appendices; and
- (d) all parties to make further submissions concerning the impact, if any, of the judgement on the appeal of Case 002/01 on the timeline for preparation of closing briefs in Case 002/02, such submissions to be filed by 7 December 2016.

Respectfully submitted,

Date	Name	Place	Signature
21 October 2016	CHEA Leang Co-Prosecutor	Phnom Penh	
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