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BEFORE THE OFFICE OF THE CO-INVESTIGATING JUDGES
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

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REQUEST FOR ADOPTION OF CERTAIN PROCEDURAL MEASURES

ឯកសារបានថតចម្លងត្រឹមត្រូវតាមច្បាប់ដើម
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I. INTRODUCTION

1. Pursuant to Rule 55(10) of the ECCC Internal Rules (the "Rules"), counsel for Charged Person Nuon Chea (the "Defence") submit this request for the adoption of certain procedural measures to the Office of the Co-Investigating Judges (the "OCIJ").

II. FACTUAL BACKGROUND

2. The Defence understands that it is the aim of the OCIJ to notify the parties by December 2009, pursuant to Rule 66 of the Internal Rules ("Rule 66"), that the investigation in case 002/19-09-2007-ECCC/OCIJ has been concluded.

3. The Defence is concerned that the system provided by Rule 66 may seriously harm the rights of the Charged Person. We therefore request the OCIJ to adopt certain procedural measures to ensure that the rights of Nuon Chea will be safeguarded throughout the proceedings.

4. The system envisaged by Rule 66 can be summarized as follows. The OCIJ will file a notice in which the conclusion of the investigation is announced ("Rule 66 Notice"). The Defence will then have 15 days to file requests for further investigative action after receiving said notice. If the OCIJ decides to reject these requests, it will file an order to that extent. The Defence will then have 30 days to appeal such decisions. Also, in that same order the OCIJ will reject all the outstanding requests; the Defence has 30 days to appeal such decisions as well.[1] It should in this context be noted that it flows from the Internal Rules that the OCIJ can add evidence to the case file up to the point of filing the Rule 66 notice.

5. This procedure leaves room for the OCIJ to adopt an approach towards the conclusion of the investigation which may seriously harm the rights of Nuon Chea; it also allows for inefficient organization of the investigative proceedings. This request is aimed at addressing and/or remedying these potential shortcomings.

[1] Internal Rule 66.

6. Specifically, the possibility of the OCIJ withholding its decisions on earlier investigative requests until the issuing of the Rule 66 notice (or shortly before it) and/or the possibility of the OCIJ adding new evidence to the case file simultaneously with the issuing of the notifice (or shortly before it) is a grave concern for the Defence, as such a course of action would seriously harm the rights of the Charged Person.

7. To be sure, the Defence does not know how the OCIJ plans to proceed during the remainder of the investigation. The Defence does not know when the OCIJ will decide on the investigative requests, or when the OCIJ plans to add the final investigative results to the case file. The Defence does not *assume* that the OCIJ would act in a manner contrary to the rights of the Charged Person. This request should thus not be understood as a premature criticism of the approach your office intends to follow.

8. Indeed, the OCIJ may well have decided already to allow for ample time between the decisions on earlier requests and adding documents to the case file on the one hand and the notification of the conclusion of the investigation on the other. After all, the OCIJ is required to safeguard the interests of Nuon Chea. Nevertheless, the Defence has no choice but to raise this issue now and in this form. Should the Defence adopt a wait-and-see approach, it may be too late to act. The instant request and its timing should be understood in this light.[2]

9. The Defence therefore requests the OCIJ to:

   a. inform the parties as soon as possible, with at least **two months** notice before the filing of the actual notice, of the exact date on which the OCIJ plans to file the Rule 66 notice;

   b. add **all** new results of the investigation to the case file at least **two months** before the filing of the notice pursuant to Rule 66. Such a timeframe is indispensable in order to safeguard the effective participation by the Defence in the proceedings;

   c. decide upon all outstanding investigative requests at least **two months** before the filing of the notice pursuant to Rule 66. Such a timeframe is indispensable

[2] In line with that thought, the OCIJ should not dismiss this request as premature, e.g. with the argument that the rights of the defence have not been harmed *yet*, as the notification pursuant to Rule 66 has not been filed yet. Again, the Defence simply cannot afford to wait with filing this request. Indeed, it would make no sense to file this request after the notification, as it would be moot by that time, considering the subject matter.

in order to safeguard the effective participation by the Defence in the proceedings;

d. respond to this request within two weeks of its filing.

10. It is only by adopting these measures that the Defence will be able to file meaningful appeals, draft meaningful additional requests for investigative action, and will be able to organize its activities in the coming months, thus safeguarding the fair trial rights of Nuon Chea.

11. The Defence stresses that, while Rule 66 does not *provide* for these procedural measures, it certainly does not *preclude* the OCIJ from implementing them. There are strong systemic and fair-trial arguments in favor of these suggestions, which will be discussed below. Moreover, the proposals will promote procedural economy.

III. RELEVANT LAW

12. The Defence adopts by reference the submissions contained in its previously filed requests for investigative action.

13. Moreover, the Defence invokes the ECCC Agreement and Law, and more specifically the fair trial rights of Charged Person Nuon Chea. Pursuant to the ECCC Agreement and Law, Nuon Chea has the right "to have adequate time and facilities for the preparation of his [...] defence".[3]

14. The European Court of Human Rights, an institution on whose jurisprudence the OCIJ has relied in the past, has given an expansive interpretation to the concept of "adequate time and facilities":

> The Court recalls that Article 6 § 3 (b) guarantees the accused 'adequate time and facilities for the preparation of his defence' and therefore implies that the substantive defence activity on his behalf may comprise everything which is 'necessary' to prepare the main trial. The accused must have the opportunity *to organise his defence in an appropriate way* and without restriction as to the possibility to put all relevant defence arguments before the trial court and thus to influence the outcome of the proceedings. *Furthermore, the facilities which everyone charged with a criminal offence should enjoy include the opportunity to acquaint himself for the purposes of preparing his*

[3] Agreement, Article 13(1); Law, Article 35 new.

> *defence with the results of investigations carried out throughout the proceedings.* The issue of adequacy of time and facilities afforded to an accused must be assessed in the light of the circumstances of each particular case.[4]

The obvious import of this analysis is that "the results of investigations carried out throughout the proceedings" should be disclosed in a manner which ensures "practical and effective" defence rights rather than merely "theoretical or illusory" ones.[5]

15. In this Request the Defence will explain how and why the fair trial rights of the Charged Person would be harmed, should the OCIJ indeed decide on the outstanding investigative requests only at the time of filing of the Rule 66 notice (or shortly before that) and/or add evidence to the case file close in time to that filing. The Defence will demonstrate that in such a scenario there would be no meaningful way for it to effectively "influence the outcome of the proceedings"; the defence rights would thus be rendered "theoretical and illusory".

16. The conclusion of the investigative stage within a reasonable time is a laudable goal, one which is also in the interest of the Charged Person. However, this desire for closure must not result in harm to the rights of the Charged Person by a rush to complete the investigation. Not only would such approach run counter to the requirements of a fair trial, it may also unnecessarily delay the remainder of the trial proceedings.

17. As is well-known, there is not much room for the Defence to conduct its own investigation in the investigative system as adopted by the drafters of the Internal Rules. The OCIJ itself has decided that the Defence is barred from conducting its own investigation.[6] Under these circumstances, the investigation should be conducted with extreme diligence; the rights of the Charged Person must receive full and meaningful protection throughout the proceedings.

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[4] *Galstyan v Armenia*, ECHR App No. 26986/03, 'Judgment', 15 November 2007, para. 84 (citations omitted, emphasis added).

[5] *See*, e.g. *Artico v Italy*, ECHR App No. 6694/74, 'Judgment', 13 May 1980, para. 33 ("[T]his is particularly so of the rights of the defence in view of the prominent place held in a democratic society by the right to a fair trial, from which they derive"). See also D130/11, Nuon Chea Defence Team Fifteenth Request for Investigative Action dated 1 September 2009.

[6] Document No. A 110/1, Response to your letter dated 20 December 2007 concerning the conduct of the judicial investigation, 10 January 2008, p.2 ("Before this Court, the power to conduct judicial investigations is assigned solely to the two independent Co-Investigating Judges and not to the parties").

18. The OCIJ has already explicitly recognized the importance of an *effective* exercise of the right to request investigative action, albeit in a slightly different context.[7] It is clear that there can be no effective exercise of the right to request investigative action if not enough time is allowed for either the filing of additional requests based on new evidence or the drafting of appeals against refusals of earlier requests.

19. In this light the Defence invokes the wording of Rule 21(1) of the Internal Rules.[8] This wording makes clear that legal certainty and the transparency of proceedings, *inter alia,* are of the highest importance throughout the proceedings. This legal certainty and transparency can only be achieved if the formalities surrounding the end of the investigation are executed in a manner that safeguards the rights of the Charged Person. In other words, the manner in which the notification of the conclusion of the investigation will be communicated, must not render the rights of the Charged Person to participate effectively in the proceedings 'theoretical and illusory'.

IV. THE ARGUMENT

20. The instant request will address four issues that are problematic for the defense: (i) the backlog of investigative requests on which the OCIJ has not communicated a decision yet; (ii) the 15 day time period in which additional requests can be formulated pursuant to Rule 66; (iii) the problems caused for the Defence by the uncertain end-date of the investigation; and (iv) the impossibility of preparing proper translations for all documents that will have to be filed in a short time frame. After the discussion of these issues, this request will briefly address the (Cambodian) background of the system as adopted in the Internal Rules. The request will then conclude with some systemic considerations, which will demonstrate that our requests are in line with the investigative system that the drafters of the Internal Rules must have had in mind.

A. The outstanding requests for investigative action

21. As stated, Rule 66 allows the OCIJ to avoid deciding upon the outstanding requests for investigative action until the filing of the notice in which the end of the investigation is

[7] *Ibid.*, p.2 ("The capacity of the parties to intervene is thus limited to such preliminary inquiries as are strictly necessary for the *effective* exercise of their right to request investigative action.", emphasis added).
[8] Rule 21(1).

announced ("Rule 66 notice").[9] Should the OCIJ indeed adopt such a course of action, the Defence would be confronted with insurmountable practical problems, leading to a violation of the fair trial rights of our client. In such a scenario, the Defence would be effectively precluded from filing meaningful appeals against refusals by the OCIJ to execute its requests for investigative action.

22. Currently, the Defence has numerous requests for investigative action outstanding. It is unclear how many of these requests will have been decided upon by your office before the notification pursuant to Rule 66. However, in case the OCIJ does decide to rule on these earlier requests only at the time of the filing of the notice (or shortly before that), the Defence will be confronted with the practical impossibility of filing appeals against these decisions.

23. It is not hard to appreciate this practical impossibility. Pursuant to Rule 75, the Defence is required to file *substantive* submissions of appeal with regard to every refused investigative request within 30 days.[10] These submissions on appeal must, in order to be considered by the Pre-Trial Chamber ("PTC"), contain all relevant matters of fact and law, as well as supporting documents.[11]

24. The task of drafting these appeals, combined with the other tasks foreseen by Rule 66 (the filing of additional investigative requests within a 15 day time period, see below) will be *de facto* impossible to accomplish if the OCIJ decides to rule on (several) outstanding requests only at the time of the Rule 66 notice, or shortly before it. It is simply impossible, *practically speaking*, for the Defence to file more than a very limited number of such appeals in a thirty day period.

1. No meaningful preparation possible

25. The Defence cannot *prepare* itself in any meaningful way for these possible appeals, as the Defence has no way of knowing which requests may be denied, and for what

[9] Indeed, the OCIJ can postpone its decision on these requests until it issues the order (the "Rule 66(2) Order"). in which it decides on the additional requests that are filed after the Rule 66 notice. Such a course of action would in and of itself create serious problems for the Defence, see below.
[10] Rule 75.
[11] *See* Rule 75(4) ("The submissions on appeal shall contain the reasons of fact and law upon which the appeal is based together with all supporting documents. The appellant may not raise any matters of fact or law during the hearing which are not already set out in the submissions on appeal.")

reasons. The Defence can start its work only when the decisions by the OCIJ are communicated.

2. Extension of time limits not an adequate remedy

26. The fact that there exists a possibility to ask for an extension of the time limit to file an appeal pursuant to Rule 75(3) does not undermine our argument. Under the circumstances as described, the possibility of asking for an extension of the time limit is not an adequate remedy.

27. First, it should be noted that the case law of the PTC has made it clear that the Defence cannot ask for an extension of the time limits *in advance*. In its Decision dated 4 September 2009 in the case of Charged Person Ieng Thirith the PTC declared that an Application by the OCP for an extension of time to respond to the Charged Person's appeal brief was premature, as the time limit for the Co-Prosecutors to respond 'has not started to run'.[12] This means in our case that the Defence cannot apply to the PTC for an extension of the time limit to file its appeals *before* the actual communication by the OCIJ of the possible denials of its investigative requests.

28. Second, the Defence cannot at this point in time proceed under the assumption that such extensions will be granted at the later stage. Obviously, requests for extension may be denied by the PTC for many reasons. Moreover, even if the request is granted, the procedure for considering the request will take at least several days, possibly even weeks. During this time of uncertainty, the Defence will have no choice but to continue its time-consuming drafting of the appeal in question.

29. In short, these considerations lead to the conclusion that the possibility of asking for an extension of the time limit is not an adequate remedy under the circumstances as envisaged in this request. The Defence would thus be precluded from filing substantive appeals on certain or all decisions it would like to appeal.

[12] Document No. D130/9/5, Decision on Co-Prosecutors' Application for Extension of Time Limit to File their Response, 4 September 2009, para. 3.

3. The possibility of deciding on outstanding requests at time of Rule 66(2) Order

30. As mentioned, the Rules provide the possibility to decide on the currently outstanding requests concurrently with the decisions on the *additional* requests that are filed after receiving the Rule 66 notice, in the Rule 66(2) Order.[13] At such a stage the decision can only amount to "rejecting" such requests, as per the wording of Rule 66(2). While it is true that such an approach would afford the Defence slightly more time and leeway than the approach in which these decisions are communicated concurrently with the Rule 66 notice (or shortly before it), such an approach would still be highly problematic.

31. First, it would leave the Defence unaware of the outcome of its investigative requests until an extremely late stage of the proceedings.[14] This is undesirable in and of itself, especially with a view to the effective participation of the Defence at the investigative stage and its ability to effectively influence the outcome of the proceedings. Moreover, such a delay would be *prima facie* unjustifiable. After all, in case the OCIJ is inclined to rule on the requests only at the time of the Rule 66(2) order, the decision is by definition a *negative* one. There is no compelling reason why such a negative decision on our investigative requests cannot be communicated to the Defence at an earlier stage.[15] In other words, as the OCIJ knows beforehand that it will not grant certain requests, it should communicate such decisions at the earliest feasible moment.[16] Such an approach is imperative as any such decision, including the timing of it, will impact on the ability of the Defence to effectively influence the outcome of the proceedings.

32. Second, it is likely that the Defence will want to reconsider its strategy and/or make substantive decisions *after* any rejection of an investigative request by the OCIJ. To be sure, filing an appeal to such a decision is but one of the steps that the Defence can take. The Defence may also decide to file an amended investigative request, or an additional investigative request, or a request that is not investigative in nature but rather procedural. Of course, such Defence decisions would be influenced by the wording and reasoning of any OCIJ rejection. However, should the OCIJ communicate the rejection

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[13] Rule 66(2).
[14] Effectively, the Defence will be unaware of the contents of the decision until the filing of the Rule 66 *notice*, as after this notice the OCIJ can only 'reject' these requests, not grant them.
[15] To be sure, time pressures do not provide such a compelling reason, as the deadlines that the OCIJ works under are self-imposed.
[16] But such a communication should not, of course, take place shortly before or concurrently with the Rule 66 notice, as per the rationale that can be found in the remainder of this request.

only at the time of the Rule 66(2) order, the Defence would be precluded from even considering these additional steps; there would no longer be room for any additional or amended requests. The Defence would thus be precluded from an active participation in the proceedings at the investigative stage, resulting in a violation of our client's right to a fair trial.

33. Third, in case the OCIJ does decide on several investigative requests simultaneously at the time of the Rule 66(2) order, the Defence would again be confronted with the practical impossibility of filing numerous substantive appeals in a very short time period, as described above in paragraphs 23-29.

B. The fifteen day period of Rule 66(1)

34. A further complication for the Defence is the 15 day period in which requests for additional investigations must be filed pursuant to Rule 66. The Defence needs to have familiarized itself with *all* the evidence in the case file in order to be able to determine whether it wants to have additional investigations conducted by the OCIJ.

35. As stated, the legal system that is in place would allow the OCIJ to provide the Defence with all or some of its investigative results (including evidence obtained as a result of earlier requests for investigative action) *only at* the filing of the notice pursuant to Rule 66 (or shortly before it). In that scenario, the Defence would have no more than 15 days to request additional investigations based on such 'fresh' evidence.

36. Such an approach would thus saddle the Defence with the impossible task of studying a potentially large body of new evidence within the same 15 days during which it must draft and file new investigative requests based on this new evidence. This would be impossible in practice.[17] Thus, the Defence would be precluded from effectively participating in the proceedings, as it would prove impossible to formulate meaningful requests with regard to issues that are added to the case file at such a late stage.

[17] This would *a fortiori* be the case should the Defence need to file a certain number of (time-consuming) appeals to rejected investigative requests as well.

C. The uncertain end date

37. Under the current system, the Defence has no means of determining when exactly the notice, as provided for by Rule 66, may be issued by the Co-investigating judges.[18] This uncertainty may result in serious complications for the work of the Defence. The rights of the defence may be harmed under the current system even if the OCIJ does release its latest investigatory findings to the Defence well before the notice pursuant to Rule 66.

38. The Defence strives to file all requests for investigative action in a timely manner. However, due to the sheer size of the case file and the limited resources of the Defence, we cannot predict when certain requests can and will be filed. Thus, at the time of filing of the notice the Defence may still be drafting or contemplating additional requests.

39. Moreover, it is certain that more investigative results will be placed on the case file by the OCIJ in the coming months. Recent weeks have seen a steady increase in investigative results being added. It is not at all unlikely that the Defence will want to base additional requests for investigative action on the information contained in these documents.

40. Given these realities, it is almost impossible for the Defence to plan its activities meaningfully in the coming months. It simply does not know what sort of evidence is still forthcoming and to what extent it will need to prepare and file new investigative requests.

41. The 15 day period does not provide the Defence with a meaningful opportunity to draft or finalize additional requests, on account of the sheer size of the case file as it exists today and the new evidence that is being added constantly. The other activities that the Defence will need to undertake in that 15 day period (as discussed above, the possible drafting and filing of appeals and the filing of additional requests based on the most recent evidence) only exacerbate this problem.

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[18] This is, of course, inherent in the implemented system. It is precisely this notice that should effectively put the Defence 'on notice' of the pending conclusion of the investigation. As such, the Defence is requesting, substantively, a form of *pre-notification*, as the Defence can already foresee that the system, as it currently exists, could endanger the rights of the Charged Person. The (informal) understanding on the side of the Defence that the OCIJ "aims" to file the Rule 66 Notice in "December 2009" does not suffice for the purpose of planning the Defence activities. Not only is this time frame not specific enough, the target date may have shifted in recent times, unbeknownst to the Defence.

D. Impossibility of timely translation

42. The required translation from English into Khmer (or Khmer into English) of every document the Defence wishes to file seriously complicates matters for the Defence. Within 15 days of the Rule 66 notice the translators must translate all the requests for additional investigative action that may be filed by all of the defence teams. Moreover, if the decisions of the outstanding requests are communicated concurrently with the notification (or shortly before it) the translators will need to translate all the appeals that may be filed by all of the defence teams as well, in a 30 day period following that notice. It should also be noted that the translators can start their translations only when the originals are finalized, which will take at least several additional days, resulting in extra loss of time for the translators.

43. There is no way of predicting how many appeals and how many additional requests will be filed by all the defence teams in total. But it is certain that if this number is more than a mere handful, it will be impossible for the pool of translators to perform such a task within the given time frame. This reality only further underlines the need for timely communications of decisions on investigative requests by the OCIJ and of the new investigative results.

E. Background of the system as adopted in the Internal Rules

44. When considering this request, it is informative to observe that the system as adopted in Rule 66 (the 15 day time period in which additional requests can be filed after the notice of the end of the investigation) is based on an interpretation of the Cambodian Code of Criminal Procedure ("CCCP"). Article 246 of the CCCP provides that the *prosecutor* has 15 days to file additional investigative requests.[19] The drafters of the Internal Rules, in an apparent attempt to establish a legal system that affords equal rights to the defence, transformed this particular provision into the system as can be found in Rule 66, in which the defence is afforded the same rights as the prosecutor.

45. It is clear that the system as envisaged by the CCCP was not designed for investigations the type and size of the one now targeting Nuon Chea. While in ordinary criminal

[19] The 15 day period for the prosecutor is not mentioned explicitly in Article 246 of the CCCP, but flows logically from the wording and structure of this Article.

proceedings in Cambodia the 15 day period may well suffice, in the current proceedings, with its vast dimensions and idiosyncratic characteristics, this time frame will prove to be too short.

46. Significantly, the system as provided by Article 246 of the Cambodian Code of Criminal Procedure seems to assume that at the time of the notification of the termination of the procedure, a decision *has been reached* by the Investigating Judge on *all prior* requests by the prosecutor.[20] This conclusion flows from the observation that article 246 of the CCCP does not contain a provision equivalent to Rule 66(2), second full sentence.[21]

47. This observation offers further support for the position that decisions on prior requests should be made timely, in order to provide the Defence with a meaningful opportunity to respond appropriately to the results of these requests (by either filing appeals, requesting follow-up action, or accepting the outcomes).

F. Systemic considerations

48. The improvements to the system that the Defence suggests are perfectly in line with the investigative system that the drafters of the internal rules must have had in mind, and arguably even more so than the structure that is currently in place.

49. The proceedings before the ECCC, as reflected by the Internal Rules, envision a broad and comprehensive investigatory phase (rule 55-70), followed by a trial phase in which, arguably, the investigation is supposed to have been mostly completed.[22] While it is true that the Trial Chamber may order additional investigations,[23] it is equally clear that the system as adopted strongly favors the completion of the investigation before the trial phase. The most obvious support for this proposition flows from the very name of your office.

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[20] Only the prosecutor files these investigative requests. *See* Article 132 of the CCCP.
[21] *See* Rule 66(2) ("Such order shall also reject any remaining requests, filed earlier in the investigation, which had not yet been ruled upon by the Co-Investigating Judges.")
[22] Internal Rules, Rules 55-70.
[23] Internal Rule 93.

50. This conclusion flows also from the functional set-up of the OCIJ and the Trial Chamber. It is undisputed that the OCIJ is the section of the ECCC that is best suited to conduct the type of investigations it has been undertaking for years now. The OCIJ has established a working method and has gained considerable expertise in conducting investigations.[24] The Trial Chamber, on the other hand, lacks this investigative experience. Any investigation will therefore be dealt with most *efficiently* by the OCIJ, rather than by (a member of) the Trial Chamber.

51. If the investigation as conducted by your office is later, at the trial stage, deemed to not have been comprehensive, it may then well come to pass that (a member or members of) the Trial Chamber will need to supervise a follow-up investigation, rather than the OCIJ. As stated, the Trial Chamber does not have relevant experience in these matters. The investigation will thus likely prove to be more time-consuming, and will possibly be of a lower investigative quality. For reasons of procedural economy, and considering the requirements of a fair trial, this is not desirable.

52. Perhaps the Trial Chamber will try to 'refer' certain questions back to the OCIJ. It is not entirely clear whether Rule 93 confers such a power upon the Trial Chamber.[25] But even if the Trial Chamber would follow this path and refers back certain investigations to the OCIJ, it is highly likely that this office will have been downsized considerably after the filing of the closing order. The capacity of the OCIJ to conduct investigations will have been diminished accordingly. A large chunk of investigative expertise with regard to investigations in present-day Cambodian society will be lost by the downsizing, possibly forever.[26] This consideration forms an additional argument to conduct as many investigations as possible during the pre-trial investigation.[27]

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[24] However opaque this method may be to the defence, see e.g. Ieng Sary's Third Request for Investigative Action, dated 21 May 2009, D171.

[25] This reading of Rule 93 cannot be presumed in advance. *N.B.* The Defence takes no position on this issue at this time.

[26] It is not unlikely that both the investigators and legal officers will move on to other positions in other destinations.

[27] Alternatively, in a scenario in which the investigations for the announced Case 003 are underway at the time of such a request by the Trial Chamber, and the OCIJ is thus at full strength investigating the facts in that case, the OCIJ will most likely not have the adequate resources to assign manpower to the newly requested investigations for Case 002.

53. A final reason for conducting as many investigations as possible in the pre-trial phase can be found in the impact that an inadequate initial investigation will have on the actual trial proceedings. First, even the mere act of filing requests for investigations by the Defence, on the basis of which the Trial Chamber will need to deliberate and decide, will be disruptive of the trial proceedings as such. Second, the granting of certain requests will inevitably lead to (possibly long) delays in the trial proceedings. It is thus for reasons of procedural economy desirable to have the initial investigation be as comprehensive as possible.

54. These observations make clear that the system was designed with a full and comprehensive preliminary investigation in mind. This also means that the investigative requests of the Defence, both the ones already formulated and the ones that may be formulated in the future, must be dealt with in a thorough and comprehensive manner in the pre-trial stage, in order to avoid further delays at the trial stage.

V. CONCLUSION

55. The Defence is apprehensive of the serious potential shortcomings surrounding (the notification of) the end of the investigation, which would lead to a violation of the fair trial rights of our client. The aim of this request is to preemptively redress these shortcomings.

56. Should the OCIJ plan to pursue the remainder of the investigation along the lines of our suggestions, the Defence seeks timely confirmation of such intent. The Defence notes that it is not, in this request, asking for time-consuming investigative actions, but rather for a relatively straightforward reply to some specific proposals.

57. For that reason, and with a view to the very subject matter of this request (the time-pressures for the Defence), the Defence requests a response within two weeks of the receipt of this letter by your office. Inevitably, your answers will have a major impact on the planning of our activities in the coming months.

VI. REQUEST

58. Accordingly, in order to ensure the provision of "adequate time and facilities" to effectively "influence the outcome of the proceedings", the Defence hereby requests the OCIJ to:

a. inform the parties as soon as possible, with at least **two months** notice before the filing of the actual notice, of the exact date on which the OCIJ plans to file the notice pursuant to Rule 66;

b. add all new results of the investigation to the case file at least **two months** before the filing of the notice pursuant to Rule 66. Such a timeframe is indispensable in order to safeguard the effective participation by the Defence in the proceedings;

c. decide upon all outstanding investigative requests at least **two months** before the filing of the notice pursuant to Rule 66. Such a timeframe is indispensable in order to safeguard the effective participation by the Defence in the proceedings; and

d. respond to this request within **two weeks** of its filing.

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