

**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:** 2 October 2013



**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:**

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**CO-PROSECUTORS' RESPONSE TO  
KHIEU SAMPHAN'S OBJECTION TO THE  
ADMISSIBILITY OF THE CO-PROSECUTORS' CLOSING TRIAL BRIEF**

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## RESPONSE

1. The Co-Prosecutors submit this response (“Response”) to Accused Khieu Samphan’s *Request for Declaration of Inadmissibility of the Prosecution Closing Trial Brief* (“Request”),<sup>1</sup> supplemented by an email titled “*Précision sur le format*” circulated by the international counsel for Khieu Samphan on 2 October 2013. For the reasons stated below, the Co-Prosecutors submit that the Request is wholly without merit, lacks any basis in fact, and should be summarily dismissed by the Trial Chamber (“Chamber”).
2. In view of the ECCC official holidays for the Pchum Ben period and the allocation of limited translation resources to the closing oral submissions in Case 002, it has not been possible to translate this Response into Khmer; accordingly, the Co-Prosecutor requests leave, pursuant to Article 7.2 of the relevant Practice Direction,<sup>2</sup> to file an English version with the Khmer version to follow at the first opportunity.
3. In sum, the Defence alleges that the Co-Prosecutors' re-filed brief amounts to 226 pages, in excess of the limit prescribed by the Chamber;<sup>3</sup> uses an incorrect font size;<sup>4</sup> uses endnotes for the purposes of argumentation and quotes in endnotes exceeding two lines;<sup>5</sup> and includes annexed chronologies that amount to extensions of legal argument,<sup>6</sup> effectively "doubling" the number of pages permitted by the Chamber.<sup>7</sup> The Defence also requests delay of the closing oral statements in Case 002/01 until a French translation of the Co-Prosecutor’s Closing Brief becomes available, as Khieu Samphan “does not speak English.”<sup>8</sup>
4. In fact, the Co-Prosecutors' original brief amounted to 219 pages *excluding* the general and detailed Tables of Contents, while the re-filed brief amounted to just over 225 pages, *including* both general and detailed Tables of Contents. In the practice of the Chamber, Tables of Contents are not included in page counts, as demonstrated by the closing brief of the Defence for Nuon Chea.

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<sup>1</sup> **E295/7** Requête en déclaration d’irrecevabilité du mémoire final de l’Accusation, 1 October 2013.

<sup>2</sup> Practice Direction ECCC/2007/1/Rev.8.

<sup>3</sup> **E295/7** *Ibid.* at paras. 3-4, 7.

<sup>4</sup> **E295/7** *Ibid.* at paras. 5-6.

<sup>5</sup> **E295/7** *Ibid.* at para. 11.

<sup>6</sup> **E295/7** *Ibid.* at paras. 10-11.

<sup>7</sup> **E295/7** *Ibid.* at para. 12.

<sup>8</sup> **E295/7** *Ibid.* at para. 16.

5. The font size is uniformly set at 12 point, Times New Roman font, with the sole exception of indented block quotes in the body text, which are set at 11 point font to clearly differentiate these from factual and legal submissions, as has been the Co-Prosecutors' practice in numerous prior filings, without complaint from any Party. This enhances the transparency of written pleadings but, by virtue of indentation, does not correlate to an inclusion of extra text beyond the limits prescribed by the Chamber.
6. The Chamber expressly approved the use of endnotes not included in page limits, rather than footnotes, in closing trial briefs. While in very few instances, quotes contained in the Co-Prosecutors' endnotes may exceed two full lines of text by a small margin, this was due to the impracticality of editing down the quote any further while retaining any sense of the relevance of the quote to the assertion it supports, and, the Co-Prosecutors submit, respects the object and purpose of the Chamber's directions.
7. The Chamber accepted the use of annexes in Case 001, and the annexed chronologies relevant to the Accused do not form part of the Co-Prosecutors' legal argument. Rather, as specified in the Co-Prosecutors' brief, they are "factual chronologies" that transparently set out the evidentiary sources for each fact and are intended simply to assist the Chamber and the Parties.
8. Finally, the decision of the Chamber to allow filing in English only is longstanding, and the Defence's protests untimely. Moreover, audiovisual evidence admitted at trial unequivocally demonstrates that Khieu Samphan reads, speaks and understands English fluently, contrary to the assertions of the Defence.<sup>9</sup> During a press conference in 1998, Khieu Samphan read a political statement in fluent English.<sup>10</sup> Later, an English-speaking journalist asked him what he had to say to those who called for trials of people like him and Nuon Chea, and those who lost their families under CPK rule. He responded in fluent English using sophisticated phrases such as, "let bygones be bygones is the best solution for our country, because it's the only way to reach national reconciliation." In response to another question (as to whether the Khmer Rouge programme was a failure), he stated, "[A]s we know, the Royal Government is [...] spending all its efforts to solve this problem; the problem relative to our national

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<sup>9</sup> **E295/7** *Ibid.* at para. 16.

<sup>10</sup> **E3/4058** Nuon Chea and Khieu Samphan Press Conference (V00172408-V00172408).

integrity [...].”<sup>11</sup> There is no evidence that his linguistic capabilities in English have diminished in the slightest to date.

9. The Co-Prosecutors include, as an annex, two screen-captured images of the page of their Closing Brief to which Mr Vercken takes exception in his email titled “*Précision sur the format.*” These images demonstrate beyond any doubt that the line spacing on the page is set to 1.5 lines precisely, and the margin size to 2.5 cm as prescribed by the Chamber. On closer analysis, there would appear to be a simply explanation for Mr Vercken’s misplaced concerns. It is most likely that the document into which he copied the excerpts of the Co-Prosecutors’ Closing Brief was set to the default “Letter” rather than “A4” size, and the margins set to the default 2.54 cm rather than 2.5 cm as prescribed by the Chamber. The use of incorrect default settings would account for the reduced number of lines per page to which Mr Vercken refers in his email correspondence with the Parties.
10. For these reasons, the Co-Prosecutors request that the Chamber dismiss the Request in full.

Respectfully submitted,

Date	Name	Place	Signature
2 October 2013	CHEA Leang Co-Prosecutor	Phnom Penh	
	William SMITH Deputy Co-Prosecutor		

<sup>11</sup> **E3/4058** *Ibid.*, from 00.10.55.