

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

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**CO-PROSECUTORS' RESPONSE TO NUON CHEA'S REQUEST FOR ADDITIONAL  
TIME AND PAGE LIMITS FOR HIS APPEAL BRIEF**

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## I. INTRODUCTION

1. The Co-Prosecutors oppose Nuon Chea's request for an approximately 430% extension of time and 3200% extension of pages for his appeal brief.<sup>1</sup> Like Khieu Samphan,<sup>2</sup> Nuon Chea fails to justify the extraordinary extensions that he seeks. While the Co-Prosecutors rely on their submissions in response to Khieu Samphan's request,<sup>3</sup> this response is necessary because of the numerous misleading statements made by Nuon Chea.

## II. PROCEDURAL HISTORY

2. The Case 002/02 Trial Judgment was issued in summary form on 16 November 2018.<sup>4</sup> Therein the Trial Chamber set out its legal findings on the CPK policies and the charged crimes relating to cooperatives and worksites; security centres and execution sites; the targeting of the Cham, the Vietnamese, Buddhists, and former Khmer Republic officials; and the regulation of marriage. The Trial Chamber indicated which crimes it had found proven beyond reasonable doubt and those for which it had entered acquittals.<sup>5</sup> The Chamber also explained the modes of liability under which Nuon Chea and Khieu Samphan were found responsible and those it had not considered proven to the requisite standard.<sup>6</sup>
3. On 28 March 2019, the Trial Chamber provided its full reasoned judgment.<sup>7</sup> On 3 April 2019, Nuon Chea filed his request for 150 additional days (180 in total) and 70 extra pages (100 in total) to file his notice of appeal,<sup>8</sup> indicating that this was only his first request for time and page extensions for the notice of appeal.<sup>9</sup> On the same day, Khieu Samphan requested a total of 240 days and 100 pages in French to file his notice of appeal.<sup>10</sup>

<sup>1</sup> **F47** Nuon Chea's First Request for an Extension of Time and Page Limits for Filing his Appeal Brief Against the Trial Judgment in Case 002/02, 23 July 2019 ("Nuon Chea Extension Request").

<sup>2</sup> See **F45/2** Co-Prosecutors Response to Khieu Samphan's Request for Additional Time and Page Limits for Appellate Briefs, 22 July 2019 ("OCP Response to Khieu Samphan's Appeal Brief Requests") paras 6-16, 21.

<sup>3</sup> **F45/2** OCP Response to Khieu Samphan's Appeal Brief Requests.

<sup>4</sup> Case 002/02 Summary of Trial Judgment, 16 November 2018 ("Trial Judgment Summary").

<sup>5</sup> Trial Judgment Summary, pp. 5-19, 29-31.

<sup>6</sup> Trial Judgment Summary, pp. 19-27.

<sup>7</sup> **E465** Case 002/02 Trial Judgment, 28 March 2019.

<sup>8</sup> **F40/1.1** Nuon Chea's Urgent First Request for an Extension of Time and Page Limits for Filing his Notice of Appeal Against the Trial Judgment in Case 002/02, 3 April 2019 ("Nuon Chea Request for Notice of Appeal Extension") para. 1.

<sup>9</sup> **F40/1.1** Nuon Chea Request for Notice of Appeal Extension, para. 35.

<sup>10</sup> **F39/1.1** Demande de la Défense de KHIEU Samphân aux fins d'extension du délai et du nombre de pages de sa déclaration d'appel, 3 April 2019, para. 42.

4. On 26 April 2019, the Supreme Court Chamber granted the Parties an extension of two months and increased the page limits from 30 to 60 pages for the notice of appeal.<sup>11</sup> On 1 July 2019, Nuon Chea filed his notice of appeal alleging 351 grounds of appeal and 24 appealable decisions.<sup>12</sup> The same day, Khieu Samphan filed his notice of appeal<sup>13</sup> purportedly containing 1,824 grounds of appeal and 355 appealable decisions.<sup>14</sup>
5. On 10 July 2019, Khieu Samphan requested a total of 10.5 months and 950 pages for his appeal brief.<sup>15</sup> The Co-Prosecutors opposed this request on 22 July 2019, on the basis that the time and page extensions requested were unprecedented and unwarranted.<sup>16</sup> On the same day that the Co-Prosecutors' response to Khieu Samphan's request was due, Nuon Chea filed what he characterised as his "first" request for an extension of time and pages, seeking a total of 10.5 months and 1,000 pages for his appeal brief.<sup>17</sup>

### III. RESPONSE

#### *(i) Nuon Chea misconstrues the standard of review on appeal*

6. Contrary to Nuon Chea's claim that the standard of appellate review at the ECCC supports his excessive requests,<sup>18</sup> the standard of appellate review is no different in Case 002/02 than in previous cases, as exemplified by the fact that Nuon Chea supports his contention by citing the Case 001 Appeal Judgment.<sup>19</sup> Thus, there is nothing in the practice of the ECCC to compel the conclusion that Nuon Chea's extraordinary extension requests are justified based on the standard of appellate review. The Co-Prosecutors agree with Nuon Chea that the standard of review "means that an appealing party must be able to formulate each ground of appeal and provide sufficient information to assist the Chamber in its review".<sup>20</sup> However, this is axiomatic as to what an effective appeal should be and not an argument that supports his unprecedented requests.

<sup>11</sup> F43 Decision on Nuon Chea and Khieu Samphan's Requests for Extensions of Time and Page Limits on Notices of Appeal, 26 April 2019 ("NoA Extension Decision") para. 11.

<sup>12</sup> E465/3/1 Nuon Chea's Notice of Appeal against the Trial Judgment in Case 002/02, 1 July 2019 ("Nuon Chea's Notice of Appeal"); F47 Nuon Chea Extension Request, para. 29.

<sup>13</sup> E465/4/1 Déclaration d'appel de KHIEU Samphan (002/02), 1 July 2019.

<sup>14</sup> F45 Demande de la Défense de KHIEU Samphan aux fins d'extension du délai et du nombre de pages de son mémoire d'appel, 10 July 2019 ("Khieu Samphan's Appeal Brief Extensions Request"), para. 9.

<sup>15</sup> F45 Khieu Samphan's Appeal Brief Extensions Request, para. 19.

<sup>16</sup> F45/2 OCP Response to Khieu Samphan's Appeal Brief Requests.

<sup>17</sup> F47 Nuon Chea Extension Request, para. 1.

<sup>18</sup> F47 Nuon Chea Extension Request, para. 42.

<sup>19</sup> F47 Nuon Chea Extension Request, para. 42.

<sup>20</sup> F47 Nuon Chea Extension Request, para. 43.

7. Nuon Chea also incorrectly points to the Supreme Court Chamber's factual analysis and hearing of additional evidence in Case 002/01 to suggest that he "needs a considerable extension" to "make a compelling argument and satisfy the standard of review of the Chamber".<sup>21</sup> Nuon Chea thus implies that the Supreme Court Chamber is unable to fulfil its role unless he makes vast submissions on his appeal grounds. This is inaccurate and contradictory given that he continues to claim he had a lack of time and space for his Case 002/01 appeal<sup>22</sup> while also stating that the Supreme Court Chamber "after careful analysis of the facts was [...] able to enter a series of acquittals" in Case 002/01.<sup>23</sup>

***(ii) Nuon Chea's excessive requests do not represent "adequate time" to prepare his Defence and are inconsistent with international practice.***

8. While Nuon Chea correctly asserts that he must have adequate time and facilities to prepare his defence, he strains credibility when he characterizes his request for 10.5 months and 1,000 pages for his appeal brief as "modest",<sup>24</sup> "the minimum necessary"<sup>25</sup> and "radically synthesised".<sup>26</sup> First, Nuon Chea relies on the International Residual Mechanism for Criminal Tribunals ("MICT") Appeals Chamber's holdings in the *Karadžić* and *Mladić* cases that recognize the right to adequate time and space to submit meaningful appeal briefs.<sup>27</sup> However, the actual extensions granted in these cases were incomparable to those in Nuon Chea's request. *Karadžić* and *Mladić* were given approximately 40% (135 days) of the time and 25% (250 pages) of the pages requested by Nuon Chea.<sup>28</sup> Notably, these were single accused cases each with a longer trial judgment than in the present case,<sup>29</sup> making Nuon Chea's request even more out of line with the international standard for comparable cases.
9. Second, Nuon Chea's statement of the time provided for appeal briefs in *Karadžić* and *Mladić* is misleading.<sup>30</sup> Nuon Chea disregards that the Appeals Chamber in *Karadžić* and *Mladić* granted the parties 135 days to file their appeal briefs.<sup>31</sup> Instead, he counts the time from the issuance of the trial judgment to the filing of the appeal briefs, thereby including the period of

<sup>21</sup> F47 Nuon Chea Extension Request, para. 44.

<sup>22</sup> F47 Nuon Chea Extension Request, para. 39.

<sup>23</sup> F47 Nuon Chea Extension Request, para. 44.

<sup>24</sup> F47 Nuon Chea Extension Request, para. 36.

<sup>25</sup> F47 Nuon Chea Extension Request, para. 35.

<sup>26</sup> F47 Nuon Chea Extension Request, para. 38.

<sup>27</sup> F47 Nuon Chea Extension Request, para. 16, fn. 27.

<sup>28</sup> F45/2 OCP Response to Khieu Samphan's Appeal Brief Requests, paras 15-16.

<sup>29</sup> F45/2 OCP Response to Khieu Samphan's Appeal Brief Requests, para. 15.

<sup>30</sup> F47 Nuon Chea Extension Request, para. 45.

<sup>31</sup> See, F45/2 OCP Response to Khieu Samphan Requests, para. 16.

time granted for the parties to file their notices of appeal, concluding that the defence in these cases had “more than eight months to file their appeal briefs”.<sup>32</sup>

10. Were Nuon Chea consistent in his argument, the 10.5 months he is requesting would have to be shortened by three months given the extension he was granted by the Supreme Court Chamber to file his notice of appeal.<sup>33</sup> Further, this calculus would also need to take into consideration the additional four months that the Nuon Chea Defence had to prepare for the appeals process after the summary judgment was issued on 16 November 2018.<sup>34</sup>
11. Third, Nuon Chea makes an inaccurate claim that the *Karadžić* and *Mladić* cases are substantially smaller than Case 002/02. He states the *Karadžić* and *Mladić* cases “have dealt with **limited subject matter** when compared to the geographical and temporal scope of Case 002/02”.<sup>35</sup> A proper assessment of these cases reveals the contrary. Both the *Karadžić* and *Mladić* Trial Judgments covered four separate and distinct joint criminal enterprises (“JCE”):<sup>36</sup> (i) an overarching JCE in Bosnia-Herzegovina to permanently remove Bosnian Muslims and Bosnian Croats from Bosnian-Serb claimed territory;<sup>37</sup> (ii) a JCE of establishing and carrying out a campaign of sniping and shelling to spread terror among the civilian population in Sarajevo;<sup>38</sup> (iii) a JCE to take UN personnel hostage to compel NATO not to conduct air strikes against Bosnian Serb military targets;<sup>39</sup> and (iv) a JCE to commit genocide against Bosnian Muslims in Srebrenica by killing the men and boys and forcibly removing the women, young children, and elderly.<sup>40</sup>
12. In terms of time and geography, the *Karadžić* Judgment covered a temporal period of October 1991 through 30 November 1995<sup>41</sup> and included Sarajevo, Srebrenica, and 20 municipalities in the Autonomous Region of Krajina and Eastern Bosnia-Herzegovina.<sup>42</sup> And the *Mladić* Judgment spanned 12 May 1992 through 30 November 1995<sup>43</sup> and included Sarajevo, Srebrenica, Goražde, and the Bosnia-Herzegovina municipalities of Banja Luka, Bijeljina,

<sup>32</sup> F47 Nuon Chea Extension Request, para. 45.

<sup>33</sup> See, F43 NoA Extension Decision, para. 11.

<sup>34</sup> See, F41 Co-Prosecutors’ Response to Defence Requests for Additional Time and Page Limits for Notice of Appeal, 11 April 2019, paras 9-11 (“OCP Response to Defence Requests for NoA Extension”).

<sup>35</sup> F47 Nuon Chea Extension Request, para. 47 (original emphasis).

<sup>36</sup> *Prosecutor v Radovan Karadžić*, IT-95-5/18-T, Judgement, 24 March 2016 (“*Karadžić* Trial Judgment”) paras 6046-49; *Prosecutor v Ratko Mladić*, IT-09-92-T, Judgement, 22 November 2017 (“*Mladić* Trial Judgment”) paras 5188-92.

<sup>37</sup> *Karadžić* Trial Judgment, para. 5996; *Mladić* Trial Judgment, paras 4612, 4688.

<sup>38</sup> *Karadžić* Trial Judgment, para. 5997; *Mladić* Trial Judgment, paras 4893, 4921.

<sup>39</sup> *Karadžić* Trial Judgment, para. 5999; *Mladić* Trial Judgment, paras 5156, 5163.

<sup>40</sup> *Karadžić* Trial Judgment, para. 5998; *Mladić* Trial Judgment, paras 4922, 5130-31.

<sup>41</sup> *Karadžić* Trial Judgment, para. 5996.

<sup>42</sup> *Prosecutor v Radovan Karadžić*, MICT-13-55-A, Judgement, 20 March 2019, para. 446.

<sup>43</sup> *Mladić* Trial Judgment, para. 5192.

Foča, Ilidža, Kalinovik, Ključ, Kotor Varoš, Novi Grad, Pale, Prijedor, Rogatica, Sanski Most, Sokolac, and Vlasenica.<sup>44</sup> Thus Nuon Chea's characterisation of these cases as substantively, temporally, and geographically "limited" by comparison to Case 002/2 is not correct.

13. Finally, the suggestion that 1,000 pages will make "a coherent appeal brief [that] will assist the Chamber in its decision-making, [and] facilitate the overall conduct of appeal proceedings"<sup>45</sup> is erroneous. Granting 1,000 pages to each Defence team would result in appeal briefs totalling almost the same number of pages as the Trial Judgment. The extra time required to produce these 1,000 pages would significantly delay the point at which the Supreme Court Chamber could commence deliberations on the submissions as well as exponentially increase the number of pages it would be required to review, once translated.

***(iii) Nuon Chea's comparison of the scope of his appeal in Case 002/01 and Case 002/02 is misleading***

14. To justify his excessive extension request, Nuon Chea states that he has identified "at least 543 errors" in the Case 002/02 Trial Judgment by comparison to "223 appeal grounds" in Case 002/01.<sup>46</sup> He is, however, adding sub-grounds to one total and not to the other. Viewed accurately, Nuon Chea alleges 351 grounds in Case 002/02<sup>47</sup> compared with 223 grounds alleged in Case 002/01.<sup>48</sup>
15. Similarly, Nuon Chea skews the workload comparison between the two appeals by noting the 24 decisions he is putting before the Supreme Court Chamber for review in Case 002/02<sup>49</sup> while failing to mention that in Case 002/01 he argued "16 distinct decisions of the Trial Chamber in addition to the Judgment, many of which involve numerous component oral decisions given over the course of the trial".<sup>50</sup> Consequently, Nuon Chea's suggestion that his appeal of 24 decisions in Case 002/02 would warrant 720 pages of submissions if interlocutory appeal were available<sup>51</sup> fails to take account of the Supreme Court Chamber's practice in Case 002/01. There, Nuon Chea had alleged 223 grounds of appeal and 16 interlocutory decisions and was granted 90 days and 270 pages in total.<sup>52</sup> Clearly, Nuon Chea's current calculations

<sup>44</sup> Mladić Trial Judgment, para. 4685.

<sup>45</sup> F47 Nuon Chea Extension Request, para. 19.

<sup>46</sup> F47 Nuon Chea Extension Request, para. 27.

<sup>47</sup> E465/3/1 Nuon Chea's Notice of Appeal.

<sup>48</sup> E313/1/1 Notice of Appeal Against the Judgment in Case 002/01, 29 September 2014.

<sup>49</sup> F47 Nuon Chea Extension Request, para. 27.

<sup>50</sup> F6 Second Request for Extension of Time and Page Limits for Filing Appeals Against the Trial Judgment in Case 002/01, 2 October 2014, para. 8.

<sup>51</sup> F47 Nuon Chea Extension Request, paras 29, 34.

<sup>52</sup> F9 Decision on Motions for Extension of Time and Page Limits for Appeal Briefs and Responses, 31 October 2014, paras 15, 17-18 ("Case 002/01 Decision on Extensions"); F13/2 Decision on Defence Motions for

do not warrant an extension of 10.5 months and 1,000 pages when compared with the Case 002/1 extensions granted.

***(iv) Nuon Chea's claims regarding the novelty and complexity of Case 002/02 are misleading***

16. While the Co-Prosecutors acknowledge the complexity of Case 002/02 and the novelty of issues addressed during the trial, some of the points raised by Nuon Chea as “having not previously been dealt with by an international criminal court or tribunal, let alone by the ECCC”<sup>53</sup> are not as he claims. For example, Nuon Chea includes the “definition of forced marriage” and “underlying acts that constituted a crime against humanity in 1975” as “novel legal issues”.<sup>54</sup> However, both relate to the definition of other inhumane acts,<sup>55</sup> something which has been addressed on numerous occasions at the ECCC and beyond.<sup>56</sup> Similarly, Nuon Chea's inclusion of “the legality of re-characterising facts during the deliberation phase without prior notice to the accused”<sup>57</sup> as a novel issue omits that the ECCC's Internal Rules and jurisprudence make clear that recharacterization may occur at any point in the proceedings and, consequently, that the parties were on notice of this possibility throughout the proceedings.<sup>58</sup>

***(v) Nuon Chea fails to properly weigh the need for judicial economy in determining time and page extensions on appeal***

17. To further justify his excessive extension requests, Nuon Chea misquotes the Supreme Court Chamber's holding that page limits “are to be tailored according to the needs of the parties”<sup>59</sup> by omitting the remainder of the Court's position that the parties' needs are required to be “*in balance with the tenets of judicial efficiency*”.<sup>60</sup>

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Extension of Pages to Appeal and Time to Respond, 11 December 2014 (“Case 002/01 Extension Decision”), paras 15-16.

<sup>53</sup> F47 Nuon Chea Extension Request, para. 40.

<sup>54</sup> F47 Nuon Chea Extension Request, para. 40.

<sup>55</sup> Nuon Chea's notice of appeal only includes underlying acts in relation to the crime of other inhumane acts. *See*, E465/3/1 Nuon Chea's Notice of Appeal, ground 50.

<sup>56</sup> *See*, F36 Case 002/01 Appeal Judgment, 23 November 2016 (“Case 002/01 Appeal Judgment”) paras 576-586, 589; *Prosecutor v Milomir Stakić*, IT-97-24-A, Judgement, 22 March 2006, paras 315-316.

<sup>57</sup> F47 Nuon Chea Extension Request, para. 40.

<sup>58</sup> Extraordinary Chambers in the Courts of Cambodia, Internal Rules (rev. 16 January 2015) (“Internal Rules”), rule 98(2); F36 Case 002/01 Appeal Judgment, para. 562; Case 001-E188 Judgement, 26 July 2010, paras 492-500; E100/6 Case 002/01 Decision on the Applicability of Joint Criminal Enterprise, 12 September 2011, paras 24-25.

<sup>59</sup> F47 Nuon Chea Extension Request, para. 15, *quoting* F13/2 Case 002/01 Extension Decision, para. 15.

<sup>60</sup> F13/2 Case 002/01 Extension Decision, para. 15 (emphasis added).

18. Even taking Nuon Chea's point that page limits are to be tailored to the parties needs and that extensions must turn on the proposed scope of the Defence's appeal,<sup>61</sup> his request is totally at odds with the extensions sought by Khieu Samphan. Specifically, Khieu Samphan raises 1,824 grounds of appeal and 355 allegedly appealable decisions, while Nuon Chea requests the same amount of time and even *more* pages to address 351 grounds of appeal and 24 allegedly appealable decisions. The time and pages requests are unreasonable in both instances, but the dissonance between the scope of each appeal and the similar extensions sought demonstrates, in particular, the unjustified nature of Nuon Chea's requests.
19. Moreover, following Nuon Chea's suggestion that it is "crucial that the Chamber defer to the Defence's own assessment of the time and space necessary to meaningfully exercise Nuon Chea's rights"<sup>62</sup> would lead to absurd results. Equally, for example, the Co-Prosecutors could insist that the Supreme Court Chamber defer to their need to have the combined total of pages and time granted to each Defence to have parity and fully respond to all issues being raised. This is not practical, however. Allowing parties to set their own deadlines would make a mockery of the process, circumventing the role of the Supreme Court Chamber and ensuring that justice is delayed, perhaps permanently.
20. Finally, Nuon Chea's claim that anything less than 1,000 pages will require him to drop appeal grounds "due to the sheer lack of space and time"<sup>63</sup> should not be used to hold the appeals process hostage to excessive requests. Notably, Nuon Chea goes on to assert that if anything other than his requests is granted, "the Defence may be forced to consider requesting additional resources to meet the deadline for filing of the appeal brief".<sup>64</sup> Given previous Defence filings acknowledging the size of the Nuon Chea Defence team,<sup>65</sup> and the fact that an additional national counsel has since been added,<sup>66</sup> Nuon Chea is seemingly preparing to have a trial-sized team for the appeal. This is in keeping with his extension requests of 10.5 months and 1,000 pages clearly designed to relitigate the trial, which is not the purpose of an appeal.

***(vi) Nuon Chea relies on irrelevant considerations to justify his extensions***

21. Nuon Chea's evocation of "budgetary considerations" and the "ECCC's Completion Plan" are irrelevant for the purposes of setting time and page limits.<sup>67</sup> There is no indication that either

<sup>61</sup> F47 Nuon Chea Extension Request, para. 28.

<sup>62</sup> F47 Nuon Chea Extension Request, para. 36.

<sup>63</sup> F47 Nuon Chea Extension Request, para. 39.

<sup>64</sup> F47 Nuon Chea Extension Request, para. 52.

<sup>65</sup> See F41 OCP Response to Defence Requests for NoA Extension, paras 9-11.

<sup>66</sup> See Press Statement by the Defence Support Section, 20 June 2019.

<sup>67</sup> F47 Nuon Chea Extension Request, para. 22.



of these issues are having, or will in future have, an impact on these appeal proceedings. Nuon Chea quotes from the Supreme Court Chamber's 2013 decision on the Trial Chamber's Case 002 severance to support his raising the spectre of potentially disrupting financial constraints.<sup>68</sup> However, the Supreme Court Chamber held in relation to the need to address the remaining charges in Case 002, that no "financial or administrative impediments exist in this respect".<sup>69</sup> Similarly, the ECCC Completion Plan on which Nuon Chea relies<sup>70</sup> noted on its front page that projections therein are "estimates" and "timelines do not reflect statutory requirements on when the different milestones will be reached".<sup>71</sup>

22. Additionally, Nuon Chea's contention that his Defence "has had far fewer opportunities than the Co-Prosecutors to set out its case"<sup>72</sup> is inaccurate. Nuon Chea only refers to the "introductory, supplementary, and final submissions in Case 002" to support this assertion.<sup>73</sup> He disregards that the Co-Prosecutors are statutorily required to file these documents;<sup>74</sup> that these documents relate to the investigation and not the trial process; and that he had an opportunity to respond to the Co-Prosecutors' Final Submission.<sup>75</sup> Contrary to his claim, Nuon Chea has had every opportunity to put forth his version of events throughout the proceedings. Most recently, his 551-page Closing Brief in Case 002/02 was a counternarrative of the evidence presented and heard before the Trial Chamber, affording Nuon Chea the chance to allege a vast "Manichean narrative" and suggest a revisionist tale of Cambodian history called the "crocodile".<sup>76</sup>

***(vii) Nuon Chea's request to file in one language is inappropriate given the extensions requested***

23. The Co-Prosecutors recognise that, as in Case 002/01,<sup>77</sup> it may be necessary to file appeal briefs in one language. However, the unreasonable nature of Nuon Chea's 10.5 month, 1,000-page request for his appeal brief is further exemplified by his projection that translation of such an enormous brief "would amount to 10 months of full-time work by ITU" [Interpretation and

<sup>68</sup> F47 Nuon Chea Extension Request, para. 22.

<sup>69</sup> E284/4/8 Decision on Immediate Appeals Against Trial Chamber's Second Decision on Severance of Case 002, 25 November 2013, para. 74.

<sup>70</sup> F47 Nuon Chea Extension Request, para. 23.

<sup>71</sup> ECCC Completion Plan (Revision 20), 31 March 2019, included as Attachment 2 to F47 Nuon Chea Extension Request.

<sup>72</sup> F47 Nuon Chea Extension Request, para. 24.

<sup>73</sup> F47 Nuon Chea Extension Request, para. 24.

<sup>74</sup> See Internal Rules, rules 53, 55(3), 66(5).

<sup>75</sup> See, e.g. D390/1/2/4 Decision on Ieng Sary's Appeal Against Co-Investigating Judges' Decision Refusing to Accept the Filing of Ieng Sary's Response to the Co-Prosecutors' Rule 66 Final Submission and Additional Observations, and Request for Stay of the Proceedings, 20 September 2010, paras 15-18.

<sup>76</sup> E457/6/3/1 Nuon Chea's Amended Closing Brief in Case 002/02, 28 September 2017.

<sup>77</sup> F9 Case 002/01 Decision on Extensions, paras 18-19.

Translation Unit] with the likelihood of “additional time at the end to merge, harmonise, and revise the completed translation”.<sup>78</sup> This would mean that the time for the Defence appeal briefs *alone* in Case 002/02 would be almost two years. Even, for argument’s sake, if the ITU could complete the translation in *half* the suggested time, it would still be approximately mid-October 2020 before just the Defence appeal briefs were complete.

**(viii) Conclusion**

24. The Co-Prosecutors reiterate that reasonable extensions for the appellate briefs are necessary in this case. As previously outlined, the Co-Prosecutors consider that a period of five months and 300 pages for each Defence team to file an appeal brief, in one language, is reasonable taking into consideration: (i) the larger size of Case 002/02 compared to Case 002/01 in terms of the type, scope, and number of crimes adjudicated; (ii) the period of three months and 210-270 pages allowed for the filing of Defence appeal briefs in Case 002/01 by virtue of extensions of 30 days and approximately 180-240 pages being granted; (iii) the practice of other international tribunals in similarly sized cases; (iv) the right to adequate time to prepare submissions; (v) the need for proceedings to be expeditious; and (vi) the interests of victims in seeing justice completed in a reasonable time.<sup>79</sup>
25. For the same reasons, and taking into consideration that the Co-Prosecutors will file their appeal brief within the applicable time and page limits, as well as the volume of issues that Nuon Chea and Khieu Samphan intend to appeal, the Co-Prosecutors request at least 70% of the combined total of pages and at least 50% of the combined time afforded to the Defence for the Co-Prosecutors’ response brief.<sup>80</sup> The Co-Prosecutors request that the deadline for filing their response, in one language, should be at least 45 days after the Defence briefs have been filed in Khmer, to respect the bi-lingual requirements of the Court and allow the national and international prosecutors sufficient time to coordinate their positions.

**IV. REQUESTED RELIEF**

26. Based on the foregoing, the Co-Prosecutors respectfully request the Supreme Court Chamber to: (i) deny the Nuon Chea request for 10.5 months and 1,000 pages for his appeal brief and grant a reasonable extension of 5 months and 300 pages, and (ii) grant the Co-Prosecutors 70%

<sup>78</sup> F47 Nuon Chea Extension Request, para. 50.

<sup>79</sup> F45/2 OCP Response to Khieu Samphan’s Appeal Brief Requests, para. 17.

<sup>80</sup> Therefore, if the Supreme Court Chamber were to grant each Defence team five months and 300 pages for their respective appeal brief (constituting ten months and 600 pages of combined appeal brief preparation), the Co-Prosecutors request five months and 420 pages to respond, with the deadline at least 45 days after the Khmer versions of both Defence briefs are filed.

of the combined total of pages and 50% of the combined time granted to both Defence teams, with the deadline for filing in one language falling no earlier than 45 days after the Khmer version of the Defence briefs have been notified.

Respectfully submitted,

Date	Name	Place	Signature
1 August 2019	CHEA Leang National Co-Prosecutor	Phnom Penh	
	William SMITH International Deputy Co-Prosecutor  for		
	Brenda J. HOLLIS Reserve International Co-Prosecutor		