

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

FILING DETAILS

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**NUON CHEA'S REQUEST REGARDING THE PAGE LIMIT, TIME LIMIT, AND
CONTENT OF HIS CLOSING BRIEF IN CASE 002/02**

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I. INTRODUCTION

1. Pursuant to Internal Rule 39 and Article 5.4 of the Practice Direction on Filing of Documents, the Co-Lawyers for Mr. Nuon Chea (the “Defence”) hereby request:
 - (a) an extension of the time limit to draft and file their closing brief from two months to three months, beginning to run from January 2017 at the earliest; and
 - (b) the affixation of a 600-page limit for said closing brief, inclusive of footnotes and excluding annexes and appendixes.

for the reasons set forth below (the “Request”). As discussed below, the Defence has already consulted with the Co-Prosecutors with respect to the instant Request, and the Co-Prosecutors have agreed that an extension of time for parties to draft and file closing briefs from two months to three months is appropriate.¹

II. BACKGROUND

2. On 28 June 2016, the Trial Chamber issued a Notice of Deadlines regarding the final stages of Case 002/02, informing the parties that:

it projects the completion of evidentiary proceedings in Case 002/02 by December 2016² [...] It will request advanced briefing on the applicable law [...] Closing Briefs will be due two months after the close of the hearing of evidence and Closing statements should follow one month thereafter. [...] Further information on Closing Briefs, including page limits, and Closing Statements will follow in due course.³

3. On 29 July 2016, the Defence requested by email that the Trial Chamber hold a Trial Management Meeting on various disclosure-related issues.⁴ On 1 August 2016, the Chamber granted that request and directed the parties to file proposed agenda items by noon on 3 August 2016.⁵ Both Defence teams requested that the Trial Management Meeting include the Closing Brief as an agenda item.⁶ However, the Trial Chamber rejected this agenda item as being premature.⁷

¹ See, *infra*, at para. 44.

² **E421**, ‘Final Stages of Case 002/02 – Notice of Deadlines’, 28 Jun 2016 (“Case 002/02 Notice of Deadlines”), ERN 01300189.

³ **E421**, Case 002/02 Notice of Deadlines, ERN 01300190.

⁴ **E408/6.3**, Email from Defence Senior Legal Consultant to Trial Chamber Senior Legal Officer, 29 Jul 2016.

⁵ Email from Trial Chamber Senior Legal Officer to the Parties, 1 Aug 2016. (**Attachment 1**).

⁶ Email from the Nuon Chea Defence Team to the Trial Chamber, 3 Aug 2016 (**Attachment 2**), Email from the Khieu Samphan Defence Team to the Trial Chamber, 3 Aug 2016 (**Attachment 3**).

⁷ Email from the Trial Chamber Senior Legal Officer to the Parties, 4 Aug 2016 (**Attachment 4**).

4. On 12 September 2016, the Supreme Court Chamber informed the parties that the appeal judgement in Case 002/01 (the “Appeal Judgement”) will be issued on 23 November 2016.⁸

III. APPLICABLE LAW

A. Extension of Page Limit

5. The ECCC legal framework does not specifically address the page limit for the parties’ written closing briefs at the end of a trial. By default, therefore, Articles 5.3 and 5.4 of the Practice Direction on the Filing of Documents apply.
6. Article 5.3. of the Practice Direction on the Filing of Documents provides that:

Unless otherwise ordered by the ECCC, the page limit shall not exceed 100 pages in English or French or 200 pages in Khmer for the written submissions under Rule 92 of Internal Rules and responses thereto, if any.⁹
7. According to Article 5.4. of the Practice Direction on Filing of Documents, “the relevant Chamber may, at the request of a participant, extend the page limit in exceptional circumstances.”¹⁰
8. The Supreme Court Chamber has emphasised that page limits, “however necessary, are to be tailored according to the needs of the parties in balance with the tenets of judicial efficiency”.¹¹
9. In Case 002/01, the Supreme Court Chamber held in principle that “extensions [of time and page limits] *will certainly* need to be granted *in light of the size and complexity* of the case and Trial Judgement” in Case 002/01.¹² It subsequently granted on two occasions 170 additional pages in total for the Defence’s substantive appeal brief in

⁸ **F34**, ‘Order Scheduling - Pronouncement of Appeal Judgement’, 12 Sep 2016.

⁹ Practice Direction on Filing of Documents (Rev. 8), Art. 5.3.

¹⁰ Practice Direction on Filing of Documents (Rev. 8), Art. 5.4.

¹¹ **F13/2**, ‘Decision on Defence Motions for Extensions of Pages to Appeal and Time to Respond’, 11 Dec 2014 (“SCC 2nd Decision on Time and Page Limits on Appeal”), para 15.

¹² **F3/3**, ‘Decision on Defence Motion for Extension of Time and Page Limits on Notices of Appeal and Appeal Briefs’, 29 Aug 2014 (“SCC Decision on Time and Page Limits on Notices of Appeal”), para 10 (emphasis added).

Case 002/01 (the “Appeal Brief”) on the basis, *inter alia*, that the extensiveness of Nuon Chea’s appeals requires “sufficient time and space to *meaningfully* plead”.¹³

10. Earlier, during the trial stage of Case 002/01, the Trial Chamber had extended the initial 100-page limit it had allotted to the two defence teams for their closing briefs in Case 002/01¹⁴ to 125 pages, excluding endnotes.¹⁵ The Defence’s Case 002/01 closing brief was ultimately 176 pages, comprised of 125 pages of substantive content and a further 41 pages (or approximately 23% of total pages) of endnotes.¹⁶ In Case 002/01, the Trial Chamber also gave parties the option to file separate applicable law briefs of no more than 20 pages in length;¹⁷ the Defence’s applicable law brief was 20 pages.¹⁸
11. The jurisprudence and practice of other international tribunals indicate that the scope of the case, the amount and complexity of the evidence and issues concerned are relevant factors in assessing the page limit. For instance, in the *Karadžić* case, the ICTY Trial Chamber held that “the unprecedented scope of the case, the number of witnesses called and the volume of evidence tendered, the Chamber is of the view that a substantial increase to the word limit from the typical 60,000 words¹⁹ is warranted”.²⁰

B. Extension of Time Limit

12. According to Rule 92 of the Internal Rules, “[t]he parties may, up until the closing statements, make written submissions as provided in the Practice Direction on Filing of Documents.”²¹
13. Article 8.1 of the Practice Direction on Filing of Documents provides that:

Unless otherwise provided in the Internal Rules or this Practice Direction or ordered by a Chamber of the ECCC, pleadings and applications shall be filed with the greffier of the Chamber hearing the case together with the relevant authorities in accordance with

¹³ See **F9**, ‘Decision on Motions for Extensions of Time and Page Limits for Appeal Briefs and Responses’, 31 Oct 2014 (“SCC 1st Decision on Time and Page Limits on Appeal”), paras 13 (emphasis added) and 17. **F13/2**, SCC 2st Decision on Time and Page Limits on Appeal, paras 16-17.

¹⁴ **E163/5/4**, ‘Further Notification of Modalities for Closing Briefs’, 26 Nov 2012, ERN 00863627.

¹⁵ T. 23 Jul 2013 (Various Trial Issues, **E1/227.1**), p. 71, lns. 14-21.

¹⁶ **E295/6/3**, ‘Nuon Chea’s Closing Submissions in Case 002/01’, 26 Sep 2013.

¹⁷ **E163/5**, ‘Notification of Decision on Co-Prosecutors’ Request to Include Additional Crime Sites Within the Scope of Trial in Case 002/01 (E163) and Deadline for Submission of Applicable Law Portion of Closing Briefs’, 8 Oct 2012, ERN 00850036-00850037, para. 4.

¹⁸ **E163/5/11**, ‘Preliminary Submissions Concerning the Applicable Law’, 18 Jan 2013.

¹⁹ See ICTY ‘Practice Direction on the Length of Briefs and Motions’: “An average page should contain fewer than 300 words”. Accordingly the limit of 60,000 words corresponds to an average of 200 pages.

²⁰ *Prosecutor v. Karadžić*, ‘Order on Filing of Final Trial Briefs’, Case No. IT-9S-S/18-T, 21 Mar 2014, (**Attachment 5**).

²¹ Rule 92 of the Internal Rules.

the following timetable, subject to the right in Rule 39 of the Internal Rules to request an extension of time limits.²²

14. According to Rule 39 of the Internal Rules, the Chambers may “at the request of the concerned party or on their own motion: a) extend any time limits set by them”.
15. According to Article 35 *new* of the Law on the Establishment of the ECCC (“the Establishment Law”), each accused before the ECCC is entitled to “minimum guarantees, in accordance with Article 14 of the International Covenant on Civil and Political Rights” (“ICCPR”), including having adequate time and facilities for the preparation of their Defence.²³ The UN Human Rights Committee, interpreting Article 14 of the ICCPR upon which the fair trial provision in the Establishment Law is based, stated that what constitutes “adequate time” depends on the circumstances of each case.²⁴ The relevant circumstances include the complexity of the case, the defendant’s access to evidence, the time limits provided, etc.²⁵
16. In Case 002/01, the Trial Chamber set an initial 30 day limit following the last day of the substantive hearing for the parties to file their closing briefs.²⁶ At the Co-Prosecutors’ request, the Trial Chamber extended that deadline until “six weeks after the conclusion of the evidentiary proceedings”.²⁷ The Chamber eventually granted a further one week extension to the parties to file their closing briefs due to the late admission into evidence of 1,400 documents shortly before that filing deadline.²⁸ The Chamber also extended the deadline for the parties’ filing of applicable law briefs in Case 002/01 from 21 December 2012 until 18 January 2013.²⁹
17. Following the delivery of the Trial Judgement and the Defence’s request for an extension of pages and time for its notice of appeal and the Appeal Brief, the Supreme

²² Article 8.1 of the Practice Direction on Filing of Documents (Rev. 8) (emphasis added).

²³ Article 35 *new*(b) of the Law on the Establishment of the ECCC.

²⁴ **E402.1.10**, U.N. Human Rights Committee (“HRC”), *General Comment No. 32: Right to Equality before Courts and Tribunals and to Fair Trial*, U.N. Doc. No. CCPR/C/GC/32, 23 Aug 2007, para 32 (‘HRC, CCPR General Comment 32 (2007)’).

²⁵ *See, e.g., E402.1.2, Albert and Le Compte v. Belgium*, App. Nos. 7299/75, 7496/76, Judgement, Court (Plenary), European Court of Human Rights (‘ECtHR’), 10 Feb 1983, para 41; **E402/1.7, Hibbert v. Jamaica**, Comm. No. 293/1988, HRC, U.N. Doc No. CCPR/C/45/D/293/1988, 27 Jul 1992, para 7.4; **E402.1.8, Williams v. Jamaica**, Comm. No. 561/1993, HRC, U.N. Doc No. CCPR/C/59/D/561/1993, 24 Apr 1997, para 9.3.

²⁶ **E163/5/4**, ‘Further Notification of Modalities for Closing Briefs’, 26 Nov 2012.

²⁷ **E288/1/1**, ‘Schedule for the Final Document and Other Hearings in Case 002/01, for the Questioning of the Accused and Response to Motions E263 and E288/1’, 17 Jun 2013.

²⁸ **E295/4**, ‘Adjusted Schedule for Closing Submissions (E295/1, E295/1/2, E295/1/3, E295/2 and E295/3)’, 22 Aug 2013.

²⁹ **E163/5/7**, ‘Email Communication Concerning Trial Chamber Disposition of Nuon Chea Request for Extension of Time to File Submissions Concerning Applicable Law’, 17 Dec 2012.

Court Chamber held in principle that “extensions [of time and page limits] *will certainly* need to be granted *in light of the size and complexity* of the case and Trial Judgement”.³⁰

Subsequently, it granted the Defence an additional 30 days to file its Appeal Brief because the extensiveness of Nuon Chea’s appeals required “sufficient time and space to *meaningfully* plead”.³¹

18. The Supreme Court Chamber also acknowledged in relation to the appeal in Case 002/01 that “the length of the Trial Judgment (623 pages in English, 777 pages in French, and 981 pages in Khmer), requires additional time to read through thoroughly and discuss the contents thereof within defence teams and with the Accused.”³²
19. Similarly, other international tribunals often consider it “in the interests of justice to ensure that the parties have sufficient time to prepare *meaningful* briefs in full conformity with the relevant provisions.”³³

C. Irrelevant Factors for Judicial Decision-Making Process

20. The Supreme Court Chamber has held previously in relation to the severance of Case 002 that it considers:

the uncertain availability of donor funding to the ECCC to be an inappropriate and irrelevant factor to consider in the present judicial decision-making process before the ECCC.³⁴

D. Requesting Trial Management Meetings

21. Internal Rule 79(7) provides that “[i]n order to facilitate the fair and expeditious conduct of the proceedings, the Chamber may confer with the parties or their representatives, as applicable, by holding a trial management meeting. Such meeting shall be held in camera, unless the Trial Chamber decides otherwise.” Rule 79(7) sets out appropriate purposes for Trial Management Meetings, including “to facilitate the setting of the date of the initial or of the substantive hearings and to review the status of the case”.

³⁰ **F3/3**, SCC Decision on Time and Page Limits on Notices of Appeal, para 10 (emphasis added).

³¹ **F9**, SCC 1st Decision on Time and Page Limits on Appeal, paras 13 (emphasis added) and 18.

³² **F3/3**, SCC Decision on Time and Page Limits on Notices of Appeal, para 9.

³³ *E.g.*, *Prosecutor v. Prlić*, ‘Decision on Appellant’s Request for Extension of Time and Word Limits’, Case No. IT-04-74-A, 9 Oct 2014 (**Attachment 6**) (emphasis added).

³⁴ **E284/4/8**, ‘Decision on Immediate Appeals against Trial Chamber’s Second Decision on Severance of Case 002’, 25 Nov 2013, para 49.

IV. ARGUMENTS

A. Just Cause Exists for the Requested Extension of Page Limit

(i) *The Broad Scope of the Facts Discussed in Case 002/02*

22. Following the completion of Case 002/01, the Trial Chamber issued a decision defining the scope of Case 002/02.³⁵ On 12 September 2014, the Trial Chamber decided that the sequencing of the trial would comprise seven trial segments related either to specific topics such as treatment of targeted groups, “internal purges”, regulation of marriage, armed conflict and the role of the accused, or to specific crime sites. Three of those trial segments were divided into several sub-segments, bringing the total number of trial segments to thirteen.³⁶
23. Moreover, the Trial Chamber has accepted to hear facts outside the scope of the Closing Order.³⁷ This is an issue that Defence needs to address in its closing brief in addition to charges within the scope of Case 002/02, since it relates to Nuon Chea’s fundamental right to be properly informed of the charges against him and to be able to defend himself accordingly.

(ii) *The Impact of the Severance and Issues that Need to Be Established Anew*

24. With regard to the impact of the severance of Case 002, the Supreme Court Chamber has held that:

Even though evidence remains formally common to the severed cases, this commonality does not extend to findings, and common factual elements in all cases resulting from Case 002 must be established anew.³⁸

25. Such common factual elements include, *inter alia*, the historical background; the structures of the government of Democratic Kampuchea (“DK”), of the Communist Party of Kampuchea (“CPK”) and of the Revolutionary Army of Kampuchea (“RAK”);

³⁵ **E301/9/1**, ‘Decision on Additional Severance of Case 002 and Scope of Case 002/02’, 4 Apr 2014.

³⁶ **E315**, ‘Decision on Sequencing’, 12 Sep 2014, para 14.

³⁷ For instance, the Trial Chamber heard evidence on rape in security centres: *see, e.g.*, T. 26 Apr 2016 (LACH Mean, **E1/422.1**), T. 28 Apr 2016 (PRAK Khan, **E1/424.1**) and Draft T. 22 Aug 2016, pp 10-11 (TEP Poch). The Trial Chamber has also routinely heard implementation evidence on crimes which are not part of the Case 002/02 (e.g T. 19 May 2015, OR Ho, **E1/301.1**, pp 87-88 on the treatment of Buddhists) or, under the justification of demonstrating the existence of a nationwide policy, on crime sites which are not listed in the Closing Order (e.g T. 11 Aug 2015. LAT Suoy, **E1/328.1**, pp 55-58 on the treatment of Khmer Republic Officials at Chamkar Khnol).

³⁸ **E301/9/1/1/3**, ‘Decision on Khieu Samphan’s Immediate Appeal against the Trial Chamber’s Decision on Additional Severance of Case 002 and Scope of Case 002/02’, 29 Jul 2014 (“SCC 2014 Decision on Severance”), para 85.

the role of Nuon Chea; as well as the existence, the content and the nature of the alleged five policies, etc.

26. Therefore, in addition to the specific charges within the scope of the thirteen trial segments in Case 002/02, the Defence needs to address anew in its closing brief complex factual issues commonly relevant to both Case 002/01 and Case 002/02. Many of these issues have already been discussed at length in the Case 002/01 Trial Judgement and will no doubt be addressed also in the forthcoming Case 002/01 Appeal Judgement. This most likely will further complicate the Defence's analysis and arguments in the closing brief.

(iii) The Large Amount of Evidence Relevant to Case 002/02

27. Confirming the position of the Trial Chamber, the Supreme Court Chamber has held that Case 002 case file remains common for the entirety of Case 002, and accordingly, the evidence adduced in Case 002/01 forms part of the evidence in Case 002/02.³⁹ The evidence admitted in Case 002 is colossal. At the time of the present request, which is about two months before the scheduled close of the evidentiary hearings, the case file contains 10,669 exhibits, including at least 1,181 Written Records of Interview.⁴⁰ To date, 155 individuals have come to testify before the Chamber in Case 002/02, including 97 witnesses, 52 civil parties and 6 experts.⁴¹ Those testimonies took place over 216 days of hearings and resulted in more than 21,564 pages of transcripts. The Defence further notes that new evidence keeps on being admitted at this late stage of the trial – in particular, evidence from Cases 003 and 004 which did not exist at the time that the Closing Order was rendered – and the amount of evidence is likely to be far greater by the time of the conclusion of the evidentiary hearings.
28. Such a volume of evidence is almost unprecedented before an international tribunal. Case 002/02 is one of the largest cases in international criminal law in terms of the geographical scope, the crimes charged, and the alleged modes of liability. The resulting 10,669 exhibits and 155 witnesses makes it one of the top 3 biggest cases in all

³⁹ E301/9/1/1/3, SCC 2014 Decision on Severance, paras 73-74.

⁴⁰ The number of documents into evidence is greater than the number of exhibits since some exhibit numbers comprise multiple documents. At the time of the present request, there are 2,872 English documents on Zylab titled "Written Record of Interview", among them, 1,181 have been admitted into evidence in Case 002/02.

⁴¹ Counting done on 10 October 2016, Peg LEVINE (2-TCE-81) being the last individual heard by the Chamber.

international criminal jurisdictions to date.⁴² It is also, by far, the largest case to be tried before the ECCC thus far. Indeed, in Case 001, 55 individuals were heard⁴³ and the case file amounted to around 1,000 documents.⁴⁴ Similarly, 92 individuals testified in Case 002/01⁴⁵ which had a case file amounted to 5,858 exhibit numbers (some of which were comprised of multiple exhibits under a single exhibit number). Although the Case 002/02 trial is not yet complete, the case file in Case 002/02 already comprises 182.13% more documents than Case 002/01.

(iv) *The Complexity of Legal Issues in Case 002/02*

29. In addition to the overwhelming volume of evidence tendered, Case 002/02 also deals with a wide range of complex legal issues. Indeed, the Co-Investigating Judges charged Nuon Chea with 22 crimes, including the crime of genocide against two different groups.⁴⁶ Further, the Defence notes that the jurisprudence is not yet well-established with regard to certain charges, including the allegations related to the regulation of marriage, thus requiring extensive and detailed legal analysis.⁴⁷
30. Besides the nature of the crimes charged in this case, the Defence also stresses the numerous modes of liability through which Nuon Chea was allegedly responsible for the crimes charged. Indeed, the Closing Order applies six different modes of liability –

⁴² To date, to the Defence's knowledge, there are only two cases in international criminal law history with a greater number of documents admitted into evidence and more witnesses who testified: *Prosecutor v. Karadžić*, Case No. IT-95-5/18 (11,478 exhibit numbers and 586 witnesses) and *Prosecutor v. Prlić et al.*, Case No. IT-04-74 (9,876 documents in evidence and 324 witnesses). However, this is with the limitation that certain information is not publicly available.

⁴³ *Case 001*, 'Judgement', 26 Jul 2010, para 54-55, "A total of 24 witnesses testified under oath before the Chamber during the proceedings.(...) 22 Civil Parties provided evidence before the Chamber.(...) A total of nine experts appeared before, or made submissions to, the Chamber over the course of the trial."

⁴⁴ *Case 001*, 'Judgement', 26 Jul 2010, para 56.

⁴⁵ **E312**, 'Final Decision on Witness, Experts and Civil Parties to be Heard in Case 002/01, 7 August 2014 and **E312.1**, Annex I, 'Individuals Heard Over the Course of Trial in Case 002/01'.

⁴⁶ **D427**, Closing Order, paras 1525-1576. Nuon Chea has been charged with eleven crimes against humanity, namely murder, extermination, enslavement imprisonment, torture, persecution on political grounds, persecution on racial grounds, persecution on religious grounds, rape other inhumane acts through "attacks against human dignity", enforced disappearance and forced marriage, six grave breaches of the Geneva Conventions specifically wilful killing, torture or inhumane treatment, wilfully causing great suffering or serious injury to body or health, wilfully depriving a prisoner of war or civilian the rights of fair and regular trial, unlawful confinement of a civilian, unlawful deportation of a civilian, genocide against two groups, the Cham and the Vietnamese and three crimes under the Cambodian Penal Code of 1956, namely murder, torture and religious persecution

⁴⁷ *E.g.* the charge of "forced marriage" for which the Trial Chamber granted the submission of an *amicus curiae* brief, *see*, **E418/3**, 'Decision on the Request for Leave to Submit *Amicus Curiae* Brief on Forced Marriage', 13 Sep 2016 ("Decision on *Amicus Curiae* Brief").

including joint criminal enterprise – in respect of each charge. Hence, the Defence needs to address each and every mode of liability for each related charge.⁴⁸

(v) *The Impact of Admitting an Amicus Curiae Brief*

31. On 13 September 2016, the Trial Chamber granted a group of *amici curiae* 20 pages to file an *amicus curiae* brief on “the status of the law with regard to the crime against humanity of other inhumane acts through forced marriage from 1975-1979”.⁴⁹ In this decision, the Chamber instructs the parties that they may respond to the *amicus curiae* brief within 30 days of its filing and/or in their closing briefs.⁵⁰
32. Given the workload and limited resources of the Defence, the Defence is forced to confine its substantive response to the *amicus curiae* brief to its closing brief. This requires extra space in the brief, considering in particular that the *amici curiae*’s position on the law appears to be unprofessionally pro-criminalisation.⁵¹

(vi) *The Requested Additional Pages Are Necessary for Mounting a Meaningful Defence*

33. As demonstrated above, the scope and complexity of the case, as well as the quantity of evidence (including witnesses) require that additional pages be granted for the Defence to properly argue its case and mount a meaningful defence.
34. To assist the Chamber in its consideration of the instant Request, the Defence has prepared a comparative table which compares, for each trial segment in Case 002/02:
- (a) how many witnesses were cited in the Closing Order and how many ultimately testified or are scheduled to testify in Case 002/02;
 - (b) how many pages were assigned to a description of the relevant facts in that segment in the Closing Order (exclusive of endnotes); and

⁴⁸ See, **D427**, Closing Order, paras 1318 and 1319.

⁴⁹ **E418/3**, Decision on *Amicus Curiae* Brief, para 15.

⁵⁰ **E418/3**, Decision on *Amicus Curiae* Brief, para 15.

⁵¹ The most striking example is the *amici curiae*’s misquotation of the *Akayesu* Judgement. They present as a direct quote from the judgement the following sentence “coercive circumstances *are inherent* in armed conflicts” (emphasis added), whereas the actual quote is “[t]hreats, intimidation, extortion and other forms of duress which prey on fear or desperation *may* constitute coercion, and coercion *may be inherent in certain circumstances*, such as armed conflict or the military presence of Interahamwe among refugee Tutsi women at the bureau communal” (emphasis added). See, **E418/1**, ‘Nuon Chea’s Response to Request for Leave to Submit *Amicus Curiae* Brief on Forced Marriage’, 4 Jul 2016, paras 13, and 14-15; see also, **E418**, ‘Request for Leave to Submit *Amicus Curiae* Brief on Forced Marriage’, 14 Jun 2016, para 18.

- (c) how many pages the Defence would have available in its closing brief to analyse the evidence presented in respect of each segment, calculated on both a 600-page limit and a 100-page limit for illustrative purposes.

#	Segment	Witnesses		Pages in Closing Order (exclusive of endnotes)	Pages in Closing Brief	
		Cited in Closing Order	Testified in 002/02		600-page limit	100-page limit
1.	Kraing Ta Chan and Tram Kok	28 and 26	32	7 (pp. 79-85)	12 and 18	2 and 3
2.	1 st January Dam	28	10	6 (pp. 90-95)	24	4
3.	Kampong Chhnang Airport	37	8	6 (pp. 99-104)	24	4
4.	Trapeang Thma Dam	25	12	6 (pp. 85-90)	24	4
5.	Treatment of the Cham	97	18	12 (p. 55, 57, pp. 186-191, pp. 192-195)	36	6
6.	Treatment of the Vietnamese	81	18	14 (pp. 196-209)	42	7
7.	Au Kanseng	17	3	9 (pp. 150-158)	18	3
8.	Phnom Kraol	21	6	5 (pp. 158-162)	18	3
9.	S-21	50	11	15 (pp. 108-122)	48	8
10.	“Internal Purges”	61	13	4 (pp. 52-55)	36	6
11.	Regulation of Marriage	117	13	8 (pp.58-59, pp. 209-214)	24	4
12.	Armed Conflict	9	6 scheduled	2 (pp. 40-41)	24	4
13.	Role of the Accused	137	10 scheduled	58 (pp. 214-224, pp. 225-250, pp. 285-294, pp. 294-304)	12	2

35. The above table does not include additional sections that will appear in the Defence’s closing brief but for which it was more difficult to quantify the number of witnesses who were cited in the Closing Order and who ultimately testified in Case 002/02 given the cross-cutting nature of the sections. These sections include modes of liability; historical background and structure; the existence and nature of the armed conflict; and alleged policies of the Communist Party of Kampuchea (“CPK”), for instance pertaining to the treatment of former Khmer Republic soldiers and officials and Buddhists. Neither

does the table reflect the discussion that the Defence's closing brief will include as to key procedural and fair trial issues which arose in Case 002/02.

36. As demonstrated in the table, the estimated space to discuss each trial segment based on a 100-page limit appears to be completely disproportionate to the scope and complexity of factual and legal issues that need to be addressed meticulously and the amount of evidence that need to be analysed by the Defence in the closing brief. In each instance, based on a 100-page limit, the Defence would have significantly fewer pages to analyse evidence and present its position on a trial segment than were even allocated in the Closing Order itself – by nature, indictments require less space as they do not need to reach the level of factual, evidentiary or legal analysis of a closing brief.
37. In contrast, the Defence submits that the estimated pages set out in accordance with a 600-page limit are appropriate and reasonable. As already outlined above, in addition to the complexity and size of the case,⁵² the Defence's Case 002/02 closing brief will also be rendered more complex by the impact of severance and issues that would need to be established anew;⁵³ the large amount of evidence relevant to Case 002/02, and particularly the significant amount of evidence added to the case file subsequent to the preparation of the Closing Order;⁵⁴ and the impact of the Chamber admitting an *amicus curiae* brief on the regulation of marriage.⁵⁵
38. Further, the Defence submits that other international tribunals' chambers usually provide a greater amount of pages to the parties for their closing briefs in comparable or even simpler cases. Indeed, the defence filed a 1,000-page brief in the *Karadžić* case,⁵⁶ a 300-page brief in the *Prlic et al.* case,⁵⁷ and a 400-page brief in *Bemba* case.⁵⁸
39. As the Supreme Court Chamber has emphasised, page limits, "however necessary, are to be tailored according to the needs of the parties in balance with the tenets of judicial

⁵² See, *supra*, at paras 27-30.

⁵³ See, *supra*, at paras 24-26.

⁵⁴ See, *supra*, at paras 27-28.

⁵⁵ See, *supra*, at paras 31-32.

⁵⁶ *Prosecutor v. Karadžić*, Case No. IT-95-5/18 (Two counts of genocide, five counts of crimes against humanity and four counts of violations of the laws or customs; 11,478 exhibit numbers and 586 witnesses heard).

⁵⁷ *Prosecutor v. Prlic et al.*, Case No. IT-04-74 (Seven counts of grave breaches of the Geneva Conventions, six counts of violation of the laws or customs and six counts of crimes against humanity; 9,876 documents in evidence and 324 witnesses heard).

⁵⁸ *The Prosecutor v. Jean-Pierre Bemba Gombo*, Case No. ICC-01/05-01/08 (Two counts of crimes against humanity, three counts of grave breaches of the Geneva Conventions; 733 exhibits numbers and 77 witnesses heard).

efficiency”.⁵⁹ The Defence will certainly strive to be as succinct as possible to present its respective case. However, the Defence submits that requesting 600 pages for its closing brief is necessary and reasonable given the circumstances outlined above. The Defence is also of the view that a well-reasoned closing brief with the necessary amount of details would assist the Trial Chamber in ascertaining the truth by providing clear arguments and thorough discussions on all key issues.

B. Just Cause Exists for the Requested Extension of Time Limit

40. The broad scope of the case, the large quantity of evidence, and the complexity of the factual and legal issues, as demonstrated above,⁶⁰ require that additional time be granted for the Defence to meaningfully prepare its closing brief.
41. Moreover, the Appeal Judgement is to be delivered at the end of November 2016, shortly before the closing of the trial of Case 002/02. Despite Nuon Chea’s unchanged position that the outcome of the Appeal Judgement is irrelevant to him⁶¹ since the Supreme Court Chamber dismissed his requests to call key witnesses such as Heng Samrin and Robert Lemkin to testify,⁶² the Defence will nevertheless need time to review the judgement thoroughly. This is partly because, given the appeal grounds advanced, the Appeal Judgement’s findings will certainly impact on a wide range of core substantive and procedural issues that are contested in Case 002/02.
42. Indeed, given the impact of the severance of Case 002 and the intricate and complex interrelation of Case 002/01 and Case 002/02 – distinguished from the relations between two discrete cases – the content of the Appeal Judgement in Case 002/01 will undoubtedly affect the content and structure of the Defence’s arguments as well as its strategy in the closing brief for Case 002/02. Although the length of the Appeal Judgement is still unknown, it is foreseeable that the Defence will need “additional time to read through thoroughly and discuss the contents thereof within defence teams and with the Accused”⁶³ to make sure it can mount a meaningful defence for Nuon Chea.

⁵⁹ See, *supra*, at para 8, citing **F13/2**, SCC 2st Decision on Time and Page Limits on Appeal, para 15.

⁶⁰ See, *supra*, at paras 22-30.

⁶¹ See Nuon Chea’s statement before the Supreme Court Chamber, T. 17 Nov 2015 (**F1/4.1**, pp. 16-18).

⁶² **F2/9**, ‘Decision on Pending Requests for Additional Evidence on Appeal and Related Matters’, 21 Oct 2015.

⁶³ **F3/3**, SCC Decision on Time and Page Limits on Notices of Appeal, para 9.

43. Additionally, the Defence will have to spend extra time on reviewing the *amicus curiae* brief on forced marriage and on targeted research and preparation for its response to the legal arguments in the brief.
44. Furthermore, and as indicated earlier, the Defence informs the Chamber that it has consulted with the Co-Prosecutors regarding the issue of time and page limits allocated to the parties to file their closing briefs. The Co-Prosecutors have confirmed that they agree with the request to extend the time limit for the filing of written closing briefs for all parties in Case 002/02 to three months instead of two.
45. For the foregoing reasons, the Defence requests an extension of one month beyond the original two months deadline prescribed by the Trial Chamber. Given the scope, the volume, and complexity of Case 002/02, the Defence submits that the three month time limit requested is reasonable and in the interests of justice.
46. The Defence further submits that its related request that the three month time limit begin to run from January 2017 at the earliest is also reasonable and in the interests of justice. According to the Defence's calculations, at this stage, the evidentiary hearings in Case 002/02 are already likely to run into early December 2016. As aforementioned, the Defence will require additional time to undertake a detailed review of the Appeal Judgement and assess its impact on Case 002/02, and also to review the *amicus curiae* brief. It would not be appropriate for either review to be integrated into the time available to the parties to draft their Case 002/02 closing briefs. The remaining weeks in December 2016 would therefore represent an appropriate "reading period" to enable the parties to undertake those reviews before commencing the drafting of their closing briefs. Given that the Appeal Judgement is not yet available to the Defence at the time of writing, the Defence reserves the right to request an extension of this "reading period" at a later date.
47. Finally, by issuing a decision that the three month drafting period would run from January 2017 *at the earliest*, the Chamber would enable the Defence – and it suspects, the other parties – to better forecast and organise their workload and allocation of resources between now and the submission of closing briefs and making of closing oral submissions next year. For this reason, the Defence also requests pursuant to Internal Rule 79(7) that the Trial Chamber schedule a Trial Management Meeting at its earliest convenience, prior to the release of the Appeal Judgement on 23 November 2016 to

enable the parties to discuss the Defence's requests and plan their workload and resources. Given the nature of the issues at hand, the Defence further requests that this Trial Management Meeting be held in public.

C. Permission to Discuss Applicable Law Within the Closing Brief

48. The Trial Chamber informed the parties that it would issue a schedule for the parties to provide an "advanced briefing on the applicable law" following the delivery of the Appeal Judgement.⁶⁴ The Supreme Court Chamber recently notified the Parties that the Appeal Judgement will be pronounced on 23 November 2016.⁶⁵
49. The Defence is of the view that legal and factual issues discussed in the Case 002/01 appeal are closely related to Case 002/02 and stresses that it will have to review the Appeal Judgement before starting drafting its applicable law submissions. In addition, the Appeal Judgement will evidently impact the way the Defence will address its final submission on both legal and factual aspects.
50. Further, the Defence submits that the question of applicable law is inseparable from the discussion on the facts and that filing a separate applicable law brief may jeopardise the quality of its final brief and the right of Nuon Chea to a meaningful defence. The Defence therefore submits that it may ultimately be more efficient and streamlined to integrate its applicable law submissions into its closing brief. As a result, it requests the Trial Chamber to amend its Notice of Deadlines so as to allow the parties to include their applicable law submissions in their closing briefs instead of by way of a separate submission.

V. RELIEF

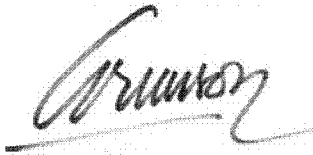
51. For the reasons stated above, the Defence requests the Trial Chamber to:
 - (a) extend the time limit provided to the Defence to file its closing brief by one month to three months in total, to begin from January 2017 at the earliest;

⁶⁴ **F3/3**, SCC Decision on Time and Page Limits on Notices of Appeal, para 5.

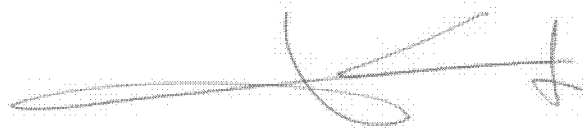
⁶⁵ **F34**, 'Order Scheduling Pronouncement of Appeal Judgement', 12 Sep 2016.

- (b) amend its Notice of Deadlines⁶⁶ 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 appendixes; and
- (d) schedule a Trial Management Meeting to be held in public as soon as possible and prior to 23 November 2016 to discuss the abovementioned requests and associated issues raised.

CO-LAWYERS FOR NUON CHEA



SON Arun



Victor KOPPE

⁶⁶ E421, Case 002/02 Notice of Deadlines.