

BEFORE THE TRIAL CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

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**NOTICE OF CO-PROSECUTORS' POSITION ON KEY ISSUES TO BE DISCUSSED
AT 17 AUGUST 2012 TRIAL MANAGEMENT MEETING
(WITH CONFIDENTIAL ANNEX A)**

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I. INTRODUCTION

1. In response to the Memorandum from the Trial Chamber President of 3 August 2012 entitled “Scheduling of Trial Management Meeting to enable planning of the remaining trial phases in Case 002/01 and implementation of further measures designed to promote trial efficiency”¹ and the Annex to that Memorandum entitled “Co-Prosecutors’ proposed extension of scope of trial in Case 002/01 (E163)”² (“the Memorandum”), the Co-Prosecutors provide advance notice of their position on certain key issues raised in that Memorandum. This notice is provided to assist the Chamber and the parties in their discussions at the Trial Management Meeting to be held on 17 August 2012.
2. In general, the Co-Prosecutors welcome the measures put forward for adoption by the Chamber, as they believe they will greatly improve this trial’s ability to fulfill the objectives of this Court and the Chamber’s obligation to ensure that the trial is fair and expeditious. In this notice, the Co-Prosecutors propose some modifications to those measures, which they believe are necessary in order to meet their burden of proof, while at the same time ensuring that the trial is fair and proceeds as expeditiously as possible.
3. Based on a review of the status of the evidence, witnesses and documentary hearings to be scheduled, the Co-Prosecutors believe that a trial that includes the additional crime sites set forth in the Memorandum can be fully completed by the end of August 2013, in a manner that protects the interests of all parties – the Defence, the Co-Prosecutors and the Civil Parties. The Co-Prosecutors propose in this filing a trial schedule intended to achieve that goal, the details of which are set forth in **Annex A** filed herewith.
4. **Annex A** identifies the witnesses the Co-Prosecutors request to be called for the remainder of this trial, in general chronological order, with two blocks of additional time (in January and May 2013) set aside for further witnesses to be called by the Chamber based on requests by the Accused and other parties. The proposed schedule also includes periods assigned for documentary hearings, such as presentations of the key documents before the Chamber at the conclusion of each trial phase and arguments on admissibility for the few remaining document categories - such as witness statements and complaints - that have not yet been put before the Chamber.³

¹ E218 Memorandum re Scheduling of Trial Management Meeting, 3 August 2012.

² E218.1 Memorandum re Co-Prosecutors’ Proposed Extension of Scope of Trial, 3 August 2012.

³ **Annex A** Proposed Trial Schedule.

5. In the proposed trial schedule set forth in **Annex A**, the Co-Prosecutors have both reduced their original witness list and sought to minimize the amount of questioning time required for each witness.

II. EVIDENCE TO BE CALLED FOR THE REMAINING TRIAL PHASES

A. WITNESS TESTIMONY

6. In assessing the evidence that the Co-Prosecutors believe is necessary to call for the remaining phases of this trial, the Co-Prosecutors agree with the Trial Chamber's approach of reducing witnesses that provide truly repetitive evidence, when dealing with witnesses not related to core issues establishing the conduct or liability of the Accused. The Co-Prosecutors also agree with the Chamber's intention to accept the second more limited request of the Co-Prosecutors to moderately widen the scope of the first trial by adding three crime sites. The addition of these sites is in keeping with the logic of the severance order, and will enhance the quality of the trial without substantially prolonging its length. The Trial Chamber's reduction of the first and second phase witness lists, in combination with creating guidelines for more focused and efficient questioning, will significantly shorten the trial as previously envisaged by the Chamber even with the inclusion of the three additional crime sites.
7. The Co-Prosecutors' Proposed Trial Schedule includes estimates of the total time required for each witness. Those estimates are based on a review of the actual time taken for witnesses who have testified to date, and an assessment of the complexity of the particular witness' testimony. Notwithstanding that the first part of the trial has focused on the more time-consuming and complex liability witnesses, the average total length of testimony has been only 2.5 days per witness.⁴ The Co-Prosecutors expect that most of the remaining Phase 1 witnesses (with a few notable exceptions, such as TCE-80 and TCE-65) can be completed in two days or less. When the trial moves to the crimes phase, most witnesses will be testifying to a particular event they witnessed or experienced, in contrast to the Phase 1 witnesses who have typically testified to conduct of the Accused or the functioning of a DK organisation (i.e., a specific zone, sector, ministry or K-office)

⁴ The total time required for each of the Phase 1 witnesses who have completed their testimony, in order from longest to shortest, is as follows: Kaing Guek Eav alias Duch (12 ¼ days); David Chandler (5 ½ days); Phy Phuon (5 days); So Hong (5 days); Sao Sarun (3 ½ days); Ny Kan (2 ¾ days); Sakim Lmut (2 ¾ days); Long Norin (2 ½ days, by video); Pean Khean (2 days); Yun Kim (1 ¾ days); Saut Toeung (1 ½ days); Prak Yut (1 ½ days); Oeun Tan (1 ½ days); Khiev Neou (1 day); Khoem Ngom (1 day); Romam Yun (1 day); Klan Fit (1 day). Excluding Duch (whose testimony was exceptional in terms of the scope and complexity of issues and number of documents to be covered), the testimony of the other 16 Phase 1 witnesses, civil parties and experts was completed in a total of 40 court days.

for the entire period of the DK regime, as well as relevant pre-1975 events. The Co-Prosecutors thus estimate that the majority of crime base witnesses proposed to be heard in Phase 2 of the trial will be able to complete their testimony in a day or less.⁵

First Phase

8. With reference to Phase 1 of the trial, the Co-Prosecutors agree that the Chamber's original list of 67 witnesses and experts can be reduced by either removing or deferring certain individuals. The Co-Prosecutors also agree that the Trial Chamber should first hear from the parties, as it intends to do at the Trial Management Meeting, on which witnesses can be removed or deferred at this stage.
9. In regards to the specific witnesses identified in paragraph 5 of the Trial Chamber's Memorandum, the Co-Prosecutors agree that witnesses TCW-354 and TCW-234 can be removed or withdrawn from the Trial Chamber's planned schedule, and that the hearing of the following witnesses can be deferred: TCW-620; TCW-638; TCW-780; TCW-707; TCCP-178; TCW-645; and TCW-679. The hearing of the latter group of witnesses is not likely to be necessary, though the Co-Prosecutors propose that final decisions on those witnesses be deferred until November or December 2012. The Co-Prosecutors also propose that the following additional 5 witnesses on the Trial Chamber's original Phase 1 list may also be deferred: TCW-326; TCCP-94; TCW-126; TCW-724; and TCW-794. The above deferrals or removals are in addition to 10 other witnesses or experts from the Chamber's Phase 1 list whose testimony has previously been cancelled.⁶
10. The Co-Prosecutors propose and request that six of the witnesses and civil parties identified in paragraph 5 of the Chamber's Memorandum still be called to testify this year: TCW-320; TCW-475; TCCP-186; TCCP-142; TCW-548; and TCW-796. Each of those individuals either provides testimony relating directly to key probative conduct of the Accused, or provides essential information relating to CPK policies or other key facts

⁵ The time estimates in **Annex A** are based on an analysis of the total questioning time used for prior witnesses. The Co-Prosecutors have required more time than other parties with these Phase 1 witnesses, as should be expected for the party bearing the burden of proof. The Trial Chamber has recognized this in its recent time allocations, typically granting 1.5 days combined for OCP and the Civil Parties and 0.5 to 1.5 days combined for the Defence. The Co-Prosecutors expect they will continue to require more time than the Accused in examining most of the remaining Phase 1 witnesses. For example, for witnesses estimated to require 2 days in **Annex A**, the Co-Prosecutors propose that 1.5 days be assigned to OCP and the Civil Parties, and 0.5 to 1.5 days for the Accused. (Similarly, for witnesses estimated to require 0.75 days in total, it is proposed that 0.5 days be assigned to OCP and the Civil Parties, and 0.25 to 0.5 days to the Accused.) The Co-Prosecutors note that for the major witnesses or experts for whom 5 days have been scheduled, such as TCE-65 and TCE-80, it is assumed that equal time will be used by the OCP and Defence sides.

⁶ Those 10 witnesses or experts are: TCE-38; TCE-44; TCW-601; TCW-297; TCE-27; TCW-600; TCW-18; TCW-778; TCW-90; and TCW-325.

in dispute in Case 002/01. Based on the original plan to hear Phase 1 witnesses through year-end 2012 and the estimated times expected for remaining individual witnesses, the Co-Prosecutors believe that there will be sufficient time to hear the following additional witnesses and experts who, whilst not on the Trial Chamber's original Phase 1 Schedule, were proposed in the Co-Prosecutors' previous witness lists filed with the Chamber: TCW-505; TCW-754; TCW-100; TCE-33; TCW-720; TCW-781; and TCW-164.⁷ The Co-Prosecutors are prepared to discuss the relevance and importance of each of the witnesses, civil parties and experts identified in this paragraph at the Trial Management Meeting.

11. In proposing these adjustments to the Trial Chamber's reduction of the First Phase witness list, the Co-Prosecutors are mindful of their responsibility to discharge their burden of proof with respect to each of the charges and supporting facts included in this trial. These adjustments are based on a recent review of the current status of the trial testimony and the statements of the witnesses still to be called.
12. The remaining Phase 1 witnesses, civil parties and experts that the Co-Prosecutors propose be heard by the Trial Chamber between now and the end of this year are set forth in **Annex A** in the blue-highlighted sections for August, September, October, November and December 2012.⁸ It is further submitted that three weeks in the month of January 2013 should be used to hear final witnesses proposed by the Accused and other parties that are believed to be essential to the Phase 1 trial issues. Each party should be provided an opportunity in November to make submissions as to relevant and probative witnesses on Phase 1 issues that they seek to call during the month of January 2013.

Second Phase

13. The Trial Chamber has designated the second phase of this trial to hear evidence that ascertains the truth of the allegations relating to the crimes that are the subject of the first trial. In the green-highlighted sections of **Annex A**, the Co-Prosecutors identify the specific witnesses proposed to be heard by the Chamber relating to the population movements, District 12 and Tuol Po Chrey execution sites, and the S-21 security centre. The Co-Prosecutors also address herein some of the Trial Chamber's questions posed relating to the addition of these 3 crime sites to Case 002/01. In light of the procedural

⁷ These 7 proposed additional witnesses and experts are identified with asterisks in **Annex A**.

⁸ The number of available court days for each month are shown in **Annex A** in brackets at the end of the heading for each time period, and exclude the holidays and recesses that are scheduled or expected for that period.

efficiencies the Trial Chamber has recently implemented in relation to the questioning of witnesses, the Co-Prosecutors have reduced their total number of proposed witnesses relating to these crime sites.

A. Crime Sites

14. In addition to the crimes arising out of the two forced movements of population currently within the scope of this trial, the Co-Prosecutors agree with the intimation of the Trial Chamber that three further criminal events will also be addressed in this trial: (1) the Kampong Tralach Leu (District 12) execution sites; (2) the Tuol Po Chrey execution site; and (3) the S-21 security centre. In line with the Chamber's concern that the inclusion of these criminal events not unduly prolong the trial, the Co-Prosecutors have requested only a few additional witnesses to those proposed by the Chamber for these sites, to ensure the Co-Prosecutors have a reasonable opportunity to meet their burden of proof in relation to these crimes.
15. In the Co-Prosecutors' Proposed Trial Schedule set forth in **Annex A**, the trial of the segments relating to these three additional crime sites will be completed in approximately twenty court days (5 weeks) in the March to April 2013 time period. A period of 12 court days (three weeks) is also proposed for May 2013 to hear additional witnesses, civil parties or experts that the Accused, Civil Parties and Co-Prosecutors may propose relating to the forced movements, execution sites and S-21, depending upon the status of the trial proceedings, the parties' evaluation of the crime base evidence heard in the preceding months and the remaining time available for the hearing of such further individuals.
16. As requested by the Chamber, the Co-Prosecutors identify below the total number of witnesses and the estimated time required to hear their testimony in relation to the five criminal episodes likely to be the subject of this trial. These witnesses have been selected from the Co-Prosecutors' witness lists that were filed with the Chamber before the commencement of trial.
 - (1) **Population Movement (Phase 1)**: Fifteen witnesses, testimony estimated to require a total of 15 court days (*see* February 2013 segment in **Annex A**).
 - (2) **Population Movement (Phase 2)**: Six witnesses, testimony estimated to take 4.5 court days (*see* March 2013 segment in **Annex A**).

- (3) ***Kampong Tralach Leu (District 12) execution sites***: Six witnesses, testimony estimated to take 5 court days (*see* March 2013 segment in **Annex A**).⁹
- (4) ***Tuol Po Chrey execution site***: Two witnesses, testimony estimated to take 2.25 court days (*see* March 2013 segment in **Annex A**).¹⁰
- (5) ***S-21 security centre and Choeng Ek execution site***: Five witnesses, testimony estimated to take 11 court days (*see* April 2013 segment in **Annex A**).
17. In response to the Chamber's request for clarification as to whether the Co-Prosecutors seek to include the purge of cadres from the new North, Central (old North) and East Zones as additional crimes or merely as "evidence that cadres from these zones were executed at S-21," the Co-Prosecutors confirm that the latter understanding is correct.
18. To prove the relevant facts relating to the S-21 crime site, the Co-Prosecutors have requested that the Chamber hear the testimony of five witnesses. The presentation of this evidence will ensure that the public understands the nature of the evidence relating to this security centre, and that the Defence has an opportunity to challenge such testimony. During his prior testimony in this trial, Kaing Guek Eav alias Duch was not examined on the day-to-day operations of S-21, other than in an abbreviated format, in accordance with the instructions of the Trial Chamber. The four other S-21 witnesses proposed by the Co-Prosecutors consist of one surviving detainee, one interrogator, the cadre responsible for taking prisoners for execution at Choeng Ek and the head of the documentation unit responsible for keeping records of the prisoners at S-21.
19. At the end of the Phase 2 hearings relating to the five criminal events, it is proposed that the month of May 2013 be set aside, similar to the proposal for the end of Phase 1, to enable the parties to call witnesses from the remaining pool of witnesses identified in their witness lists. In order to determine the witnesses most appropriate to be heard during this period, the parties should have the opportunity to make submissions to the Chamber in March 2013 as to relevant and probative witnesses that would be called during this segment. It is submitted that this approach will balance the obligation of the

⁹ If the trial proceeds at the pace expected and there is sufficient time, the Co-Prosecutors may also propose that TCW-610 and TCW-789 (each expected to require only .75 days) be heard relating to this crime site. The Co-Prosecutors do not propose TCW-347 as a witness relating to the District 12 execution sites, as his testimony relates primarily to a security centre that was only established in 1976.

¹⁰ Similarly, if there is sufficient time, the Co-Prosecutors may propose that TCW-689 and TCW-644 (also expected to require only .75 days each) be heard relating to this crime site.

Trial Chamber to manage the trial in a fair and expeditious manner with the rights of the Defence and other parties to present the evidence they believe is essential to their case.

B. Policy Issues

20. ***Necessity of Including Additional Crime Sites in Order for Co-Prosecutors to Meet their Burden of Proof:*** In response to the question raised by the Trial Chamber in paragraph 15(a) of its Memorandum, the Co-Prosecutors submit that the inclusion of the additional crime sites would significantly assist them in meeting their burden of proof, by demonstrating the criminal intent and purpose behind the forced movement of the population from the cities of Cambodia in April 1975. Whilst these movements were in part mechanisms for implementing the CPK's economic and social policies, they were also carried out to enable the CPK to identify, separate and eliminate their perceived political enemies, including the officials and soldiers of the former regime that were executed at the District 12 and Tuol Po Chrey sites and S-21 security centre.
21. The criminal episodes at the two execution sites occurred during or shortly after the population movements, and the majority of victims were evacuees identified as former soldiers, officials and civil servants of the Khmer Republic.¹¹ Consequently, the inclusion of the District 12 and Tuol Pol Chrey execution sites and the S-21 security centre will provide strong evidence of the criminal intent behind the forced movements of the population. Indeed, a compelling reason for the inclusion of these crime sites is that witnesses relating to these sites would need to be heard by the Chamber in any event, as part of the Co-Prosecutors' proof of the true purpose of the 17 April 1975 evacuation.
22. ***Benefits Versus Risks of Widening the Scope of Trial:*** In response to the Chamber's invitation to indicate whether the envisaged benefits offered by this proposed extension outweigh the risks created by a prolongation of the trial proceedings, particularly in view of the interests of victims of Khmer Rouge era crimes in reaching an early verdict, the Co-Prosecutors respectfully submit - as can be seen from the proposed Trial Schedule in **Annex A** - that there will be only a minimal prolongation of the proceedings by including these sites, due to the few number of witnesses requested to prove such crimes. The Co-Prosecutors recall that the Trial Chamber separated these proceedings in order to "[safeguard] the fundamental interest of victims in achieving *meaningful and timely* justice."¹² One of the key concerns of the Co-Prosecutors, for reasons conveyed to the

¹¹ **D427** Closing Order, 15 September 2010 at paras. 698-714.

¹² **E124** Severance Order, 22 September 2011 at para. 8 (emphasis added).

Trial Chamber in previous filings, is that there is a significant risk that there may be no second trial against these Accused. The 5 to 6 week extension of the trial will allow the Accused to be judged on some of the most serious crimes committed during the DK regime, and will make this trial more representative of the comprehensive crimes covered in the Case 002 Closing Order and more meaningful to the victims, without a significant impact on the overall length of trial. Thus, any slight prolongation arising out of the addition of these three crime sites into the current trial is greatly outweighed by the benefit that will be provided to the victims and to the legacy of the ECCC.

23. **Relevant Closing Order Paragraphs:** The Co-Prosecutors also agree that the additional paragraphs of the Closing Order identified by the Chamber in footnote 10 of the Annex to the Memorandum should be included as part of the expansion of crime sites.¹³ It is noted that the allegations in these paragraphs overlap with many paragraphs that are part of the original Case 002/01, and that the Chamber has already heard much of the evidence addressed in those paragraphs.

Third Phase

24. As described in the Trial Chamber's Memorandum, the third phase of the trial will be relatively short, and will include the opportunity for the Defence to present character witnesses and the civil parties to present testimony on the impact the crimes had on their physical and psychological well-being. In the Co-Prosecutors' Proposed Trial Schedule, this phase will take place during the June to July 2013 time period, and should require no more than 13 court days.

B. DOCUMENTARY HEARINGS [ALL PHASES]

25. In accordance with the Trial Chamber's practice, the Co-Prosecutors request that further document hearings be held between now and the completion of the trial, in order for the parties to present to the Trial Chamber and the public the content and probative value of key documents that have been placed before the Chamber.

¹³ Specifically, the further paragraphs identified by the Chamber that would also be appropriate for inclusion are: paragraphs 178-191 (JCE allegations re security centres and execution sites), 205-209 (JCE allegations re targeting of former Khmer Republic officials), 916-974 (Nuon Chea participation in security centres and execution sites, including S-21), 975-977 (Nuon Chea participation in targeting of Lon Nol officials), 1048-1089 (Ieng Sary participation in security centres and execution sites, including S-21), 1105-1113 (Ieng Sary participation in targeting of Lon Nol officials), 1172-1190 (Khieu Samphan participation in security centres and execution sites, including S-21) and 1191-1193 (Khieu Samphan participation in targeting of Lon Nol officials).

26. One hearing should also be scheduled to provide an opportunity for the Accused to challenge the admissibility of witness statements and complaints requested by the Co-Prosecutors to be admitted in this trial. Such a hearing has already been intimated by the Trial Chamber. Consequently, the Co-Prosecutors request that the following documentary hearings be scheduled between now and the end of trial:
- (1) presentation of Phase 1 documents relating to administrative, communications and military structure, the formation of the JCE and the role of the Accused (*4 days in late January 2013*);
 - (2) presentation of documents relating to the forced movements of population (*2-3 days in March 2013*);
 - (3) presentation of documents relating to the District 12 and Tuol Po Chrey execution sites and the S-21 security centre (*3 days in April 2013*);
 - (4) document admissibility hearing regarding witness statements and victim complaints (*3 days in June or July 2013*); and
 - (5) hearings for any further documents the parties wish to present to the Chamber and public, and for any remaining documents whose admissibility has not been previously argued (*3-5 days in July 2013*).
27. In the proposed trial schedule set forth in **Annex A**, document hearings have been placed at the end of trial phases or significant trial segments, and are highlighted in yellow for ease of reference. Scheduling document “relevancy” hearings at the end of a phase or segment avoids possible repetition of documents in that phase or segment, and helps ensure that documents are understood more clearly in the context of the prior oral testimony.
28. As the Chamber has already heard argument on the admissibility of the majority of the documents listed in the Co-Prosecutors’ Trial Document Annexes, other than witness statements and complaints, these additional document hearings are not expected to be overly time consuming.

III. CLOSING BRIEFS

29. The Co-Prosecutors support the Trial Chamber’s initiative to conclude the trial as expeditiously as possible. However, it is respectfully submitted that the proposed 75 page and one month time limit for the parties to file their closing briefs in two languages is

insufficient to enable them to effectively assist the Trial Chamber in ascertaining the truth of the allegations in this trial,¹⁴ considering that the parties will need to analyze and address over 200 days of trial transcript and thousands of document exhibits.

A. PAGE LENGTH

30. It is instructive to look at the practice of other international tribunals as to the length of closing brief viewed as necessary for the parties to be heard fully at the closure of cases involving crimes of a lesser or similar magnitude to the current trial. At the ICTY, final trial briefs are limited to 60,000 words (or 200 pages), but parties may seek authorization in advance to exceed the word limit by providing an “explanation of the exceptional circumstances that necessitate the oversized filing.”¹⁵ For example, the ICTY Trial Chamber in the case of *Gotovina et al.* allowed the prosecution to file a 266 page final trial brief (with annexes excluded) that addressed the liability of three accused.¹⁶ In the case of *Stanišić and Župljanin*, another ICTY Trial Chamber authorized the prosecution to file a 319 page closing brief (with annexes excluded) in a case assessing the liability of two accused.¹⁷ At the ICTY, there is a longstanding and consistent practice of providing sufficient opportunity for the parties to provide detailed argument in their closing briefs, particularly where multiple accused are on trial.¹⁸
31. Similarly, at the SCSL, the Court authorizes substantial page limits for parties’ closing briefs. The practice directions of that Court state that final trial submissions “shall not exceed 200 pages or 60,000 words, whichever is greater.”¹⁹ However, in *Taylor* the SCSL Trial Chamber, recognizing the importance of the trial, extended this limit to 510

¹⁴ E218 Memorandum at para. 5.

¹⁵ Practice Direction on the Length of Briefs and Motions (ICTY), 16 September 2005 at paras. 4, 6 and 7. All word limits for the ICTY, SCSL, and ICTR include headings, footnotes and quotations, but not appendices or authorities.

¹⁶ *Prosecutor v. Ante Gotovina, Ivan Čermak & Mladen Markač*, Case No. IT-06-90-T, Prosecution's Public Redacted Final Trial Brief (ICTY Trial Chamber), 2 August 2010.

¹⁷ *Prosecutor v. Mičo Stanišić and Stojan Župljanin*, Case No. IT-08-91-T, Prosecution's Notice of Filing a Public Redacted Version of the Prosecution's Final Trial Brief (ICTY Trial Chamber II), 12 July 2012.

¹⁸ See, e.g., *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Prosecution Public Redacted Final Trial Brief (ICTY Trial Chamber III), 1 April 2011 (398 pages, annexes excluded); *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-T, Prosecution Final Trial Brief (ICTY Trial Chamber III), 12 May 2009 (184 pages, annexes excluded); *Prosecutor v. Édouard Karemera and Mathieu Ngirumpatse*, Case No. ICTR-98-44-T, Prosecutor's Final Brief (ICTR Trial Chamber III), 2 June 2011 (208 pages); *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, Prosecution's Notice of Filing a Public Redacted Version of the Prosecution's Closing Brief (ICTY Trial Chamber III), 20 April 2012 (205 pages, annexes excluded).

¹⁹ Practice Direction on Filing Documents before the Special Court for Sierra Leone (SCSL), 10 June 2005 at Article 6(B).

pages for the prosecution, a case which involved one high level accused.²⁰ At the ICTR, the Court automatically grants extra length for final trial briefs in multi-accused trials, giving the Prosecution a base word limit of 30,000 words plus 20,000 words for each additional accused.²¹ Accordingly, in a case at the ICTR against 3 accused, the Prosecution is automatically given 233 pages for their final trial brief. At the ICC, the Chamber may extend the normal 20 page limit for documents filed with the Registry at the request of the participants “in exceptional circumstances”²² and has done so for parties’ closing submissions.²³ For example, in the *Lubanga Dyilo* case, the ICC permitted the prosecution to file a closing brief with a 250 page limit in a case with only one accused.²⁴ On review, it is clear that the practice at the international tribunals is to generally grant at least 200 pages for a single accused case and substantially more pages for multiple accused cases.

32. Consistent with international practice, the Trial Chamber in Case 001 recognized the inadequacy of the 100 page maximum for a closing brief prescribed in the ECCC Practice Direction on the Filing of Documents, and granted the Co-Prosecutors 160 pages in which to file their closing brief. In contrast to the current trial, Case 001 concerned only one accused charged with a more limited set of crimes in magnitude and geographic scope. Unlike the current Accused who are contesting nearly every aspect of this trial, the accused in Case 001 made extensive admissions to the allegations and his physical participation in the crimes charged. Moreover, the length of trial and amount of documentary evidence tendered will be greater in the current trial than in Case 001. For these reasons, the Co-Prosecutors request that they be granted 180 pages for their closing brief to accord with the size, complexity and importance of this case and international and ECCC practice.

²⁰ *Prosecutor v. Charles Ghankay Taylor*, Case No. SCSL-03-01-T, Prosecution Final Trial Brief (SCSL Trial Chamber II), 8 April 2011.

²¹ Practice Direction on Length and Timing of Closing Briefs and Closing Arguments (ICTR), 3 May 2010 at 1.3(ii); *Prosecutor v. Édouard Karemera and Mathieu Ngirumpatse*, Case No. ICTR-98-44-T, Prosecutor’s Final Brief (ICTR Trial Chamber III), 2 June 2011 (208 pages); *Prosecutor v. Gregoire Ndashimana*, Case No. ICTR-2001-68-T, Prosecutor’s Final Trial Brief (ICTR Trial Chamber III), Case No. ICTR-2001-68-T, 25 July 2011 (83 pages); *Prosecutor v. Augustin Ngirabatware*, Case No. ICTR-99-54-T, Prosecutor’s Closing Brief (ICTR Trial Chamber II), 14 May 2012 (130 pages).

²² Regulations of the Court (ICC), 29 June 2012 at Regulation 37(2).

²³ See, e.g., *Prosecutor v. Thomas Lubanga Dyilo*, Case No. ICC-01/04-01/06, Prosecution’s Closing Brief (ICC Trial Chamber I), 1 June 2011 (210 pages).

²⁴ *Prosecutor v. Thomas Lubanga Dyilo*, Case No. ICC-01/04-01/06, Order on the timetable for closing submissions (ICC Trial Chamber I), 12 April 2011 at para. 3.

33. The ratio of prosecution pages to combined Defence pages proposed in the Chamber's Memorandum also creates an inequality of arms, in that the Co-Prosecutors have half the page length of the three Defence teams combined in which to make their final submissions.
34. The Chamber's approach to this issue should be consistent with the Chamber's application of the equality of arms principle in the questioning of witnesses.²⁵ This Chamber has granted equal questioning time between the Co-Prosecutors and the Civil Parties combined, on one side, and the three combined Defence teams, on the other side. This is a recognition by the Chamber that the Co-Prosecutors are prosecuting a case against three individual Accused, whereas each Defence team are defending the case against only one Accused. As this principle has been applied to questioning, it has become clear that on many occasions the Defence have not required their fully allotted questioning time. Therefore, just as the equality of arms between the parties needs to be preserved when eliciting evidence from witnesses, a similar balance should be preserved for briefs persuading the Trial Chamber as to the guilt or innocence of the Accused.

B. TIME PERIOD AND LANGUAGE

35. The Co-Prosecutors also respectfully seek the Chamber's reconsideration of its directive that closing briefs "shall be due (in Khmer and at least one other official ECCC language) within one calendar month of the conclusion of trial proceedings." The Co-Prosecutors are extremely conscientious of the need for expediency in the final phase of this trial, and will begin preparation of their closing brief as the trial proceeds.
36. However, preparing closing briefs for a trial of this complexity due to the amount of evidence, length of trial and the seriousness of the allegations requires a sufficient amount of time if the briefs are to usefully assist the Chamber in the truth finding process. For example, international practice at the ICTR allows for a 60 day time limit to file closing briefs from the closure of the evidence in the trial of a single-accused trial. However, in a multi-accused trial, the ICTR extends this period by one month to a 90 day time limit recognizing the added complexity of those cases.²⁶ The importance of providing sufficient time to prepare final briefs has also been recognized by this Trial Chamber in Case 001, where they allowed the parties approximately 8 weeks to file from the

²⁵ The principle of equality of arms is recognised in Internal Rule 21(1)(a) stating that "ECCC proceedings shall be fair and adversarial and preserve a balance between the rights of the parties."

²⁶ *Ibid.* at 4(i).

conclusion of the evidentiary proceedings.²⁷ Based on the expedient trial schedule proposed in **Annex A**, it is submitted that a 7 week period to prepare closing briefs in one language (to be translated on filing) will still allow completion of the trial months ahead of the Chamber's predicted closure, and will accord to the minimum international and ECCC standards.

37. If briefs are required to be filed in two languages, the translation process will usurp an inordinate amount of the time necessary to finalize the closing briefs, and insufficient time would be available to prepare a comprehensive brief from the close of evidence. Unlike the ECCC, the other international tribunals are not required to file final briefs or other motions in two languages.
38. Though the hybrid nature of this tribunal requires translations of documents in order to carry out its work, the Co-Prosecutors submit that the time for translation of the closing briefs should be allocated after the filing deadline, so as to ensure an expedited process. It is submitted that this proposed timeline will not delay the Chamber's formulation of its Final Judgment. Recognising the Chamber's scrupulous efforts at conserving the time and resources of the Court, the Co-Prosecutors note that while awaiting the filing of the closing briefs, the Chambers will be able to use the time to begin their evaluation of the evidence before them.
39. To conclude, the Co-Prosecutors request that they be granted a 180 page limit, that the Defence be granted 180 pages combined (60 pages each) for their final briefs, and that the parties have 7 weeks from the last day of the evidential hearings to file their briefs in one official language, with the translation of the briefs into another official language of the ECCC commencing on the day of the filing. This request will help ensure that all parties can fulfill their obligations in this case to a standard that contributes to the integrity of the ECCC process.


C. OTHER MATTERS RAISED BY THE TRIAL CHAMBER

40. The Co-Prosecutors also notify the Chamber of other issues discussed in the Memorandum that they may wish to address at the Trial Management Meeting, including:
 - (1) sufficiency of notice in expanding the scope of the Case 002/01 trial;
 - (2) reduction in the scope of questioning witnesses;

²⁷ **E159/9** Co-Prosecutors' Final Trial Submission With Annexes 1-5, 11 November 2009. The proceedings relevant to the examination of evidence in Case 001 concluded on 17 September 2009.

- (3) questioning by only one lawyer per party; and
- (4) any other matters that may be raised by the Accused and other parties.

Respectfully Submitted,

Date	Name	Place	Signature
15 August 2012	CHEA Leang Co-Prosecutor	Phnom Penh	
	Andrew CAYLEY Co-Prosecutor		