

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

**FILING DETAILS**

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(PTC 75)

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**CO-PROSECUTORS' OBSERVATIONS ON IENG SARY'S REQUEST FOR AN  
EXTENSION OF PAGE LIMIT TO APPEAL THE CLOSING ORDER**

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## I. OBSERVATIONS

1. A decision of the Co-Investigating Judges, like the Closing Order,<sup>1</sup> can only be appealed once by each of the entitled parties before the Pre-Trial Chamber (“PTC”). The appealing party must raise all challenges to that decision in one consolidated brief.<sup>2</sup> The Internal Rules (“Rules”) do not allow multiple appeals by one appellant against a single decision or order.<sup>3</sup> One appeal by each party ensures the integrity of the impugned decision is maintained and that final determinations by the PTC are achieved in a timely and judicially economic fashion. Ieng Sary’s assertion that separate 30 page briefs can be filed against separate jurisdictional issues raised in the Closing Order should be rejected.<sup>4</sup>
2. However, page limits to file appeals against decisions or orders can and have been extended in exceptional circumstances.<sup>5</sup> This Court has granted extensions if the party has shown that the extension would provide the Court with “sufficient material in order to consider all issues [...] appropriately”<sup>6</sup> or due to the “importance or complexity of the investigative procedures and jurisprudential matters”.<sup>7</sup> Ieng Sary has sought an extension of 150 pages beyond the 30 pages prescribed under the Rules<sup>8</sup> on the basis that the Closing Order: (1) “addresses several jurisdictional issues” and (2) “[e]ach of these issues alone is quite complex and would require

<sup>1</sup> Closing Order, Case No. 002/19-09-2007-ECCC-OCIJ, Co-Investigating Judges, 15 September 2010, D427 (“Closing Order”).

<sup>2</sup> Decision on the Expedited Request of the Co-Lawyers for a Reasonable Extension of Time to File Challenges to the Jurisdictional; Issues, Appeal No. 002/19-09-2007-ECCC-OCIJ (PTC 03), Pre-Trial Chamber, 3 March 2008, C22/I/15, paras. 3-4. In this case, Ieng Sary wished to challenge only the provisional detention decision of the Co-Investigating Judges’ Detention Order and to postpone for a later occasion his response to the jurisdictional issues. Upon consideration of this request, the Pre-Trial Chamber found that the counsel for Ieng Sary “have the opportunity to raise *all* issues they wish to raise in their appeal” against the Detention Order. (emphasis added) The Pre-Trial Chamber found that there is no provision in the Internal Rules for the Chamber to find that Ieng Sary was “free to file any [subsequent] jurisdictional challenges”.

<sup>3</sup> See Internal Rules, Rev.5, 9 February 2010 (“Rules”), rule 75(3) (providing that an appeal can be lodged within 30 days of the notification of the impugned decision).

<sup>4</sup> Ieng Sary’s Expedited Request for Extension of Page Limit to Appeal the Jurisdictional Issues Raised by the Closing Order, Appeal No. 002/19-09-2007-ECCC-OCIJ (PTC 75), 17 September 2010, D427/1/1 (“Request”), p. 1.

<sup>5</sup> Practice Directions on Filing of Documents Before the ECCC, ECCC/01/2007/Rev.4, 5 June 2009 (“Practice Directions”), article 5.4.

<sup>6</sup> Decision on Co-Prosecutors’ Application for Extension of Time and Page Limits to File a Joint Response to Ieng Thirith, Khieu Samphan, Ieng Sary and Certain Civil Parties’ Appeals Against the Order on Joint Criminal Enterprise, Appeal Nos. 002/19-09-2007-ECCC-OCIJ (PTC 35, 37, 38 & 39), Pre-Trial Chamber, 9 February 2010 (“PTC JCE Decision”), para. 6.

<sup>7</sup> Order on Request for Extension of Page Limit, Case No. 002/19-09-2007-ECCC-OCIJ, Co-Investigating Judges, 8 September 2009, para. 8.

<sup>8</sup> Practice Directions, article 5.2; Request, p. 2.

most of the allotted 30-page space, if an extension is not granted.”<sup>9</sup> Since the Closing Order addresses several jurisdictional issues, a reasonable extension of the page limit would be in the interests of justice. However an extension up to 180 pages, six times that envisaged by the Practice Direction, is excessive and should be denied.

3. By way of comparison the Practice Directions on the Filing of Documents before the ECCC (“Practice Direction”) provides a maximum limit of 30 pages for appeals against trial judgments which like a closing order deals with multiple factual and legal submissions addressed throughout the trial.<sup>10</sup> Other international tribunals, like the International Criminal Tribunal for the Former Yugoslavia, also stipulate much shorter page lengths than that sought by Ieng Sary. For example 9,000 words (30 pages) for interlocutory appeals, 30,000 words (100 pages) for an appeal against a judgment and 12,000 words (40 pages) if the appeal against a judgment is restricted to sentencing.<sup>11</sup> Ieng Sary’s request for 180 pages extends well beyond the generally accepted limits for appellate filings at the pre-trial and final appellate stages in other international jurisdictions.
4. Moreover, the extension requested is also excessive when one considers that the Rules do not intend that the entire Closing Order is appealable by the Defence. Although the PTC has raised the possibility of a Defence Appeal: “if the Closing Order confirms the jurisdiction of the ECCC” then an indictee “may consider the effect of Internal Rule 67(5) [dealing with the Closing Order] when read in conjunction with Internal Rule 74(3)(a) [dealing with the possibility of an appeal if a decision confirms the jurisdiction of the ECCC]”<sup>12</sup> the PTC has not confirmed in what circumstances such an appeal would be admissible. It is the Co-Prosecutors position that if jurisdictional issues intended to be raised by any Appellant have been previously confirmed by the Co-Investigating Judges and the Appellant has chosen not to appeal that jurisdictional issue at the earlier stage they are consequently barred from raising such issues now. To allow otherwise would be a misuse of the procedures of the PTC and would bring the administration of justice into disrepute.

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<sup>9</sup> Request, p. 1.

<sup>10</sup> Practice Directions, article 5.2.

<sup>11</sup> Practice Direction on the Length of Briefs and Motions, IT/184.Rev.2, 16 September 2005, articles C(1), C(2).

<sup>12</sup> Decision on Ieng Sary’s Appeal Against the Co-Investigating Judges’ Order on Ieng Sary’s Motion Against the Application of Command Responsibility, Appeal No. 002/19-09-2007-ECCC-OCIJ (PTC 60), Pre-Trial Chamber, 9 June 2010, D345/5/11, para. 11.

5. The Co-Investigating Judges confirmed the jurisdiction over the four current indictees, including Ieng Sary during September-November 2007, when they arrested and brought them before the ECCC and subjected them to a three year judicial investigation. More specifically, the Co-Investigating Judges confirmed the jurisdiction of this Court over Ieng Sary on 14 November 2007, when they provisionally detained him for the enumerated crimes against humanity and grave breaches of the Geneva Conventions.<sup>13</sup>
6. Jurisdiction was further confirmed over Ieng Sary on 16 December 2009, when the Co-Investigating Judges informed him of the charges under the 1956 Penal Code and the Genocide Convention.<sup>14</sup> In their communication of 16 December 2009, the Co-Investigating Judges also confirmed the jurisdiction of the ECCC over Ieng Sary with respect to the modes of liability of planning, instigating, ordering, committing, adding and abetting, conspiring, participating, attempting, joint criminal enterprise and superior responsibility.<sup>15</sup> Ieng Sary had 30 days to challenge these jurisdictional decisions before the PTC.<sup>16</sup>
7. Rather than appeal all of these decisions confirming jurisdiction Ieng Sary selectively chose to exercise his right of appeal on: (1) the question of the royal pardon and amnesty granted to him, and (2) the ground of double jeopardy owing to his “conviction” by the Peoples’ Revolutionary Tribunal of 1979.<sup>17</sup> Consequently, to the extent that Ieng Sary has not challenged the decisions of 14 November 2007 and 16 December 2009, he has forfeited his right to challenge jurisdiction on all those jurisdictional issues confirmed by those decisions during the pre-trial proceedings before the PTC. He may, however, have a right at trial to raise “preliminary objections”, including the issue of the jurisdiction of the Trial Chamber, 30 days after the Closing Order has become final.<sup>18</sup>

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<sup>13</sup> Provisional Detention Order, Case No. 002/19-09-2007-ECCC-OCIJ, Co-Investigating Judges, 14 November 2007, pp. 1-2, 7.

<sup>14</sup> Written Record of Interview of Charged Person, Case No. 002/19-09-2007-ECCC-OCIJ, Co-Investigating Judges, 16 December 2009 (“Written record of 16 December 2009”), paras. 9-13.

<sup>15</sup> Written Record of 16 December 2009, para. 9.

<sup>16</sup> Rules, rule. 75(3).

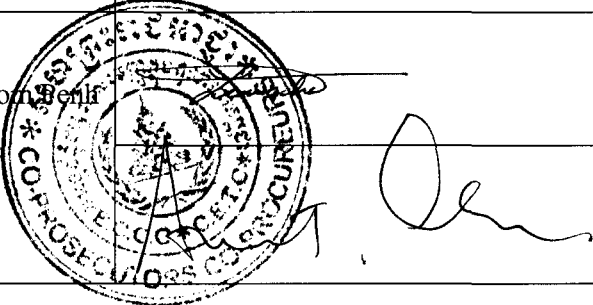
<sup>17</sup> Decision on Appeal Against Provisional Detention Order of Ieng Sary, Appeal No. 002/19-09-2007-ECCC-OCIJ (PTC 03), Pre-Trial Chamber, 17 October 2008, C22/I/74.

<sup>18</sup> Rules, rule 89.

## II. CONCLUSION

8. As (1) the Closing Order has only reiterated the exercise of jurisdiction that has already been confirmed by the Co-Investigating Judges, *inter alia*, by their decisions of 14 November 2007 and 16 December 2009, (2) Ieng Sary has had an opportunity in the past to challenge that confirmation of jurisdiction which he selectively exercised, (3) Ieng Sary has already filed copious, and at many times repetitive, briefs on issues including but not limited to double jeopardy, genocide, crimes against humanity, grave breaches of the Geneva Conventions, crimes under the 1956 Penal Code, joint criminal enterprise, command responsibility, and these documents remain on the Case File, and (4) the PTC and the Trial Chamber have extensively ruled on different occasions on all these issues, it would be both unreasonable and bring the administration of justice into disrepute to grant Ieng Sary the requested extension of a page limit to 180 pages.<sup>19</sup>
9. However, a reasonable extension may still be in order to enable Ieng Sary to “provide the [Pre-Trial] Chamber with sufficient material in order to consider all issues [...] appropriately”<sup>20</sup> The Co-Prosecutors consider that double the permissible page length of 30 pages would be a reasonable extension. In the circumstances, the Co-Prosecutors do not oppose an extension of page limit but request that the PTC grant the Request, in part, by extending the page limit of the Appellant’s proposed appeal brief to a maximum of sixty pages in English.

Respectfully submitted,

Date	Name	Place	Signature
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<sup>19</sup> See, *inter alia*, Judgement, Case No. 001/18-07-2007-ECCC-TC, Trial Chamber, 26 July 2010, E188 (dealing with four out of seven issues identified by Ieng Sary, namely, (1) crimes against humanity, (2) grave breaches of the Geneva Conventions, (3) national crimes, and (4) command responsibility); Decision on the Appeals Against the Co-Investigating Judges’ Order on Joint Criminal Enterprise, Appeal Nos. 002/19-09-2007-ECCC-OCIJ (PTC 38), D97/15/9, 20 May 2010 (dealing with many jurisdictional issues common to all the matters raised by Ieng Sary as his potential appeal points against the Closing Order).

<sup>20</sup> PTC JCE Decision, para. 6.