



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia
Chambres extraordinaires au sein des tribunaux cambodgiens

អង្គបុរេជំនុំជម្រះ

Pre-Trial Chamber
Chambre Préliminaire

ព្រះរាជាណាចក្រកម្ពុជា

ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia
Nation Religion King

Royaume du Cambodge
Nation Religion Roi

លេខ/No: ០៤២៧/១៣

Criminal Case File No: 002/19-09-2007-ECCC/OCIJ (PTC75)

Before:
Judge PRAK Kimsan, President
Judge Rowan DOWNING
Judge NEY Thol
Judge Catherine MARCHI-UHEL
Judge HUOT Vuthy

Date: 1 October 2010

PUBLIC

**DECISION ON IENG SARY'S EXPEDITED REQUEST FOR EXTENSION OF PAGE LIMIT
TO APPEAL THE JURISDICTIONAL ISSUES RAISED BY THE CLSOING ORDER**

Co-Prosecutors

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Andrew CAYLEY

Charged Person

IENG Sary

Lawyers for the Civil Parties

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ORIGINAL DOCUMENT/DOCUMENT ORIGINAL	
ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/Date de reception):	
01 / 10 / 2010	
ម៉ោង (Time/Heure):	
14:00	
អគ្គិសនីបណ្ណករសំណុំរឿង/Case File Officer/L'agent chargé du dossier:	
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THE PRE-TRIAL CHAMBER of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) is seized of “Ieng Sary’s Expedited Request for Extension of Page Limit to Appeal the Jurisdictional Issues Raised by the Closing Order” filed by the Co-Lawyers for the Charged Person on 17 September 2010 (the “Request”).¹

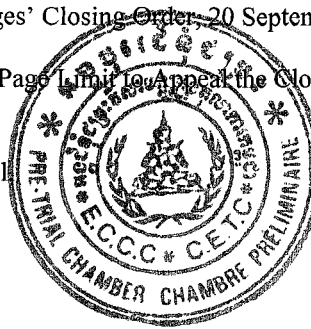
1. On 16 September 2010 the Co-Investigating Judges filed the Closing Order.² The Closing Order was notified to the parties on 22 September 2010.
2. On 17 September 2010, the Co-Lawyers for the Charged Person filed a Notice of Appeal against the Closing Order.³ The Notice of Appeal was notified on 20 September 2010.
3. On the same day of 17 September 2010, the Co-Lawyers filed the Request. The Request was notified on 21 September 2010.
4. On 27 September 2010, the Co-Prosecutors filed the “Co-Prosecutors’ Observations on Ieng Sary’s Request for an Extension of Page Limit to Appeal the Closing Order”.⁴
5. By the Request, the Co-Lawyers for the Charged Person ask for an extension of the page limit for this Appeal to a total of 180 pages.
6. The Pre-Trial Chamber observes that the Co-Lawyers’ in the Request submit that they intend to file an Appeal “to the portions of the Closing Order which confirm the jurisdiction of ECCC” and that although the Internal Rules do not prohibit them from filing separate appeals, 30 pages each, related to each jurisdictional issue, it would be in the interest of judicial economy to address all issues in one motion. The Co-Lawyers further submit that there are exceptional circumstances which require an extension of the applicable page limit for this Appeal because the jurisdictional issues that will be addressed are quite complex and would require most of the allotted 30-page limit for each. The Co-Lawyers state that they would not be able to serve the best interests of their client if they are not granted the extension of page limit sought.

¹ Ieng Sary’s expedited Request for Extension of Page Limit to Appeal the Jurisdictional Issues Raised by the Closing Order, 17 September 2010, D427/1/1, (“The Request”).

² Closing Order, 16 September 2010, D427.

³ Appeal Register of Ieng Sary’s Lawyers Against the Co-Investigating Judges’ Closing Order, 20 September 2010, D427/1.

⁴ Co-Prosecutors’ Observations on Ieng Sary’s Request for an Extension of Page Limit to Appeal the Closing Order, 27 September 2010, D427/1/2. (“Co-Prosecutors’ Observations”).



7. The Co-Prosecutors' dispute the Co-Lawyers assertion that separate 30 page briefs can be filed against separate jurisdictional issues raised on one order and claim an appealing party must raise all challenges to a decision in one consolidated brief.⁵
8. The Co-Prosecutors do not oppose to an extension of the page limit for the appeal, since the Closing Order addresses several jurisdictional issues. However, in view of the provisions in the ECCC Practice Directions and of the practice followed in other international tribunals, the Co-Prosecutors find the request for a total of 180 pages for this appeal excessive for the following reasons:⁶ (1) the Internal Rules do not intend that the entire Closing Order is appealable by the Defence and the Pre-Trial Chamber has not confirmed in what circumstances such an appeal would be admissible;⁷ (2) the Appellant is barred from challenging now those jurisdictional issues which were confirmed by the Co-Investigating Judges at an earlier stage and which he then chose not to appeal;⁸ (3) the Trial Chamber and Pre-Trial Chamber have extensively ruled on different occasions on several jurisdictional issues raised by the Appellant.⁹ The Co-Prosecutor's suggest to limit the extension to a maximum of sixty pages in total.¹⁰
9. Pursuant to Article 5.4 of the ECCC Practice Directions (Rev. 4), the Pre-Trial Chamber may, at the request of a participant, extend the page limit in exceptional circumstances.
10. The Pre-Trial Chamber concurs with the Co-Prosecutors that the Co-Lawyers assertion that separate 30 page briefs can be filed against separate jurisdictional issues raised in one order is incorrect. However, the Pre-Trial Chamber is of the view that the complexity of the seven issues alleged to be jurisdictional which the Appellant seeks to appeal constitutes the exceptional circumstance envisaged by the Practice Direction and warrants an extension of the page limit. The Pre-Trial Chamber notes in particular that the Defence will have to satisfy it of the jurisdictional nature of the issues in question before addressing their arguments on the merit.
11. The Pre-Trial Chamber further notes that it is in the interest of the Charged Person to have such issues addressed as fully and comprehensively as possible, that the Co-Prosecutors would be given the same opportunity if they were to seek an extension of the page limit

⁵ Co-Prosecutors' Observations, para. 1.

⁶ Co-Prosecutors' Observations, paras. 2, 3 and 9.

⁷ Co-Prosecutors' Observations, para. 4.

⁸ Co-Prosecutors' Observations, paras 4-7.

⁹ Co-Prosecutors' Observations, para. 8.

¹⁰ Co-Prosecutors' Observations, para.9.



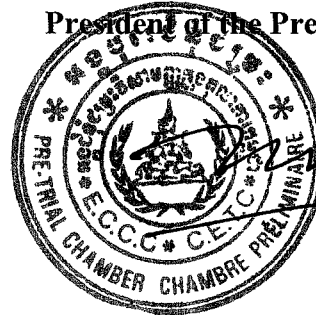
for a response to the proposed appeal, and that this would provide the Chamber with sufficient material to consider all the issues raised appropriately.

THEREFORE, THE PRE-TRIAL CHAMBER HEREBY:

GRANTS the Request for extension of page limit for this appeal to 180 pages in total in English.

Phnom Penh, 1 October 2010 ^{CR}

President of the Pre-Trial Chamber



PRAK KIMSAN