

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

FILING DETAILS

Appeal Nos.: 002/19-09-2007-ECCC/OCIJ
(PTC 75 & 152)

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CO-PROSECUTORS' PRELIMINARY OBSERVATIONS IN RESPECT OF IENG
SARY'S SEPARATE APPEALS AGAINST THE CLOSING ORDER ON
PROVISIONAL DETENTION AND JURISDICTION

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OBSERVATIONS

1. A decision of the Co-Investigating Judges, like the Closing Order,¹ can be appealed only once before the Pre-Trial Chamber. A party choosing to appeal a decision must, therefore, raise all of the challenges it wishes to bring against that decision in one consolidated brief.² The ECCC Internal Rules do not envisage multiple appeals by one appellant against a single decision of the Co-Investigating Judges.³ This maintains the integrity of the impugned decision and allows the Pre-Trial Chamber to bring finality to the decision-making process thereby ensuring judicial economy and discipline. The Pre-Trial Chamber has accordingly found the practice of challenging one decision in separate appeals as “incorrect”.⁴ This is also consistent with the Pre-Trial Chamber’s practice in the past when Ieng Sary filed, and the Pre-Trial Chamber determined, a consolidated appeal addressing questions of both jurisdiction and provisional release against an order of the Co-Investigating Judges.⁵

2. Despite the practice and the jurisprudence of the Pre-Trial Chamber, Ieng Sary has attempted to appeal the Closing Order in two separate and independent appeals: (1) appeal on the question of provisional detention (“Detention Appeal”),⁶ and (2) appeal on the question of jurisdiction (“Jurisdiction Appeal”).⁷ The Pre-Trial Chamber must reject this attempt.

¹ Closing Order, Case No. 002/19-09-2007-ECCC-OCIJ, Co-Investigating Judges, 15 September 2010, D427.

² 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”.

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

⁴ Decision on 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), Pre-Trial Chamber, 1 October 2010, D427/1/3, para. 10.

⁵ 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.


⁶ Ieng Sary’s Appeal Against the Closing Order’s Extension of his Provisional Detention, Appeal No. 002/19-09-2007-ECCC-OCIJ (PTC 152), 22 October 2010, D427/5/1.

⁷ Ieng Sary’s Appeal Against the Closing Order, Appeal No. 002/19-09-2007-ECCC-OCIJ (PTC 75), 25 October 2010, D427/1/6.

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3. The Co-Prosecutors, therefore, invite the Pre-Trial Chamber to:
- (a) Accept the Detention Appeal, filed first in time, as the only validly filed appeal against the Closing Order and reject the Jurisdiction Appeal *in limine* as non-maintainable; or
 - (b) Direct Ieng Sary to comply with the Pre-Trial Chamber's jurisprudence and practice and file one consolidated appeal brief; or
 - (c) Treat the two appeals as one filing, consider them together and, accordingly, permit the Co-Prosecutors to file a common response to the two appeals within the time period permissible to respond to the Jurisdiction Appeal, filed later in time.

Respectfully submitted,

Date	Name	Place	Signature
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