

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

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**CO-PROSECUTORS' OBSERVATIONS ON IENG THIRITH AND NUON CHEA'S
URGENT DEFENCE REQUEST TO DETERMINE DEADLINES**

Filed by:

Co-Prosecutors
CHEA Leang
Andrew CAYLEY

Distributed to:

Trial Chamber
Judge NIL Nonn. President
Judge Silvia CARTWRIGHT
Judge YA Sokhan
Judge Jean-Marc LAVERGNE
Judge THOU Mony

Copied to:

Accused
NUON Chea
IENG Sary
IENG Thirith
KHIEU Samphan

Civil Party Lead Co-Lawyers
PICH Ang
Elisabeth SIMONNEAU FORT

Lawyers for the Defence
SON Arun
Michiel PESTMAN
Victor KOPPE
ANG Udom
Michael G. KARNAVAS
PHIAT PouV Seang
Diana ELLIS
SA Sovan
Jaques VERGES
Phillipe GRECIANO

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I. INTRODUCTION

1. On 13 January 2011, the Pre-Trial Chamber issued its Decision on Ieng Thirith's and Nuon Chea's Appeals Against the Closing Order ("Appeal Decision").¹ On 14 January 2011, Ieng Thirith and Nuon Chea (collectively, "the Defence") filed their "Urgent Defence Request to Determine Deadlines" (the "Request").² The Defence Request requests that the Trial Chamber order that the time deadlines imposed under Internal Rules 80 and 89 start running from the date upon which the Pre-Trial Chamber provides the underlying reasons for its Appeal Decision.³ The Co-Prosecutors oppose the Defence's requests for the reasons detailed below.

II. THE TRIAL CHAMBER SHOULD NOT ADJUST THE DATE ON WHICH THE TIME LIMIT FOR SUBMITTING RULE 80 WITNESS LISTS COMMENCES.

2. Rule 80 of the Internal Rules details the timeline for the parties' witness list filings and provides that the Co-Prosecutors must file their witness list 15 days from the day the Indictment is finalized whereas other parties must submit their list of additional witnesses within 15 days of notification of the Co-Prosecutors' list."⁴ The Trial Chamber held in its 17 January 2011 order that the Rule 80 timelines started to run "from Friday 14 January 2011, being the date upon which the Trial Chamber greffiers were formally forwarded the Case File from the Pre-Trial Chamber."⁵ In light of the Trial Chamber's express statement on this issue, i.e. that the time clock started running from 14 January 2011, the Defence's request for clarification of the applicable deadline is moot.
3. In any case, the Defence's assertion that its interests will be harmed if it does not have the full Pre-Trial Chamber decision prior to compiling its lists of witnesses⁶ is unfounded and should be disregarded by the Trial Chamber. The Closing Order, as amended by the Pre-Trial Chamber's 13 January 2011 decision, clearly sets out the charges against the Accused and discusses in detail the evidence and law supporting

¹ Pre-Trial Chamber, Decision on Ieng Thirith's and Nuon Chea's Appeals Against the Closing Order, 13 January 2011 (hereinafter "Appeal Decision").

² Defence Teams of Ieng Thirith and Nuon Chea, Urgent Defence Request to Determine Deadlines, 14 January 2011 (hereinafter "Defence Request").

³ Defence Request, para. 8.

⁴ ECCC Internal Rules, rule 80(1-2).

⁵ Trial Chamber, Order to File Material in Preparation for Trial, 17 January 2011.

⁶ Defence Request, para. 6.

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those allegations.⁷ The Defence fails to explain how its ability to compile its witness lists will be impacted in the absence of access to the specific reasoning underlying the Pre-Trial Chamber's rulings on its *jurisdictional* grounds of appeal; this claim is strained at best and a mere dilatory tactic at worst.

III. THE TRIAL CHAMBER SHOULD NOT ADJUST THE DATE ON WHICH THE TIME LIMIT FOR SUBMITTING RULE 89 PRELIMINARY OBJECTIONS COMMENCES.

4. Rule 89 of the Internal Rules provides that preliminary objections must be raised "no later than 30 (thirty) days after the Closing Order becomes final." Applying the date that the Trial Chamber has pinpointed as representing the finalization of the Closing Order, the 30-day time limit for submission of preliminary objections began running as of 14 January 2011.⁸
5. The Defence claims that the 30-day time period has not yet started because the Pre-Trial Chamber decision of 13 January 2011 is not sufficiently reasoned and therefore does not have the effect of a "decision."⁹ This claim is misguided and undercut by the Defence's own actions and admissions. Indeed, by virtue of its various filings to the Trial Chamber, the Defence has implicitly accepted that the Pre-Trial Chamber's Decision of 13 January 2011 was a valid "decision" for the purposes of the Rules;¹⁰ logically, if it were not a valid "decision," it could not have served to activate transfer of the casefile to the Trial Chamber.
6. Furthermore, it is neither prejudicial to the Defence nor a breach of the ICCPR for the Defence to be required to comply with the above-mentioned timeline, even if this means raising preliminary objections prior to the issuance of the Pre-Trial Chamber's detailed reasons. The Trial Chamber is not bound by the Pre-Trial Chamber's findings

⁷ See Appeal Decision, pages 6-7 (rejecting all of Nuon Chea's grounds of appeal and rejecting all of Ieng Thirith's grounds of appeal except for Ground 4, which it granted in part). The Co-Prosecutors note that the Defence has had several months to peruse the Closing Order, which has been amended only marginally by the Pre-Trial Chamber's decision of 13 January 2011.

⁸ See Trial Chamber, Order to File Materials in Preparation of Trial, 17 January 2011, para. 2 (finding, with respect to another provision that refers back to the "the date the Indictment becomes final", that the time period should run from Friday 14 January 2011 on the basis that such date "represents the date upon which the Trial Chamber greffiers were formally forwarded the Case File from the Pre-Trial Chamber.").

⁹ Defence Appeal, paras. 4-5.

¹⁰ Nuon Chea has expressly conceded this point. See Nuon Chea Urgent Application for Release, para. 11 (accepting that the Trial Chamber is seized of the casefile "as a result of the indictment by the PTC on 13 January 2011") (emphasis added).

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with respect to the jurisdictional issues raised by the Defence, and there is no reason why the Accused's preliminary objections, which will be made before the Trial Chamber, will be affected by the Pre-Trial Chamber's full decision. Indeed, the Co-Prosecutors believe that – regardless of the specifics of the reasoning provided in the forthcoming full Pre-Trial Chamber decision – it is unlikely that the Defence will be deterred in raising exactly the same issues as preliminary objections before the Trial Chamber.

7. There is also no reasonable basis for the Defence's suggestion that the above-mentioned timeline would result in an infringement of their right to "adequate time and facilities" to prepare their preliminary objections.¹¹ Both the Ieng Thirith and Nuon Chea Defence teams have been active in raising legal issues throughout the pre-trial stage, and, as diligent advocates, they undoubtedly have devoted substantial time over the last three years to researching and developing potential preliminary objections. Indeed, the Defence teams' level of preparation is demonstrated by the quality of their submissions to the Pre-Trial Chamber in their respective appeals against the Closing Order. In any case, the right to "adequate time and facilities" must be balanced against another central component of the right to a fair trial, i.e. the right of a defendant to be tried without undue delay.¹²
8. Nevertheless, although the Co-Prosecutors maintain that it is unnecessary for the Accused to address the detailed reasoning of the Pre-Trial Chamber in its submissions on preliminary objections, in the interests of fairness, speed and judicial economy, the Co-Prosecutors would not object to the Defence filing a supplemental submission after the issuance of the Pre-Trial Chamber's full decision, providing that the discussion in the supplemental submission directly pertains to the specific reasoning provided in the Pre-Trial Chamber's full decision.

¹¹ Defence Request, paras. 6-7 (citing Article 14(3) of the International Covenant on Civil and Political Rights).

¹² ICCPR, article 14(3)(c); Establishment Law, article 33(new).

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IV. CONCLUSION

9. For the foregoing reasons, the Co-Prosecutors respectfully request that:
- (1) the Trial Chamber find that the Defence's 14 January 2011 request for clarification as to the deadline for preparation of Rule 80 witness lists is moot since the Trial Chamber has since indicated that the applicable deadline commenced on 14 January 2011;
 - (2) the Trial Chamber order the Defence to file its Rule 89 preliminary objections no later than 30 days after the date of finalization of the Closing Order, i.e. 14 January 2011.

Respectfully submitted,

Date	Name	Place	Signature
25 January 2011	YET Chakriya Deputy Co-Prosecutor	Phnom Penh	
	Andrew CAYLEY Co-Prosecutor		