

BEFORE THE TRIAL CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

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CO-PROSECUTORS' RESPONSE TO IENG SARY'S EXPEDITED REQUEST
FOR THE POSTPONEMENT OF THE TIME PERIOD, EXTENSION OF TIME AND PAGE LIMITS
RELATING TO THE RULE 89 PRELIMINARY OBJECTIONS

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I. INTRODUCTION

1. On 13 January 2011, the Pre-Trial Chamber issued its Decision on Ieng Sary's Appeal Against the Closing Order.¹ On 17 January 2011, the Accused Ieng Sary ("the Accused") filed an expedited request for the time period for preliminary objections not to commence until the Pre-Trial Chamber has given reasons for its decision on Ieng Sary's appeal against the Closing Order and an expedited request for extension of time and page limit to file Rule 89 preliminary objections.² The Co-Prosecutors oppose the Accused's requests for the reasons detailed below.

II. THE TRIAL CHAMBER SHOULD NOT ADJUST THE DATE ON WHICH THE 30-DAY TIME LIMIT FOR RAISING RULE 89 PRELIMINARY OBJECTIONS COMMENCES.

2. Rule 89 of the ECCC Internal Rules provides that preliminary objections "shall be raised no later than 30 (thirty) days after the Closing Order becomes final."³ Applying the date that the Trial Chamber has pinpointed as representing the finalization of the Closing Order, the Closing Order became final on 14 January 2011, pursuant to the Pre-Trial Chamber's decision ruling on the Accused's Closing Order appeal and the subsequent transfer of the Case File from the Pre-Trial Chamber to the Trial Chamber.⁴ Accordingly, the 30-day time limit for raising Rule 89 preliminary objections commenced on 14 January 2011.
3. The Accused should not be allowed to depart from the explicit requirements of the Rules. The ECCC Internal Rules reflect a careful balancing between interests of judicial economy and efficiency and the fair trial rights of the accused. Rule 89 in particular reflects the conclusion of the drafters of the Rules that 30 days is an adequate time period

¹ Pre-Trial Chamber, Decision on Ieng Sary's Appeal Against the Closing Order, 13 January 2011 (hereinafter "PTC Appeal Decision").

² Ieng Sary's Expedited Request for the Time Period for Preliminary Objections Not to Commence Until the Pre-Trial Chamber Has Given Reasons For Its Decision on Ieng Sary's Appeal Against the Closing Order & Expedited Request for Extension of Time and Page Limit to File Rule 89 Preliminary Objections (hereinafter "Ieng Sary Request"), 17 January 2011.

³ ECCC Internal Rules, rule 89(1).

⁴ See Trial Chamber, Order to File Materials in Preparation of Trial, 17 January 2011, para. 2 (finding, with respect to another provision that refers to a time period commencing on the date that the Indictment becomes final, that the relevant 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."); PTC Appeal Decision, para. 10 (holding that "[t]he Accused Person is indicted and ordered to be sent for trial as provided in the Closing Order being read in conjunction with this decision").

to prepare preliminary objections challenging the jurisdiction of the court or any issue which would require the termination of prosecution. This time period is particularly appropriate here where the Accused's level of preparation is apparent in light of his numerous, extensive submissions on jurisdictional issues to the Pre-Trial Chamber⁵ and where the Accused himself admits that "it was possible for the Defence to conduct research on [jurisdictional issues] before the Closing Order became final."⁶

4. It is neither prejudicial to the Accused nor a breach of fundamental fair trial rights for the Accused to be required to make preliminary objections within 30 days of the finalization of the Closing Order, 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, 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. There is also no reasonable basis for the Accused's suggestion that they would lack "adequate time and facilities" to prepare their preliminary objections;⁷ indeed, in this respect, the Co-Prosecutors note that another central component of the right to a fair trial is the right of a defendant to be tried without undue delay.⁸ Furthermore, 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 Accused will be deterred in raising exactly the same issues as preliminary objections before the Trial Chamber.
5. 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 Accused filing a supplemental submission after the issuance of the Pre-Trial Chamber's full decision, providing that the discussion in the supplemental

⁵ See, e.g. Ieng Sary's Motion against the Application at the ECCC of the Form of Liability known as Joint Criminal Enterprise, 28 July 2008, D97; Ieng Sary's Motion against the Applicability of the Crime of Genocide at the ECCC, 30 October 2009, D240; Ieng Sary's Motion against the Application of Command Responsibility at the ECCC, 15 February 2010, D345/2; Ieng Sary's Motion Against the Application of Crimes Against Humanity at the ECCC, 13 April 2010, D378; Ieng Sary's Motion against the Application of Grave Breaches at the ECCC, 7 May 2010, D379.

⁶ Ieng Sary Request, para. 13.

⁷ PTC Appcal Decision, paras. 6-8.

⁸ ICCPR, article 14(3)(c); Establishment Law, article 33(new).

submission directly pertains to the specific reasoning provided in the Pre-Trial Chamber's full decision.

III. THE TRIAL CHAMBER SHOULD REJECT THE ACCUSED'S REQUEST TO EXTEND THE TIME LIMIT FOR RULE 89 PRELIMINARY OBJECTIONS

6. The Co-Prosecutors oppose the Accused's request for an additional thirty days to file his Rule 89 preliminary objections. The Accused's numerous prior filings on jurisdictional issues to the Pre-Trial Chamber and his own acknowledgment that he has been able to conduct research on relevant issues prior to the finalization of the Closing Order⁹ demonstrates that the 30-day time period for submission of preliminary objections is adequate and reasonable. It is in the interest of all parties for preliminary objections to be raised and considered in the most thorough yet expeditious fashion possible, and a likely outcome of an extension of the applicable time period is that the Trial Chamber will have less time to consider the merits of the submissions. The Co-Prosecutors also note that the 30-day time period provided in the Rules conforms with the time period allotted for preliminary motions by other international tribunals.¹⁰

IV. THE TRIAL CHAMBER SHOULD REJECT THE ACCUSED'S REQUEST TO EXTEND THE APPLICABLE PAGE LIMIT FOR ITS RULE 89 PRELIMINARY OBJECTIONS

7. The Co-Prosecutors maintain that the Trial Chamber should require the accused to comply with the Practice Direction on the Filing of Documents, which provides that a document filed to the Trial Chamber shall not exceed 15 pages in English or French or 30 pages in Khmer, unless otherwise provided in the Rules or Practice Direction or ordered by the ECCC.¹¹ Although the Trial Chamber may extend page limits for a document in "exceptional circumstances,"¹² such circumstances do not exist here. The Rules specifically anticipate that parties may make preliminary objections, including as to jurisdiction of the Trial Chamber.¹³ Therefore, the mere fact that the Accused wishes to raise jurisdictional issues cannot possibly constitute "exceptional circumstances"; on the contrary, this filing is a normal circumstance. Furthermore, the 15-page limit provided in

⁹ See *supra*, para. 3.

¹⁰ ICTY Rules of Procedure and Evidence, Rule 72; ICTR Rules of Procedure and Evidence, Rule 72.

¹¹ Practice Direction on the Filing of Documents before the ECCC (hereafter "Practice Direction"), art. 5.1.

¹² Practice Direction, art. 5.4.

¹³ Rule 89.

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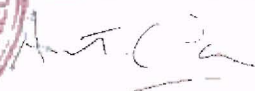
the ECCC Practice Direction is consistent with the practice of other international tribunals. The ICTY, for example, allows only 3,000 words (10 pages) for motions, including preliminary motions that challenge jurisdiction.¹⁴

8. In any case, even if the Trial Chamber were to grant a page-limit extension, the Accused's request for 45 pages for each Rule 89 objection¹⁵ is excessive. The mere fact that jurisdictional issues can be complicated does not warrant a tripling of the applicable page limit. Granted, the Pre-Trial Chamber did allow an extension of the page limit for the Accused's appeal of the Closing Order. However, in that brief, the Accused dealt with eleven discrete issues in 180 pages, which averages out to 16.3 pages per issue, far less than the Accused's current request for 45 pages per issue.

III. CONCLUSION

9. For the foregoing reasons, the Co-Prosecutors respectfully request that:
- (1) the Trial Chamber order the Accused to file his Rule 89 preliminary objections no later than 30 days after the date that the Closing Order was finalized, i.e. 14 January 2011;
 - (2) the Trial Chamber reject the Accused's requests for an extension of the time and page limit for the filing of Rule 89 preliminary objections.

Respectfully submitted,

Date	Name	Place	Signature
25 January 2011	YET Chakriya Deputy Co-Prosecutor	Phnom Penh	
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¹⁴ ICTY Practice Direction on the Length of Briefs and Motions, IT/184.Rev.2, 15 September 2005, I(C)(5).

¹⁵ Ieng Sary Request, para. 17.