BEFORE THE TRIAL CHAMBER

EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

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CO-PROSECUTORS' REPLY TO IENG THIRITH'S RESPONSE TO THE CO-PROSECUTOR'S REQUEST FOR AN EXTENSION OF TIME AND PAGE LIMIT TO RESPOND TO PRELIMINARY OBJECTIONS OF THE ACCUSED

FILED BY:

Co-Prosecutors:
CHEA Leang
Andrew CAYLEY

DISTRIBUTE TO:

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

Civil Party Lead Co-Lawyers:
PICH Ang
Elisabeth SIMONNEAU FORT

Charged Persons and Defence Teams:

NUON Chea
SON Arun
Michiel PESTMAN
Victor KOPPE

IENG Sary
ANG Udom
Michael G. KARNAVAS

KHIEU Samphan
SA Sovan
Jacques VERGÈS
Philippe GRÉCIANO

IENG Thirith
PHAT Pouv Seang
Diana ELLIS

I. INTRODUCTION

1. Pursuant to Article 8.4 of the "Practice Direction on Filing of Documents Before the ECCC' (the 'Practice Direction') the Co-Prosecutors submit their reply to the "Ieng Thirith Defence Response to 'Co-Prosecutors' Request for an Extension of Time and Page Limit to Respond to Preliminary Objections of the Accused" (the 'Response') [1] which was notified to the parties on 2 March 2011.

II. SUBMISSIONS IN REPLY

2. In the Response Ieng Thirith through her Defence ('the Defence') requested that the Trial Chamber deny the Co-Prosecutors request[2] ('the Co-Prosecutor's Request') for a 14 day extension of time and 20 page extension of page limit to its joint response to the combined preliminary objections of the Accused. In the Response the Defence have misled the Trial Chamber that the Co-Prosecutors Request was a "similar request" to that which the Defence requested for a time and page limit extension for their preliminary objections ('the Defence Request')[3] which was subsequently denied by the Trial Chamber. The circumstances pertaining to the denial of the Defence Request are substantially different to the Co-Prosecutor's Request.

3. First, the Defence fail to acknowledge the significant imbalance of page and time limits between the parties making the preliminary objections and those that are responding to them. In terms of pages, all four Defence teams combined have been granted 108 pages; Nuon Chea – 35 pages, Ieng Sary – 35 pages, Khieu Samphan – 25 pages and Ieng Thirith – 20 pages (used 13). By contrast, the Co-Prosecutors have been granted a total of 20 pages to respond to a total of 108 pages combined. [4]

4. Taking into account all extensions of time granted to the four Defence teams by the Trial Chamber, the longest extension being granted to Ieng Sary namely until 28 February 2011, the combined Defence preliminary objections were filed within 6 weeks of the closing order becoming final. In contrast the Co-Prosecutors will have received 7 days in

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1 Document No. **E51/5/1/1.** "Ieng Thirith Defence Response to 'Co-Prosecutors' Request for an Extension of Time and Page Limit to Respond to Preliminary Objections of the Accused", 2 March 2011.

2 Document No. **E51/5/1.** "Co-Prosecutors' Request for an Extension of Time and Page Limit to Respond to Preliminary Objections of the Accused', 1 March 2011.

3 Document No. **E24.** "Ieng Thirith Defence Request for Additional Time and Pages for Preliminary Objections' 25 January 2011.

4 Request, para.s 2 -5.

which to prepare their combined response - from the time all preliminary objections have been received.

5. Second, the Defence fail to fully acknowledge the extra analysis required for the new issues raised in the preliminary objections to the Closing Order which were not otherwise raised by the Defence teams in their appeal of the Closing Order. They state simply that *"given that many of the preliminary objections filed by the parties overlap, that a consolidated response of 20 pages suffices...."*[5] This assertion minimizes the significance of the new preliminary objections raised by the other Defence teams and the appropriate time and consideration that should be given to those arguments. These new objections include (1) the legality of the ECCC Internal Rules (Nuon Chea) (11 pages), (2) the lack of fair investigation (Nuon Chea) (15 pages) and (3) the lack of personal jurisdiction over Khieu Samphan including the issue of legality (Khieu Samphan) (15 pages).

6. For these issues, the Co-Prosecutors cannot *"simply refer to their arguments filed at earlier occasions in response to defence jurisdictional arguments."*[6] The responses to the new preliminary objections require new arguments which need to be drafted for the first time. The Defence also fail to recognize that both of Khieu Samphan's preliminary objections have not yet been filed in English, the stipulated filing language of the Co-Prosecutors in addition to Khmer. Under the Practice Directions, response times would not commence until the Co-Prosecutors received them in both of their stipulated filing languages.

7. Third, the Defence selectively omit to "remind" the Trial Chamber that in the Co_Prosecutor's previous response to the Defence Request for extension of page and time limits, in both cases, the Co-Prosecutors took an overall positive view of the Request. As to page limits, the Co-Prosecutors did not oppose their request for an extension of their page limits from 15 to 45 pages on the basis that *"a thorough analysis of the Defence's preliminary objections seems reasonable; accordingly, the Co-Prosecutors do not oppose the Defence's request regarding extension of page limit."*[7]

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5 Response, para 7.
6 Response, para 10.
7 Document No. **E24/1.** "Co-Prosecutors' Observations on Ieng Thirith's Request for Additional Time and Pages for Preliminary Objections, 31 January 2011 at para 2.

8. Similarly, as to the Defence Request for an extension of time limit, the Defence selectively omit in their Response that the Co-Prosecutors' recommended to the Trial Chamber that the Defence be given an opportunity to file further submissions on their preliminary objections after the 30 day deadline if the Pre-Trial Chamber's reasoned decision assisted in supporting their arguments, *"However, in the interest of fairness, speed and judicial economy, the Co-Prosecutors do 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 submission directly pertains to the specific reasoning provided in the Pre-Trial Chamber's full decision."* [8] The Trial Chamber will note that this was the basis of the Defence Request in the first place. It was on this basis that the Co-Prosecutors believed further submissions were appropriate.

III. CONCLUSION

9. In light of the relevant circumstances supporting the Co-Prosecutors Request as stated above, and as set out in the application, the Co-Prosecutors request that an extension of 14 days and a further 20 pages to respond to the combined Defence preliminary objections is reasonable and should be granted.

Respectfully submitted,

Date	Name	Place	Signature
4 March 2011	YET Chakriya Deputy Co-Prosecutor	Phnom Penh	
	Andrew CAYLEY Co-Prosecutor		

[8] Document No. **E24/1.** "Co-Prosecutors' Observations on Ieng Thirith's Request for Additional Time and Pages for Preliminary Objections, 31 January 2011 at para 4.