

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

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CO-PROSECUTORS' OBSERVATIONS ON IENG THIRITH'S REQUEST FOR ADDITIONAL TIME AND PAGES FOR PRELIMINARY OBJECTIONS

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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.¹ On 25 January 2011, the Ieng Thirith Defence (the "Defence") filed its Request for Additional Time and Pages for Preliminary Objections ("Defence Request").² The Defence Request asks for an additional 30 days to formulate Rule 89 preliminary objections, commencing on the date that the Pre-Trial Chamber issues its full decision on the Defence's Closing Order appeal.³ The Defence also requests an extension of the page limit for its preliminary objection document from 15 pages to a total of 45 pages.⁴ For the reasons detailed below, the Co-Prosecutors do not oppose the Defence's request for extension of page limit but do oppose the Defence's request for a total of 60 days after the Pre-Trial Chamber issues its full decision to submit preliminary objections.

II. THE CO-PROSECUTORS DO NOT OPPOSE THE DEFENCE'S REQUEST FOR AN EXTENSION OF PAGE LIMIT FOR PRELIMINARY OBJECTIONS TO A TOTAL OF 45 PAGES.

2. The Co-Prosecutor appreciate that a thorough analysis of the Defence's preliminary objections is appropriate and may assist the Trial Chamber in ruling on those objections. In this context, the Defence's request for permission to increase the page limit from 15 pages to 45 pages in order to submit one document covering all preliminary objections seems reasonable; accordingly, the Co-Prosecutors do not oppose the Defence's request regarding extension of page limit.

III. THE CO-PROSECUTORS OPPOSE THE DEFENCE'S REQUEST FOR ADDITIONAL TIME TO RAISE PRELIMINARY OBJECTIONS.

3. The Defence argues that the 30-day deadline in Rule 89 does not start running until the Pre-Trial Chamber issues its full decision.⁵ The Defence also argues that the 30 days provided by Internal Rule 89 is insufficient to formulate preliminary objections and that a 30-day extension of this time limit, to a total of 60 days, would be appropriate.⁶

¹ Decision on Ieng Thirith's and Nuon Chea's Appeals Against the Closing Order, Case File No. 002/19-09/2008-ECCC/OCIJ (PTC 145 & PTC 146), Pre-Trial Chamber, 13 January 2011, D427/2/12.

² Ieng Thirith Defence Request for Additional Time and Pages for Preliminary Objections, Case File No. 002/19-09/2008-ECCC/TC, Defence, 25 January 2011, E24 (hereinafter "Defence Request").

³ Defence Request, para. 15.

⁴ Defence Request, para. 18.

⁵ Defence Request, para. 4. *See also* Urgent Defence Request to Determine Deadlines, Case File No. 002/19-09/2008-ECCC/TC, Defence, 14 January 2011, E14.

⁶ Defence Request, paras. 11, 15.

4. For the reasons previously articulated in response to Nuon Chea and Ieng Thirith's Urgent Defence Request to Determine Deadlines, the Co-Prosecutors reject the notion that the Trial Chamber should adjust the date on which the time limit for submitting Rule 89 preliminary objections commences.⁷ 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
5. With respect to the extension of the 30-day time limit for raising preliminary objections, the Co-Prosecutors disagree that the time period set out in the Rules is insufficient.⁹ Both Co-Lawyers for the Defence have been involved with the case since November 2007 and thus have had over 3 years to consider and develop potential preliminary objections.¹⁰ This substantial period of time includes a period of four months after the 15 September 2011 issuance of the Closing Order, which was only marginally amended by the Pre-Trial Chamber's Decision of 13 January 2011. As diligent advocates, the Defence surely has spent a significant amount of time researching and developing potential preliminary objections over the last few years.
6. Furthermore, the Defence is incorrect in arguing that the likelihood that complex jurisdictional issues will be raised as preliminary objections constitutes an "exceptional circumstance."¹¹ The Rules specifically anticipate that parties may raise preliminary objections, including as to the jurisdiction of the Trial Chamber.¹² As a newly constituted court, it is to be expected that jurisdictional issues may arise at the ECCC that are novel and potentially complex. This does not constitute an "exceptional circumstance"; indeed,

⁷ See Co-Prosecutors' Observations on Ieng Thirith and Nuon Chea's Urgent Defence Request to Determine Deadlines, Case File No. 002/19-09/2008-ECCC/TC, Office of the Co-Prosecutors, 25 January 2011, E14/1 (hereinafter "Co-Prosecutors' Observations on Deadlines Request"), paras. 5-7.

⁸ See Co-Prosecutors' Observations on Deadlines Request, para. 8.

⁹ The issues raised by Ieng Thirith are similar to those raised by Ieng Sary, which the Co-Prosecutors have addressed in their response to Ieng Sary's request for extension of time and page limits for Rule 89 preliminary objections. See 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, Case File No. 002/19-09/2008-ECCC/TC, Office of the Co-Prosecutors, 25 January 2011, E15/1.

¹⁰ See Letter from Rupert Skilbeck, Head of Defence Support Section, to the Co-Investigating Judges, 12 November 2007, A56 (stating that Ieng Thirith had selected Mr. Phat Pov Seang to act as her Cambodian Co-Lawyer and Miss Diana Ellis to act as her foreign Co-Lawyer).

¹¹ See Defence Request, para. 14.

¹² See ECCC Internal Rules (Rev.6), 17 September 2010, rule 89.

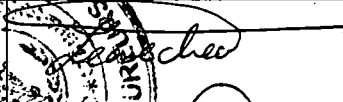

it is quite an ordinary circumstance and must have been contemplated by the drafters of the ECCC Internal Rules.

7. Therefore, the 30-day time period allotted by the drafters of the ECCC Internal Rules should be maintained since it reflects the drafters' careful and considered balancing between interests of judicial economy and efficiency and the fair trial rights of the accused.¹³ In this respect, the Co-Prosecutors note that the 30-day time period provided in the Rules conforms with the time period allotted for preliminary motions by other international tribunals that deal with similarly complex jurisdictional issues.¹⁴ The Co-Prosecutors also note that it is within the discretion of the Trial Chamber to decide when it is most appropriate to deal with jurisdictional issues in detail.

III. CONCLUSION

8. For the reasons stated above, the Co-Prosecutors:
- (1) do not oppose the Defence's request for an extension of the allotted page limit from 15 pages to a total of 45 pages for one document encompassing all preliminary objections;
 - (2) oppose the Defence's request that the Trial Chamber allow the Defence to file its preliminary objections within sixty days after receipt of the Pre-Trial Chamber's full decision.

Respectfully submitted,

Date	Name	Place	Signature
31 January 2011	CHEA Leang Co-Prosecutor	Phnom Penh	
	Andrew CAYLEY Co-Prosecutor		

¹³ Indeed, another central component of the right to a fair trial is the right of a defendant to be tried without undue delay. See International Covenant on Civil and Political Rights, *entry into force* 23 March 1976, article 14(3)(3); Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes committed during the period of Democratic Kampuchea, 27 October 2004, article 33 (new).

¹⁴ ICTY Rules of Procedure and Evidence (Rev.45), 8 December 2010, article 72; ICTR Rules of Procedure and Evidence, *amended* 1 October 2009, article 72.