

**BEFORE THE PRE-TRIAL CHAMBER**

**EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

**FILING DETAILS**

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**IENG SARY'S EXPEDITED REQUEST FOR EXTENSION OF TIME AND PAGE LIMIT TO REPLY TO THE CO-PROSECUTORS' RESPONSE TO IENG SARY'S APPEAL AGAINST THE CLOSING ORDER IF NO ORAL HEARING IS GRANTED**

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**The Pre-Trial Chamber Judges:**

Judge PRAK Kimsan  
Judge NEY Thol  
Judge HUOT Vuthy  
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**All Defence Teams**



Mr. IENG Sary, through his Co-Lawyers (“the Defence”), pursuant to Rule 39(4) of the ECCC Internal Rules and Article 5.4 of the Practice Direction on Filing Documents Before the ECCC (“Practice Directions”), hereby requests an extension of the applicable 5 day time limit<sup>1</sup> and 30-page limit<sup>2</sup> to file a Reply to the Co-Prosecutors’ forthcoming Response (“OCP Response”) to IENG Sary’s Appeal against the Closing Order,<sup>4</sup> should no oral hearing be held. Specifically, the Defence respectfully requests that the 5 day period begin to run as soon as it is informed as to whether a Reply is allowed, that this period be extended to 15 days from such notification, and that the applicable page limit be extended from 30 pages to 75 pages. This Request is made for the following reasons:

1. The OCP informed the Defence that it expects to file its Response on 19 November 2010 and it will provide a courtesy copy after filing. It also noted that with respect to a request for an extension of the page and time limit for the filing of the Reply, the OCP, consistent with its past practices, would not look unfavorably on any *reasonable* request to the Pre-Trial Chamber.
2. According to Article 8.4 of the Practice Directions, a Reply shall only be permitted where there is no oral argument on a request and such Reply must normally be filed within 5 calendar days of notification of the Response. On 12 November 2010, the Defence requested to be informed as to whether an oral hearing would be granted on its Appeal<sup>5</sup> as it had requested,<sup>6</sup> but has yet to receive a decision.<sup>7</sup> Thus, the Defence is currently not in a position to know whether a Reply may be filed until it receives notice of whether a hearing will be held.

<sup>1</sup> Article 8.4 of the Practice Directions states, “A reply to a response shall only be permitted where there is to be no oral argument on the request, and such reply shall be filed within 5 calendar days of notification, in the ECCC official language which the party has elected under Article 2.2, of the response to which the participant is replying.”

<sup>2</sup> Article 5.2 of the Practice Directions states, “A document filed to the Pre-Trial Chamber or the Supreme Court Chamber of the ECCC shall not exceed 30 pages in English or French or 60 pages in Khmer, unless otherwise provided in the Internal Rules or this Practice Direction or ordered by the ECCC.”

<sup>4</sup> *Case of IENG Sary*, 002/19-09-2007-ECCC-OCIJ(PTC 75), IENG Sary’s Appeal Against the Closing Order, 25 October 2010, D427/1/6, ERN: 00617486-00617631 (“Closing Order Jurisdictional Appeal”).

<sup>5</sup> *Case of IENG Sary*, 002/19-09-2007-ECCC-OCIJ(PTC 75), Request for Information Concerning Whether there will be an Oral Hearing for Ieng Sary’s Appeal against the Closing Order, 12 November 2010, D427/1/14, ERN: 00623223-00623224.

<sup>6</sup> Closing Order Jurisdictional Appeal, para. 4.

<sup>7</sup> The Defence was notified by email that a hearing would be held concerning its Detention Appeal and that the Pre-Trial Chamber had not yet decided whether to hold a hearing on the jurisdictional issues addressed in its Closing Order Jurisdictional Appeal.



3. In light of the gravity and complexity of the issues involved,<sup>8</sup> it is manifestly unfair for the Defence to have only 5 days to reply from the time the OCP Response is notified. The OCP, in keeping with its due diligence obligations and well established high standards, as evident from past submissions, is expected to file a lengthy and comprehensive Response.
4. If the Defence is to be of maximum assistance to the Pre-Trial Chamber in fleshing out all legal nuances attendant to the issues involved (some of which are effectively of first impression), and if it is to be due diligent in protecting Mr. IENG Sary's rights, then sufficient time must be allotted to meaningfully analyze the OCP's arguments and cited authorities.
5. Experience has shown that with submissions of this nature, nearly half of the allotted deadline must be preserved for translation purposes. Thus, in this instance, a 5 day deadline to reply to a response on all jurisdictional issues raised, in reality, is reduced to 2-3 days for actual analysis and drafting, with the remainder of the time reserved for translation.
6. Experience has further shown that actual time for translation is lost when the 5 day period falls within a weekend. Moreover, depending on when the Defence is notified of the OCP Response, some time will also be lost due to an ECCC official holiday.
7. If the Defence is notified on 19 November 2010, not only will time for translation be lost because of the ECCC's holiday closure, but the Defence will be required to work on the Reply over the Water Festival holiday period. This holiday is important for the Cambodian Defence team members, who traditionally meet their families at this time.


**WHEREFORE**, for all of the reasons stated herein, the Defence respectfully requests the Pre-Trial Chamber to extend the time limit for a Reply to 15 days after a Decision on this Request is issued and to extend the page limit for the Reply to 75 pages.

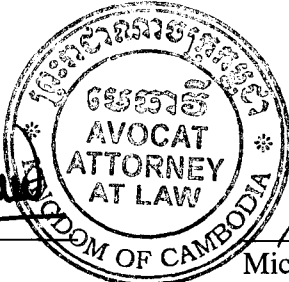
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<sup>8</sup> The Pre-Trial Chamber has previously recognized that these issues are complex and constitute exceptional circumstances. See *Case of IENG Sary*, 002/19-09-2007-ECCC-OCIJ(PTC 75), Decision on IENG Sary's Expedited Request for Extension of Page Limit to Appeal the Jurisdictional Issues Raised by the Closing Order, 1 October 2010, D427/1/3, ERN: 00611380-00611383, para. 10.



Respectfully submitted,

  
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ANG Udom

  
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Michael G. KARNAVAS

Co-Lawyers for Mr. IENG Sary

Signed in Phnom Penh, Kingdom of Cambodia on this 19<sup>th</sup> day of November, 2010