

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

FILING DETAILS

Appeal Nos.: 002/19-09-2007-ECCC/OCIJ
(PTC ~~35~~, 104 & 2 Ors.)

Party Filing: Co-Prosecutors

Filed to: Pre-Trial Chamber

Original language: English

Date of document: 6 October 2010

CLASSIFICATION

**Classification of the document
suggested by the filing party:** Public

**Classification by
the Chamber:** សាធារណៈ / Public ^{CR}

Classification Status:

Review of Interim Classification:

Records Officer Name:

| | |
|--|----------------------------|
| ឯកសារដើម | |
| ORIGINAL DOCUMENT/DOCUMENT ORIGINAL | |
| ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/Date de reception): | 06 / 10 / 2010 |
| ម៉ោង (Time/Heure): | 14 : 45 |
| មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé du dossier: | Uch ARUN |

**CO-PROSECUTORS' REQUEST TO FILE A JOINT RESPONSE TO THE APPEAL
BRIEFS OF NUON CHEA, IENG SARY, KHIEU SAMPHAN AND IENG THIRITH
AGAINST THE CLOSING ORDER AND A CONSEQUENT
EXTENSION OF PAGE LIMIT**

Filed by:

Co-Prosecutors

CHEA Leang
Andrew CAYLEY
YET Chakriya
William SMITH
SENG Bunkheang
Anees AHMED

Distribution to:

Pre-Trial Chamber

Judge PRAK Kimsan
Judge Rowan DOWNING
Judge NEY Thol
Judge C. MARCHI-UHEL
Judge HUOT Vuthy

Counsel for the Appellants

ANG Udom
Michael G. KARNAVAS
PHAT Pouv Seang
Diana ELLIS
SA Sovan
Jacques VERGÈS
Philippe GRÉCIANO
SON Arun
Michiel PESTMAN
Victor KOPPE

Counsel for the Civil Parties

KIM Mengkhy
MOCH Sovannary
Martine JACQUIN
Philippe CANONNE
Elizabeth RABESANDRATANA
Annie DELAHAIE
Fabienne TRUSSES-NAPROUS
NY Chandy
LOR Chhunthy
SILKE Studzinsky
KONG Pisey
HONG Kim Suon
YUNG Phanit
SIN Soworn
Mahdev MOHAN
NGUYEN Lyra
Marie GUIRAUD
Patrick BAUDOUIN
Olivier BAHOUAGNE

SUBMISSION

1. In this case, all four Accused have notified their intention to appeal the Closing Order.¹ Further, the Pre-Trial Chamber has permitted Ieng Sary to file his appeal brief in no more than one hundred and eighty pages.² While doing so, the Chamber recognized that the “complexity” of the multiple jurisdictional issues identified by Ieng Sary in the Closing Order constituted an “exceptional circumstance” to warrant this extension.³ The Chamber noted that the Co-Prosecutors “would be given the same opportunity” if they were to seek an extension of the page limit. According to the Chamber, this would provide it “with sufficient material to consider all the issues raised appropriately.”⁴
2. The Co-Prosecutors have examined the Closing Order and the proposed grounds of appeal of Ieng Sary. They have has been unable to determine on what grounds the other Accused are challenging the Closing Order as this information has not been provided in their notices of appeal. However, having considered the nature, extent and length of their likely procedural and substantive responses to the grounds raised by Ieng Sary and taking into account that the other three Accused’s grounds may be connected to those grounds it is submitted it would be in the interests of justice to file a joint response to all the defence appeals against the common Closing Order.
3. This will ensure integrity of argument and a judicious utilization of the limited time to respond, particularly considering the finite and over-stretched translation resources in the Office of the Co-Prosecutors (“OCP”) and the Court Management Section (“CMS”). On a number of occasions in the past, the Pre-Trial Chamber has accepted joint responses of the Co-Prosecutors to different appeals against common impugned orders.⁵ This is another such case.

¹ Nuon Chea (notice of appeal notified on 23 September 2010); Khieu Samphan (PTC-104, notice of appeal notified on 23 September 2010); Ieng Thirith (notice of appeal notified on 20 September 2010); Ieng Sary (PTC-75, notice of appeal notified on 20 September 2010). The appeals of Ieng Thirith and Nuon Chea remain un-numbered.

² Decision on Ieng Sary’s Expedited Request for Extension of Page Limit to Appeal the Jurisdictional Issues Raised by the Closing Order, Appeal No. 002/19-09-2007/ECCC/OCIJ (PTC 75), Pre-Trial Chamber, 1 October 2010 (“PTC Ieng Sary Page Limit Extension Decision”), p. 4.

³ PTC Ieng Sary Page Limit Extension Decision, para. 10.

⁴ PTC Ieng Sary Page Limit Extension Decision, para. 11.

⁵ *See, e.g.*, Decision on the Co-Prosecutors’ Application for Extension of Time and Page Limit to File a Joint Response to Ieng Thirith, Khieu Samphan, Ieng Sary and Certain Civil Parties’ Appeals Against the Order on Joint Criminal Enterprise, Appeal No. 002/19-09-2007/ECCC/OCIJ (PTC 35, 37, 38, 39), Pre-Trial Chamber, 9 February 2010, p. 4. Similar filings were accepted in respect of the appeals on (1) shared materials drive (“SMD”), (2) evidence allegedly obtained under torture, and (3) the appeals on the issue of the alleged administrative corruption at the ECCC.

4. As recognized by the Pre-Trial Chamber, the Co-Prosecutors would require a page limit equivalent to the number of pages utilized by the four Accused in filing their appeals. Although the appeals have not yet been filed, the Co-Prosecutors consider that this request is not “premature”⁶ as an order granting them the extension of page limit in advance will assist them in the preparation and management of the filing of their joint response brief. In making this request for an advance grant of the extension of page limit, the Co-Prosecutors are cognizant that (1) the Pre-Trial Chamber has a short period of four months from the Closing Order to conclude these appeal proceedings, (2) the Co-Prosecutors have only fifteen days to respond to the appeals including the time for translation, and (3) the translation capacity of the OCP and the CMS are severely stretched, a fact also recognized by the Pre-Trial Chamber.⁷

5. The Co-Prosecutors are not in a position to project whether they will be in a position to file their proposed joint response in the available fifteen-day period. This estimation will be determined by the scope and length of the four Accused’s appeal briefs and the capacity of the CMS to translate a lengthy appeal response within a few days. The Co-Prosecutors will, if appropriate, request the Pre-Trial Chamber for an extension of the time limit immediately after the receipt of the briefs. At the current stage, however, they request that the Pre-Trial Chamber order that the time period to file a joint response to the appeal briefs commence from the day the Co-Prosecutors have received all the Accused appeal briefs in English and Khmer.

⁶ Decision on Co-Prosecutors’ Application for Extension of Time Limit to File Their Response, Appeal No. 002/19-09-2007/ECCC/OCIJ (PTC 26), Pre-Trial Chamber, 4 September 2009, para. 3.

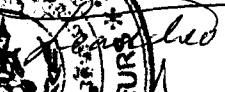

⁷ Email from the Pre-Trial Chamber to the defence counsel for Khieu Samphan copied to the Co-Prosecutors, 1 October 2010.

Appeal Nos. 002/19-09-2007-ECCC/OCIJ (PTC 75, 104 & 2 Ors.)

CONCLUSION

6. The Co-Prosecutors, therefore, request that the Pre-Trial Chamber (1) permit them to file a joint response to all the proposed defence appeals against the Closing Order, (2) grant an extension of page limit equal to the combined number of pages of all the defence appeals,⁸ and (3) order the time period to file a joint response to commence from the day the Co-Prosecutors have received all four appeal briefs in English and Khmer.⁹

Respectfully submitted,

| Date | Name | Place | Signature |
|----------------|--|------------|--|
| 6 October 2010 | CHEA Leang Co-Prosecutor | Phnom Penh |  |
| | William SMITH Deputy Co-Prosecutor | |  |

⁸ An extension of page limit can be granted by the Pre-Trial Chamber under Article 5.4 of the Practice Directions on Filing of Documents Before the ECCC, ECCC001/2007/Rev.4.

⁹ An extension of time limit can be granted by the Pre-Trial Chamber under Internal Rule 39(4)(a).