

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

FILING DETAILS

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URGENT

**IENG THIRITH DEFENCE REQUEST FOR
ADDITIONAL TIME AND PAGES FOR PRELIMINARY OBJECTIONS**

Defence for Ieng Thirith:

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Trial Chamber Judges:

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Silvia CARTWRIGHT
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I INTRODUCTION AND PETITION

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 (**PTC Decision**) by which the Trial Chamber was seized with Case 002. The following day, on 14 January 2011, the defence for Madame Ieng Thirith (**Accused Person**) filed an ‘Urgent Defence Request to Determine Deadlines’ (**Deadlines Request**).²
2. On 17 January 2011, the Trial Chamber issued its ‘Order to File Material in Preparation for Trial’³ (**Order**).
3. In the Deadlines Request, the defence submitted that the PTC Decision does not qualify as a ‘decision’ as defined in Internal Rule 77(14), which requires that a decision be reasoned. As explained by the Pre-Trial Chamber in the PTC Decision:

The Pre-Trial Chamber has determined the final disposition of the Appeal, which it hereby pronounces. The reasons for this decision shall follow in due course.⁴
4. In the Deadlines Request the defence submitted that the deadlines in Internal Rule 80 and 89 do not start running until the Pre-Trial Chamber issue their reasoning for the PTC Decision.
5. The Trial Chamber has not yet ruled on the Deadlines Request, but the Trial Chamber indicated its position on the deadlines where it stated that

These time-limits shall start to run from Friday 14 January 2011, being the date upon which the Trial Chamber greffiers were formally forwarded the Case File from the Pre-Trial Chamber.⁵

¹ PTC, Decision on Ieng Thirith’s and Nuon Chea’s Appeals against the Closing Order, 13 January 2011, Document No. D427/2/12.

² Urgent Defence Request to Determine Deadlines, 14 January 2011, Document No. E14.

³ TC, Order to File Material in Preparation for Trial, 17 January 2011, Document No. E9.

⁴ PTC Decision, p. 5.

⁵ Order, para. 2.

6. This underlying Request builds upon the Deadlines Request, in the sense that the defence hereby requests the Trial Chamber to grant the defence additional time to formulate the Preliminary Objections as set out in Internal Rule 89 after receipt of the Pre-Trial Chamber's reasoning underlying the PTC Decision.
7. Further, the defence requests the Trial Chamber to allow the defence extra pages to draft the Preliminary Objections.

II RELEVANT LEGAL PROVISIONS

8. Internal Rule 89 provides insofar as is relevant:
 1. A preliminary objection concerning:
 - a) the jurisdiction of the Chamber,
 - b) any issue which requires the termination of prosecution;
 - c) nullity of procedural acts made after the indictment is filed shall be raised no later than 30 (thirty) days after the Closing Order becomes final, failing which it shall be inadmissible.
9. Internal Rule 39(4)(a) provides that '[t]he [...] Chambers may, at the request of the concerned party or on their own motion (a) extend any time limits set by them [...]']
10. Article 5.1 of the Practice Direction on the Filing of Documents before the ECCC states that '[a] document filed to [...] the Trial Chamber of the ECCC shall not exceed 15 pages in English or French or 30 pages in Khmer, unless otherwise [...] ordered by the ECCC'. Article 5.4 reads: '[t]he [...] Chamber may, at the request of a participant, extend the page limit in exceptional circumstances'.

III SUBMISSIONS

3.1 Request for Extension of Deadline

11. The defence submits that the thirty days provided by Internal Rule 89 is insufficient to formulate the preliminary objections.



12. In this period, the defence is required to file several other documents, as evidenced by the Order where those deadlines are specified. Further, translation of the several documents is expected to take up a considerable amount of the available days. The importance of the preliminary objections cannot be overstated, as the Rule itself provides that if such preliminary objection be raised at a later stage in the proceedings, 'it shall be inadmissible'. Therefore, it is of the utmost importance that the defence is provided the opportunity to carefully assess the preliminary objections it wishes to raise.
13. Further, the content of the preliminary objections, especially those in relation to jurisdiction, will depend on the reasoning still to be provided by the Pre-Trial Chamber in support of the PTC Decision. How can the defence be expected to formulate arguments in this respect, when the parties are not yet aware the final Closing Order's argumentation?
14. Rule 89 allows the defence to raise the jurisdiction of the Chamber as a preliminary objection. The PTC has previously recognized the 'complexity of the multiple jurisdictional issues raised' in the Appeal briefs against the Closing Order and that such complexity amounted to an 'exceptional circumstance'.⁶ The defence submits that the jurisdictional issues that will be raised by the defence before the Trial Chamber will undoubtedly be as complex as the jurisdictional issues raised before the Pre-Trial Chamber and that this constitutes an exceptional circumstance that requires an extension of time.
15. The defence submits that it would be of assistance to the Trial Chamber to have these issues dealt with fully and in detail before the start of the trial. The defence

⁶ Pre-Trial Chamber, Decision on 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 Consequent Extension of Page Limit, 28 October 2010, Document No. D427/1/8, para. 15, referring to Pre-Trial Chamber, 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, Document No. D427/1/3, para. 10.



thus requests to file their preliminary objections within sixty days after receipt of the PTC Decision's reasoning.

3.2 Request for Additional Pages

16. The defence further submits that the fifteen pages allowed by the Practice Direction is insufficient to deal with preliminary objections, consisting of jurisdictional challenges, any issue which would require the termination of the prosecution and nullity of procedural acts.
17. As stated above in paragraphs 13 and 14, the importance of such document cannot be overstated, nor the complexity thereof denied. Additional pages would greatly enhance the quality of such document given the variety of arguments to be put forward in it.
18. The defence respectfully requests the Trial Chamber to allow an additional 30 pages to formulate these challenges, hence a total of 45 pages for all preliminary objections.

IV CONCLUSION

19. For the reasons stated above, the defence respectfully requests the Trial Chamber to allow the defence:
 - a. To file their preliminary objections within sixty days after receipt of the Pre-Trial Chamber's reasoning; and
 - b. A total of 45 pages to formulate their preliminary objections.



Party	Date	Name Lawyers	Place	Signature
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