

BEFORE THE PRE-TRIAL CHAMBER**EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA****FILING DETAILS****Case No:** 002/19-09-2007-ECCC/OCIJ(PTC **75**) **Party Filing:** The Defence for IENG Sary**Filed to:** The Pre-Trial Chamber**Original language:** ENGLISH**Date of document:** 17 September 2010**CLASSIFICATION****Classification of the document suggested by the filing party:** PUBLIC**Classification by OCIJ or Chamber:** សាធារណៈ / Public ^{CR}**Classification Status:****Review of Interim Classification:****Records Officer Name:****Signature:**

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IENG SARY'S EXPEDITED REQUEST FOR EXTENSION OF PAGE LIMIT TO APPEAL THE JURISDICTIONAL ISSUES RAISED BY THE CLOSING ORDER

Filed by:**The Co-Lawyers:**ANG Udom
Michael G. KARNAVAS**Distribution to:****The Pre-Trial Chamber Judges:**Judge PRAK Kimsan
Judge NEY Thol
Judge HUOT Vuthy
Judge Catherine MARCHI-UHEL
Judge Rowan DOWNING**Co-Prosecutors:**CHEA Leang
Andrew CAYLEY**All Defence Teams**

ឯកសារបានចម្លងតាមប្រព័ន្ធគ្រប់គ្រងឯកសារ
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Mr. IENG Sary, through his Co-Lawyers ("the Defence"), hereby seeks an extension of the applicable 30-page limit¹ to file an Appeal to the portions of the Closing Order² which confirm the jurisdiction of the ECCC.³ While the Rules do not prohibit the Defence from filing separate appeals related to each jurisdictional issue raised in the Closing Order, with each appeal allotted 30 pages, in the interest of judicial economy, the Defence would prefer to file one motion addressing all jurisdictional issues. In doing so, an increase in the page limitation would be required. According to Article 5.4 of the Practice Direction on Filing Documents Before the ECCC, it is within the power of the Pre-Trial Chamber to extend the applicable 30-page limit in exceptional circumstances. Such exceptional circumstances exist in the present case. The Closing Order addresses several jurisdictional issues, such as the validity of Mr. IENG Sary's Royal Amnesty and Pardon, whether the principle of *ne bis in idem* is a bar to prosecution, and whether the ECCC has jurisdiction over Mr. IENG Sary with regard to genocide, crimes against humanity, grave breaches of the Geneva Conventions, national crimes, and command responsibility. Each of these issues alone is quite complex and would require most of the allotted 30-page space if an extension is not granted. The Defence cannot address each of these issues substantively in one 30-page appeal and the Defence would not serve the best interests of Mr. IENG Sary if it attempted to do so.⁴

¹ Article 5.2 of the Practice Direction on the Filing of Documents Before the ECCC 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."

² *Case of NUON Chea*, 002/19-09-2007-ECCC-OCIJ, Closing Order, 16 September 2010, D427, ERN: 00604508-00605246.


³ Such an Appeal is permissible according to Rule 74(3)(a), which permits a Charged Person to appeal against orders or decisions of the OCIJ confirming the jurisdiction of the ECCC. This will be more fully explained in the Appeal.

⁴ The Co-Lawyers have the obligation of due diligence in their representation of Mr. IENG Sary. This duty obliges the Defence to act diligently to protect Mr. IENG Sary's rights and interests, and thus do its part to ensure that his trial is fair. Discussing the requirement of due diligence with respect to the right to adequate time and facilities for the preparation of a defence, one scholar noted that "[w]ith regard to both time and facilities, a certain degree of diligence on the part of the defence is expected and indeed required. The defence can only complain of a violation of their rights if they did everything required by the domestic law to obtain the respective (extension of) time or facility." STEPHAN TRECHSEL, HUMAN RIGHTS IN CRIMINAL PROCEEDINGS 214 (Oxford University Press, 2005) (emphasis added).




WHEREFORE, for all of the reasons stated herein, the Defence respectfully requests the Pre-Trial Chamber to extend the page limit for this Response to 180 pages.

Respectfully submitted,



ANG Udom



Michael G. KARNAVAS
Co-Lawyers for Mr. IENG Sary

Signed in Phnom Penh, Kingdom of Cambodia on this 17th day of **September, 2010**