

D97/16



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the
Courts of Cambodia

ការិយាល័យសហចៅក្រមស៊ើបអង្កេត

Office of the Co-Investigating Judges
Bureau des Co-juges d'instruction

សំណុំរឿងព្រហ្មទណ្ឌ

Criminal Case File /Dossier pénal

លេខ/No: 002/14-08-2006

លេខស៊ើបអង្កេត/Investigation/Instruction

លេខ/No: 002/19-09-2007-ECCC-OCIJ

ព្រះរាជាណាចក្រកម្ពុជា

ជាតិ សាសនា ព្រះមហាក្សត្រ

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du dossier: CA 4my	

ដីកាសម្រេចអំពីការស្នើសុំបន្ថែមចំនួនទំព័រកំណត់

Order on Request for Extension of Page Limit

Ordonnance sur demande d'extension du nombre de pages

CERTIFIED COPY/COPIE CERTIFIÉE CONFORME

ថ្ងៃ ខែ ឆ្នាំ ត្រឹមត្រូវ (Certified Date/Date de certification):

04 / DEC / 2008

មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé

du dossier: CA 4my

We, You Bunleng ឬ ប៊ុនឡេង and Marcel Lemonde, Co-Investigating Judges of the
Extraordinary Chambers in the Courts of Cambodia ("ECCC"),

Noting the Law on the Establishment of the Extraordinary Chambers in the Courts of
Cambodia, dated 27 October 2004 ("ECCC Law");

Noting the continuing judicial investigation against IENG Sary alias Van, born on 24
October 1925, charged with **Crimes Against Humanity** and **Grave Breaches of the
Geneva Conventions of 12 August 1949**, offences defined and punishable under Articles
5, 6, 29 (new) and 39 (new) of the ECCC Law, and others;

Noting Rule 39 of the ECCC Internal Rules ("Internal Rules");

Noting Article 5 of the Practice Direction on Filing of Documents before the ECCC
("Practice Direction");

Noting our Order on Application at the ECCC of the Form of Responsibility Known as
Joint Criminal Enterprise, dated 16 September 2008 (D97/III);

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា មានទីតាំងស្ថិតនៅ ផ្លូវជាតិលេខ៤ សង្កាត់ ចោមចៅ ខណ្ឌ ដង្កោ ក្រុង ភ្នំពេញ ប្រអប់សំបុត្រលេខ៧១

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Noting the Co-Prosecutors' Application for an Extension of Page Limit for their Observations on Joint Criminal Enterprise, dated 21 November 2008 (D97/4) ;

Noting Ieng Sary's Request for an Extension of the Page Limit for Filing Supplementary Observations on the Application of Joint Criminal Enterprise Liability at the ECCC, dated 24 November 2008 (D97/5);

PROCEDURAL HISTORY

1. On 28 July 2008, Ieng Sary challenged the applicability of the form of responsibility known as Joint Criminal Enterprise ("JCE") before this Court (D97).
2. By Order dated 16 September 2008, we invited all the parties to file their observations on this issue before 31 December 2008.
3. In filings on 21 and 24 November 2008 respectively, the Co-Prosecutors and Ieng Sary filed applications to extend the page limit for their observations from 15 to 30 pages.

THE APPLICABLE LAW

4. In accordance with Internal Rule 39(6), Sub-Articles 5.1 and 5.4 of the Practice Direction provide that documents filed to the Co-Investigating Judges should not exceed 15 pages in English unless, at the request of a party, the judges consider that exceptional circumstances warrant extending that limit.

ARGUMENTS BY THE PARTIES

5. In their Application, the Co-Prosecutors invoke exceptional circumstances, arguing that the applicable page limit is insufficient to "*adequately address all the aspects of this important issue*", the clear importance and complexity of which "*the Co-Investigating Judges have recognised (by granting) a sufficiently long period of deliberation to the parties to file their observations*". They also note the need to respond to additional arguments contained in *amicus curiae* briefs filed solely before the Pre-Trial Chamber; and raise the need to respond individually with respect to each charged person. Finally, they note the need to survey a wide range of writings and jurisprudence on the issue (paras. 2-3).
6. The Request by Ieng Sary equally claims exceptional circumstances by reference to the invitation by the Co-Investigating Judges and the need to respond to new issues raised by the Pre-Trial Chamber *amicus curiae* briefs (paras. 1-3).

REASONS FOR THE DECISION

7. Considering that the fact that a relatively long period of time has been afforded to the parties to file their observations concerning JCE does not constitute exceptional circumstances warranting an extended page limit since, on the contrary, this allows

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time to prepare more concise pleadings; nor that the presence of a number of charged persons requires separate treatment of this essentially jurisdictional issue common to all of them;

8. Considering, however, both the importance and complexity of the statutory and jurisprudential matters involved, including those issues raised in the *amicus* briefs filed before the Pre-Trial Chamber;
9. Considering that the extension of the page limit for all parties will avoid any prejudice to their material rights;

FOR THESE REASONS, THE CO-INVESTIGATING JUDGES HEREBY:

- **GRANT** the requests by the Co-Prosecutors and Ieng Sary.
- **ADMIT** the submissions annexed to Ieng Sary's Request.
- **DECLARE** that all the other parties to this case may also file observations of not more than 30 pages on the issue of the applicability before the ECCC of the form of responsibility known as JCE.

Done in Phnom Penh, on 2 December 2008

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**Co- Investigating Judges
Co-juges d'instruction**