



**អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា**

Extraordinary Chambers in the Courts of Cambodia

Chambres Extraordinaires au sein des Tribunaux Cambodgiens

D99/3/31

**អង្គបុរេជំនុំជម្រះ**

PRE-TRIAL CHAMBER  
CHAMBRE PRELIMINAIRE

**Criminal Case File N° 001/18-07-2007-ECCC/OCIJ (PTC 02)**

**Before:** Judge PRAK Kimsan, President  
Judge Rowan DOWNING  
Judge PEN Pichsaly  
Judge Katinka LAHUIS  
Judge HUOT Vuthy

**Date:** 05 November 2008

<b>ឯកសារដើម</b>	
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**PUBLIC**

**DECISION ON URGENT JOINT DEFENCE REQUEST TO INTERVENE ON THE ISSUE OF JOINT CRIMINAL ENTERPRISE IN THE OCP APPEAL AGAINST THE DUCH CLOSING ORDER**

**Co-Prosecutors**

CHEA Leang  
Robert PETIT  
YET Chakriya  
William SMITH  
PICH Sambath  
Alex BATES

<b>ឯកសារចម្លងត្រឹមត្រូវតាមច្បាប់ដើម</b>	
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**Charged Person**

KAING Guek Eav alias "DUCH"

**Lawyers for the Civil Parties**

KONG Pisey  
HONG Kimsuon  
YOUNG Panith  
KIM Mengkhy  
MOCH Sovannary  
Silke STUDZINSKY  
Martine JACQUIN  
Philippe CANNONE

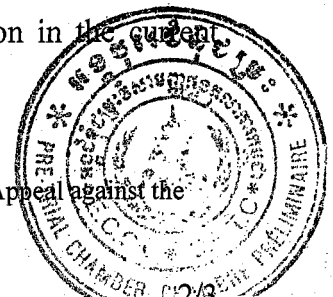
**Co-Lawyers for the Defence**

KAR Savuth  
François ROUX



1. **THE PRE-TRIAL CHAMBER** of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) has received an “Urgent Joint Defence Request to Intervene in the ‘Application of the Theory of JCE’ in the OCP Appeal against the Duch Closing Order” (“Request”), filed by the Co-Lawyers for Ieng Thirith, Nuon Chea and Khieu Samphan (“Co-Lawyers for the Charged Persons”) on 27 October 2008.
2. The Pre-Trial Chamber notes that on 21 August 2008, the Co-Prosecutors filed a Notice of Appeal against the Closing Order of the Co-Investigating Judges in Case File 001/18-07-2007-ECCC/OCIJ (“Appeal”). In the Co-Prosecutors’ Appeal Brief, filed on 5 September 2008, it is requested *inter alia* that the Pre-Trial Chamber amend the Closing Order and indict the Charged Person for committing the alleged crimes via participation in a joint criminal enterprise.
3. The Co-Lawyers for the Charged Persons claim a “direct interest in the issue to be argued and the decision to be taken by the Pre-Trial Chamber”<sup>1</sup> and ask to be heard on the issue of the application of the theory of joint criminal enterprise. They submit that even in the absence of a right to intervene, the Request should be allowed in the interests of judicial economy and to give recognition to the Charged Persons’ fair trial rights.
4. The Co-Prosecutors, in their response filed on 4 November 2008, argue that the Request is duplicative of an earlier request by the Co-Lawyers for Ieng Sary and devoid of merit.
5. The Pre-Trial Chamber notes that in its “Decision on Ieng Sary’s Request to make submissions on the application of the theory of joint criminal enterprise in the Co-Prosecutors’ Appeal of the Closing Order against Kaing Guek Eav ‘Duch’” of 6 October 2008 (“Decision on Ieng Sary’s request”), it found that the Charged Person Ieng Sary did not have the right to intervene in the case against the Charged Person Duch on the issue of the application of the theory of joint criminal enterprise. The Pre-Trial Chamber found further that its decision on the Appeal would not be directly applicable to Ieng Sary, who would still have the possibility to challenge the application of the theory of joint criminal enterprise in the case file to which he is a party.
6. The Pre-Trial Chamber finds that the considerations in its Decision on Ieng Sary’s request apply and that no compelling grounds for reaching a different conclusion in the current Request have been put forward.

<sup>1</sup> Urgent Joint Defence Request to Intervene in the ‘Application of the Theory of JCE’ in the OCP Appeal against the Duch Closing Order, 23 October 2008, D99/3/26 (“Request”), para. 5.



D99/3/31

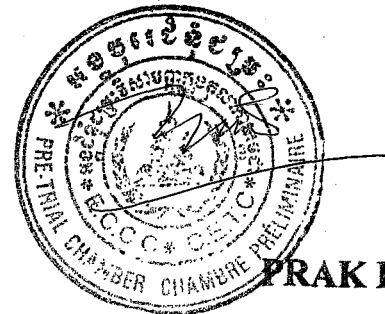
7. At this stage of the proceedings, the Pre-Trial Chamber further finds that it will be sufficiently informed through the directed procedures to determine the Appeal and that the fairness of its decision will not be affected by any perceived “imbalance in the presentation of argument”.<sup>2</sup>
8. The Pre-Trial Chamber notes, as it did in the Decision on Ieng Sary’s request, that it is inherent to courts where several proceedings are pending that a decision in one case on a legal issue will guide the court in future similar cases where no new circumstances or arguments are raised. It does not result from that situation that charged persons have the right to intervene in a case file to which they are not parties to submit their views on an issue.

**THEREFORE, THE PRE-TRIAL CHAMBER HEREBY:**

Denies the Request. PK

Phnom Penh, 05 November 2008

**President of the Pre-Trial Chamber**



<sup>2</sup> Request, para. 15.