



**អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា**

Extraordinary Chambers in the Courts of Cambodia  
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

D99/3/41

**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:** 3 December 2008

<b>ឯកសារដើម</b>	
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**PUBLIC**

**DECISION ON IENG SARY'S MOTION FOR RECONSIDERATION OF RULING ON THE FILING OF A MOTION IN THE DUCH CASE FILE**

**Co-Prosecutors**

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

<b>ឯកសារច្បាប់ត្រឹមត្រូវតាមច្បាប់ដើម</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**

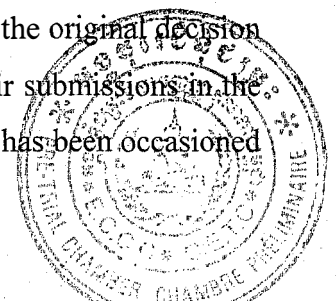
KAR Savuth  
François ROUX



1. **THE PRE-TRIAL CHAMBER** of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) notes that on 24 November 2008, it received “Ieng Sary’s Motion for Reconsideration of Ruling on the Filing of a Motion by the Charged Person Ieng Sary in the Case against the Charged Person ‘Duch’”.
2. In its “Ruling on the Filing of a Motion by the Charged Person Ieng Sary in the Case against the Charged Person ‘Duch’” of 21 November 2008, the Pre-Trial Chamber considered that the Charged Person Ieng Sary was not entitled to file the motion in the case file 001/18-07-2007-ECCC/OCIJ (PTC02) having regard to the Chamber’s previous decisions concerning the Co-Lawyer’s request to file submissions on joint criminal enterprise liability.
3. 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, the Pre-Trial Chamber 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.
4. By a decision delivered on 14 October 2008, the Pre-Trial Chamber further declared inadmissible a Motion filed by the Co-Lawyers for the Charged Person Ieng Sary to disqualify an *amicus curiae* as the Charged Person lacked standing to make submissions in the case against the Charged Person Duch.
5. The Pre-Trial Chamber notes that its Ruling on the Filing of a Motion neither denied the motion nor declared it inadmissible. The Chamber determined that the motion could not be added to the case file for a decision on its substantive merits on the basis that the filing party did not have standing to file such a motion.
6. The Pre-Trial Chamber has previously determined that it may reconsider its decisions only if a change of circumstances, which may include new facts or arguments, is presented or if an unexpected result leading to an injustice has been caused.<sup>1</sup>
7. The Co-Lawyers have not put forward any new facts, arguments or change of circumstances which would cause the Pre-Trial Chamber to reconsider the Ruling on the Filing of a Motion. Indeed, their arguments are based on their disagreement with the original decision of 6 October 2008 and their interest in creating a judicial record of their submissions in the case file. As Ieng Sary is not a party to the Duch case file, no injustice has been occasioned

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<sup>1</sup> TS decision



by refusing to allow the Co-Lawyers for Ieng Sary to continue to file submissions related to the issue of joint criminal enterprise liability.

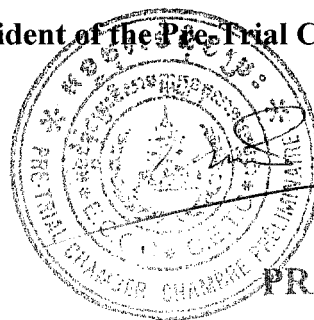
**THEREFORE, THE PRE-TRIAL CHAMBER HEREBY:**

Denies the request for reconsideration.

Rejects the filing of the Annexes, the Table of Authorities and the Authorities attached to the Motion. mf

Phnom Penh, 3 December 2008

**President of the Pre-Trial Chamber**



**PRAK KIMSAN**