

BEFORE THE PRE-TRIAL CHAMBER

EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

Criminal Case File N°: 001/18-07-2007-ECCC-OCIJ (PTC02)

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**IENG SARY'S REQUEST TO AMEND HIS EXPEDITED REQUEST TO MAKE
SUBMISSIONS ON THE APPLICATION OF JOINT CRIMINAL ENTERPRISE
LIABILITY IN THE CO-PROSECUTORS' APPEAL OF THE CLOSING ORDER
AGAINST KAING GUEK EAV "DUCH"**

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**The Pre-Trial Chamber
Judges:**
PRAK Kimsan
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Mr. IENG Sary, through his Co-Lawyers ("the IENG Sary Defence"), hereby files this Request to Amend his Expedited Request to Make Submissions on the Application of Joint Criminal Enterprise Liability in the Co-Prosecutors' Appeal of the Closing Order against Kaing Guek Eav "Duch", filed on 15 September 2008.¹

I. INTRODUCTION

1. The OCP filed an appeal against the Closing Order by the OCIJ on 5 September 2008.² The IENG Sary Defence filed a request to make submissions in response to the OCP Appeal on 15 September 2008. The requested deadline for filing these submissions was "15 days of the issuance of a decision" granting the Request.³ Subsequent to the filing of this Request the Pre-Trial Chamber invited "Professor Antonio Cassese [...] together with other members of the Board of Editors and the Editorial Committee of the *Journal [of International Criminal Justice]*, to submit a written *amicus curiae* brief not exceeding thirty (30) pages in English and/or French on the issue of joint criminal enterprise as described in this invitation by 27 October 2008."⁴
2. For the reasons set out below, the Defence submits that an amendment of the deadline to file submissions to 27 October 2008, the same deadline for submission of the written brief by *amicus curiae*, would be appropriate given the complexity of the specific issues upon which the Pre-Trial Chamber has sought assistance. Furthermore, it would cause no delay or any other prejudice to the parties to the OCP Appeal.

II. LAW

3. Internal Rule 39(2)⁵ provides the following:

¹ *Case of Kaing Guek Eav "Duch"*, 001/18-07-2007-ECCC-OCIJ (PTC02), Ieng Sary's Expedited Request to Make submissions on the application of joint criminal enterprise liability in the Co-Prosecutors' appeal of the closing order against Kaing Guek Eav "Duch", 15 September 2008 ("Request").

² *Case of Kaing Guek Eav "Duch"*, 001/18-07-2007-ECCC-OCIJ (PTC02), Co-Prosecutors' Appeal of the Closing Order Against Kaing Guek Eav "Duch" dated 8 August 2008, 5 September 2008.

³ Request, at 8.

⁴ *Case of Kaing Guek Eav "Duch"*, 001/18-07-2007-ECCC-OCIJ (PTC02), Invitation to Amicus Curiae, 23 September 2008 ("Invitation").

⁵ Revision. 2, 5 September 2008.

"2. Unless these IRs provide otherwise and in compliance with the applicable Practice Directions, the judges may set time limits for the filing of pleadings, written submissions and documents relating to a request or appeal, taking into account the circumstances of the case, especially whether a Charged Person or Accused is in detention."

III. ARGUMENT

A. The complexity of the questions posed to the *amicus curiae* applies equally to the submissions of IENG Sary

4. In the Invitation, the Pre-Trial Chamber requested *amicus curiae* submissions on the following two areas:
 1. the development of the theory of joint criminal enterprise and the evolution of the definition of this mode of liability, with particular reference to the time period 1975-79
 2. whether joint criminal enterprise as a mode of liability can be applied before the ECCC, taking into account the fact that these crimes were committed in the period 1975-79.⁶
5. By requesting submissions on these specific areas, the Pre-Trial Chamber explicitly recognises the complexity of the issues involved in this appeal. By doing so the Pre-Trial Chamber also helpfully provided guidance to the parties and possible interveners in this appeal as to the areas on which submissions should be focused. To adequately respond to the Pre-Trial Chamber on these issues the IENG Sary Defence team requires the same amount of time to file submissions on this issue as that granted to the *amicus*.

B. Imposing a deadline of 27 October 2008 for the IENG Sary Defence to file submissions causes no delay to the resolution of the OCP Appeal.

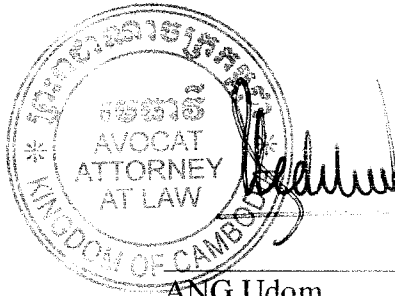
6. Under Internal Rule 33(2), the OCP and the lawyers for the other parties, namely the Civil Parties and the Defence for Duch, shall be afforded the opportunity to respond to the briefs filed by the *amicus curiae*. Therefore, the briefing on appeal will continue well after 27 October 2008 as these parties will be able to file responses to the *amicus brief* submitted by Professor Cassese. For the IENG Sary Defence to be granted the

⁶ Invitation, at 1.

right to file submissions by this date will therefore cause no delay to the resolution of the appeal and accordingly will cause no prejudice to the OCP, the Duch Defence or the Civil Parties.

IV. RELIEF SOUGHT

WHEREFORE, for all of the reasons stated therein, the Defence respectfully requests the Pre-Trial Chamber to grant the IENG Sary until 27 October 2008 to file written submissions in Response to Ground 2 of the Co-Prosecutors' Appeal on the application of joint criminal enterprise liability at the ECCC.



ANG Udom

Michael G. KARNAVAS

Co-Lawyers for Mr. IENG Sary

Signed in Phnom Penh, Kingdom of Cambodia on this 24th day of **September, 2008**