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**BEFORE THE PRE-TRIAL CHAMBER  
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

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**CO-PROSECUTORS' RESPONSE TO IENG SARY'S MOTION TO DISQUALIFY  
AMICUS CURIAE IN THE KAING GUEK EAV "DUCH" CLOSING ORDER APPEAL**

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## I. SUMMARY AND ARGUMENT

1. The Applicant IENG Sary is not a party in Case No. 001/18-07-2007-ECCC-OCIJ (PTC02) against Kaing Geuk Eav, alias DUCH ("Case File 1"). Nevertheless, he has filed an Application<sup>1</sup> seeking to disqualify Professor Antonio Cassese and his colleagues from submitting an *amicus curiae* brief on the issue of joint criminal enterprise requested by this Chamber.
2. The Pre-Trial Chamber's "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'"<sup>2</sup> declared that charged persons do not have a right to intervene in a case file to which they are not parties.<sup>3</sup> The Pre-Trial Chamber also noted that: (1) the Internal Rules and the Cambodian Code of Criminal Procedure do not provide a right for a third party to intervene in a Case File<sup>4</sup>; (2) the Co-Prosecutors did not identify IENG Sary as a member of the group of persons who participated in the alleged joint criminal enterprise...in the present case"<sup>5</sup>; and (3) IENG Sary will have the possibility to challenge the application of the theory of joint criminal enterprise in the Case File 002/19-09-2007-ECCC/OCIJ to which he is a party.<sup>6</sup> Essentially, the Pre-Trial Chamber declared that IENG Sary did not have standing to argue his position in Case File 1 because he is not a party to that case.<sup>7</sup>
3. The Co-Prosecutors request that the Pre-Trial Chamber reject this Application as inadmissible because the Applicant is not a party in Case File 1 and has no standing in the present proceedings. The Co-Prosecutors make this request due to their reliance on the

<sup>1</sup> IENG Sary's Motion to Disqualify Professor Antonio Cassese and selected members of the Board of Editors and Editorial Committee of the Journal of International Criminal Justice from submitting a written *Amicus Curiae* brief on the issue of Joint Criminal Enterprise in the Co-Prosecutor's Appeal of the Closing Order against Kaing Guek Eav "Duch", Case No. 001/18-07-2007-ECCC-OCIJ (PTC02), 3 October 2008 [*hereinafter* Application].

<sup>2</sup> 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", Case No. 001/18-07-2007-ECCC-OCIJ (PTC02), 6 October 2008 [*hereinafter* Decision].

<sup>3</sup> Decision, paragraph 14.

<sup>4</sup> Decision, paragraph 9.

<sup>5</sup> Decision, paragraph 13.

<sup>6</sup> Decision, paragraph 12.

<sup>7</sup> Decision, paragraph 8.

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authority of the Decision and the rationale behind it. As IENG Sary is not a party to Case File 1 and therefore has no standing to raise claims relating to this Case File his application is not relevant and his observations consequently should not be taken into consideration.

4. If however the Pre-Trial Chamber decides to grant standing to IENG Sary and agrees to hear arguments on the merits of his Application, the Co-Prosecutors respectfully request that leave be granted to amend this response to address them.

## II. REQUEST

5. The Co-Prosecutors therefore request that the Pre-Trial Chamber reject the Application.



CHEA Leang      Robert PETIT  
Co-Prosecutor      Co-Prosecutor

Signed in Phnom Penh, Kingdom of Cambodia on this thirteenth day of October 2008.