

D99/3/30

BEFORE THE PRE-TRIAL CHAMBER

EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

Case File No. : 001/18-07-2007-ECCC/OCIJ (PTC 02)

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**CO-PROSECUTORS' RESPONSE TO THE JOINT DEFENCE APPLICATION
TO INTERVENE IN THE APPEAL**

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I. RESPONSE

1. Applicants NOUN Chea, KHIEU Samphan and IENG Thirith (“Applicants”) are not parties to this Appeal. They are also not parties to or charged in the Case File No. 001 from which this Appeal emanates. They have, however, filed an Application (“Application”) seeking to intervene in these proceedings to make submission on the applicability of Joint Criminal Enterprise (“JCE”) before this Court.¹ They claim an interest in the outcome of this Appeal as the resolution of the issue of JCE now, according to them, will impact the judicial investigation against them in the separate Case File No. 002.²
2. An identical request made by IENG Sary was recently dismissed by the Pre-Trial Chamber. In so doing, the Pre-Trial Chamber held that IENG Sary lacked standing to intervene in the Appeal as he was not a party to Case File No. 001, which concerns Charged Person DUCH alone.³ The Chamber found that neither the Internal Rules nor the Cambodian Criminal Procedure Code envisage a possibility for a third party to intervene in an appeal and make submissions.⁴
3. The case of the Applicants is identical to that of IENG Sary. The Applicants and IENG Sary are being investigated only in Case File No. 002. They are not parties to or have a standing in Case File No. 001. The Pre-Trial Chamber’s ruling in the case of IENG Sary shall, therefore, squarely apply in the case of the Applicants also. The Applicants have not shown how their case is different from that of IENG Sary. They have also not averred, much less demonstrated, any change of circumstance that would warrant a reconsideration of the Pre-Trial Chamber’s holding in IENG Sary’s case.

¹ *Case of Duch*, Urgent Joint Defence Request to Intervene in the Application of the Theory of Joint Criminal Enterprise in the OCP Appeal Against the Duch Closing Order, Case No. 001/18-07-2007-ECCC-OCIJ (PTC02), Document No. D99/3/26, 28 October 2008[*hereinafter* Application].

² Application, p. 1.

³ *Case of Duch*, Decision on Ieng Sary’s Motion to Disqualify Amicus Curiae, Case No. 001/18-07-2007-ECCC-OCIJ (PTC02), Document No. D99/3/23, 14 October 2008, paras. 3 & 6.

⁴ *Case of Duch*, 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 of Duch, Case No. 001/18-07-2007-ECCC-OCIJ (PTC02), Document No. D99/3/19, 6 October 2008, para. 9.


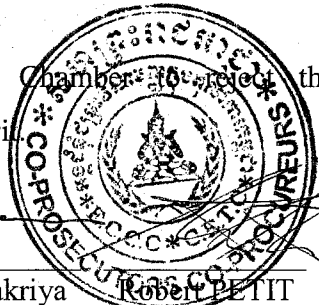
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4. It is inherent to courts like the ECCC, where several proceedings are simultaneously pending, that a decision in one case on a legal issue will guide the court in future similar cases where no new circumstances are identified or arguments raised. It does not follow, however, that charged persons have a right to intervene to submit their views in a case file to which they are not parties.⁵
5. The Appeal concerns the charges for which DUCH alone will be sent for trial. The Pre-Trial Chamber's decision will, therefore, not be directly applicable to the Applicants who will still have the possibility, like IENG Sary, to challenge the application of Joint Criminal Enterprise in Case File No. 002 in which they are a party.⁶

II. REQUEST

6. The Co-Prosecutors, therefore, request the Pre-Trial Chamber to reject the Application as duplicative and, in any event, devoid of merit.

YET Chakriya
Deputy
Co-Prosecutor

Robert PETIT
Co-Prosecutor

Signed in Phnom Penh on this third day of November 2008.

⁵ *Case of Duch*, 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 of Duch, Case No. 001/18-07-2007-ECCC-OCIJ (PTC02), Document No. D99/3/19, 6 October 2008, para. 14.

⁶ *Case of Duch*, 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 of Duch, Case No. 001/18-07-2007-ECCC-OCIJ (PTC02), Document No. D99/3/19, 6 October 2008, para. 12.