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មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé
du dossier: SANN RADA

D97/3/5

Paris, 30 December 2008

To: Judge YOU Bunleng and Judge Marcel LEMONDE
Co-Investigating Judges

Case File No. 002/19-09-2007

Subject: **Invitation to File Supplementary Observations Relating to the Issue of
Joint Criminal Enterprise before 31 December 2008**

Your Honours:

On 16 September 2008, you invited us, as the Parties to Case File 002, to file supplementary observations relating to the pleadings filed with you by IENG Sary's defence team and by the Office of the Co-Prosecutors concerning the application of joint criminal enterprise.¹

However, we note that none of the documents filed by IENG Sary's defence team in respect of this issue has been translated into French² and that the same applies to a document filed by the Co-Prosecutors.³ In the final analysis, it seems to us that the only documents available in the French language are the Co-Investigating Judges' orders (which have been served in all three official languages)⁴ and the Prosecutor's Response.⁵

¹ Order on Application at the ECCC of the Form of Responsibility Known as Joint Criminal Enterprise, 16 September 2008, *Court Document No. D9/III*.

² Ieng Sary's Motion Against the Application of the Form of Responsibility Known as Joint Criminal Enterprise, 28 July 2008, *Court Document No. D97*; Ieng Sary's Request for an Oral Hearing, or, in the Alternative, Request for Extension of Time to Reply to the Office of the Co-Prosecutors' Response to "Ieng Sary's Motion Against the Application at the ECCC of the Form of Responsibility Known as Joint Criminal Enterprise", 7 August 2008, *Court Document No. D97/II*; Ieng Sary's Request for an Extension of the Page Limit for Filing Supplementary Observations on the Application of Joint Criminal Enterprise at the ECCC, 24 November 2008, *Court Document No. D97/5*; Ieng Sary's Supplementary Observations on the Application of the Theory of Joint Criminal Enterprise at the ECCC, 24 November 2008, *Court Document No. D97/7*.

³ Co-Prosecutors' Application for an Extension of Page Limit for Their Observations on Joint Criminal Enterprise Pursuant to the Co-Investigating Judges' Order of 16 September 2008, 21 November 2008, *Court Document No. D9/4*.

⁴ Order on the Application at the ECCC of the Form of Responsibility Known as Joint Criminal Enterprise, 16 September 2008, *Court Document No. D97/III*, and Order on Extension of Page Limit, 2 December 2008, *Court Document No. D97/6*.

⁵ Co-Prosecutors' Response to Ieng Sary's Motion on Joint Criminal Enterprise, 11 August 2008, *Court Document No. D97/III*. (French ERN 00238826-00268842, 14 November 2008)

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ថ្ងៃ ខែ ឆ្នាំ ត្រឹមត្រូវតាមច្បាប់ (Certified Date/Date de certification):
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មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé
du dossier: K.K. Ratanak

Also, the recent Pre-Trial Chamber decision relating in part to the issue of joint criminal enterprise – and is thus closely related to the present procedure – is available in Khmer and English, but has not yet been translated into French.⁶

Therefore Mr. KHIEU Samphan *de facto* placed in an unfair situation in comparison with all the Parties who were also invited to participate in the procedure, and who have received documents in both their working languages.

Wherefore, we request that the Co-Investigating Judges take any measure necessary to restore equity and to ensure equal treatment, to which Mr. KHIEU Samphan is entitled.

Sincerely,

For the Co-Lawyers for the Defence

Jacques VERGÈS

⁶ Pre-Trial Chamber Decision on Appeal Against Closing Order Indicting Kaing Guek Eav alias “Duch”, D99/3/42.