

BEFORE THE OFFICE OF THE CO-INVESTIGATING JUDGES
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

Criminal Case File N°: 002/19-09-2007-ECCC/OCIJ
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IENG SARY'S REQUEST FOR AN EXTENSION OF THE PAGE LIMIT FOR
FILING SUPPLEMENTARY OBSERVATIONS ON THE APPLICATION OF JOINT
CRIMINAL ENTERPRISE LIABILITY AT THE ECCC

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002/19-09-2007-ECCC/OCIJ

Mr. IENG Sary, through his Co-Lawyers ("the Defence"), hereby requests, pursuant to Article 5.4 of the Practice Direction on the Filing of Documents,¹ an extension of the page limit for its supplementary observations to be filed on the application of joint criminal enterprise liability at the ECCC pursuant to the Order of the Co-Investigating Judges ("OCIJ"), issued on 16 September 2008.² The Defence also respectfully requests that the OCIJ accept Mr. IENG Sary's substantive supplementary submissions on this issue which are attached as an annex to this request.

1. The Defence filed its opposition to the application of joint criminal enterprise liability ("JCE") at the ECCC on 28 July 2008.³ A response to this opposition was filed by the Office of the Co-Prosecutors' ("OCP") on 11 August 2008.⁴ Recognizing the importance of this issue and the effect it has on all the Charged Persons, the OCIJ requested supplementary submissions on this issue from all parties to case file 002 to be filed by 31 December 2008.⁵
2. Simultaneously, the OCP appealed the rejection of JCE in the Closing Order issued by the OCIJ in the case of Kaing Guek Eav "Duch".⁶ In that appeal, the Pre-Trial Chamber requested briefs to be submitted on the application of JCE at the ECCC in 1975-79 by three amicus curiae⁷ in addition to the submissions of the OCP, Defence and Civil Parties. These amicus briefs were filed pursuant to the Pre-Trial Chamber's invitation and amounted to a further 97 pages of submissions on this issue.⁸ Each brief addressed the question from a different perspective and addressed issues not raised by the Defence or OCP in the briefs submitted before the OCIJ.

¹ ECCC/01/2007/Rev.3, 8 October 2008.

² *Case of IENG Sary*, 002/19-09-2007-ECCC/OCIJ, Order on Application at the ECCC of the Form of Responsibility Known as Joint Criminal Enterprise, 16 September 2008 ("Order").

³ *Case of IENG Sary*, Case No. 002/19-09-2007-ECCC/OCIJ, IENG Sary's Motion Against the Application at the ECCC of the Form of Liability Known as Joint Criminal Enterprise, 28 July 2008.

⁴ *Case of IENG Sary*, 002/19-09-2007-ECCC/OCIJ, Co-Prosecutors' Response to Ieng Sary's Motion on Joint Criminal Enterprise, 11 August 2008.

⁵ Order, p. 2.

⁶ *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, ("OCP Appeal").

⁷ *Case of Kaing Guek Eav "Duch"*, 001/18-07-2007-ECCC-OCIJ (PTC02), Invitation to Amicus Curiae, 23 September 2008 and *Case of Kaing Guek Eav "Duch"*, 001/18-07-2007-ECCC-OCIJ (PTC02), Invitation to Amicus Curiae, 25 September 2008.

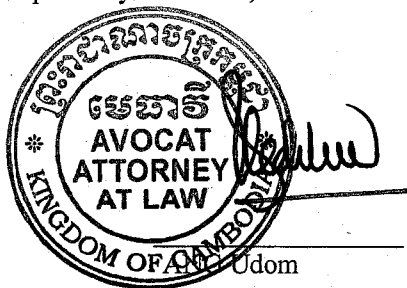
⁸ *Case of Kaing Guek Eav alias "Duch"*, 001/18-07-2007-ECCC-OCIJ (PTC02), *Amicus Curiae* Brief of Professor Antonio Cassese and Members of the *Journal of International Criminal Justice* on Joint Criminal Enterprise Doctrine, 27 October 2008; *Amicus Curiae* concerning Criminal Case File No. 001/18-07-2007-ECCC/OCIJ (PTC02), 27 October 2008 (Brief submitted by Professor Kai Ambos); *Amicus Curiae* Brief Submitted by the Centre for Human Rights and Legal Pluralism, McGill University Montreal (Québec) Canada.

- 3. To adequately respond to the issues contained in the briefs submitted by the *amici curiae*, the Defence respectfully requests an increase from 15 pages to 30 pages of the limit for filing documents before the OCIJ. Such an increase will allow the issues to be properly explored from a Defence perspective. It will also cause no prejudice to the OCP or the Civil Parties. Indeed, the Defence would not object to a similar extension of the page limit for the supplementary submissions by the other parties.
- 4. Furthermore, in the interests of judicial economy, and also to aid the OCIJ in verifying the necessity of an extension of the page limit for the supplementary observations on JCE, the Defence has attached its supplementary submissions as an annex to this document. Therefore, if the request for an extension of the page limit is granted, the attached submissions will constitute Mr. IENG Sary's supplementary observations requested by the OCIJ.

WHEREFORE, for all the reasons stated herein, the Defence respectfully requests the OCIJ to:

- a. GRANT the request for an extension of the page limit from 15 to 30 pages for the supplementary observations on the application of joint criminal enterprise at the ECCC, authorized by the Order of 16 September 2008;
- b. ACCEPT the submissions set out as an annex to this request as supplementary observations on the application of joint criminal enterprise at the ECCC; and
- c. DECLARE that all three forms of Joint Criminal Enterprise liability are not forms of liability within the jurisdiction of the ECCC.

Respectfully submitted,



Michael G. KARNAVAS

Co-Lawyers for Mr. IENG Sary
Signed in Phnom Penh, Kingdom of Cambodia on this 24th day of November, 2008