

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

Case File No: 001/18-07-2007- ECCC/OCIJ (PTC 02)
Filed to: Pre-Trial Chamber
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**RESPONSE TO THE REQUEST FILED BY ENG SARY
ON 15 SEPTEMBER 2008**

Filed by:

Filed to:

Lawyers for Charged Person
KAING Guek Eav alias Duch
KAR Savuth
François ROUX

Pre-Trial Chamber
Judge PRAK Kimsan, President
Judge Rowan DOWNING
Judge NEY Thol

Judge Katinka LAHUIS
Judge HUOT Vuthy

Co-Prosecutors

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Mr. Robert PETIT

Lawyers for the Civil Parties

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D99/3/10

MAY IT PLEASE THE PRE-TRIAL CHAMBER

1. The Defence notes that Mr. Ieng Sary is charged under Case File No. 002/19-09-2007-ECCC/OCIJ.
2. However, in their Order, dated 19 September 2007,¹ the Co-Investigating Judges ordered separation of Case File No. 001/18-07-2007-ECCC/OCIJ from Case File No. 002/19-09-2007-ECCC/OCIJ, "*in the interests of due process*".
3. In particular, the Defence notes that as stated in the Separation Order – which has not been challenged and is therefore now considered definitive –the Co-Investigating Judges "*have expedited resolution of the case of Duch since this person has already been under temporary detention in various procedural frameworks for eight years now (...)*".
4. The Defence considers that it is important to forward Case File No. 001/18-07-2007ECCC/OCIJ to the Trial Chamber without further delay in order for Duch to have a speedy public trial, in the interests of both Duch himself and those of the victims.²
5. The Defence notes that after the Motion filed on 28 July 2008 by Mr. IENG Sary under Case File No. 002/19-09-2007-ECCC/OCIJ, he and the other parties to the Case File were directed in the Co-Investigating Judges' Order of 16 September 2008 to file their observations concerning the question whether the concept of joint criminal enterprise is applicable in this case file, so that the issue could be litigated in an adversarial proceeding with the Co-Prosecutors and the other parties to the case file.³

¹ See Co-Investigating Judges' "*Separation Order*" dated 19 September 2007 (D18).

² See "*Defence Response to the Co-Prosecutors' Appeal of the Closing Order Dated 8 August 2008*", filed with the Pre-Trial Chamber on 16 September 2008 (D99/3/8).

³ See Co-Investigating Judges' "*Order on Application at the ECCC of the Form of Responsibility Known as Joint Criminal Enterprise*" dated 16 September 2008 (D97/III).

6. For the foregoing reasons, the Defence requests that Mr. IENG Sary be invited to file his observations before the Co-Investigating Judges under Case File No. 002/19-09-2007-ECCC/OCIJ.

FOR THESE REASONS

7. The Defence respectfully requests the Pre-Trial Chamber:

Noting the Co-Investigating Judges' Order dated 16 September 2008,

- TO DIRECT Mr. IENG Sary to file his observations before the Co-Investigating Judges under Case File No. 002/19-09-2007- ECCC/OCIJ.

- TO DISMISS Mr. IENG Sary's Motion concerning the Co-Prosecutors' Appeal against the Closing Order in Case File No. 001/18-07-2007- ECCC/OCIJ.

- TO FORWARD Case No. 001/18-07-2007-ECCC/OCIJ to the Trial Chamber so that Duch's case go to trial without further delay.

**THE FILING PARTY RESERVES THE RIGHT TO MAKE
FURTHER SUBMISSIONS**

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| 18-9-2008 | For both Lawyers KAR Savuth | Phnom Penh | (Signed) |
| Date | Name | Place | Signature |