



**អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា**

Extraordinary Chambers in the Courts of Cambodia

Chambres Extraordinaires au sein des Tribunaux Cambodgiens

D99/3/17

**អង្គបុរេជំនុំជម្រះ**

PRE-TRIAL CHAMBER  
CHAMBRE PRELIMINAIRE

**Criminal Case File N°** 001/18-07-2007-ECCC/OCIJ (PTC02)

**Before:** Judge PRAK Kimsan, President  
Judge Rowan DOWNING  
Judge NEY Thol  
Judge Katinka LAHUIS  
Judge HUOT Vuthy

**Date:** 2 October 2008

<b>ឯកសារដើម</b>
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PUBLIC

**DECISION ON REQUEST FOR LEAVE TO FILE AMICUS CURIAE BRIEF**

**Co-Prosecutors**

CHEA Leang  
Robert PETIT  
YET Chakriya  
William SMITH  
PICH Sambath  
Alex BATES

<b>ឯកសារច្បាប់ចម្លងត្រឹមត្រូវតាមច្បាប់ដើម</b>
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មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé du dossier: ..... SANN RADA .....

**Charged Person**

KAING Guek Eav alias "DUCH"

**Lawyers for the Civil Parties**

KONG Pisey  
HONG Kimsuon  
YOUNG Panith  
KIM Mengkhy  
MOCH Sovannary  
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Philippe CANNONE

**Co-Lawyers for the Defence**

KAR Savuth  
François ROUX



1. **THE PRE-TRIAL CHAMBER** of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) has received a letter dated 22 September 2008 (attached) from Randle DeFalco and Jared Watkins, Legal Associates at the Documentation Center of Cambodia (DC-Cam), requesting leave to file an *amicus curiae* brief regarding the mode of liability known as “joint criminal enterprise” (JCE) and the issue of *nullum crimen sine lege*. These issues relate to the Co-Prosecutors’ Appeal of the Closing Order Against Kaing Guek Eav ‘Duch’ (“Appeal”).
2. Rule 33(1) of the Internal Rules provides:

At any stage of the proceedings, the Co-Investigating Judges or the Chambers may, if they consider it desirable for the proper adjudication of the case, invite or grant leave to an organization or person to submit a written *amicus curiae* brief concerning any issue. The Co-Investigating Judges and the Chambers concerned shall determine what time limits, if any, shall apply to the filing of such briefs.
3. The Pre-Trial Chamber has invited specific *amici curiae*, unaffiliated with the court or any of its offices, to present written briefs on the mode of liability known as joint criminal enterprise. The Pre-Trial Chamber finds that through the submissions of these neutral *amici* as well as the submissions of the Parties, it will be sufficiently informed in order to determine the appeal. In these circumstances it would be undesirable to risk delaying the proceedings by receiving an additional *amicus curiae* brief and responses thereto by the Parties.
4. The Pre-Trial Chamber appreciates the interest shown by Randle DeFalco and Jared Watkins in the current proceedings, but does not consider it desirable to grant leave to file an *amicus curiae* brief in this case.

**THEREFORE, THE PRE-TRIAL CHAMBER HEREBY:**

Denies the request for leave to file an *amicus curiae* brief. *PK*

Phnom Penh, 2 October 2008

**President of the Pre-Trial Chamber**



**PRAK KIMSAN**

D 99/3/17

Pre-Trial Chamber  
Extraordinary Chambers in the Courts of Cambodia,  
National Road 4, Chaom Chau Commune,  
Dangkao District,  
Phnom Penh

Monday, September 22, 2008

To the Judges of the Pre-Trial Chamber:

We are Randle DeFalco and Jared Watkins, Legal Associates at the Documentation Center of Cambodia (DC-Cam). DC-Cam has been actively monitoring the proceedings of the ECCC since the Court's inception. As Legal Associates, we have a strong interest in ensuring that the ECCC adheres to the tenets of international law. Only by doing so will the ECCC fulfill its mission of providing justice for the crimes committed during the period of Democratic Kampuchea in Cambodia.

We write to request that the Chamber grant us leave, pursuant to Internal Rule 33, to submit a written *amicus curiae* brief regarding the mode of liability known as "joint criminal enterprise" (JCE) under international law and related issues regarding the affirmative defense of *nullum crimen sine lege*.

Charged Person Ieng Sary has filed an intervention application to file a submission on JCE in response to the OCP's appeal of the Duch indictment. The Chamber's decision regarding the applicability of JCE before the ECCC will impact the entirety of the proceedings of the Court and is thus a critical one. Furthermore, the issue of JCE's applicability before the ECCC raises a novel question of international law due to the Court's unique temporal jurisdiction.

The Court could benefit from accepting *amici curiae* briefs from neutral parties unaffiliated with any of its offices. These briefs offer the Court a thorough and complete picture of the jurisprudence relating to critical issues of law likely to be raised before the ECCC. Therefore, such briefs could be a useful supplement to the Court's own investigation when deciding on critical and complex legal questions, such as the applicability of JCE.

For these reasons, we respectfully request that the Pre-Trial Chamber accept an *amicus curiae* brief regarding issues of JCE, *nullum crimen sine lege*, and the jurisdiction of the ECCC. We have attached an executive summary highlighting key points for your reference. Thank you very much. We look forward to hearing from you.

Sincerely,

RANDLE C. DEFALCO  
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Legal Associates, Documentation Center of Cambodia