



អង្គបុរេជំនុំជម្រះ

PRE-TRIAL CHAMBER
CHAMBRE PRELIMINAIRE

Criminal Case File N° 001/18-07-2007-ECCE/OCIJ (PTC 02)

Before: Judge PRAK Kimsan, President
Judge Rowan DOWNING
Judge PEN Pichsaly
Judge Katinka LAHUIS
Judge HUOT Vuthy

Date: 20 November 2008

ឯកសារដើម
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du dossier: C.A. Jay

PUBLIC
DECISION ON REQUEST FOR A PUBLIC HEARING TO RESPOND TO THE
AMICUS CURIAE BRIEFS

Co-Prosecutors

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

ឯកសារបានកម្រិតត្រឹមត្រូវតាមច្បាប់ដើម
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..... 20 / 11 / 2008

មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé
du dossier: C.A. Jay

Charged Person

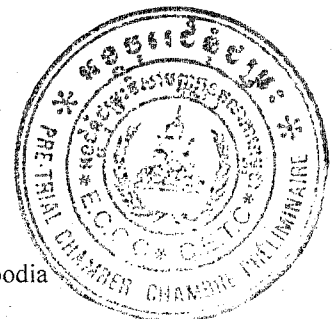
KAING Guek Eav alias "DUCH"

Lawyers for the Civil Parties

KONG Pisey
HONG Kimsuon
YOUNG Panith
KIM Mengkhy
MOCH Sovannary
Silke STUDZINSKY
Martine JACQUIN
Philippe CANNONE

Co-Lawyers for the Defence

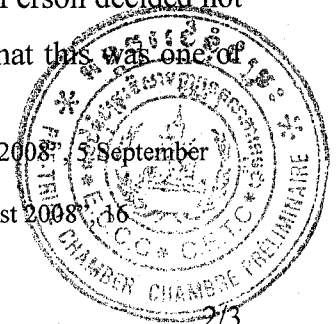
KAR Savuth
François ROUX



1. **THE PRE-TRIAL CHAMBER** of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) is seized of a request filed on 18 November 2008 by the Co-Lawyers for the Charged Person for a public hearing concerning the *amicus curiae* briefs (“Request”) in relation to the Co-Prosecutors’ appeal against the Closing Order (“Appeal”).
2. In their Request, the Co-Lawyers ask for a public hearing before the 5th of December (the date set for the delivery of the Pre-Trial Chamber’s decision on the Appeal) to respond to the *amicus curiae* briefs and the Co-Prosecutors’ arguments on the application of joint criminal enterprise liability or, as a subsidiary alternative, for an extension of time of 8 days to respond to the briefs.
3. On 13 October 2008, the Pre-Trial Chamber issued its Decision to determine the Appeal on the basis of written submissions only pursuant to Internal Rule 77(3) (“Decision to determine the appeal on the basis of written submissions”), having considered the views of the Co-Prosecutors and the Co-Lawyers for the Charged Person to the effect that a hearing was not required. The Lawyers for the Civil Parties did not file any pleadings at that stage.
4. The Co-Prosecutors presented extensive submissions in their Appeal brief arguing for the inclusion of joint criminal enterprise as an additional mode of liability in the Closing Order.¹ In their response,² the Co-Lawyers for the Charged Person did not present any arguments on the substantive issue related to joint criminal enterprise for the reasons expressed in their pleadings.
5. The Pre-Trial Chamber invited three *amici curiae* to submit briefs on specific questions related to the doctrine of joint criminal enterprise in order to be better informed on the issue. Anticipating that the necessary translations would be available on 3 November (French) and 7 November (Khmer) respectively, the Pre-Trial Chamber directed the parties to file any responses to the *amicus curiae* briefs by 4pm on 17 November 2008.
6. The Request amounts to an application for the Pre-Trial Chamber to reconsider its previous Decision to determine the appeal on the basis of written submissions. The Pre-Trial Chamber finds that there has been no change of circumstances involving new facts or arguments to warrant reconsideration. The Co-Lawyers for the Charged Person decided not to present arguments on the issue of joint criminal enterprise knowing that this was one of

¹ “Co-Prosecutors’ Appeal of the Closing Order against Kaing Guek Eav ‘Duch’ dated 8 August 2008, D99/3/3, paras 43-72.

² “Defence Lawyers’ Response to the Co-Prosecutors’ Appeal of the Closing Order dated 8 August 2008, D99/3/8, September 2008, D99/3/8.



the grounds of appeal and agreed to a procedure based on written submissions only. The Pre-Trial Chamber therefore finds that there is no reason to hold a public hearing at this stage.

7. The Pre-Trial Chamber notes that the translations of the *amicus curiae* briefs into French were only made available on 4 and 11 November. The time limit for responding will therefore be extended.

THEREFORE, THE PRE-TRIAL CHAMBER HEREBY:

- (1) Denies the request for a public hearing;
- (2) Grants the alternative request for an extension of time to respond to the *amicus curiae* briefs;
- (3) Directs that the response shall be filed by **4pm on 25 November 2008.** ort

Phnom Penh, 20 November 2008

President of the Pre-Trial Chamber



PRAK KIMSAN