

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

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**NOTICE OF APPEAL BY THE CO-LAWYERS FOR KAING GUEK EAV ALIAS
DUCH AGAINST THE TRIAL CHAMBER JUDGEMENT OF 26 JULY 2010**

Filed by:

Distribution to:

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Co-Prosecutors
CHEA Leang
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INTRODUCTION

1. The Co-Lawyers hereby file this Notice of Appeal against the Trial Chamber Judgement of 26 July 2010 (“Judgement”)¹ in which **KAING Guek Eav** alias “**Duch**” (“the Accused”) was sentenced to single prison term of 35 (thirty-five) years.
2. The Co-Lawyers are authorized to appeal the Trial Chamber Judgement of 26 July 2010 (“TC”) before the ECCC’s Supreme Court Chamber according to the letter dated 16 August 2010 by the Accused **KAING Guek Eav** alias **Duch**.²
3. Pursuant to Rules 104(1), 105(1)(b), 106(2) and 107(4) of the Internal Rules, the Co-Lawyers hereby advise that they intend to appeal the said Judgement.
4. The Co-Lawyers submit that pursuant to Rule 104(1), the Supreme Court Chamber has jurisdiction to examine the Co-Lawyers’ appeal, notably in relation to the fact that the Trial Chamber committed:
 - a) an error on a question of law invalidating the judgement; and/or
 - b) an error of fact which has occasioned a miscarriage of justice.
5. Pursuant to Rule 105(3), the Co-Lawyers for the Defence set out below the grounds of appeal concerning the errors of law or of fact committed by the Trial Chamber which invalidate the judgement and/or have occasioned a miscarriage of justice.

Grounds of appeal

6. The grounds of appeal of the Co-Lawyers for the Defence set out the following errors of law:³

I. Ground 1: Error regarding the Trial Chamber’s jurisdiction

7. The Trial Chamber erred in the assessment of its *ratione personae* jurisdiction, for the following reasons:
 - a) It relied on elements presented by the Co-Prosecutors to the effect that the Accused came under the jurisdiction of the temporal, territorial and material jurisdiction of the ECCC in determining that it had jurisdiction

¹ Judgement, 26 July 2010, Case File: 001/18-07-2007/TC, Trial Chamber, E188 (Judgement), paras. 677, 679.

² Letter of authorization dated 16 August 2010 by the Accused KAING Guek Eav alias “Duch” for the Co-Lawyers pursuant to Rule 106(3) of the Internal Rules.

³ Rule 105(3) of the Internal Rules.

over him. However, it failed to demonstrate why it was convinced beyond a reasonable doubt that the Prosecution evidence on which it relied proved that the Accused fell under its personal jurisdiction. In reality, in light of his official functions at the relevant time, the Accused does not fit into the category of persons under the jurisdiction of the ECCC.⁴

- b) To interpret the applicable law in reliance on international customary law is inconsistent with the ECCC law.⁵ In its interpretation, the Trial Chamber gave preference to common law principles at the detriment of the civil law principles recognized under the civil law system in effect in Cambodia.⁶ Such interpretation amounts to a violation of Article 2(1) of the Agreement between the United Nations and the Royal Government of Cambodia concerning the prosecution under Cambodian law of crimes committed during the period of Democratic Kampuchea, of Articles 1 and 2(new) of the ECCC law and of the civil law judicial system in effect in Cambodia.
- c) All this seems to suggest that the ECCC applied victor's justice and that it was established for the sole purpose of prosecuting **KAING Guek Eav** alias **Duch**. No adversarial hearing preceded the determination that **KAING Guek Eav** came under the ECCC's jurisdiction. Moreover, the determination of jurisdiction is based solely on the fact that the Trial Chamber found that the Defence Preliminary Objection was brought out of time.⁷

II. Ground 2: Error concerning the determination of a single prison sentence of 35 years

8. The Trial Chamber only considered its subject-matter, temporal and territorial jurisdictions and relied thereupon to convict **KAING Guek Eav** alias **Duch** for the crimes committed at S-21, as set out in the amended Closing Order.⁸ In its assessment, it omitted to take into consideration the real functions of **KAING Guek Eav** alias **Duch** during the Democratic Kampuchea regime – in light of which he should be found to be a witness of the events of the relevant period – and the fact that he fully cooperated with the Chamber.
9. By failing to thoroughly examine the question of its personal jurisdiction solely on the grounds that the Defence preliminary objections were raised late⁹, the Trial Chamber violated Rule 87 (Rules of Evidence) of the ECCC Internal Rules.

⁴ Judgement, paras. 13, 17, 18, 19, 20, 21, 23.

⁵ Judgement, paras. 22, 24, 30, 31, 33.

⁶ Judgement, paras. 45, 48.

⁷ Rule 87 of the Internal Rules.

⁸ Judgement, paras. 676, 677.

⁹ Judgement, paras. 14, 115.

CONCLUSION

10. We respectfully request the Supreme Court Chamber:
- a) To set aside in its entirety the Trial Chamber Judgement and to acquit **KAING Guek Eav**;
 - b) to find that **KAING Guek Eav** is a witness of the events during the period of Democratic Kampuchea; and
 - c) to find that his detention period counting from the date of his arrest to the day the Judgement was pronounced qualifies as witness protection and not as detention.

Without Prejudice

24 August 2010	National Lawyers KAR Savuth KANG Ritheary	Co- Phnom Penh	
Date	Name	Place	Signature