

**BEFORE THE SUPREME COURT CHAMBER
OF THE EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

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**Response of the Lawyers for the Group 3 Civil Parties, to the Appeal of the
Co-Lawyers for Duch against the Judgement of 26 July 2010**

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Before:

The Supreme Court Chamber

Judge KONG Srim, President

Judge Motoo NOGUCHI

Judge SOM Sereyvuth

Judge Agnieszka KLONOWIECKA-MILART

Judge SIN Rith

Judge Chandra Nihal JAYASINGHE

Judge YA Narin

Distribution to:**The Accused:**

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I. FACTUAL AND PROCEDURAL BACKGROUND

- 1- On 26 July 2010, the ECCC Trial Chamber found Kaing Guek Eav guilty of Grave Breaches of the Geneva Conventions and Crimes against Humanity, and sentenced him to thirty-five years imprisonment with reduction of five years in light of his unlawful detention.
- 2- On 5 October, the Civil Party Co-Lawyers appealed against the Judgement, in regard to the finding of inadmissibility of some of the Civil Parties represented by the Group, and to the question of reparations.
- 3- On 13 October 2010, the Co-Prosecutors filed their Appeal against the Judgement requesting the Supreme Court Chamber to revise the Trial Chamber's decision against Duch to a sentence of life imprisonment.
- 4- On 18 October 2010, and following a request by the Lawyers for the Defence for an extension of the time limit to file their appeal, the Supreme Court Chamber granted the Defence an extension of 30 days for filing its appeal.
- 5- By letter 20 October 2010, the *Greffiers* of the Supreme Court Chamber enquired whether Group 3 intended to make observations on the appeals, and if so, to specify the working language in which they intended to file such observations.
- 6- By a letter dated 27 October 2010, the Civil Party Co-Lawyers notified their intention to file observations on the appeals, in French and Khmer.
- 7- The Co-Lawyers for the Group 3 Civil Parties therefore have ground to file their appeal, pursuant to the Internal Rules and the Practice Directions.
- 8- On 18 November 2010, the Co-Lawyers for the Defence filed their appeal against the Judgement of 26 July, seeking the following remedy:

“Therefore, the Judgement [...] ought to be found invalid, and Kaing Guek Eav *alias* Duch ought to be released.

The detention of Kaing Guek Eav *alias* Duch from the date of his arrest until the present time should be considered as protective measure for a potential witness for showing DK senior leaders and the most responsible persons for crimes committed at S-21.”

II- DISCUSSION

- 9- In his Brief, the Accused argues that the Chamber erred by characterizing him as the principal perpetrator of the crimes committed at S-21, and that it was impermissible for it to do so according to both Article 1 of the ECCC Law and Rule 87 of the Internal Rules.
- 10- The Accused is of the view that the Chamber does not have jurisdiction to try him.
- 11- The Accused maintains that the Chamber erred with regard to its personal jurisdiction by finding that he fits in the category of principal perpetrators of the serious crimes committed between 17 April 1975 and 6 January 1979, and in particular at S-21.
- 12- Contrary to the Accused's allegations, he was not merely an executor without power or the possibility to express his opinion.
- 13- Kaing Guek Eav *alias* Duch was appointed Deputy Director and subsequently Director of the S-21 Security Centre by one of the permanent members of the Central Committee during the period in question, on account of his experience in managing the M-13 Detention Centre where he won the permanent member's trust; that is proof that he believed in the regime and had the qualities of "the best interrogator". His appointment by SON Sen cannot exonerate him from individual criminal liability for the crimes committed at S-21.
- 14- As established both during the judicial investigation and the hearings, the Accused was actively involved in directing S-21. He played a supervisory role there,¹ participated in interrogations,² made annotations to confessions by which he gave the Party leads as to new traitors to search for³ and managed the Centre's staff members who were entirely under his orders, and taught them interrogation and torture techniques.⁴

¹ ECCC Trial Chamber, Judgement of 26 July 2010, para. 128.

² *Ibid.*, para. 176.

³ *Ibid.*, paras. 177 and 178.

⁴ ECCC Trial Chamber, Judgement of 26 July 2010, para. 163.

- 15- Kaing Guek Eav *alias* Duch had full control over the actions of his subordinates and over everything that happened at S-21.
- 16- Kaing Guek Eav *alias* Duch knowingly orchestrated and participated, directly and indirectly, in eliminating 12,273 people, and supported that policy and the terror methods employed. The acts of extreme gravity perpetrated at S-21 under his orders constitute crimes against humanity and grave breaches of the Geneva Conventions.
- 17- It is therefore wrong for the Accused to argue that the Chamber erred by finding that he was one of the principal perpetrators of the serious crimes committed at S-21 during the period from 17 April 1975 to 6 January 1979.
- 18- The Chamber affirmed the characterization that the Co-Investigating Judges adopted after conducting the judicial investigation. It cannot be inferred that this characterization is not firmly grounded in law for the reason that the Co-Prosecutors' Introductory Submission characterises Kaing Guek Eav *alias* Duch as one of the senior leaders of Democratic Kampuchea. While the Co-Investigating Judges are bound by the facts and crimes set out in the Introductory Submission, they have the discretion to characterize them differently. The Accused's argument is therefore untenable.
- 19- Contrary to the the Accused's allegations,⁵ there is no ambivalence in the following French text: "*peut être considéré comme entrant dans la catégorie retenue par les Co-Juges d'instruction dans l'ordonnance de clôture et par la Chambre dans le jugement*" [in the Closing Order, the Co-Investigating Judges allege that [...] he may be considered in the category of those most responsible for crimes". This phrase cannot be interpreted as raising any doubts; it is an assertion.
- 20- It is noteworthy that at several instances in his Brief, the Accused seems to completely misinterpret certain parts of the Judgement. Paragraph 99 of the Judgement makes no reference to statements by Judge Cartwright, contrary to what is indicated in the Brief.⁶ In any case, paragraph 99 recalls that "[t]he most critical aspect of the CPK policy as it relates to this trial was that of 'smashing' enemies, a policy introduced at M-13"; this policy was supported, followed and

⁵ Defence Appeal Brief against the Judgement of 26 July 2010, 18 November 2010, para. 16.

⁶ Defence Appeal Brief against the Judgement of 26 July 2010, 18 November 2010, para. 30.

implemented at M-13 by Kaing Guek Eav *alias* Duch. Furthermore, it is clearly established that he could influence the search for ‘enemies’. Contrary to what is alleged in his Brief, there is no proof anywhere in paragraph 99 that Duch was not responsible for the alleged crimes.

21- Furthermore, in claiming that the Chamber has no jurisdiction, the Accused relies on the Separate and Dissenting Opinion of Judge Lavergne, who, according to him, “admitt[ed] that the Trial Chamber did not have the jurisdiction”. However, no such inference emerges from a reading of the Opinion; the dissent is in relation to the legal basis for determining sentence and not to whether the Chamber had jurisdiction to try Kaing Guek Eav *alias* Duch.

22- Moreover, the Accused did not formally and properly challenge the Chamber’s jurisdiction.

23- It was in application of Cambodian law and the rules and customs of international humanitarian law and conventions to which Cambodia has acceded, that the Chamber considered itself lawfully seised of the case, and it considered the charges against Duch established before it entered a finding of guilty.

III. CONCLUSION

24- The Civil Party Co-Lawyers for the Group 3 Civil Parties request the Judges to reject the arguments contained in the Brief filed by the Co-Lawyers for Kaing Guek Eav *alias* Duch as manifestly unfounded.

Done in Phnom Penh, on 3 December 2010, by the Lawyers for the Group 3 Civil Parties:

(signed)

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