

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

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**REQUEST BY THE CO-LAWYERS
FOR MR KAING GUEK EAV ALIAS DUCH TO ADMIT NEW EVIDENCE**

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I. INTRODUCTION

1. On 18 November 2010, the Co-Lawyers for Mr KAING Guek Eav *alias* Duch (“Co-Lawyers for the Accused”) filed an Appeal Brief¹ with the Supreme Court Chamber (the “Chamber”) of the Extraordinary Chambers within the Cambodian Courts;
2. On 14 January 2011, the Co-Lawyers for the Accused filed with the Chamber a Reply² to the Co-Prosecutors’ Response, dated 20 December 2010;³
3. The Co-Lawyers for the Accused refer to the Interoffice Memorandum of the Greffiers of the Chamber, dated 21 February 2011;⁴

II. DIRECT RELEVANCE OF THE NEW EVIDENCE

A. “*Khmer Rouge Prisons*”

4. “*Khmer Rouge Prisons*” is the title of a Documentation Centre of Cambodia (DC-Cam) document compiled by Mr PHENG Pong Rasy. Drafted in Khmer, it contains 328 pages listing the 196 security centres which existed throughout Cambodia during the period of Democratic Kampuchea.
5. The Co-Lawyers for the Accused would like to inform the Chamber that “*Khmer Rouge Prisons*” is a new document which is not in Case File 001 and that they attached it as Annex A⁵ to the Appeal Brief and as Annex A⁶ to the Reply to the Co-Prosecutors’ Response, dated 20 December 2010.⁷ The National Co-Lawyer for the Accused referred to pages 81 to 83 of the Khmer version of “*Khmer Rouge Prisons*” dealing with the Chong Chroy [ចុងច្រាយ] Security

¹ Appeal Brief by the Co-Lawyers for Kaing Guek Eav *alias* Duch against the Trial Chamber Judgement of 26 July 2010, dated 18 November 2010, F14 (“Appeal Brief”).

² Reply by the Co-Lawyers for KAING Guek Eav *alias* Duch to the Co-Prosecutors’ Response of 20 December 2010, F14/4/2, dated 14 January 2011 (“Reply”).

³ Co-Prosecutors’ Response to the Appeal Brief by the Co-Lawyers for KAING Guek Eav *alias* Duch, dated 20 December 2010, F14/4.

⁴ Interoffice Memorandum of the Greffiers of the Supreme Court Chamber, dated 21 February 2011, F17.

⁵ Appeal Brief, Annex A, F14.2 and F14.2.1.

⁶ Reply, Annex A, F14/4/2.2, F14/4/2.2.1.

⁷ Co-Prosecutors’ Response to the Appeal Brief by the Co-Lawyers for KAING Guek Eav *alias* Duch, dated 20 December 2010, F14/4.

Centre before the Trial Chamber in his opening statement at the substantive hearing of 31 March 2009⁸ and in his closing statement at the end of the substantive hearing of 27 November 2009.⁹ The Co-Lawyers for the Accused only located the document at the time of the filing of the Appeal Brief.

B. DC-Cam's conclusion on DUCH's position and function at S-21 presented to the UN Commission of Experts

6. DC-Cam submitted a brief to the UN Commission of Experts entitled "The Selected 31 Biographies of Khmer Rouge Leaders and Others, Prepared for the UN Commission of Experts, August-September, 1998" to enable the Commission to prepare its report to the UN Security Council. The brief included a statement on DUCH's position and function prepared by DC-Cam experts.

7. The Co-Lawyers for the Accused would also like to inform Chamber that they will be relying on this new document, i.e. the above-noted DC-Cam brief, to highlight DUCH's position and function at S-21 in light of DC-Cam's experts' two-page document (in English) which describes certain individuals as having been DUCH's superiors. This document has not yet been placed on Case File 001 even though the Co-Lawyers for the Accused attached it as Annex A to the Appeal Brief.¹⁰ The Co-Lawyers for the Accused only recently located the document entitled "The Selected 31 Biographies of the Khmer Rouge Leaders and Others, Prepared for the UN Commission of Experts, August-September, 1998" at the time of the filing of the Appeal Brief.

C. Additional documents attached to the Appeal Brief and the Reply

8. The Co-Lawyers for the Accused would like to inform the Chamber that they have attached new documents,¹¹ other than those referred to in sections A and B above, to the Appeal

⁸ Transcript of the hearing of 31 March 2009, E1/6.1, ERN 00301785-00301786, ERN 00301787-00301789.

⁹ Transcript of the hearing of 27 November 2009, E1/82.1, ERN 00407675-00407676, ERN 00407678-00407679.

¹⁰ Appeal Brief, Annex A, F14.2 and F14.2.4.

¹¹ DC-Cam's Searching for the Truth, Number 2, February 2000, p. 53 (Kh), p. 43 (Eng), F14.2.2; Collection of Cambodian Folk Tales, Volume 3, published in 2001, p. 137-144 (Kh), F14.2.3; Command Structure of S-21 "Secret Military Prison" also known as Tuol Sleng Prison of the Government of Democratic Kampuchea, from March 1976 to 15 August 1977 and from 15 August 1977 to 6 January 1979 (Kh/Eng), F14.2.5. *Prakas* of the Ministry of Interior of the Kingdom of Cambodia on the Management of Prisons, No. 217, dated 31 March 1998, which includes 26 pages (Kh), F14/4/2.2.2.

Brief¹² and Reply¹³ to the Co-Prosecutors' Response, dated 20 December 2010¹⁴ and that they will be using these documents at the appeal hearings before the Chamber, particularly for comparison purposes, in support of their submissions and explanations, and that the documents will be available to the Chamber for consideration when rendering its judgment.

III. REQUEST

9. The Co-Lawyers for the Accused request that the following new evidence be placed on Case File 001/18-07-2007 ECCC/SCC:

- A. The 328-page DC-Cam Khmer document entitled "*Khmer Rouge Prisons*" compiled by Mr PHENG Pong Rasy.
- B. The DC-Cam brief submitted to the UN Commission of Experts, entitled "The Selected 31 Biographies of Khmer Rouge Leaders and Others, Prepared for the UN Commission of Experts, August-September, 1998".

Without prejudice

	National Co-Lawyers Mr. KAR Savuth Mr. KANG Ritheary	Phnom Penh	
Date	Name	Location	Signature

¹² Appeal Brief, F14.

¹³ Reply.

¹⁴ Co-Prosecutors' Response to the Appeal Brief by the Co-Lawyers for KAING Guek Eav *alias* Duch, dated 20 December 2010, F14/4.