



**អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា**  
**Extraordinary Chambers in the Courts of Cambodia**  
**Chambres Extraordinaires au sein des Tribunaux Cambodgiens**

F7

TO: Supreme Court Chamber  
H.E. Kong Srim, President of the Supreme Court Chamber  
Judge Som Sereyvuth  
Judge Sin Rith  
Judge Ya Narin  
Judge Motoo Noguchi  
Judge Agnieszka Klonowiecka-Milart  
Judge Chandra Nihal Jayasinghe

<b>ឯកសារដើម</b>
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/date de reception): ..... 14 / 09 / 2010 .....
ម៉ោង (Time/Hour) : ..... 08 : 45 .....
មន្ត្រីទទួលបន្ទុកសំណុំរឿង / Case File Officer/L'agent chargé du dossier: ..... SANN RADA .....

Richard J. Rogers  
Chief, Defence Support Section  
10 September 2010

**RE: DSS request to submit an *amicus curiae* brief  
to the Supreme Court Chamber**

Dear Judges,

<b>ឯកសារចម្លង</b>
<b>COPY/COPIE</b>
ថ្ងៃ ខែ ឆ្នាំ (Date): 14-Sep-2010, 08:58
CMS/CFO: Sann Rada

1. On 26 July 2010, Mr. Kaing Guek Eav, alias Duch ("DUCH"), was convicted and sentenced by the Trial Chamber of the ECCC. The parties have notified their intention to appeal against the judgment to the Supreme Court Chamber. In accordance with Rule 33 of the Internal Rules, the Defence Support Section ("DSS") respectfully requests leave to submit an *amicus curiae* brief as part of this appeal.

**Background:**

2. On 16 August 2010, the Co-Prosecutors filed their Notice of Appeal.<sup>1</sup> The Co-Prosecutor's notice contains three grounds of appeal, all of which raise complex and technical issues of international law.
3. On 24 August 2010, the co-lawyers for the DUCH filed their Notice of Appeal ("Defence Notice").<sup>2</sup> It is apparent from the Defence Notice that the co-lawyers intend to limit their submissions to matters relating to jurisdiction and to concentrate on national law. Therefore, many issues involving international law, including those raised by the Co-Prosecutors in their Notice of Appeal, are unlikely to be addressed in detail by the defence.

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<sup>1</sup> See 'Co-Prosecutors' Notice of Appeal Against the Judgment of the Trial Chamber in the Case of Kaing Guek Eav alias Duch', Doc E188/2, ERN 00589658 (ENG), 16 August 2010  
<sup>2</sup> See 'Notice of Appeal by the Co-Lawyer of Kaing Guek Eav Alias Duch Against the Trial Chamber Judgment of 26 July 2010', Doc. E188/8, ERN 00595835 (ENG), 24 August 2010, para. 7(b).

***Amicus curiae in international proceedings:***

4. *Amicus curiae* submissions have been widely accepted in international and hybrid criminal courts. For example, in the ICTY case of *Milosevic*, the trial chamber nominated counsel to serve as *amicus curiae* to ensure the court was "fully briefed on certain aspects of international law".<sup>3</sup> Commentators have observed that *amici* briefs are especially useful in hybrid courts (such as the ECCC), due to the complex interaction of national and international laws.<sup>4</sup>
5. According to the Appeals Chamber of the Special Court for Sierra Leone, requests for leave to submit *amici* briefs should be considered in terms of the potential assistance that they can provide to the court, and should be viewed much more generously at the appellate level.<sup>5</sup>
6. Consistent with international practice, the ECCC has invited and / or accepted *amici* briefs on a number of occasions. On four separate occasions the Pre-Trial Chamber invited organizations and the public to file *amici* briefs to assist its deliberation on the issue of provisional detention;<sup>6</sup> the PTC invited Prof. Antonio Cassese, Prof. Kai Ambos, and the McGill Centre for Human Rights and Legal Pluralism to submit *amici* briefs on the applicability of joint criminal enterprise;<sup>7</sup> the PTC also invited *amici* briefs from organizations and the public on the issue of civil party participation.<sup>8</sup>

***Amicus curiae in the current appeal:***

7. The appeal against judgment in the DUCH case is the first to be adjudicated before Supreme Court Chamber. As such, a significant number of novel and complex international criminal law issues will be argued and determined for the first time: the final judgement will set precedents that will influence all future trials at the ECCC. Accordingly, it is imperative that the Supreme Court Chamber is 'fully briefed on certain aspects of international law.'
8. Since the co-lawyers for DUCH intend to limit their submissions to matters relating to jurisdiction and to concentrate on national law, an *amicus* brief addressing some of the other aspects of international criminal law would be of assistance to the Supreme Court Chamber in the full and proper determination of the appeal.
9. As the Section of the ECCC responsible for helping to ensure fair trials, the DSS is an appropriate organ to submit an *amicus* brief in this appeal.<sup>9</sup>

<sup>3</sup> *Milosevic* (IT-02-54-T) TC, Order, 22 November 2002; and Order, 1 July 2005

<sup>4</sup> See Sarah Williams and Hanna Woolaver, "The Role of the Amicus curiae before International Criminal Tribunals," 6 Int'l Crim L. Rev. 151 2006, para. 185

<sup>5</sup> *Kallon*, (SCSL-2003-07) AC, Decision, 1 November 2003, at para 5-6

<sup>6</sup> (07-09-001 ECCC), PTC, Notice, 4 September 2007; (02/19-09-2007-ECCC-OCIJ), PTC 01, Notice, 27 November 2007; (02/19-09-2007-ECCC-OCIJ), PTC 02, Notice, 16 January 2008; (02/19-09-2007-ECCC-OCIJ), PTC 03, Notice, 4 February 2008

<sup>7</sup> (001-18-07-2007-ECCC/OCIJ) PTC 02, Invitation to Amicus Curiae, 25 September 2007

<sup>8</sup> (02/19-09-2007-ECCC-OCIJ), PTC 01, Order on the Filing of Submissions on the Issue of Civil Party Participation in the Appeals Against Provisional Detention Order and an Invitation to Amicus Curiae, 12 February 2008

<sup>9</sup> The Appeal Chamber of the Special Court for Sierra Leone noted that the *amicus* rule is "broad enough to include, for example, the Defence Office." See *Kallon*, AC Decision, supra, at para 10

**Request:**

10. For the above reasons, the DSS respectfully requests the Supreme Court Chamber to grant leave to submit an *amicus* brief in accordance with Rule 33 of the ECCC Internal Rules.

Yours sincerely,

A handwritten signature in black ink, consisting of stylized initials 'RR' with a horizontal line underneath.

Richard J Rogers