



ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

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

Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

F14/411

អង្គជំនុំជម្រះតុលាការកំពូល

Supreme Court Chamber
Chambre de la Cour suprême

សំណុំរឿងលេខ: ០០១/១៨ កក្កដា ២០០៧-អ.វ.ត.ក/អ.ជ.ត.ក

Case File/Dossier N°. 001/18-07-2007-ECCC/SC

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Before: Judge KONG Srim, President
 Judge Motoo NOGUCHI
 Judge SOM Sereyvuth
 Judge Agnieszka KLONOWIECKA-MILART
 Judge SIN Rith
 Judge Chandra Nihal JAYASINGHE
 Judge YA Narin

Date: 22 December 2010

Classification: PUBLIC

DECISION GRANTING LEAVE TO THE CO-LAWYERS FOR THE ACCUSED TO REPLY TO THE RESPONSE OF THE CO-PROSECUTORS

Co-Prosecutors
CHEA Leang
Andrew CAYLEY

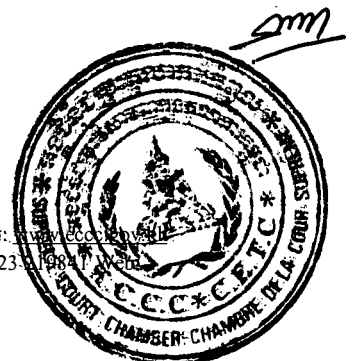
Accused
KAING Guek Eav alias
'DUCH'

Lawyers for the Accused
KAR Savuth
KANG Ritheary

Lawyers for Civil Parties
Group 1
TY Srinna
Karim KHAN
Alain WERNER
Brienne McGONIGLE

Lawyers for Civil Parties
Group 2
KONG Pisey
HONG Kimsuon
YUNG Phanit
Silke STUDZINSKY

Lawyers for Civil Parties
Group 3
KIM Mengkhy
MOCH Sovannary
Martine JACQUIN
Annie DELAHAIE
Philippe CANONNE
Elizabeth RABESANDRATANA
Fabienne TRUSSES-NAPROUS
Christine MARTINEAU



THE SUPREME COURT CHAMBER of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) is seised of the response of the Co-Prosecutors¹ (“Co-Prosecutors’ Response”) to the appeal brief of the Accused, KAING Guek Eav *alias* “Duch” (“Accused Appeal Brief”).

I. PROCEDURAL HISTORY

1. On 26 July 2010, the Trial Chamber of the ECCC issued its Judgement against the Accused (“Trial Judgement”).² The Co-Prosecutors, Accused, and Civil Parties Groups 1, 2, and 3 have filed appeals to the Supreme Court Chamber against the Judgement.³
2. On 19 November 2010, the Accused Appeal Brief was notified to the parties. On 7 December 2010, the Supreme Court Chamber granted the Co-Prosecutors’ request for an extension of 15 calendar days to file their response to the Accused Appeal Brief.⁴ On 21 December 2010, the Co-Prosecutors’ Response was notified to the parties.

II. APPLICABLE LAW

3. The Internal Rules provide:

The applicable ECCC Law, Internal Rules, Practice Directions and Administrative Regulations shall be interpreted so as to always safeguard the interests of Suspects, Charged Persons, Accused and Victims and so as to ensure legal certainty and transparency of proceedings, in light of the inherent specificity of the ECCC, as set out in the ECCC Law and the Agreement.

...

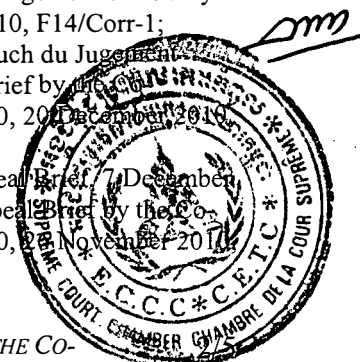
Unless these IRs provide otherwise and in compliance with the applicable Practice Directions, the judges may set time limits for the filing of pleadings, written submissions

¹ Co-Prosecutors’ Response to the Appeal Brief by the Co-Lawyers for KAING Guek Eav *alias* “Duch” against the Trial Chamber Judgement of 26 July 2010, 20 December 2010, F14/4.

² E188 (as corrected).

³ “Group 1-Civil Parties’ Co-Lawyers’ Immediate Appeal of Civil Party Status Determinations from the Final Judgement,” 16 September 2010, F8; “Appeal of the Co-Lawyers for the Group 3 Civil Parties against the Judgement of 26 July 2010,” 6 October 2010, F9; “Co-Prosecutors’ Appeal against the Judgement of the Trial Chamber in the Case of KAING Guek Eav *alias* Duch,” 18 October 2010, F10 (“Co-Prosecutors’ Appeal Brief”); “Notice of Appeal of Co-Lawyers for Civil Parties (Group 2) and Grounds of Appeal against Judgment,” 6 September 2010, E188/12; “Appeal against Rejection of Civil Party Applicants in the Judgment Co-Lawyers for Civil Parties – Group 2,” 22 October 2010, F11; “Appeal against Judgment on Reparations by Co-Lawyers for Civil Parties – Group 2,” 2 November 2010, F13; “Appeal Brief by the Co-Lawyers for KAING Guek Eav *alias* ‘Duch’ against the Trial Chamber Judgement of 26 July 2010,” 18 November 2010, F14; Request for Correction to Accused Appeal Brief, 9 December 2010, F14/Corr-1; Mémoire en réponse du groupe d’avocats de parties civiles, groupe 3, à l’appel de la défense de Duch du Jugement rendu le 26 juillet 2010, 3 December 2010, F14/2; and Co-Prosecutors’ Response to the Appeal Brief by the Co-Lawyers for KAING Guek Eav *alias* “Duch” against the Trial Chamber Judgement of 26 July 2010, 20 December 2010, F14/4.

⁴ Decision on Co-Prosecutors’ Application for Extension of Time to Respond to the Accused Appeal Brief, 7 December 2010, F14/3; Co-Prosecutors’ Application for Extension of Time to File their Response to the Appeal Brief by the Co-Lawyers for KAING Guek Eav *alias* “Duch” against the Trial Chamber Judgement of 26 July 2010, 20 December 2010, F14/1.



and documents relating to a request or appeal, taking into account the circumstances of the case, especially whether a Charged Person or Accused is in detention.⁵

4. The relevant parts of the Practice Direction on Filing of Documents before the ECCC (Rev. 5) (“Practice Directions on Filing”) are the following:

Unless otherwise provided in the Internal Rules or this Practice Direction or ordered by a Chamber of the ECCC, pleadings and applications shall be filed with the greffier of the Chamber hearing the case together with the relevant authorities in accordance with the following timetable, subject to the right in Rule 39 of the Internal Rules to request an extension of time limits.

A Chamber may fix time limits for the filing of an application or pleadings.

...

A reply to a response shall only be permitted where there is to be no oral argument on the request, and such reply shall be filed within 5 calendar days of notification . . . of the response to which the participant is replying.

...

A document filed to the . . . Supreme Court Chamber of the ECCC shall not exceed 30 pages in English or French or 60 pages in Khmer, unless otherwise provided in the Internal Rules or this Practice Direction or ordered by the ECCC.⁶

III. RULING

5. Since there will be “oral argument” on the appeals against the Trial Judgement, the Supreme Court Chamber notes that Article 8.4 of the Practice Direction on Filing appears to preclude a written reply from the Accused to the Co-Prosecutors’ Response. However, the Chamber finds that Article 8.4 is subordinate to Article 8.1 of the Practice Direction on Filing, which allows the Supreme Court Chamber to order a change to “the following timetable” of pleadings.
6. The Chamber is also obliged by Internal Rule 21(1) to interpret Article 8.4 of the Practice Direction on Filing “so as to always safeguard the interests of . . . Accused.” In light of the challenges in the Co-Prosecutors’ Response to the admissibility of the Accused Appeal Brief,⁷ the Supreme Court Chamber finds that the opportunity to file a written reply to the Co-Prosecutors’ Response will help safeguard the interests of the Accused in the adjudication of the appeals against the Trial Judgement.
7. Moreover, the opportunity for the Accused to reply to the Co-Prosecutors’ Response is consistent with Cambodian and international criminal procedure. In cassation proceedings before the Criminal Chamber of the Supreme Court of Cambodia, “[a]ny party

⁵ Internal Rules 21(1), 39(2) (Rev. 6).

⁶ Articles 8.1-8.2, 8.4, 5.2.

⁷ Co-Prosecutors’ Response, paras. 6-10.



brief or supplementary briefs until the closing of the hearing has been declared.”⁸ A reply to a response to an appeal brief is permitted as of right at the International Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda, the Special Court for Sierra Leone, and the Special Tribunal for Lebanon.⁹ The Appeals Chamber of the International Criminal Court has the power to order such a reply in the interests of justice.¹⁰

8. Therefore, on its own motion, the Supreme Court Chamber decides to grant leave to the Co-Lawyers for the Accused to file a written reply to the Co-Prosecutors’ Response. Such a reply, if filed, should satisfy the following conditions:

- a. The reply may only address the Co-Prosecutors’ Response;
- b. The reply must be filed within 15 full working days after notification of this Decision; and
- c. The reply may not exceed 40 pages in Khmer or 20 pages in English or French.¹¹

9. In rejecting the application from the Defence Support Section of the ECCC for leave to submit an *amicus curiae* brief, the Supreme Court Chamber stated, “since the Accused is represented by two national Co-Lawyers, the only appropriate capacity in which the DSS may fulfil its mandate is by offering legal assistance and support to the Accused and his Co-Lawyers in accordance with Internal Rule 11(2)(j).”¹² The Supreme Court Chamber therefore reminds the Co-Lawyers for the Accused that the Defence Support Section is available to provide them with “basic legal assistance and support,” including legal research, analysis, drafting, and advice.

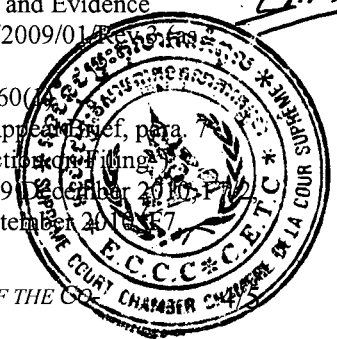
⁸ Code of Criminal Procedure of the Kingdom of Cambodia, 10 August 2007, Article 434.

⁹ ICTY Rules of Procedure and Evidence, IT/32/Rev.45 (including amendments of 13 December 2010), Rule 113; ICTR Rules of Procedure and Evidence (9 February 2010), Rule 113; SCSL Rules of Procedure and Evidence (amended on 28 May 2010), Rule 113(A); and STL Rules of Procedure and Evidence, STL/BD/2009/01/Rev.1 (corrected on 29 November 2010), Rule 184.

¹⁰ Regulations of the Court, ICC-BD/01-02-07, 26 May 2004 (as amended), Regulations 24(5), 60(1).

¹¹ Decision on Co-Prosecutors’ Application for Extension of Time to Respond to the Accused Appeal Brief, para 10 (“The original language . . . is determinative for the purposes of Article 5.2 of the Practice Direction on Filings”).

¹² Decision on DSS Request to Submit an *Amicus Curiae* Brief to the Supreme Court Chamber, 9 December 2010, para. 9; DSS Request to Submit an *Amicus Curiae* Brief to the Supreme Court Chamber, 14 September 2010, para. 10.



IV. DISPOSITION**FOR THE FOREGOING REASONS, THE SUPREME COURT CHAMBER:**

1. **GRANTS** leave to the Co-Lawyers for the Accused to file a reply to the Co-Prosecutors' Response. If filed, such a reply should satisfy the conditions in paragraph 8(a)-(c) above; and
2. **REMINDS** the Co-Lawyers for the Accused of the legal assistance and support available to them from the Defence Support Section pursuant to Internal Rule 11(2)(j).

Phnom Penh, 22 December, 2010
President of the Supreme Court Chamber 

