



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

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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..... Uch Arun	

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: 3 March 2011

Classification: PUBLIC

DECISION ON DSS REQUEST TO THE SUPREME COURT CHAMBER TO INVITE *AMICUS CURIAE* BRIEFS FROM INDEPENDENT THIRD PARTIES

Defence Support Section

Nisha Valabhji
Rupert Abbott

Co-Prosecutors

CHEA Leang
Andrew CAYLEY

Accused

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'DUCH'

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Christine MARTINEAU



THE SUPREME COURT CHAMBER of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) is seised of the “DSS request for the Supreme Court Chamber to exercise its power under ECCC Internal Rule 33” (“Request”).¹

I. PROCEDURAL HISTORY

1. On 26 July 2010, the Trial Chamber of the ECCC issued its Judgement against KAING Guek Eav *alias* Duch (“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 26 January 2011, the Defence Support Section of the ECCC (“DSS”) submitted the Request to the Greffiers of the Supreme Court Chamber, and it was filed and notified on 28 January 2011. On 3 February 2011, the Co-Prosecutors filed their response to the Request (“Response”),⁴ and on 9 February 2011 the DSS replied to the Response⁵ (“Reply”).

II. REASONING

A. Applicable Law

3. The Internal Rules (Rev. 6) provide as follows:

At any stage of the proceedings . . . the Chambers may, if they consider it desirable for the proper adjudication of the case, invite or grant leave to an organization or person to submit

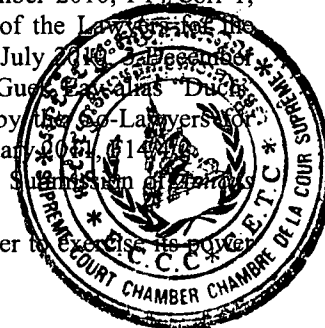
¹ 28 January 2011, F16.

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; Group 1-Civil Parties’ Co-Lawyers’ Notice of Intent Supplemental Filing, 28 October 2010, F12; 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 (“Accused’s Appeal Brief”); Request for Correction to Accused’s Appeal Brief, 9 December 2010, F14/Corr-1; Request for Correction to Accused’s Appeal Brief, 3 February 2011, F14/Corr-2; Response of the Law Firm to the Group 3 Civil Parties to the Appeal of the Co-Lawyers for Duch against the Judgement of 26 July 2010, F14/2; 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; Reply by the Co-Lawyers for KAING Guek Eav *alias* ‘Duch’ to the Co-Prosecutors’ Response of 20 December 2010, 14 January 2011, F16/1.

⁴ Co-Prosecutors’ Response to the DSS Request for the Supreme Court Chamber to Invite the Submission of *Amicus Curiae* Briefs, F16/1.

⁵ DSS reply to the Co-Prosecutors’ response to the DSS request for the Supreme Court Chamber to Invite the Submission of *Amicus Curiae* Briefs under ECCC Internal Rule 33, F16/2.



an *amicus curiae* brief in writing concerning any issue . . . [T]he Chambers concerned shall determine what time limits, if any, shall apply to the filing of such briefs.

[*Amicus Curiae*] Briefs under this Rule shall be filed with the Greffier of the . . . Chamber concerned, who shall provide copies to the Co-Prosecutors and the lawyers for the other parties, who shall be afforded the opportunity to respond.⁶

B. Merits

4. In the Request, the DSS asks the Supreme Court Chamber to invite one or more *amicus curiae* briefs from an independent third party for the purpose of ensuring “a full airing of legal arguments in regard to issues raised by the Co-Prosecutors on appeal that have not been addressed by the Co-Lawyers in proceedings thus far, and in particular the issue of sentencing.”⁷ The Co-Prosecutors support an invitation from the Supreme Court Chamber under Internal Rule 33(1) that is limited to “independent and impartial briefing” from an “appropriate independent party,” provided “the Chamber feels that such briefing would aid in its consideration of the issues raised by the parties on appeal.”⁸
5. For the following reasons, the Supreme Court Chamber finds that it would be inappropriate to invite the submission of an *amicus* brief under Internal Rule 33(1).
6. First, the Supreme Court Chamber must respect the appeal strategy chosen by the two national Co-Lawyers who were retained by the Accused in accordance with the Internal Rules.⁹ The Accused and his Co-Lawyers are neither obligated to file a written response to the Co-Prosecutors’ Appeal Brief nor to publicly disclose why they “chose not to.”¹⁰
7. Second, it is not accurate for the DSS to state that the Accused’s Co-Lawyers have focused “exclusively on issues of personal jurisdiction in appeal proceedings to date.”¹¹ For example, the Accused has appealed against his sentence on the basis that the Trial Chamber failed to have “regard to the provisions of Article 95 of the current Criminal Code of the Kingdom of Cambodia.”¹²

⁶ Internal Rule 33(1)-(2).

⁷ Request, para. 16.

⁸ Response, para. 5.

⁹ See “Form 7: Request for Engagement/Assignment of Co-Lawyers,” 20 July 2010, E189.2 (in which the Accused requests the representation of Mr. KANG Ritheary). See also Response, para. 4.

¹⁰ Request, para. 7. See Response, para. 2.

¹¹ Request, para. 9.

¹² Accused’s Appeal Brief, para. 91.



8. Third, the DSS is correct that the Accused's Co-Lawyers have thus far not addressed in their written pleadings the specific arguments in the Co-Prosecutors' Appeal Brief relating to sentencing and crimes against humanity. This appeal strategy chosen by the Accused's two national Co-Lawyers does not mean that without an invitation from the Supreme Court Chamber under Internal Rule 33(1) "a full airing" of the Co-Prosecutors' appeal submissions is "unlikely."¹³ The judges of the Supreme Court Chamber are equipped and duty-bound to comprehensively consider all appeal submissions, including the Co-Prosecutors'.
9. Fourth, the Supreme Court Chamber must respect the Accused's right to have the appeal proceedings "brought to a conclusion within a reasonable time."¹⁴ At this stage of the appeal proceedings, the Chamber considers that it would cause undue delay either to invite any organization or person in the general public or to search for and invite a specific organization or person to submit an *amicus* brief, and then to wait for the submission of the *amicus* brief(s). This consideration is without prejudice to the possibility that an organization or person may apply to the Supreme Court Chamber under Internal Rule 33(1) for leave to submit an *amicus* brief on sentencing and/or crimes against humanity. The Supreme Court Chamber finds nothing in the ECCC Agreement, ECCC Law, or the Internal Rules that prevents the DSS from trying to identify an organization or person not formally affiliated with the ECCC¹⁵ who is available and willing to offer such a brief for the Chamber's consideration.
10. Due to the combined effect of these reasons, the Supreme Court Chamber decides to dismiss the Request. It is therefore unnecessary for the Chamber to decide on the disagreement between the DSS and the Co-Prosecutors over whether or not the "Chamber has the discretion also to ask the *amicus curiae* to argue in favour of the interests of a particular party where this approach will serve the interests of justice."¹⁶

¹³ Request, para. 9.

¹⁴ Internal Rule 21(4).

¹⁵ Decision on DSS Request to Submit an *Amicus Curiae* Brief to the Supreme Court Chamber, 9 December 2016, para. 9.

¹⁶ Request, para. 11. See Response, paras. 3-4 and Reply, paras. 8-14.



III. DISPOSITION

FOR THE FOREGOING REASONS, THE SUPREME COURT CHAMBER DECIDES:

The Request is dismissed.

Phnom Penh, 3 March 2011
President of the Supreme Court Chamber



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