

BEFORE THE TRIAL CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

FILING DETAILS

Case No: 001/18-07-2007-ECCC/TC Party Filing: Co-Prosecutors
Filed to: Trial Chamber Original language: English
Document Date: 16 August 2010

CLASSIFICATION

Classification of the document suggested by the filing party: Public

Classification by the Chamber:

Classification Status:

Review of Interim Classification:

Records Officer Name:

Signature:

ឯកសារបានដកចេញពីប្រព័ន្ធគ្រប់គ្រងឯកសារ
CERTIFIED COPY/COPIE CERTIFIÉE CONFORME
ថ្ងៃ ខែ ឆ្នាំ ដែលបញ្ជាក់ (Certified Date/Date de certification):
16 / 08 / 2010
មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé
du dossier: SANN RADA

CO-PROSECUTORS' NOTICE OF APPEAL AGAINST THE JUDGEMENT OF THE TRIAL CHAMBER IN THE CASE OF KAING GUEK EAV ALIAS DUCH

Filed by:	Supreme Court Chamber	Counsel for the Civil Parties
Office of the Co-Prosecutors	Judge KONG Srim, President	KONG Pisey
CHEA Leang	Judge Motoo NOGUCHI	HONG Kimsuon
Andrew CAYLEY	Judge SOM Sereyvuth	YUNG Panith
	Judge A. KLONOWIECKA-MILART	KM Mengkhy
	Judge SIN Rith	MOCH Sovannary
	Judge C. N. JAYASIINGHE	Silke STUDZINSKY
	Judge YA Narin	Martine JACQUIN
Distribution to:	Accused/Respondent	Philippe CANONNE
Trial Chamber	Kaing Guek Eav alias DUCH	TY Srinna
Judge NIL Nonn, President		Pierre Olivier SUR
Judge S. CARTWRIGHT	Counsel for the Accused/Respondent	Alain WERNER
Judge YA Sokhan	KAR Savuth	Brianne McGONIGLE
Judge J-M LAVERGNE	KANG Ritheary	Annie DELAHAIE
Judge THOU Mony		Elizabeth RABESANDRATANA
		Karim KHAN
		Fabienne TRUSSES-NAPROUS

ឯកសារដើម
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/Date de réception):
16 / 08 / 2010
ម៉ោង (Time/Heure): 9:30
មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé
du dossier: Uch ARUN

INTRODUCTION

1. The Co-Prosecutors file this Notice of Appeal against the judgement of the Trial Chamber dated 26 July 2010 (“Judgement”)¹ convicting Kaing Guek Eav *alias* Duch for enumerated grave breaches of the Geneva Conventions and crimes against humanity and sentencing him to thirty years of imprisonment.²

GROUND OF APPEAL

2. The Co-Prosecutors’ grounds of appeal setting out the alleged errors of law invalidating the Judgement are set forth in the following paragraphs.³

I. GROUND ONE: DISCERNABLE Error IN THE EXERCISE OF SENTENCING DISCRETION

3. The Trial Chamber committed a discernable error in the exercise of its discretion by:
 - a. giving insufficient weight to the gravity of the “crimes of a particularly shocking and heinous character” committed by Duch,⁴ his role and willing participation in those crimes and,⁵ other aggravating circumstances;⁶ and
 - b. giving undue weight to the mitigating circumstances.⁷
4. In addition, the Trial Chamber committed an error of law invalidating the Judgement by failing to consider the relevant international sentencing law and the range of sentences available to it in cases similar to this.⁸ The Co-Prosecutors submit that the sentence imposed on Duch is arbitrary and manifestly inadequate and fell outside the range of sentences available to the Trial Chamber in the circumstances.

¹ Judgement, Case File No. 001/18-07-2007-ECCC/TC, Trial Chamber, 26 July 2010, E188 (“Judgement”), paras. 677, 679.

² Internal Rules, Rev.5, 9 February 2010 (“Rules”), Rules 105(3), 106(2), 107(4).

³ Rules, Rule 105(3).

⁴ Judgement, paras. 596-598, 600.

⁵ Judgement, paras. 597, 599.

⁶ Judgement, paras. 601-605, 630.

⁷ Judgement, paras. 608-611, 629.

⁸ Co-Prosecutors’ Final Trial Submission, Case File No. 001/18-07-2007-ECCC/TC, Office of the Co-Prosecutors, 11 November 2009, E159/1, *Sentencing*, in general, and paras. 453-456, in particular.

II. GROUND TWO: ERROR OF LAW REGARDING CUMULATIVE CONVICTIONS

a. Persecution and other Crimes Against Humanity

5. The Trial Chamber committed an error of law invalidating the Judgement by failing to convict Duch cumulatively for the crimes against humanity of enslavement, imprisonment, torture, rape, extermination (subsuming murder) and, other inhumane acts and, by subsuming those crimes in the crime against humanity of persecution on political grounds.⁹

b. Torture and Rape

6. The Trial Chamber committed an error of law invalidating the Judgement by characterising the crime against humanity of rape as torture and by failing to convict Duch cumulatively for the distinct crimes against humanity of rape and torture.¹⁰

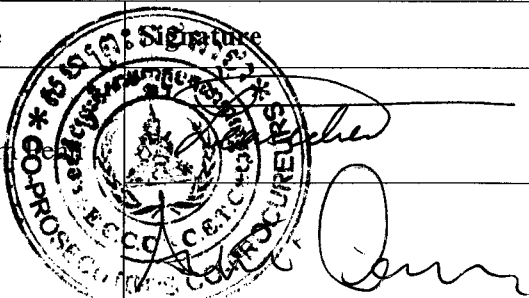
III. GROUND THREE: Error OF LAW REGARDING ENSLAVEMENT

7. The Trial Chamber committed an error of law invalidating the Judgement by employing a definition of the crime against humanity of enslavement that requires forced labour as an essential element of enslavement. This is not correct law; indeed there is no such requirement. Accordingly, the Trial Chamber erred in failing to convict Duch for the enslavement of those detainees in S-21 who were not subjected to forced labour.¹¹

CONCLUSION

8. The Co-Prosecutors will file their substantive Appeal within sixty days of the filing of this Notice of Appeal.¹² The Appeal will request the Supreme Court Chamber (1) to correct these errors of law and, accordingly, (2) increase the sentence awarded to Duch by the Trial Chamber.

Respectfully submitted,

Date	Name	Place	Signature
16 August 2010	CHEA Leang Co-Prosecutor	Phnom Penh	
	Andrew CAYLEY Co-Prosecutor		

⁹ Judgement, paras. 563-566, 568, 677.

¹⁰ Judgement, paras. 246, 366, 677.

¹¹ Judgement, paras. 342-346, 677.

¹² Rules, Rule 107(4).