



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

អង្គជំនុំជម្រះសាលាដំបូង
Trial Chamber
Chambre de première instance

សំណុំរឿងលេខ: ០០១/១៨ កក្កដា ២០០៨/អវតក/អជសដ
Case File/Dossier No. 001/18-07-2007/ECCC/TC

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du dossier: SANN RADA

Before: Judge NIL Nonn, President
Judge Silvia CARTWRIGHT
Judge YA Sokhan
Judge Jean-Marc LAVERGNE
Judge THOU Mony

Date: 13 July 2009

Classification: PUBLIC

ឯកសារបានច្បាប់ត្រឹមត្រូវតាមច្បាប់ដើម
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**DECISION ON THE CO-PROSECUTORS' MOTION TO
SUBMIT ANALYSES OF WITNESS STATEMENTS**

Co-Prosecutors

CHEA Leang
Robert PETIT

Accused

KAING Guek Eav alias "DUCH"

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The **TRIAL CHAMBER** of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”);

BEING SEISED of Case File No. 001/18-07-2007-ECCC/TC pursuant to the “Decision on Appeal Against the Closing Order Indicting Kaing Guek Eav Alias Duch”, rendered orally by the Pre-Trial Chamber on 5 December 2008 and filed in Khmer on 9 December 2008 (“Decision”)¹;

HAVING CONSIDERED the Motion of Co-Prosecutors to submit analyses of witness statements, dated 11 March 2009², and the Response of the Defence dated 28 April 2009³;

PURSUANT to Rule 92 of the Internal Rules;

HEREBY DECIDES as follows:

BACKGROUND AND FINDINGS

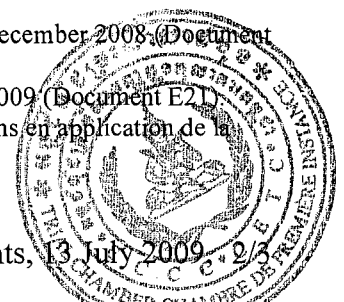
A. BACKGROUND

1. On 11 March 2009, the Co-Prosecutors filed a submission including two annexes presented as analyses of various statements of witnesses already in the case file. Annex 1 refers to statements of those witnesses that the Co-Prosecutors have requested to be heard in Court, while Annex 2 concerns the statements of those witnesses who have not been called to be heard in Court but whose statements the Co-Prosecutors intend to put before the Chamber in order to be used as evidence.
2. The Co-Prosecutors consider that Rule 92 creates a mechanism for the parties to notify the Chamber in writing of particular pieces of evidence that the party would like the Trial Chamber to examine during the trial. They argue that the Annexes are accurate summaries of evidence in the case file related to each of the witnesses and constitute a preliminary indication to the Chamber of the evidence that they would like to be taken into account during the deliberations.
3. In a response filed on 28 April 2009, the Defence requested the rejection of the material. The Defence considers these analyses as a partial presentation which could infringe the fairness of the trial because the reading of such material prior the appearance of the witnesses in Court or

¹“Decision on Appeal Against the Closing Order Indicting Kaing Guek Eav Alias Duch”, 5 December 2008 (Document D99/3/42).

²“Rule 92 Motion of Co-Prosecutors to Submit Analyses of Witness Statements”, 11 March 2009 (Document E21/09/001/18-07-2007-ECCC/TC).

³« Réponse de la Défense aux Co-Procureurs sur le dépôt d’analyses de déclarations de témoins en application de la règle 92 », 28 April 2009 (Document E21/1).



prior the production of the statements before the Court could influence the bench and make more difficult the search for the truth.

4. The Defence does not deny that, in accordance with Rule 92, any party can inform the Chamber of any evidence that it considers necessary to be put before the Court as conducive to ascertaining the truth. However, it argues that this opportunity is limited to the mere presentation of information concerning that evidence, as opposed to the submission of partial summaries of such evidence before discussion of that evidence in court.

B. FINDINGS

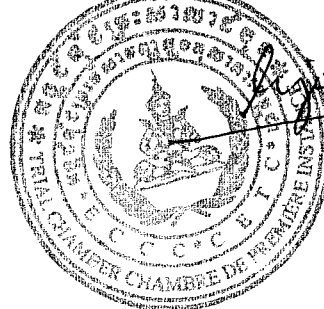
5. Rule 87(3) provides that “evidence from the case file is considered put before the Chamber if its content has been summarized or read out in Court”. In order to facilitate the management of the trial, the Chamber has already stated that it welcomes any information, in particular written summaries, given in advance concerning the material that the parties intend to put before the Chamber. This facilitates the discussion on the admissibility of such material and does not prevent any adversarial discussion on the accuracy of the summaries. The Chamber is obviously not bound by the written or oral presentation of evidence by any party, as it is its duty to do its own assessment.
6. This is not the appropriate time to examine the accuracy of the Co-Prosecutors’ analyses. This will be done when the Chamber has heard the witnesses concerned or when the statements are put before the Court. The Chamber considers such analyses helpful and admissible.

FOR THE FOREGOING REASONS, THE TRIAL CHAMBER:

ACCEPTS the request and declares the witness analyses presented by the Co-Prosecutors admissible. *[Signature]*

Phnom Penh, 13 July 2009

President of the Trial Chamber



[Signature]
[Nil Nonu]