

**CHAMBRES EXTRAORDINAIRES AU SEIN DES TRIBUNAUX CAMBODGIENS
DEVANT LA CHAMBRE DE LA COUR SUPRÊME**

DONNÉES RELATIVES AU DÉPÔT

Dossier n° 001/18-07-2007-ECCC/SC

Partie déposante : les co-procureurs

Déposée devant : la Chambre de la cour suprême

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DONNÉES RELATIVES AU CLASSEMENT

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**OBSERVATIONS DES CO-PROCUREURS RELATIVES À LA VERSION ANGLAISE CORRIGÉE DU
MÉMOIRE D'APPEL DES CO-AVOCATS DE KAING GUEK EAV, ALIAS « DUCH », CONTRE LE
JUGEMENT DE LA CHAMBRE DE PREMIÈRE INSTANCE**

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I. INTRODUCTION

1. Le 19 novembre 2010, l'accusé Kaing Guek Eav, *alias* Duch, (l'« Accusé ») a déposé le Mémoire d'appel des co-avocats de Kaing Guek Eav *alias* « Duch » contre le jugement rendu le 26 juillet 2010 par la Chambre de première instance (le « Mémoire d'appel »)¹. Le 20 décembre 2010, les co-procureurs ont déposé leur Mémoire en réponse au mémoire d'appel (le « Mémoire en réponse des co-procureurs »)². Le 4 février 2010, les co-procureurs se sont vu notifier que la traduction vers l'anglais du Mémoire d'appel avait été corrigée (le « Mémoire d'appel corrigé »). Cette retraduction comportait des modifications importantes³.

2. Il ne semble pas y avoir de délai prescrit pour le dépôt d'une demande de correction d'une traduction, le rectificatif devant être approuvé par l'Unité d'interprétation et de traduction⁴. Les co-procureurs notent toutefois que la version anglaise corrigée du mémoire d'appel a été déposée plus de deux mois après le dépôt du Mémoire d'appel et plus d'un mois après le dépôt de leur mémoire en réponse. Ils n'ont pas été informés de cette retraduction.

3. Les co-procureurs s'inclinent devant la nécessité de soumettre des traductions exactes dans toutes les langues et de demander que les documents déposés soient corrigés lorsque leur traduction est erronée. Toutefois en l'espèce, il semble que certaines modifications aient été apportées au Mémoire d'appel pour corriger des points de droit à la lumière du Mémoire en réponse des co-procureurs, plutôt que pour remédier à des erreurs de traduction. Cette conclusion est corroborée par le fait que des avocats khmers du Bureau des co-procureurs qui sont également anglophones, se sont aperçus que le document original en khmer était plus proche de la première version anglaise sur certains points.

¹ Mémoire d'appel des co-avocats de Kaing Guek Eav *alias* Duch contre le jugement rendu le 26 juillet 2010 par la Chambre de première instance [intitulé en anglais : *Appeal Brief by the Co-Lawyers for Kaing Guek Eav alias "Duch" Against the Trial Chamber Judgement of 26 July 2010*], dossier n°001/18-07-2007-ECCC/SC, déposé par la Défense le 18 novembre 2010, doc. n° F14 (le « Mémoire d'appel »).

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*, [disponible uniquement en anglais et en khmer], dossier n° 001/18-07-2007-ECCC/SC, déposé par les co-procureurs le 20 décembre 2010, doc n° F14/4 (le « Mémoire en réponse des co-procureurs »).

³ *Appeal Brief by the Co-Lawyers for Kaing Guek Eav alias "Duch" Against the Trial Chamber Judgement of 26 July 2010, Case File No. 001/18-07-2007-ECCC/SC*, déposé par la Défense le 18 novembre 2010 (la demande de correction a été déposée le 3 février 2011), doc. n° F14/Corr-2 (le « Mémoire d'appel corrigé »).

⁴ Dépôt des documents auprès des CETC, Directive pratique ECCC/01/2007/Rev. 5, 17 septembre 2010, art. 3.17.

4. En outre, plusieurs passages du Mémoire d'appel cités dans le Mémoire en réponse des co-procureurs ont maintenant été modifiés, ce qui fait que la réponse des co-procureurs apparaît parfois imprécise et dépourvue de fondement.

5. Pour que cela soit plus clair pour la Chambre de la Cour suprême, les co-procureurs ont recherché et reproduit les passages de la traduction anglaise du Mémoire d'appel et du Mémoire d'appel corrigé dans lesquels apparaissent : 1) les modifications du Mémoire d'appel corrigé qui semblent avoir été apportées à la lumière du Mémoire en réponse des co-procureurs ; 2) les passages du Mémoire d'appel cités dans le Mémoire en réponse des co-procureurs qui ont maintenant été modifiés dans le Mémoire d'appel corrigé.

II. MODIFICATIONS APPORTÉES AU MÉMOIRE D'APPEL EN RÉACTION AU MÉMOIRE EN RÉPONSE

6. Les co-procureurs ont fait valoir que l'Accusé avait « sciemment choisi de ne pas présenter d'exception d'incompétence *rationae personae* »⁵. Dans le Mémoire en réponse, pour étayer cette thèse, ils ont cité le Mémoire d'appel qui était libellé comme suit : « *the Defence 'did not oppose the Co-Prosecutors [in regards to jurisdiction] at the beginning'* »⁶. Cette proposition ne se trouve plus dans le Mémoire d'appel corrigé, où il est affirmé à présent que les co-avocats de la Défense ne se sont pas vu offrir la possibilité de s'opposer à la thèse des co-procureurs.

a. **Mémoire d'appel, par. 94 :** « *the Defence did not oppose the Co-Prosecutors at the beginning* ».

b. **Mémoire d'appel corrigé, par. 94 :** « *the Defence was not afforded the opportunity from the outset to respond to the Co-Prosecutors' charges* ».

7. Les co-procureurs ont fait observer dans leur Mémoire en réponse que l'Accusé avait mal interprété l'opinion dissidente de l'un des juges : « *[t]he Appellant falsely asserts that Judge Lavergne's dissent 'admitt[ed]' that the Trial Chamber lacked jurisdiction over the Appellant. On the contrary, the dissent was limited solely to discussing the quantum of the sentence imposed on the Appellant.* »⁷. Dans le Mémoire d'appel corrigé, la formulation a été modifiée de façon à qualifier l'effet de l'opinion dissidente du Juge Lavergne.

⁵ Mémoire en réponse des co-procureurs, par. 16.

⁶ Mémoire en réponse des co-procureurs, note de bas de page 35.

⁷ Mémoire en réponse des co-procureurs, par. 8.

- a. **Mémoire d'appel, par. 96 :** *« The evidence showing that the Trial Chamber had no jurisdiction over Kaing Guek Eav alias Duch was reflected through the acceptance and knowledge by the National and International Co-Judges because there was at least one international judge admitting that the Trial Chamber actually did not have the jurisdiction over Kaing Guek Eav alias Duch »*
- b. **Mémoire d'appel corrigé, par. 96 :** *« Moreover, the Dissenting Opinion of the international judge, reflecting his belief that the Trial Chamber did not have jurisdiction to try KAINING Guek Eav, amounts to proof that all the trial judges, both national and international, knew and recognised that the ECCC lacked the personal jurisdiction to be seised of Case 001 ».*

8. Les co-procureurs ont noté en divers endroits que la Défense faisait état de ses « submissions » sans indiquer comment ou quand elles avaient été formulées : *« [t]he Appellant repeatedly refers to the Trial Chamber's failure to consider its 'submissions' on personal jurisdiction but fails to specify which submissions it refers or clearly state when such submissions were made even though these are obviously key facts. »*⁸ Dans le Mémoire d'appel corrigé on trouve une précision supplémentaire sur les « submissions » dans certains passages et dans d'autres c'est le mot « objection » ou « argument » qui est utilisé au lieu de « submission ».

- a. **Mémoire d'appel, par. 5 (non souligné dans l'original) :** *« As a result, the Co-Lawyers for the Accused made another attempt to raise this matter in their submission and requested that Judges review the Defence evidence confirming that the provisions of Article 1 of the Agreement and articles 1 and 2 (new) of the ECCC law do not apply to the Accused. »*

Mémoire d'appel corrigé, par. 5 (non souligné dans l'original) : *« For that reason, the Co-Lawyers for KAINING Guek Eav made another attempt to raise the question of the jurisdiction of the ECCC in their Final Submission, moving that that Judges re-examine the evidence to the effect that Article 1 of the Agreement and Articles 1 and 2 (new) of the ECCC law do not apply to KAINING Guek Eav ».*

- b. **Mémoire d'appel, par. 66 (non souligné dans l'original) :** *« The Chamber failed to consider Rule 87 of the Internal Rules of the ECCC and the Defence Counsel's*

⁸ Mémoire en réponse des co-procureurs, par. 8.

submission by relying only on Rule 89. The rejection of the submission made by the Defence Counsel, who depended wholly on the evidence presented to the Chamber by the Prosecutors, and the entire reliance on Rule 89 violated Rule 87, which made the exculpatory evidence not entirely examined to ensure that the ECCC did not have the jurisdiction over the Accused as submitted by the Defence Counsel »

Mémoire d'appel corrigé, par. 66 (non souligné dans l'original) : *« By dismissing the submissions contained in Defence Final Submission, the Trial Chamber only took account of Rule 89 of the Internal Rules, but not Rule 87. The dismissal, based solely on the evidence adduced before the Chamber and on Rule 89, amounts to a violation of Rule 87, in that no exculpatory evidence was assessed in order to verify whether, as submitted by the Lawyers for the Defence in their Final Submission, the ECCC actually had jurisdiction over KAINING Guek Eav ».*

- c. **Mémoire d'appel, par. 70 (non souligné dans l'original) :** *« Article 290(6) may have also been viewed that the Trial Chamber of the ECCC could have applied it if the Chamber had examined the evidence submitted by the Defence and conceded that it did not have the jurisdiction over the Accused. The application of Rule 89 of the Internal Rules of the ECCC to reject the submission made by the Defence Counsel showed that the Chamber also agreed on the submission made by the Defence that the Accused was not within the jurisdiction of the ECCC, but it was only that the submission by the Defence Counsel was late. Thus, the Trial Chamber of the ECCC shall issue an order stating it has no territorial jurisdiction over the case as stipulated in Article 290(6) of the applicable Code of Criminal Procedure of the Kingdom of Cambodia. Hence, the submission by the Defence Counsel to the Trial Chamber of the ECCC that the Accused was not within the jurisdiction of the ECCC could not be rejected with the reason that it was submitted late because every reasoning submitted by the Defence Counsel was entirely taken from Rule 87(1) »*

Mémoire d'appel corrigé, par. 68 [sic] (non souligné dans l'original) : *« Article 290(6) could have also been interpreted this way, and this would have meant that the Trial Chamber – had it considered the evidence submitted by the Defence in their Final Submission – would have recognized that it did not have jurisdiction over KAINING Guek Eav. By relying on Rule 89 of the Internal Rules, the Trial Chamber seemed to imply that it agreed with the Defence's view that KAINING Guek Eav is not within the purview*

of the jurisdiction of, the ECCC. This is indeed why the Trial Chamber evaded the issue claiming that the Defence interlocutory motion was belated. The Trial Chamber should have complied with the provisions of Article 290(6) of the current Code of Criminal Procedure of the Kingdom of Cambodia, and declined jurisdiction. Hence, the Chamber could not dismiss the Defence submission that KAING Guek Eav is not within its jurisdiction, simply because it was belated, especially considering that the Defence submissions were all brought under Rule 87(1) of the Internal Rules. ».

- d. **Mémoire d'appel, par. 71 (non souligné dans l'original) :** « *That the Trial Chamber of the ECCC failed to examine the submission made by the Defence Counsel completely violated Rules 92 and 93 of the Internal Rules of the ECCC ...»*

Mémoire d'appel corrigé, par. 71 (non souligné dans l'original) : « *By refusing to consider the Defence arguments, the Trial Chamber acted in utter violation of Rules 92 and 93 of the Internal Rules ».*

- e. **Mémoire d'appel, par. 71 :** « *The rejection of evidence showing the jurisdictional matter of the court by stating that the submission was not made on time cannot be accepted based on various judiciaries in some civilized countries ».*

Mémoire d'appel corrigé, par. 71 : « *Therefore, according to the legal system in most civilised countries, it is not acceptable to exclude evidence relating to jurisdiction on the ground that it is presented beyond time ».*

- f. **Mémoire d'appel, par. 94 (non souligné dans l'original) :** « *...the court considered that it had jurisdiction over him and it rejected the submission by the Defence by calling the submission the late preliminary objection ».*

Mémoire d'appel corrigé, par. 94 (non souligné dans l'original) : « *...the Trial Chamber therefore tried KAING Guek Eav on the incorrect premise that he came under its jurisdiction : moreover, it dismissed the Defence objections, simply on the ground that they were belated ».*

III. PASSAGES DU MÉMOIRE D'APPEL CITÉS DANS LE MÉMOIRE EN RÉPONSE DES CO-PROCTEURS QUI ONT ÉTÉ MODIFIÉS DANS LE MÉMOIRE D'APPEL CORRIGÉ

9. Les co-procteurs souhaitent éviter tout préjudice résultant du fait qu'ils ont cité dans leur Mémoire en réponse des passages du Mémoire d'appel qui ont maintenant été modifiés,

même s'ils semblent généralement avoir un contenu similaire. Pour aider la Chambre de la Cour suprême, les co-procureurs reproduisent ci-après les passages de leur Mémoire en réponse dans lesquels ils citaient le Mémoire d'appel, et les citations qui ont été modifiées dans le Mémoire d'appel corrigé.

- a. **Mémoire en réponse des co-procureurs, par. 3 :** *« He claims that the ECCC lacks personal jurisdiction over him, that he does not satisfy the requisite standard because 'he is not classified within the senior leaders and most responsible persons' leadership structure within the Democratic Kampuchea regime.' »*

Mémoire d'appel corrigé, par. 22 : *« ...he was neither a senior leader of Democratic Kampuchea nor among those most responsible for the crimes committed under this regime »*

- b. **Mémoire en réponse des co-procureurs, par. 3 :** *« The Appellant concludes his submission by asserting that the Case 001 proceedings should be considered 'a mistaken trial,' that his detention should be considered as a 'protective measure for a potential witness,' and that he should be released »*

Mémoire d'appel corrigé, par. 100 : *« The proceedings in Case 001 "must be considered as the result of an error by the Chamber" and "[t]he detention of Kaing Guek Eav from the date of his arrest until the present should be considered as a form of protection ».*

- c. **Mémoire en réponse des co-procureurs, note de bas de page 13 :** *« See, e.g. Defence Appeal Brief, paras. 4-6 (referring generally, with no specific reference or citation, to 'supporting evidence') »*

Mémoire d'appel corrigé, par. 4 : *« evidence in support ».*

- d. **Mémoire en réponse des co-procureurs, note de bas de page 13 :** *« See, e.g. Defence Appeal Brief . . . para. 21 (claiming that personal jurisdiction is based fundamentally on national administrative norms without providing reference to such norms)... »*

Mémoire d'appel corrigé, par. 21 : *« administrative law norms »*

- e. **Mémoire en réponse des co-procureurs, note de bas de page 13 :** *« See, e.g. Defence Appeal Brief . . . para. 22 (referring generally to 'significant national legal instruments' indicating that the Appellant is not classified within the 'senior leaders*

and most responsible persons' leadership structure' without reasonably referencing such instruments)... »

Mémoire d'appel corrigé, par. 22 : *« there is a large number of documents from the then authorities which describe his role and hierarchical position, and reveal that he was neither a senior leader of Democratic Kampuchea nor among those most responsible for the crimes committed under this regime »*

- f. **Mémoire en réponse des co-procureurs, note de bas de page 13 :** *« See, e.g. Defence Appeal Brief . . . para. 25 (referring generally to an unspecified 'legal theory of defining the most responsible persons' whereby one defines such persons by looking at their willpower in the hierarchy and volition compared to other prison secretaries) »*

Mémoire d'appel corrigé, par. 25 : *« From a legal standpoint, in determining if an individual fits in the category of those most responsible, it is necessary to determine the powers he or she held, based on his/her hierarchical rank. »*

- g. **Mémoire en réponse des co-procureurs, note de bas de page 14 :** *« See, e.g. Defence Appeal Brief . . . paras. 23, 25 (obscurely asserting that because other prisons purportedly claimed greater victims than S-21, this 'explicitly confirms' that former prison heads are not considered to be most responsible persons)... »*

Mémoire d'appel corrigé, par. 23 : *« This clearly shows that the then prisons heads do not fit into the category of those most responsible, under the ECCC Law »*

- h. **Mémoire en réponse des co-procureurs, note de bas de page 15 :** *« See, e.g. Defence Appeal Brief, para. 69 (asserting that the Trial Chamber 'used too much presumption by stating that it agreed with the Prosecutors')...(emphasis added) »*

Mémoire d'appel corrigé, par. 69 : *« The Chamber thus relied on an excessive presumption against KAING Guek Eav by accepting the prosecution evidence... »*

- i. **Mémoire en réponse des co-procureurs, note de bas de page 15 :** *« See, e.g. Defence Appeal Brief . . . para. 25 (stating that 'the Chamber has improperly concurred with the unreasonable reasoning which lacks reasonable legal ground and with which the prosecution relies on to press charges on the accused [...] such arguments lack legal*

logic and cannot be used for defining the status of a person who is most responsible') . .
 . (emphasis added) »

Mémoire d'appel corrigé, par. 25 : « *The Chamber erroneously concurred with conclusions that were without legal basis, and in reliance thereupon, it was determined that KAINING Guek Eav comes under the category of those most responsible for the crimes...[t]hose conclusions are legally unsound and cannot form a basis for determining that a person was among those most responsible.* »

- j. **Mémoire en réponse des co-procureurs, note de bas de page 16 :** « *See, e.g. Defence Appeal Brief . . . paras. 91, 99 (misconstruing the fact that one Trial Chamber Judge dissented as to the quantum of sentence to mean that there was 'irregularity in offering justice to the Accused'...)* »

Mémoire d'appel corrigé, par. 99 : « *The Trial Chamber Judges did not reach a unanimous decision. This proves that the trial of KAINING Guek Eav was vitiated by irregularities.* »

- k. **Mémoire en réponse des co-procureurs, par. 12 :** « *The Defence Appeal challenges this determination, alleging that the Trial Chamber 'applied Rule 89 at the wrong time and with procedural defect.* »

Mémoire d'appel corrigé, par. 71 : « *[The Trial Chamber] misapplied Rule 89 : this amounts to procedural defect* »

- l. **Mémoire en réponse des co-procureurs, note de bas de page 42 :** « *See, e.g. Defence Appeal Brief, para. 33 ('DUCH was not a senior leader : he had lower hierarchical status => he had no right to issue orders and make decisions => less responsible.')* »

Mémoire d'appel corrigé, par. 33 (non souligné dans l'original) : « *KAINING Guek Eav was not a senior leader and was of low rank within the hierarchy => he had no power to issue orders or to make decisions => he had limited responsibility* »

- m. **Mémoire en réponse des co-procureurs, note de bas de page 42 :** « *See, e.g. Defence Appeal Brief...para. 22 (stating that the Appellant is not within the ECCC's jurisdiction because 'he is not classified within the senior leaders and most responsible persons' leadership structure within the Democratic Kampuchea regime').* »

Mémoire d'appel corrigé, par. 22 : *« he was neither a senior leader of Democratic Kampuchea nor among those most responsible for the crimes committed under this regime »*

- n. **Mémoire en réponse des co-procureurs, note de bas de page 43 :** *« See, e.g. Defence Appeal Brief, para. 33 (arguing that DUCH cannot be considered a person 'most responsible' because 'an individual's responsibility is based on his/her legal, hierarchical authority' and DUCH had 'lower' hierarchical status) »*

Mémoire d'appel corrigé, par. 33 : *« a person's responsibility depends on his/her legal authority within this hierarchy...[Duch] was of low rank within the hierarchy... »*

- o. **Mémoire en réponse des co-procureurs, note de bas de page 43 :** *« See, e.g. Defence Appeal Brief...paras. 37-38 (stating that the ECCC Law 'does not allow for a prosecution of any person who was at the lower echelons for crimes committed during the DK regime because they acted on orders from the upper echelons')... »*

Mémoire d'appel corrigé, par. 37 : *« [T]he ECCC Law, which is based on the 1956 Penal Code, does not provide for prosecuting persons who held junior positions within the hierarchy of Democratic Kampuchea for any crimes they may have committed during that period, to the extent that such persons would have acted on orders from their superiors. »*

- p. **Mémoire en réponse des co-procureurs, note de bas de page 43 :** *« See, e.g. Defence Appeal Brief...para. 100 ('The ECCC Chamber had no jurisdiction over [DUCH] . . . because Duch's status both within the ranks of the Government of Democratic Kampuchea and the Communist Party of Kampuchea was relatively the basis and lowest status, not the high status.') »*

Mémoire d'appel corrigé, par. 100 : *« [T]he Chamber had no jurisdiction over [Duch]. The evidence shows that he held a junior, and not senior position both within the ranks of Government of Democratic Kampuchea and within Communist Party of Kampuchea. »*

- q. **Mémoire en réponse des co-procureurs, note de bas de page 43 :** *« See, e.g. Defence Appeal Brief...para. 65 (claiming that the ECCC Law 'does not cover groups of individuals who carried out the order of committing crimes and did not have the power*

to make decisions by their own’ but rather covers ‘a group of individuals who had the power to make political decisions which established the criminal policy’) »

Mémoire d’appel corrigé, par. 65 : *« The ECCC Law does not apply to persons who executed orders to commit crimes, but who had no decision-making power as such” : “namely only those who had the power to make political decisions, establish criminal policies and make sure that those policies were implemented. »*

- r. **Mémoire en réponse des co-procureurs, note de bas de page 54 :** *« See Defence Appeal Brief, para. 25 (stating that ‘the Chamber has improperly concurred with the unreasonable reasoning [in the indictment] which lacks reasonable legal ground and with which the prosecution relies on to press charges on the accused, charging him as one of the most responsible persons and describing S-21 as a very important security centre, carrying out national-wide operations. Such arguments lack legal logic and cannot be used for defining the status of a person who is most responsible.’ (emphasis added)... »*

Mémoire d’appel corrigé, par. 25 : *« The Chamber erroneously concurred with conclusions that were without legal basis, and in reliance thereupon, it was determined that KAING Guek Eav comes under the category of those most responsible for the crimes, because S-21 was a very important security centre which carried out nation-wide operations. Those conclusions are legally unsound and cannot form a basis for determining that a person was among those most responsible. »*

- s. **Mémoire en réponse des co-procureurs, note de bas de page 54 :** *« See Defence Appeal Brief...para. 25 (obscurely citing to an unspecified ‘legal theory of defining the most responsible persons’ that purportedly excludes persons who received orders from higher echelons). »*

Mémoire d’appel corrigé, par. 25 : *« From a legal standpoint, in determining if an individual fits in the category of those most responsible, it is necessary to determine the powers he or she held, based on his/her hierarchical rank »*

- t. **Mémoire en réponse des co-procureurs, par. 37 :** *« The Appellant himself noted that the ICTY Referral Bench—when considering the gravity of crimes charged—has taken*

into account 'the number of victims, the geographic and temporal scope and manner in which they were allegedly committed, as well as the number of separate incidents.' »

Mémoire d'appel corrigé, par. 19 : « ...factors such as the number of victims, the geographic and temporal scope of the crimes and manner in which they were allegedly committed, as well as the number of separate incidents of the crime... »

- u. **Mémoire en réponse des co-procureurs, par. 48 :** « As Ground 2 of their Defence Appeal, the Co-Lawyers allege an 'error concerning conviction.' »

Mémoire d'appel corrigé, p. 19 (titre) : « error concerning conviction and sentence. »

- v. **Mémoire en réponse des co-procureurs, par. 48 :** « In particular, the Co-Lawyers allege that the Trial Chamber 'failed to consider Rule 87 of the Internal Rules of the ECCC and the Defence Counsel's submission . . . which made the exculpatory evidence not entirely examined to ensure that the ECCC did not have jurisdiction over the Accused as submitted by the Defence Counsel.' »

Mémoire d'appel corrigé, par. 66 : « By dismissing the submissions contained in Defence Final Submission, the Trial Chamber only took account of Rule 89 of the Internal Rules, but not Rule 87. The dismissal, based solely on the evidence adduced before the Chamber and on Rule 89, amounts to a violation of Rule 87, in that no exculpatory evidence was assessed in order to verify whether, as submitted by the Lawyers for the Defence in their Final Submission, the ECCC actually had jurisdiction over KAING Guek Eav. »

- w. **Mémoire en réponse des co-procureurs, par. 48 :** « They further allege that 'the Chamber used too much presumption by stating that it agreed with the Prosecutors and failed to give any reasoning as a credible argument which did not have any reasonable doubt about every evidence it used as the reasoning in determining its jurisdiction over the Accused.' »

Mémoire d'appel corrigé, par. 69 : « The Chamber thus relied on an excessive presumption against KAING Guek Eav by accepting the prosecution evidence and not raising any valid reasons as to why it was convinced beyond any

reasonable doubt based on the evidence permitting it to determine that it had personal jurisdiction. »

- x. **Mémoire en réponse des co-procureurs, note de bas de page 115 :** « See, e.g. Defence Appeal Brief, para. 66 (stating that ‘the exculpatory evidence [was] not entirely examined to ensure that the ECCC did not have the jurisdiction over the Accused’)... »

Mémoire d’appel corrigé, par. 66 : « *no exculpatory evidence was assessed in order to verify whether, as submitted by the Lawyers for the Defence in their Final Submission, the ECCC actually had jurisdiction over KAING Guek Eav. »*

- y. **Mémoire en réponse des co-procureurs, note de bas de page 115 :** « See, e.g. Defence Appeal Brief...para. 69 (alleging that the Trial Chamber ‘failed to examine the exculpatory evidence about the entire personal jurisdiction presented by the Defence’)... »

Mémoire d’appel corrigé, par. 69 : « *[The Trial Chamber] omit[ed] to consider the exculpatory evidence about the requirements for the exercise of personal jurisdiction. »*

- z. **Mémoire en réponse des co-procureurs, note de bas de page 115 :** « See, e.g. Defence Appeal Brief...para. 70 (stating that the Trial Chamber would have conceded that it did not have jurisdiction over the Accused if it ‘had examined the evidence submitted by the Defence’). »

Mémoire d’appel corrigé, par. 70 : « *the Trial Chamber - had it considered the evidence submitted by the Defence in their Final Submission - would have recognized that it did not have jurisdiction over KAING Guek Eav. »*

- aa. **Mémoire en réponse des co-procureurs, par. 56 :** « *the Trial Chamber was aware of and took into account the types of facts and evidence the Appellant characterizes as ‘not yet presented by’ the Trial Chamber. »*

Mémoire d’appel corrigé, par. 72 (titre) : « *Exculpatory evidence not considered by the Chamber »*

IV. CONCLUSION

10. Les co-procureurs soulignent les divergences entre le Mémoire d'appel et le Mémoire d'appel corrigé afin d'aider la Chambre de la Cour suprême à se prononcer sur les appels interjetés par la Défense et par les co-procureurs.

11. Aux fins de l'efficacité judiciaire, les co-procureurs appuient la pratique consistant à soumettre, dans les délais, des traductions exactes des écritures, pour que les parties aient la possibilité d'y répondre de façon adéquate et précise.

Date	Noms	Fait à	Signature
16 mars 2011	CHEA Leang co-procureurr	Phnom Penh [sceau]	[signé]
	Andrew CAYLEY co-procureurr		[signé]