



**BEFORE THE SUPREME COURT CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

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**CO-PROSECUTORS' RESPONSE TO THE CO-LAWYERS FOR KAING GUEK EAV *ALIAS*
"DUCH"'S REQUEST TO ADMIT NEW ADDITIONAL EVIDENCE AND ANNEX A
AGAINST THE TRIAL CHAMBER JUDGMENT**

Filed by:

Office of the
Co-Prosecutors
CHEA Leang
Andrew CAYLEY

Distributed to:

Supreme Court Chamber
Judge KONG Srim, President
Judge Motoo NOGUCHI
Judge SOM Sereyvuth
Judge A. KLONOWIECKA-MILART
Judge SIN Rith
Judge C. N. JAYASINGHE
Judge YA Narin

Accused

Kaing Guek Eav *alias* DUCH

**Counsel for the
Accused**

KAR Savuth
KANG Ritheary

Copied to:

Counsel for the Civil Parties
KONG Pisey
HONG Kimsuon
YUNG Panith
KM Mengkhy
MOCH Sovannary
Silke STUDZINSKY
Martine JACQUIN
Philippe CANONNE
TY Srinna
Pierre Olivier SUR
Alain WERNER
Brienne McGONIGLE
Annie DELAHAIE
Elizabeth RABESANDRATANA
Karim KHAN
Fabienne TRUSSES-NAPROUS

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I. INTRODUCTION

1. On 18 November 2010, the Accused, Kaing Guek Eav *alias* DUCH (“The Accused”) filed an appeal brief by the Defence Lawyers for Kaing Guek Eav *alias* “DUCH” against the Trial Chamber Judgement of 26 July 2010 (“the Appeal”)¹ with **Annex A**². The Co-Prosecutors filed their response to the Appeal on 20 December 2010 (“the OCP’s Response”)³. On 11 January 2011, the Co-Lawyers for Kaing Guek Eav *alias* “DUCH” (“Co-Lawyers”) submitted their reply to the OCP’s Response (“the Defence Reply”)⁴.
2. On 21 February 2011, the Supreme Court Chamber issued its order to the Co-Lawyers to submit additional evidence in light of the Supreme Court Chamber Memorandum (“the Memo”)⁵.

On 25 February 2011, the Co-Lawyers submitted a request to admit new additional evidence (“Additional Evidence Request”)⁶. This request does not comply with Rule 108(7).

II. BACKGROUND RELATING TO NEW EVIDENCE

3. When filing their Appeal Brief against the 26 July 2010 Judgment of the Trial Chamber, the Co-Lawyers attached 5 new additional documents in the Annex “A”, which are follows:
 - a. DC-Cam document of 1 page (page 81) (The Khmer Rouge Prison), compiled by Pheng Pong Rasy (Original in Khmer)/ English “translation” (F14.2.1);
 - b. Searching for the Truth document No.2 of the DC-Cam, edition of February 2000, 1 page (page 53)(in Khmer/English) (F14.2.2);
 - c. Collection of Khmer Legends, part 3 , edition of 2001, pages 137-144 (in Khmer “original”/in English “translation”) (F14.2.3);

¹ Appeal Brief by the Co-Lawyers for Kaing Guek Eav *alias* “Duch” Against the Trial Chamber Judgment of 26 July 2010, Case file No: 001/18-07-2007-ECCC/SC, the Defence, 18 November 2010, F14 (“the Appeal”).

² Appeal Brief by the Co-Lawyers for Kaing Guek Eav *alias* “Duch” Against the Trial Chamber Judgment of 26 July 2010, Case file No: 001/18-07-2007-ECCC/SC, the Defence, 18 November 2010, F14.2 (“Annex A of the Appeal”).

³ Co-Prosecutors’ Response to the Appeal Brief by the Co-Lawyers for Kaing Guek Eav *alias* “Duch” Against the Trial Chamber Judgment of 26 July 2010, Case file No: 001/18-07-2007-ECCC/SC, the Office of the Co-Prosecutors, 20 December 2010, F14/4 (“the OCP’s Response”).

⁴ Reply by the Co-Lawyers for Kaing Guek Eav *alias* “Duch” to the Co-Prosecutors’ Response of 20 December 2010, Case file No: 001/18-07-2007-ECCC/SC, the Defence, 14 January 2011, F14/4/2 (“the Defence Reply”).

⁵ The Supreme Court Chamber Memorandum, Case file No: 001/18-07-2007-ECCC/SC, 21 February 2011, F17 (“the Memo”).

⁶ Request of the Co-Lawyers for Kaing Guek Eav *alias* “Duch” to Admit Additional New Evidence, Case file No: 001/18-07-2007-ECCC/SC, the Defence, 25 February 2011, F2/2 (“Additional New Evidence Request”).

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- d. DC-Cam's Conclusion submitted to the United Nations Commission of Experts regarding DUCH's biography (Original in English / Khmer "translation") (F14.2.4);
 - e. Command and Control Structure over the S-21 "Secret Military Prison", also called Tuol Sleng Prison of the DK Government from March 1976 to 15 August 1977, and from 15 August 1977 to 06 January 1979 (in Khmer/English) (F14.2.5).
5. When the Co-Lawyers were filing their application for the consideration of new additional evidence, they submitted:
- a. "The Khmer Rouge Prison", DC-Cam's document which was compiled by Pheng Pong Rasy that contained 328 pages in Khmer which was attached with a letter of certification of the substitution of document⁷;
 - b. DC-Cam's Conclusion submitting to the United Nations Commission of Experts, entitled "The Selected 31 Biographies of the Khmer Rouge Leaders and Others prepared for the UN Commission of Experts, August-December, 1998".
6. The document entitled "Document Center of Cambodia (Khmer Rouge Prison), page 81, compiled by Pheng Pong Rasy" (Khmer "original"/English "translation"), submitted by the Co-Lawyers, originally consisted of only a single page excerpted from a 328-page book, attached to the Annex "A" of the Appeal. The Co-Lawyers subsequently submitted the whole book in the request to add new evidence. The essence of the excerpt at page 81 of the Khmer original is already on the Case File⁸.
7. The document entitled "Command Structure of S-21 'Secret Military Prison' known as Tuol Sleng prison of the Government of the Democratic Kampuchea, from March 1976 to 15 August 1977 and from 15 August 1977 to 6 January 1979" **was drafted by the Co-Lawyers** and therefore cannot constitute admissible evidence.
8. The document entitled "Searching for the Truth of the Document Center of Cambodia, Issue No. 2, February 2000, page 53" and the document entitled "Conclusion of DC-Cam prepared for the UN Commission of Expert" both concern general biographical information about

⁷ Letter of certification of the substitution of document F2/2.1.

⁸ Document D204/3.1 at ERN 00379100 and D204/3.2 at ERN 00347408.

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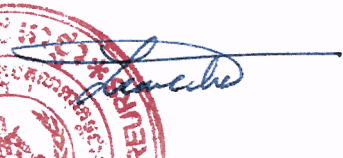

Duch. The general essence of this information exists in many of Duch's written records in which Duch affirmed that he was the Chief of the S-21 Security Center and that he received direct orders from Son Sen, and later, Nuon Chea⁹.

9. For the document on Collection of Khmer Legends, Part III, printed in 2001, pages 137-144, both its essence and the document itself have not been in the case file. However, the essence of this document is irrelevant to the factual crimes committed in the Democratic Kampuchea regime, which are under the jurisdiction of ECCC.

III. REQUEST

10. For the aforementioned reasons, the Co-Prosecutors, therefore, submit that the Supreme Court Chamber dismiss all new evidential documents requested by the Co-Defence Lawyers of Kaing Guek Eav *alias* "Duch".

Respectfully submitted,

Date	Name	Place	Signature
25 March 2011	CHEA Leang Co-Prosecutor	Phnom Penh	
	Andrew CAYLEY Co-Prosecutor		

⁹ Duch's written records before the Co-Investigating Judges, 19 February 2008, D47, ERN 00164345, p.3; Duch's written records before the Co-Investigating Judges, 7 August 2007, D11, ERN 00147517, p.3.