



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia
Chambres extraordinaires au sein des tribunaux cambodgiens

ព្រះរាជាណាចក្រកម្ពុជា

ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia
Nation Religion King

Royaume du Cambodge
Nation Religion Roi

ការិយាល័យសហចៅក្រមស៊ើបអង្កេត
Office of the Co-Investigating Judges
Bureau des co-juges d'instruction

Before: **Judge YOU Bunleng**
Judge Marcel LEMONDE
Date: **14 September 2010**
Original: **Khmer/French**
Classification: **Confidential**

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DISMISSAL ORDER

Co-Prosecutors
CHEA Leang
Andrew CAYLEY

Charged Person(s):
Kaing Guek Eav alias Duch

Lawyers for the Civil Parties

- NY Chandy
- LOR Chunthy
- KONG Pisey
- HONG Kim Suon
- YUNG Phanit
- KIM Mengkhy
- MOCH Sovannary
- SIN Soworn
- CHET Vannly
- PICH Ang
- Silke STUDZINSKY
- Françoise GAUTRY
- Isabelle DURAND
- Emmanuel ALTIT
- Emmanuel JACOMY
- Julien RIVET
- Philippe CANONNE
- Elizabeth RABESANDRATANA
- Mahdev MOHAN
- Olivier BAHOUGNE
- Martine JACQUIN
- Annie DELAHAIE
- Fabienne TRUSSES-NAPROUS
- Patrick BAUDOIN
- Lyma Thuy NGUYEN
- Marie GUIRAUD
- Laure DESFORGES
- Christine MARTINEAU
- Pascal AUBOIN
- Barnabe NEKUIE
- Nicole DUMAS
- Daniel LOSQ
- Ferdinand DJAMMEN-NZEPA

Lawyers for the Defence:

KAR Savuth

We, **You Bunleng** (ឃុំ ប៊ុនឡុង) and **Marcel Lemonde**, Co-Investigating Judges of the Extraordinary Chambers in the Courts of Cambodia (the “ECCC”),

Noting the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia, dated 27 October 2004 (the “ECCC Law”),

Noting Rules 55, 66, 67 and 68 of the ECCC Internal Rules (the “Internal Rules”),

Noting the judicial investigation against **Kaing Guek Eav កាំង ហ្គេកអ៊ាវ** alias **Duch ឌុច** relating to **Crimes against humanity and grave breaches of the Geneva Conventions of 12 August 1949**, offences defined and punishable under Articles 5, 6, 29 (new) and 39 (new) of the ECCC Law,

Noting the Co-Prosecutors’ Introductory Submission dated 18 July 2007 (D3),

Noting our Separation Order dated 19 September 2007 (D18),

Noting our Notice of Conclusion of Judicial Investigation dated 14 January 2010 (D317),

Noting our Forwarding Order dated 19 July 2010 (D385),

Noting the Co-Prosecutors’ Additional Final Submission dated 16 August 2010 (D391),

Considering that the investigation has revealed the following facts:

Procedural Background

1. On 10 July 2006, the Co-Prosecutors opened a preliminary investigation relating to crimes that may have been committed by Democratic Kampuchea’s leaders and those who were most responsible, during the period from 17 April 1975 to 6 January 1979.
2. On 18 July 2007, pursuant to Internal Rule 53, they issued an Introductory Submission containing allegations against five suspects, including Duch,¹ for criminal acts committed in multiple locations. The case file was then forwarded to the Office of the Co-Investigating Judges (OCIJ) in view of the opening of a judicial investigation under Internal Rule 55.
3. On 30 July 2007, the Co-Investigating Judges charged Duch with crimes against humanity² and ordered³ his transfer to the ECCC Detention Facility. He was

¹ **D3** Introductory Submission No. 008, 18 July 2007; **D4** Correction to the Introductory Submission No. 009, 19 September 2007.

² **D86/2** Written record of initial appearance of KAING Guek Eav alias DUCH, 31 July 2007.

³ **C4** Detention Order: KAING Guek Eav alias DUCH, 31 July 2007.

later charged with Grave Breaches of the Geneva Conventions of 12 August 1949.⁴

4. On 19 September 2007, mindful of the need for an expeditious decision concerning Duch, the Co-Investigating Judges ordered the separation of the Duch case file relating to his role at S-21.⁵ This aspect of the judicial investigation was investigated as Case File No. 001/18-07-2007-ECCC-OCIJ.
5. The Co-Investigating Judges concluded the judicial investigation on 8 August 2008 by indicting Duch on charges of violating Article 5 (Crimes Against Humanity) and Article 6 (War Crimes) of the ECCC Law.
6. Following the Co-Prosecutors' Appeal against the Closing Order on 5 December 2008, the Pre-Trial Chamber modified the indictment to include Violations of the 1956 Penal Code of Cambodia.⁶
7. The trial in Case No. 001 commenced on 30 March 2009 and concluded on 27 November 2009.
8. On 26 July 2010,⁷ the Trial Chamber found Duch guilty of "*crime against humanity (persecution on political grounds), which subsumed his multiple other convictions for extermination, enslavement, imprisonment, torture and other inhumane acts as crimes against humanity*". Additionally, the Chamber found Duch guilty of Grave Breaches of the Geneva Conventions of 1949, namely wilful killing, torture and inhumane treatment, wilfully causing great suffering or serious injury to body or health, wilfully depriving a prisoner of war or civilian of the rights of fair and regular trial and unlawful confinement of a civilian. However, the Trial Chamber was unable to obtain the required majority in order to decide upon the charges of violation of the 1956 Penal Code.
9. Duch was sentenced to a term of 35 years of imprisonment, which was reduced to 30 years on account of "*his illegal detention by the Cambodian Military Court between 10 May 1999 and 30 July 2007*". The Chamber also specified that the entirety of the time he spent in detention during the said period would be taken into account in sentencing. The Judgement was appealed by the Co-Prosecutors, the Defence and the Civil Parties.
10. Given this situation, in their Additional Final Submission, the Co-Prosecutors request the Co-Investigating Judges to dismiss the charges against Duch in Case No. 002.

Reasons for the Decision

11. As rightly noted by the Co-Prosecutors in their Supplementary Submission, Duch's criminal activity has already been the subject of extensive litigation in Case File 001. The decision will now be subjected to the scrutiny of the Supreme Court Chamber. The evidence that would form the basis of Duch's prosecution in Case File 002 has already been considered by the Trial Chamber.

⁴ D86/6 Written Record of Interview of KAING Guek Eav alias Duch, 2 October 2007, p.2.

⁵ D18 Separation Order, 19 September 2007, p.2.

⁶ *Kaing Guek Eav alias DUCH*, ECCC [2008], Pre-Trial Chamber Decision on Co-Prosecutors' appeal against the Closing Order Indicting Guek Eav alias "Duch".

⁷ *Kaing Guek Eav alias DUCH*, ECCC [2010], Trial Chamber Judgement.

In this way, the Trial Chamber has already adjudicated upon the facts central to Duch's involvement in Case File 002.

12. Furthermore, the Trial Chamber decision took account of S-21's position in the nationwide CPK network of security offices, and accordingly, Duch's role in the commission of crimes nationwide. Such evidence was discussed at trial through expert witnesses and relevant documentation. From this point of view, the investigation in Case file 002 has revealed no new evidence in relation to Duch's participation.
13. In view of all these elements, to send Duch for a new trial would be both pointless and impermissible, in the interests of good administration of justice.

FOR THESE REASONS, THE CO-INVESTIGATING JUDGES

Noting Rule 67 of the Internal Rules,

Hereby decide that there are no grounds to indict **Kaing Guek Eav កាំង ហ្គេកអ៊ាវ**
alias **Duch ឌុច** in the present case.

Done in Phnom Penh, on 14 September 2010

សហចៅក្រមស៊ើបអង្កេត

Co-Investigating Judges
co-juges d'instruction