



**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

<b>ឯកសារដើម</b>
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**Before:**

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

**Date:**

**22 July 2009**

**Classification:**

**PUBLIC**

<b>ឯកសារបានចម្លងត្រឹមត្រូវតាមច្បាប់ដើម</b>
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**Decision on Co-Prosecutors' request for confidential classification of Defence Request relating to self-incrimination**

**Co-Prosecutors**

CHEA Leang  
Robert PETIT

**Accused**

KAING Guek Eav alias "DUCH"

**Lawyers for the Civil Parties**

KONG Pisey	TY Srinna
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KAR Savuth  
François ROUX  
Marie-Paule CANIZARES



**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”)<sup>1</sup>;

**NOTING** the request by the Defence dated 15 July 2009<sup>2</sup>;

**NOTING** the oral request by the Co-prosecutors during the hearing of 20 July 2009 for a closed session under Rule 28 (8)<sup>3</sup>;

**HAVING HEARD** the oral arguments of the parties during the closed session of 20 July 2009<sup>4</sup>;

**RECALLING** the Trial Chamber’s oral decision issued during the hearing of 21 July 2009<sup>5</sup>;

**PURSUANT** to Rule 28(8) and 79(6) of the Internal Rules;

### **BACKGROUND AND FINDINGS:**

1. The OCP sought a hearing in closed session pursuant to Rule 28(8) of the Internal Rules at which they sought a classification of a Request by the defence dated 15 July 2009. In the submission of the OCP, the Request ought to be classified ‘confidential’ when it is filed in the case file.
2. The Trial Chamber has the responsibility pursuant to Practice Direction 004/2009 ‘Classification and management of case-related information’ to classify certain documents of which the defence Request is one, into categories ‘public’ confidential’ or ‘strictly confidential’. Until such classification is fixed by the Trial Chamber the filing remains confidential. The Chamber has 30 days in which to classify the filing. That period has not yet expired.
3. There are two basic categories of documents in the case file contemplated by the Practice Direction: one for which there is a presumption of confidentiality and one where the presumption is for public disclosure. The first category is a very limited class.

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

<sup>2</sup> “Requête”, 15 July 2009 (Document E107)

<sup>3</sup> Transcript of proceedings (“T.”), 20 July 2009, p.1 (English).

<sup>4</sup> T. 20 July 2009, Closed session, p.1-20 (English)

<sup>5</sup> T. 21 July 2009, (English)



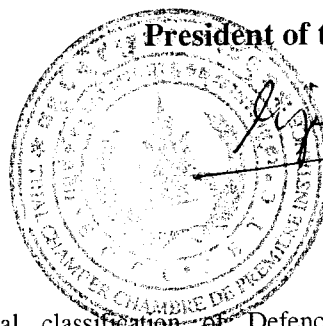
4. On consideration of the Request filed by the defence, the Trial Chamber can see no reason to classify it 'confidential'. It does not fall into the narrow class of documents that should not be made available to the public.
5. The Trial Chamber also notes that Internal Rule 28(8) is to be invoked only when there are issues relating to the testimony of witnesses concerning self-incrimination. For this limited reason, and as an exception to the principle of publicity of the hearing set out in Internal Rule 79(6), the Trial Chamber may convene a closed session to consider the issues raised. This application does not fall into this category and the Trial Chamber therefore announces its decision in public.
6. Finally, the Trial Chamber reminds the parties that the sole responsibility to warn a witness against self incrimination falls to the Chamber or to counsel advising the witness. The defence is asked not to repeat such warnings to witnesses in the future.

**THE TRIAL CHAMBER THEREFORE DECIDES AS FOLLOWS:**

1. The Request will be classified as a public document when it is ready for filing in the case file.
2. The closed session sought on 20 July was inappropriate. The subject-matter did not fall within the narrow confines of Internal Rule 28(8)
3. The Trial Chamber will continue to ensure that witnesses whom it considers at risk of self-incrimination receive legal advice and are warned by the Chamber pursuant to Internal Rule 28. The defence shall no longer warn witnesses of their right to remain silent when they come to give testimony.

**Phnom Penh, 22 July 2009**

**President of the Trial Chamber**



**Nil Nonn**