

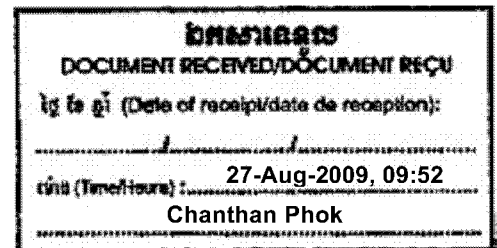
**BEFORE THE TRIAL CHAMBER
OF THE EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

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**DEFENCE RESPONSE TO GROUPS 1 AND 2 – CIVIL PARTIES’ CO-LAWYERS
 JOINT REQUEST FOR A RULING ON THE STANDING OF CIVIL PARTY
 LAWYERS TO MAKE SUBMISSIONS ON SENTENCING**

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| <u>Filed by:</u> | <u>Before:</u> | <u>Copied to:</u> |
| Lawyers for the Accused | The Trial Chamber | The Co-Prosecutors |
| Mr KAING Guek Eav <i>alias</i> | Judge NIL Nonn, President | Ms CHEA Leang |
| DUCH | Judge Silvia CARTWRIGHT | Mr Robert PETIT |
| Mr KAR Savuth | Judge YA Sokhan | |
| Mr François ROUX | Judge Jean-Marc LAVERGNE | |
| Ms Marie-Paule CANIZARES | Judge THOU Mony | |

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| Ms Martine JACQUIN | |



MAY IT PLEASE THE TRIAL CHAMBER

I. FACTUAL BACKGROUND AND PURPOSE OF RESPONSE

1. The Defence has, since the initial appearance, voiced strong objection to Civil Parties making submissions on sentence during the trial of Mr Kaing Guek Eav alias Duch, and has repeatedly stated the grounds for its objection.¹
2. On 18 June 2009 and 11 August 2009, the Defence received notification, in Khmer and in French, respectively, of the “Groups 1 and 2 – Civil Parties’ Co-Lawyers Joint Request for a Ruling by the Chamber on the Standing of Civil Party Lawyers to Make Submissions on Sentencing”.²
3. The Defence hereby requests the Trial Chamber to dismiss the said Request purely and simply.

II. DEFENCE SUBMISSIONS

4. The Defence continues to maintain that according to the Cambodian *Code of Criminal Procedure* and the *ECCC Internal Rules*, matters of sentencing lie with the prosecution and, accordingly, fall exclusively within the province of the Co-Prosecutors.³ Rule 105 of the *ECCC Internal Rules* could not be much clearer in this regard, in that it only permits Civil Parties to file an appeal “*in respect of their civil interests, only where the Co-Prosecutors have appealed*”.
5. Further, the Defence emphasises that the civil law principle that only the prosecution is entitled to make submissions on sentencing in a trial is very clearly explained in a number of books of reference on French criminal procedure. For example, in *Procédure Pénale*, Serge Guinchard and Jacques Buisson – leading

¹ See Transcript of Proceedings of the Public Hearing of 18 February 2009, E 1/4.1, p. 8, line 8 et seq. See also “Defence Response Concerning the Lists of Witnesses and Documents Filed by the Co-Lawyers for the Group 1 Civil Parties”, 24 March 2009 (E28/1 and E28/2), and “*Précisions de la défense relatives à la liste des témoins du groupe 1 des parties civiles*” (E28/3). See also Transcript of Proceedings of the Public Hearing of 1 April 2009 (E1/7.1), p. 5, line 14 et seq.

² E72.

³ See “Defence Response Concerning the Lists of Witnesses and Documents Filed by the Co-Lawyers for the Group 1 Civil Parties”, 24 March 2009 (E28/1 and E28/2), paras. 9-15.

experts in criminal procedure –⁴, after having stated that, pursuant to the combined provisions of articles 31, 40, paragraph 1, and 41, paragraph 1, of the *Code of Criminal Procedure*, only the public prosecutor is entitled to conduct public prosecution, go on to conclude as follows: “[TRANSLATION] *That is the logic behind our procedural system, which is predominantly inquisitorial. That is why, speaking after the civil party at the hearing, the prosecuting counsel makes submissions on sentence, which is the purpose of the prosecution, something civil parties cannot – and must not – do.*”. The Defence also notes that because they are fully aware of this fundamental criminal law principle,⁵ the Groups 3 and 4 Co-Lawyers for Civil Parties did not join in the Request of the Civil Parties’ Co-Lawyers for Groups 1 and 2.

6. Finally, the Defence notes that, to some extent, the Trial Chamber settled this issue by its Decision dated 13 April 2009, given that it decided to dismiss the request of the Civil Parties’ Co-Lawyers for Group 1 who were seeking to have two witnesses summoned to appear, witnesses who, according to the Co-Lawyers, could have thus assisted the Chamber in determining the sentence to be imposed.⁶

FOR THESE REASONS,

7. The Defence requests the Trial Chamber:
 - To ADUJUDGE AND DECLARE that the Civil Parties are not entitled to make submissions on sentence; and
 - To purely and simply DISMISS the Request of the Civil Parties’ Co-Lawyers for Groups 1 and 2.

WITHOUT PREJUDICE

⁴ *Procédure Pénale*, by Serge Guinchard and Jacques Buisson, Editions Litec, 2005 Edition, para. 912.

⁵ See Transcript of Proceedings of the Public Hearing of 18 February 2009, E 1/ 4.1, pp. 10 to 12. Transcript of Trial Proceedings - Public Hearing of 16 June 2009, E 1/33.1, p. 11 line 21 et seq.

⁶ See *Decision on Protective Measures for Witnesses and Experts and Parties’ Requests to Hear Witnesses and Experts – Reasons*, Trial Chamber, 13 April 2009 (E40/1). See, in particular, paras. 15 and 23 thereof.

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| | Co-Lawyers KAR Savuth Marie-Paule CANIZARES | Phnom Penh | |
| Date | Name | Place | Signature |