



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា
Extraordinary Chambers in the Courts of Cambodia
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

អង្គបុរេជំនុំជម្រះ
PRE-TRIAL CHAMBER
CHAMBRE PRELIMINAIRE

**Declassified to Public
06 September 2012**

ORIGINAL DOCUMENT
RECEIVED ON 20/11/2007
AT 9:35 BY
NUP SOTHUNVICHET
ACTING CASE FILE OFFICER

Criminal Case file No. 001/18-07-07-ECCC-OCIJ (PTC01)

WRITTEN RECORD OF DIRECTIONS HEARING

Year two thousand seven, November, 15th, at 10h16am, the Pre-Trial Chamber has conducted a Directions Hearing on the Appeal against Provisional Detention Order dated 31 July 2007 of the Charged Person, Kaing Guek Eav, alias Duch ("Duch"), male, born 17 November 1942, in Peuvveuy village, Peam Bav commune, Stong district, Kampong Thom province, Cambodian, pre-arrest address village O Tuntim, Commune Ta Sagn, District Somlot, Province Battambang, occupation teacher, father's name Duch Ky (deseased), mother's name Meas Kim Sieu (alive),

who is charged with crimes against Humanity, being crime(s) set out and punishable under articles 5, 29 (new) and 39 (new) of the Law on the establishment of the Extraordinary Chambers in the Courts of Cambodia dated 27 October 2004 (ECCC Law). There has been a supplementary charge in respect of graves breaches of the Geneva Conventions of 1949, in breach of Article 6 of ECCC Law.

- The composition of the Court:
1. Justice Prak Kimsan, President
 2. Justice Huot Vuthy
 3. Justice Pen Pichsaly
 4. Justice Rowan Downing
 5. Justice Katinka Lahuis
 6. Ms. Chea Leang, Co-Prosecutors
 7. Mr. Robert Petit, Co-Prosecutors
 8. Mr. Chuon Sokreasey, Chief Greffier
 9. Ms. Anne-Marie Burns, Greffier

បានចម្លងតាមត្រឹមត្រូវ/តាមច្បាប់ដើម
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 ក្រឡាបញ្ជី/ Greffier NUP SOTHUNVICHET

The Defence is represented by Mr. Kar Savuth and Mr. François Roux.

The President declares the hearing open at 10h16am. He identifies the Charged Person and reads the charges against him, as stated above. He orders the security guard to bring the Charged Person in the court room. The Charged Person is brought in at 10h18am and the President reads out the rights of the Charged Person, pursuant to Internal Rule 21(1)d).

The President then asks the Co-Prosecutors if they have received notification for the hearing of 20 November 2007 and if they are ready to proceed.

Chea Leang confirms that the Co-Prosecutors have received the notification and will be ready for the hearing.

The President asks the parties whether they would like to raise any questions during the current hearing.

Robert Petit seeks enlightenment as to how the hearing of 20 November 2007 is going to proceed. He asks about the order in which the parties will speak, the possibility of specific questions being asked by the Court, and the moment when the report of the co-rapporteurs will be read and distributed. His understanding is that the report will probably be read in Court, but he points out that the Internal Rules specify that the parties should have the opportunity to make comments on that report. He concludes by saying that he would like to discuss matters of delegation of authority.

The President declares that he will distribute a document titled "Criminal conduct of proceedings" later. He mentions that the Co-Prosecutors have suggested, by a motion dated 5 November 2007, to replace the document filed as appendix C of their Response.

Robert Petit responds that the Co-Prosecutors have made a deficient filing regarding Appendix C of their Response. They had corrected it by a subsequent filing, which should be the one considered by the Court.

The President asks the Defence co-lawyers if they have any objection to the Co-Prosecutors' request to amend their response, dated 5 November 2007.

Kar Savuth responds that the Defence does not object to this request.

The President declares that the Co-Prosecutors' request is accepted by the Defence co-lawyers.

The document titled "Conduct of criminal proceedings" is distributed by the Court to the parties, in English and Khmer.

The President allows the judges to ask the lawyers any questions.

Judge Downing asks the Defence co-lawyers if they want to make any requests.

François Roux responds that the co-lawyers have already notified that the first Co-Prosecutors' Response contained quotations of declarations made by the Charged person to the Co-Investigating Judges. He reminds the Court that the procedure of instruction is secret and that the hearing of 20 November 2007 will be public. Therefore, he asks that the declarations made by the Charged person before the Co-Investigating judges be

redacted from the Co-Prosecutors' Response. He adds that a first redaction was made by the Co-Prosecutors but the Defence, in a second memo, has indicated that some quotations were still there.

Regarding the publicity of the hearing, François Roux wants to know what measures have been taken regarding photographs. He says that in many national and international tribunals, journalists are allowed to take photos and videos when everybody is present in the courtroom, for a few minutes, and they leave when the president opens the debates. Mr. Roux was told that two fixed cameras will diffuse images to the public in the main courtroom, one taking images of the judges and the other one taking only images of the Charged person. The Defence asks that multiples images be taken, and that no camera be posted permanently on the Charged person.

Regarding the interpretation, François Roux requests that interpreters be given breaks every 20 minutes, as done in other international tribunals. He also mentions that interpreters should translate in only one way, e.g. from French to Khmer but not also from Khmer to English. While attending a workshop with interpreters at the International Criminal Court, he was told that even with highly qualified interpreters, 25% of the speech is lost in translation. He also reminds that everybody should make an effort to speak slowly.

As for the translation, François Roux mentions that there are still problems that need to be solved. He tells the Court that the French translations of the amicus curiae briefs he has received were not acceptable. He says he would be grateful to the judges if they can ask the Administration to take the appropriate measures in order to ensure professional interpretation and translation.

In order to assist the interpreters in their work, he suggests that by Monday night, the Co-Prosecutors and the Defence co-lawyers hand out a summary of their oral submissions, so the interpreters will be able to familiarise themselves with the vocabulary they will employ at the hearing.

In response to the Defence's requests, Robert Petit says that the Co-Prosecutors will endeavor to give a summary to the interpreters and that he will make an effort to speak more slowly.

He agrees with the Defence co-lawyers that the Office of Administration should be asked again to provide a better quality of interpretation and translation.

The Co-Prosecutors have no objection to cameras being present in the courtroom, within the framework proposed by the Defence.

With regards to the first issue raised by the Defence co-lawyers, Robert Petit mentions that the Co-Prosecutors have received a first request from the Defence to expunge from the Court record declarations made by the Charged person. To his knowledge, the Co-Prosecutors did not receive a second request. He understands that the Defence wants

some parts of the Co-Prosecutors' Response to be expunged from the Court record and does not agree with this. Noting that the investigation is secret, he adds that the deliberations of the judges are also secret. He suggests that on the 20th, the President should remind the parties of the necessity of keeping some parts of the record confidential and not accessible to the public. He believes that it is possible to have both a fair trial and protect the confidentiality of the investigation.

Judge Lahuis says that it is her understanding that the Co-Prosecutors have already agreed to the Defence's request, that they have removed sentences from their Response but that the Co-Prosecutors' Response has not been published yet.

Robert Petit responds that the Co-Prosecutors were asked by the Pre-Trial Chamber whether they would agree to remove certain passages of their Response for publication on the website but not as part of their official response.

Judge Lahuis replies that it was a proposition made by the Pre-Trial Chamber, for references were made to the Introductory Submission, which is not public.

Robert Petit says that the Co-Prosecutors have agreed to remove some passages of their Response for publicity, but he adds that the Court record should stay as is.

Chea Leang adds, with regards to the Defence's request to redact additional parts of the Co-Prosecutors' Response, that the Co-Prosecutors want to maintain the source of the information because the Court should be informed of these facts.

Chea Leang asks for clarifications regarding the document submitted by the Court titled "Conduct of criminal proceeding".

The President explains that the Report of examination will first be read. The President will ask the Charged person whether he wants to respond to the report, and then he will ask the Charged person some questions. Afterwards, there will be a stage of debates between the lawyers, in the following order: Defence, Co-Prosecutors, Defence. At the end, the Charged person will be allowed to say a final word.

Chea Leang asks whether the Co-Prosecutors will be allowed to speak again.

The President responds that the judges will decide when the debates will end and that the Charged person will be allowed to make the final conclusion.

Chea Leang says that according to Rules 13 and 22, the Co-Prosecutors are entitled to delegate their rights to their deputies. She adds that a lot of hearings are coming up and that the deputies could be very helpful. She asks the Court to accept the Co-Prosecutors' delegation of powers to their deputies and senior assistants.

The Defence co-lawyers make no remarks on this issue.

Robert Petit announces that the Co-Prosecutors will file a notification for delegation of powers for the hearing of 20 November 2007. He adds that the Rules allow the Co-Prosecutors to delegate their powers to the deputy prosecutors or their senior assistants and that this is important to ensure the efficiency of the court. Since the next plenary session will take place in January and the hearing of 20 November 2007 will probably be the last before the plenary session, Robert Petit says that it will be useful for the plenary to have the opinion of the Pre-Trial Chamber on the interpretation of such rules and propose amendments. He seeks the guidance of the Pre-Trial Chamber on this matter.

The Co-Prosecutors filed a document titled "Co-Prosecutors' notification of delegation of powers pursuant to rules 13(1) and 13(4) of the Internal Rules", dated 15 November 2007, in Khmer and English.

Judge Lahuis says that the Co-Prosecutors' Response was signed by deputy prosecutors.

Robert Petit answers that it was signed in the absence of the Co-Prosecutors. They now ask to delegate their powers for the hearing.

François Roux declares that the Defence has no comments on the Notification of delegation of powers made by the Co-Prosecutors. However, the Defence asks to receive a copy of this document, and of any other document, in French, which is one of the Court's three official languages.

Regarding the sequential order for the oral submissions, the Defence agrees with the one suggested by the Court on the "Conduct of criminal proceedings". The Defence co-lawyers consider that they are entitled to be the last to speak.

François Roux says that he understands that the Co-Prosecutors want some declarations made by Duch before the Co-Investigating Judges to remain in their Response. The Defence agrees that the Co-Prosecutors keep quotations of the Introductory Submission but not declarations made to the Co-Investigating Judges, which should remain secret for the moment.

The President declares that the Pre-Trial Chamber wants the representatives of the Co-Prosecutors to remain the same for the hearing of 20 November 2007 but will consider their request for further hearings.

Judge Downing rectifies the remarks made by the President as translated by the interpreter and specifies that the Court will consider the application on the 20th, once the judges will have read the request filed by the Co-Prosecutors. He refers to Article 22 (2) (new) of the ECCC Law and rule 13 (4) b) of the Internal Rules and says that deputy prosecutors could have a different position from senior assistants.

Regarding the Conduct of criminal proceedings, the President says that in Cambodian procedure, the Co-Prosecutors will normally make the last conclusion, but, according to the Common Law system, the Defence should speak last. The judges will decide at the

end of the hearing if the floor was balanced between the parties and see if the Co-Prosecutors should be allowed to speak again.

François Roux asks the Court to maintain the order proposed in the Conduct of criminal proceeding, which complies with Cambodian and Civil Law.

Chea Leang mentions that the legal system which will be applied does not matter but adds that there is a risk that the debates never end if the parties make responses back and forth. She says that the Charged person should have the last word, not his lawyers.

The President declares that the Pre-Trial Chamber has jurisdiction to decide on that matter and will exercise it.

Robert Petit asks for clarification on the Court's expectations with regard to oral submissions.

Judge Downing specifies that according to rule 77(10) of the Internal Rules, the Report of examination will be limited to the facts and the decision on appeal. He adds that a summary of the written submissions by the parties would be appropriate and that there will be questions from the Court.

Robert Petit suggests that each party be granted a limited amount of time for oral submissions and then answer questions from the Court.

Kar Savuth suggests a one hour time limit for each lawyer of the parties.

Robert Petit says that 30 minutes for each party should be enough, but that the Co-Prosecutors want to be granted the same time as the Defence.

The President adjourns the hearing at 11h30.

The hearing resumes at 11h52.

The President declares that:

- the Co-Prosecutors' Request to amend their response is granted;
- the period for oral submissions will be the same for both parties;
- the Co-Prosecutors should provide a French translation of their Notification of delegation of powers;
- the Defence can respond to this Notification until 19 November 2007, at noon, in the Court's three languages.
- Both parties can file other documents, in the Court's three languages, until 19 November 2007, at noon.

Due to problems of translation, Judge Downing specifies that:

- the time limit for each party to address the Court will be two hours;
- the Defence can file a response to the Notification of delegation of powers until 19 November, at noon, in the Court's three languages; and
- any additional motions by a party should preferably be filed in the Court's three languages, this being a request rather than an order.

Kar Savuth asks whether it could be possible that the hearing not ends on 20 November 2007, for he has another hearing on the 21th.

The President responds that he cannot know the length of the hearing for the moment.

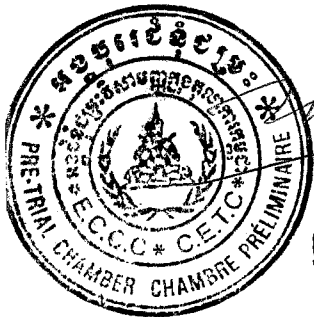
François Roux says that the Pre-Trial Chamber has not responded to his first request, regarding the publicity of the hearing. He would like to confirm whether the journalists will be entitled to take pictures and videos before the hearing and will be asked to leave when the hearing will begin. He also asks that the camera not be placed on the Charged person only, but rather take images of the whole courtroom.

The President confirms that the Pre-Trial Chamber has already agreed on these two requests.

The hearing is adjourned at 12h01 and will resume on 20 November 2007.

Phnom Penh, 20 November, 2007

President



PRAK KIMSAN

Chief Greffier

Greffier



Anne-Marie Burns

CHUON SOKREASEY