



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

អង្គជំនុំជម្រះសាលាដំបូង

Trial Chamber

Chambre de Première instance

**ឯកសារដើម**

ORIGINAL DOCUMENT/DOCUMENT ORIGINAL

ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/date de reception):  
..... 17 / 08 / 2009 .....

ម៉ោង (Time/Heure) : ..... 16:00 .....

មន្ត្រីទទួលបន្ទុកសំណុំរឿង / Case File Officer/L'agent chargé  
du dossier: ..... C.A. Riser .....

WRITTEN RECORD OF PROCEEDINGS - "DUCH" TRIAL

PUBLIC

Case File N° 001/18-07-2007-ECCC/TC

15 June 2009

Substantive Hearing - Day 27

Prepared by: DUCH Phary and Natacha WEXELS-RISER

**ឯកសារបានថតចម្លងត្រឹមត្រូវតាមច្បាប់ដើម**

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ថ្ងៃ ខែ ឆ្នាំ ថតចម្លង (Certified Date /Date de certification):  
..... 18 / 08 / 2009 .....

មន្ត្រីទទួលបន្ទុកសំណុំរឿង / Case File Officer/L'agent chargé  
du dossier: ..... C.A. Riser .....

<b>Attendance Record</b>
<b>Before:</b> Judge NIL Nonn (President), Judge Silvia CARTWRIGHT, Judge YA Sokhan, Judge Jean-Marc LAVERGNE, Judge THOU Mony.
<b>Reserve Judges:</b> Judge YOU Ottara (Reserve) and Judge Claudia FENZ (Reserve)
<b>Greffier/s:</b> Mr. Matteo Crippa, Mrs. Se Kolvuthy, Ms. Natacha Wexels-Riser, Mr. Duch Phary.
<b>OCP:</b> Mr. William Smith, Mr. Yet Chakriya, Mr. Pich Sambath, Mr. Zachery Lampell, Mr. Pak Chanlino.
<b>Accused:</b> Mr. Kaing Guek Eav alias Duch.
<b>Defence for the Accused:</b> Mr. Kar Savuth (morning only), Mr. François Roux, Mrs. Marie-Paule Canizares; Mrs. Héleyn Uñac, Mr. Chan Ravuth, Ms. Lucile Nattiez.
<b>Lawyers for the Civil Parties:</b> Ms. Silke Studzinsky, Mr. Kong Pisey, Ms. Moch Sovannary, Mrs. Elisabeth Rabesandratana, Ms. Ty Srinna, Mr. Alain Werner, Mr. Hong Kim Suon.
<b>Courtroom Officer/CMS:</b> Mr. Kouv Keoratanak;
<b>Others:</b> Mr. Scott Bywater, Mr. Pierre Cozette, Mrs. Maryvonne Moussounda Maniacky, Mr. Meach Sovanna.



<b>General court times</b>		
Day	Start time: 9:15	Finish time: 16:25
Recess am	Start time: 10:35	Finish time: 11:05
Recess	Start time: 12:05	Finish time: 13:35
Recess pm	Start time: 14:50	Finish time: 15:15
	Total Court Time:	4 hours and 45 minutes

<b>Proceedings</b>			
Type of Issue	Raised By	Start time	Finish time
Pronouncement of the dispositive of the decision on the request for release	TC	9:15	9:21
Follow-up from the Trial Management Meeting	TC	9:22	9:29
Questioning of the Accused on the Functioning of S-21	TC	9:30	16:25
Acceptance of request by Pierre Olivier Sur for his assistant Jessica Finelle to attend the hearing	TC	15:30	15:30

**Summary of Proceedings:**

**Pronouncement of the dispositive of the decision on the request for release**

The Chamber pronounced the dispositive of its decision on the Accused's request for release (see below) and indicated that the full decision was available on the website of the ECCC.

**Follow-up from the Trial Management Meeting**

Further to the Trial Management Meeting held in closed session on 11 June 2009, the Chamber informed the public and the parties of the proceedings of the following:

First, the Chamber has noted that all parties are concerned about the time that will be needed to complete the presentation of evidence in the trial. The Chamber has noted that there are wide variations in parties' estimates of the time needed to complete the evidence. These range from August to December of 2009.

The Chamber is, therefore, reviewing its current tentative schedule to address these concerns so that the hearing can be completed as soon as possible while maintaining the fairness of the proceedings. The Chamber cannot yet announce an end date for the presentation of evidence, but it wishes to announce that it will adopt the practice of assigning speaking times to the parties. So far in the trial, the Chamber has permitted the parties to give their own estimates of time but this has not been altogether successful.



The Chamber will assess the time it thinks appropriate for the hearing of each witness on a case-by-case basis, but it wishes now to give an indication of the time it considers, generally appropriate for the questioning of witnesses and for the presentation of submissions so that the parties can prepare:

First the questioning of witnesses; generally, this will be 30 minutes for the Co-prosecutors, 40 minutes for all civil parties combined, and 40 minutes for the Defence. Secondly, submissions; the Chamber will permit between five and 10 minutes for the raising of questions and objections, and 5 minutes for responses.

The Trial Chamber will not permit lengthy dispute by the parties to these time estimates. The distribution of the 40-minutes speaking time among the civil parties lawyers is for them to decide; however, the Chamber suggests, as a possible method, that the four civil party groups assign one Cambodian and one international lawyer with the responsibility for the questioning of each witness on behalf of all civil parties. The Chamber emphasizes, however, that this is a suggestion only for the efficient use of the 40-minutes time allocation.

The Chamber wishes to modify its sitting days to allow an additional day each month when the trial will not be proceeding. At this point, the Chamber wishes to explain to the public, and emphasize, that a large proportion of its work is done outside of the courtroom. This involves preparation for the trial, deliberations, drafting and translation of decisions, discussion of trial-management issues and other matters. These cannot be satisfactorily attended to in the time left before, during, and after hearings.

Finally, the Chamber notes that civil party lawyers have raised concerns about poor working conditions, lack of financial support, and the availability of some from August 2009 onwards. A representative of the Office of Administration was present at the trial-management meeting, and took note of the first two concerns which are obviously outside the jurisdiction of the Chamber. With respect to the third concern, that of availability of Civil Party lawyers from August onwards, the Chamber will liaise with the Victims' Unit to ensure that any possible unavailability of lawyers does not jeopardize the smooth continuity of the proceedings.

#### **Questioning of the Accused on the Functioning of S-21**

The Chamber questioned the Accused on the functioning of S-21, in particular on the arrest of individuals, the allocation of cells and conditions of detention, including of foreigners, women and children.

#### **Acceptance of request by Pierre Olivier Sur for his consultant Jessica Finelle to attend the hearing**

The Chamber announced its decision to allow a legal consultant for Civil Party Group 4, Jessica Finelle, to attend the hearing on behalf of this group.

#### **Record of Rule 87.3 Proceedings**



TC Ref Number	OCIJ Ref Number	Name/Description	Class. (S, C or P)	Remarks
E3/230	D57	Co-Prosecutors' Request to admit S21 Prisoner Lists relevant to proving the number and type of victims killed at the S21	P	00172366-00172367
E3/231	IS 14.3	S-21 Notebook by MAM Nai alias Chan	P	00077661-00078056, 00184579-00184618,
E3/229	D69 Annex A	Vietnamese archival footage of the discovery of Office S-21 (Clip 2)	P	V00172621. Already in E3 folder.
E3/232	D45/1/2	Photo album containing photos used in presentation, photos 39 to 50	C	00195373-00195377, 00189128-00189130 00360015-00360100
E52/4.62	NA	Annex 62: Some files on foreigners who were detained or killed by the Khmer rouge at S-21	P	00320844-00320845
E68.8	NA	Annex 8: Percentage of Men, Women and Children at S-21	P	00331261
E68.7	NA	Annex 7: S-21 Prisoners Identified as Children	P	00331257-00331260
E3/233	D42/1/4	Duch's Note on Document ERN 00006728	P	00197738-00197738
E68.6	NA	Annex 6: S-21 Prisoners Identified as Women	P	00331192-00331256

**Oral Orders/Decisions:**

- **Decision on the request for release (dispositive)**

**The Trial Chamber:**

**DENIES** the request for release;

**ORDERS** that the Accused shall remain in provisional detention for the duration of the trial;

**FINDS** that the detention of the Accused by the Military Court was an error of application of procedural law, a violation of his rights, and that therefore the detention was unlawful;

**DECLARES** that the Accused, under international law and the law of the Kingdom of Cambodia, is entitled to a remedy for the time spent in detention under the authority of the Military Court and the violation of his rights;

**NOTES** that the Accused, in the event of acquittal, may seek appropriate remedies.



spent in detention at the Military Court and for the violation of his rights before the national courts of Cambodia;

**DECLARES** that, in the event of conviction before the ECCC, and applying Article 503 of the Cambodian Code of Criminal Procedure, the Accused is entitled to credit for the time served in detention under the authority of the ECCC, namely since 31 July 2007;

**DECLARES** further that, in the event of conviction before the ECCC, the Accused is entitled to the remedy of credit for the time spent in detention under the authority of the Military Court, namely from 10 May 1999 to 30 July 2007;

**RESERVES** the question of the nature and extent of the additional remedy in consequence of the violation of his rights to the Chamber's determination of sentence, if applicable.

- Order to take the Accused to the Detention Facility and bring him back to court for the Hearing on 16 June 2009.

#### Orders for Adjournment of Hearing

Adjournment of Hearing: The hearing will resume on Tuesday, 16 June 2009 at 9:00.

Phnom Penh, 15 June 2009  
Greffier



DUCH Phary  
WEXELS-RISER