



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

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

អង្គជំនុំជម្រះសាលាដំបូង

Trial Chamber
Chambre de Première instance

ព្រះរាជាណាចក្រកម្ពុជា

ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia
Nation Religion King

Royaume du Cambodge
National Religion King

ប្រកាសដើម	
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL	
ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/Date de réception):	07 / 1 / APR 2009
ម៉ោង (Time/Heure):	14:00
មន្ត្រីទទួលបន្ទុកឯកសារ (Case File Officer/L'agent chargé du dossier):	C.A. JMY

WRITTEN RECORD OF PROCEEDINGS - "DUCH" TRIAL

Case File N° 001/18-07-2007-ECCC/TC

1 April 2009

Substantive Hearing - Day 3
Public

Prepared by: Matteo CRIPPA and DUCH

ប្រកាសច្បាប់ចម្លងត្រឹមត្រូវតាមច្បាប់ដើម	
CERTIFIED COPY/COPIE CERTIFIÉE CONFORME	
ថ្ងៃ ខែ ឆ្នាំ ត្រឹមត្រូវ (Certified Date/Date de certification):	08 / 1 / APR 2009
មន្ត្រីទទួលបន្ទុកឯកសារ (Case File Officer/L'agent chargé du dossier):	C.A. JMY

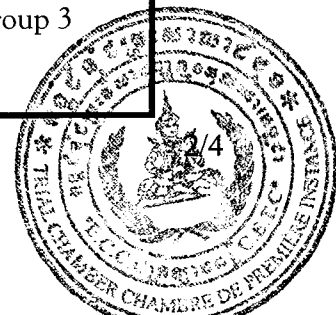
Attendance Record
Before: Judge NIL Nonn (President), Judge Silvia CARTWRIGHT, Judge YA Sokhan, Judge Jean-Marc LAVERGNE, Judge THOU Mony.
Reserve Judges: Judge YOU Ottara (Reserve) and Judge Claudia FENZ (Reserve)
Greffier/s: Mr. Matteo Crippa, Mr. Lim Suy Hong, Ms. Natacha Wexels-Riser, Mr. Duch Phary, Mrs. Se Kolvuthy.
OCP: Chea Leang, Mr. Robert Petit, Mr. Yet Chakriya, Mr. William Smith, Mr. Tan Senarong, Mr. Pich Sambath, Mr. Alex Bates, Mr. Pak Chanlino, Stuart Ford;
Accused: Mr. Kaing Guek Eav alias Duch.
Defence for the Accused: Mr. Kar Savuth, Mr. François Roux, Mrs. Héleyn Uñac, Mr. Kar Savuth, Mrs. Marie-Paule Canizares, Ms. Virginie Charpentier, Ms. Lucile Nattiez.
Civil Parties: [REDACTED]
Lawyers for the Civil Parties: Mr. Hong Kimsuon, Mr. Kong Pisey, Mr. Yung Phanit, Ms. Silke Studzinsky, Mrs Martine Jacquin, Mr. Pierre Olivier Sur, Ms Moch Sovannary, Mr. Kim Mengkhy, Ms. Ty Srinna, Mr. Alain Werner.
Courtroom Officer/CMS: Mr. Rada Sann.
Others: Mr. Scott Bywater, Ms. Julie Masse, Mr. Pierre Cozette, Ms. Marivonne Moussounda Maniacky.

General court times

Day	Start time: 09:10	Finish time: 16:15
Recess am	Start time: 09:50	Finish time: 10:35
Recess	Start time: 12:05	Finish time: 13:50
Recess pm	Start time: 14:50	Finish time: 15:10
	Total Court Time:	4 hours, 15 minutes

<u>Proceedings</u>			
Type of Issue	Raised By	Start time	Finish time
Parties Requests and Agreement of Facts	Civil Party Lawyers, Defence and Co-Prosecutors	09:10	10:35
Response to the Opening Statement by the Co-Prosecutors/Clarification	Defence	10:35	10:40
Request for the Release of the Accused	Defence	10:40	14:05
Reading of Agreement of Facts	Co-Prosecutors and Defence	14:05	16:15

<u>Summary of Proceedings:</u>
<p><i>Parties Requests and Agreement of Facts</i></p> <p>The Chamber directed the Civil Party Lawyers to follow the chronological order of their groups and identify themselves when addressing the court.</p> <p>Civil Party Lawyers for Group 1, 3 and 4 requested clarification on the scheduling of the trial and concerning the list of factual topics indicated by the Trial Chamber. The Lawyer indicated that most of the civil parties coming to speak before the Court do not concern any of these topics and sought clarification on the scheduling of their hearing for organizational purposes.</p> <p>Civil Party Lawyer for Group 2 referred to the opening statement given by the Co-Prosecutors and the response by the Accused and his Defence Lawyers and indicated that Civil Parties, should be granted the right to respond to these submissions. She indicated that this request is an amended request from that previously presented for the civil parties to make an opening statement.</p> <p>The Defence indicated that a document containing the agreement of fact has been filed with the court and could be distributed to the public. The lawyer also indicated that, if the Chamber wished to do so, the whole document could be read in court. The Co-Prosecutors agreed with the Defence. Civil Party Lawyer for Groups 2 and 4 indicated that they would prefer filing of the document in the case file, while the Civil Party Lawyer for Group 3 requested it to be read in court.</p>



After deliberation, the Trial Chamber ordered the Co-Prosecutor to read their agreement of facts, limited to the agreed and non disputed facts.

Response to the Opening Statement by the Co-Prosecutors/Clarification

The Defence submitted that the arguments made during the response to the opening statement of the Co-Prosecutor did not intend to be a challenge to the jurisdiction of the court, but only made comments for the consideration of the Chamber.

Request for the Release of the Accused

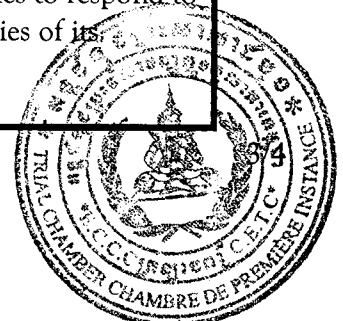
The Defence requested that the Accused be released by the Trial Chamber. The Defence submitted that the Accused was arrested on 10 May 1999 by the authorities of the Kingdom of Cambodia and transferred before the Military Court. He remained in detention before this court until July 2007 when the Co-Investigating Judges of the ECCC issued a warrant of arrest and transfer before the ECCC. The Defence submitted that the Accused should be released on the basis that under both national and international law it was not possible to maintain him in detention for such long time. The Defence indicated that under Cambodian Law, provisional detention for the crimes against the Accused should not exceed 3 years and therefore any time limits provide for by Cambodian law have expired.

Defence clarified that they request the release of the Accused for the duration of the trial and that he be kept in a safe house as well as under any other conditions as set by the Chamber. If the request is denied, the Defence requested that the Chamber declares that, in case of conviction of the Accused, the period of detention before the Military Court will be taken into account and, in addition, that he will be entitled to a reduction of any sentence in lieu of compensation for the breach of his rights.

The Co-Prosecutor indicated that the Defence request is not new and that this issue has already been dealt with by the Co-Investigating Judges and by the Pre-Trial Chamber. She also stated that the ECCC, due to its mixed features, is an independent institution from the Military Court and it is not bound by this Court's previous decisions. The prior detention of the Accused before the Military Court was not requested by the Co-Prosecutors and therefore is not relevant before the ECCC and cannot be taken into account. In addition, she indicated the following: that there has been no change in circumstances from the issuing of the Pre-Trial Chamber Decision currently disposing for the detention of the Accused; that there is a risk for the Accused to flee and the proceeding to continue in absentia; and that there is an issue for the safety of the accused person, because his release might trigger retaliation from victims and this can also cause disruption of public order. The Co-Prosecutor therefore requested that the detention of the Accused continue and that any request for reduction of any sentence be considered by the Chamber.

All Civil Party Lawyers requested to make submissions on the Defence request due to their role in the proceeding.

Trial Chamber indicated that it will consider the requests by the Civil Parties to respond to the Defence request for the release of the Accused and will inform the parties of its decision on Monday, 6 April 2009.



The Defence indicated that the Civil Parties are requesting the Chamber to revise Rule 82(2) and (3) and stated that only the Plenary Meeting has the power to modify procedural rules. The current provisions of this rule indicate that civil parties do not have a right to intervene in issues concerning the release of the Accused.

Reading of Agreement of Fact

The Co-Prosecutors read the document containing the agreement of fact (E5/11/2) and indicated which specific factual allegations are agreed upon or not disputed by the Defence. The Defence confirmed each of the mentioned agreed or not disputed allegations.

Oral Orders/Decisions:

- 1 - After deliberation, the Trial Chamber orders that the Co-Prosecutor and the Defence to read the agreement of facts, limited to the agreed and non disputed facts.
- 2- Order to take the Accused to the Detention Facility and bring him back to court on 6 April 2009.


Orders for Adjournment of Hearing

Adjournment of Hearing: Hearing will resume on Monday, 6 April 2009 at 9:00.

Phnom Penh, 1 April 2009

Greffier

Greffier

Matteo CRIP  CH Phary