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អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា  
Chambres Extraordinaires au sein  
des Tribunaux Cambodgiens

ការិយាល័យសហចៅក្រមស៊ើបអង្កេត  
Office of the Co-Investigating Judges  
Bureau des Co-juges d'instruction  
សំណុំរឿងព្រហ្មទណ្ឌ  
Criminal Case File /Dossier pénal  
លេខ/No: 002/14-08-2006  
លេខស៊ើបអង្កេត/Investigation/Instruction  
លេខ/No: 001/18-07-2007-ECCC-OCIJ

ព្រះរាជាណាចក្រកម្ពុជា

ជាតិ សាសនា ព្រះមហាក្សត្រ

Royaume du Cambodge  
Nation Religion Roi

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កំណត់ហេតុនៃការចុះធ្វើការស៊ើបអង្កេតដល់កន្លែងកើតហេតុ  
**Report of Reconstruction**  
**Procès verbal de transport sur les lieux**

In the year two thousand eight, on twenty sixth February, at 8 a.m,

Noting the investigation opened against **Kaing Guek Eav** alias **Duch**, charged with Crimes Against Humanity and Grave Breaches of the Geneva Conventions of 12 August 1949, crimes defined and punishable under Rules 5, 6, 29 (new) and 39 (new) of the Law on the Establishment of the Extraordinary Chambers, dated 27 October 2004,

Noting Rule 55(8) of the Internal Rules of the Extraordinary Chambers,

Noting the *Ordonnance de transport* dated 21 February 2008,

We, **You Bunleng** and **Marcel Lemonde**, Co-Investigating Judges of the Extraordinary Chambers in the Courts of Cambodia,

Assisted by Mr. Ham Hel ហាម ហ៊ែល and Mr. Ly Chantola លី ច័ន្ទគុណ, Greffiers,

And by Mr. Tanheang Davann តាន់ហ៊ាង ដាវ៉ាន់ and Mr. Ouch Channora អ៊ូច ចាន់ណូរ៉ា, who are sworn interpreters of the Extraordinary Chambers,

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Made an on-site visit to the Cheung Ek Memorial, 15 km to the south-west of Phnom Penh, in Kandal province.

At Cheung Ek, we were joined by:

- Ms Chea Leang ជា លាង and Mr. Robert PETIT, Co-Prosecutors of the Extraordinary Chambers,
- Kaing Guek Eav កាំង ហ្គេកអ៊ាវ alias Duch ឌុច, assisted by his lawyers, Mr. Kar Savuth កាវ សាវុត្តិ and Mr. François Roux,
- Witnesses MEAS Peng Kry, HIM Huy, CHHUN Phal, and TAY Teng.

Expert Zoran LESIC, designated by means of the *Ordonnance* dated 12 February 2008, was also in attendance for the purpose of his report, and he took the photographs featured to the present Report (Annex 1).

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1. During the roll call, the Charged Person [Photograph No.1] stated that he knew only HIM Huy among the four witnesses. HIM Huy [Photograph No.2] stated that he knows DUCH. Witness MEAS Peng Kry [Photograph No.3] stated that he has never met him, but knew him by face. As for CHHUN Phal [Photograph No.4] and TENG Tay [Photograph No.5], they declared that they do not know the Charged Person.

2. Witnesses CHHUN Phal and TENG Tay stated that they were returning to the Cheung Ek site for the first time. MEAS PENG KRY stated that he has returned there once, last year, for a film with HIM Huy. The latter indicated that he had returned to the site several times, including in the eighties, at the invitation of journalists and NGOs.

3. At the entrance to the site, the participants were invited to describe what they knew regarding the procedure for the transport of prisoners and their processing on arrival.

3.1 Witness MEAS PENG KRY explained that initially, he came to Cheung Ek to deliver wood for building a wooden house: he brought the wood, off-loaded it and left. Subsequently, he did the same with prisoners. He used the same road which still in place today (it was not paved then and was in a very poor condition) and entered Cheung Ek through the current entrance [Photograph No. 6] and parked his truck close to where the flag pole now stands [Photographs 7 and 8]. He would leave after the guards had received the prisoners. He stated that he came to Cheung Ek “only once or twice”; the reason is that after having an accident (he fell asleep while driving the truck, the truck rolled over near the Wat Sleg [pagoda]; there were no prisoners on board), he was sent to Prey Sâr at HIM HUY’s request, to work in the rice field and no longer transported prisoners to Cheung Ek after that. According to him, the vehicles had registration plates, but he no longer remembers the numbers (CHHUN PHAL confirmed that two 4-wheel drive trucks had “S-21” registration plates).

3.2 Witness HIM Huy stated that he usually arranged the transport of prisoners between 8 a.m. and 9

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p.m. They would arrive with their hands tied in their backs, and remained blindfolded until the eleventh hour, and were kept in the house before being sent away for execution. He indicated that the number of arrivals of trucks varied between one week and one or two a month. He added that he was not the only one in charge of transport.

3.3 Witness TENG TAY confirmed that he was assigned to guarding prisoners and that he was present whenever they arrived.

3.4 Witness CHHUN PHAL said that he could not speak to the transport of prisoners, because he was a guard at S-21, but not here.

3.5 The **Charged Person** stated that he had no comments about these witnesses' accounts.

4. The participants were then invited to proceed to the wooded house where the prisoners were kept before execution [Photograph No. 9].

4.1 Witness MEAS PENGKAY pointed to the place where the shack was stood [Photograph No. 10] and added that it was about 4 m x 8 m in size and was two-storeyed (ground floor and 1<sup>st</sup> floor).

4.2 Witness TENG TAY was somewhat disoriented by the changed surroundings, but he did identify the area where the wooded shack stood then. He stated that the generator was near the booth, which is still in place [Photograph No. 11]. According to him, the prisoners did not stay in the house for very long before being executed. He explained that he would have a list for recording those who arrived and those to be sent away for execution, so as to make sure that none of them was lost. He estimated that at any given time, there were anywhere between 20 to 30 prisoners, but was not quite certain about this.

4.3 Witness HIM HUY stated that there were 50 to 60 prisoners any given time, and that they spent one hour utmost at this location. He confirmed that a list was drawn up when the prisoners arrived and was checked against the one at S-21. This took 30 minutes to one hour. Upon returning to S-21, HIM HUY would report back to SUOS Thy.

5. The participants were then invited to proceed to the area where the executions were carried out [Photograph No. 12].

5.1 Witness HIM HUY recognized the locations of the palm tree [Photograph No. 13] and the Chinese cemetery [Photograph No. 14], which he mentioned in Rithy Panh's film "S-21".

5.2 Witness CHHUN PHAL stated that he had been to this place only once, in 1978, to bury corpses. He indicated that the corpses he buried were of people who were already dead, but he did not know their number, because it was dark and he did not count them. He added that "he did the digging during the day and the burials at night". He stated that he does not remember the exact location of the grave he dug, and that he could not quite remember the Chinese cemetery.

5.3 Witness TENG TAY stated that he was having difficulty identifying exact locations, because the trees have since grown much taller.

5.4 Close to the location where skeletal remains of children were found [Photographs 15 and 16], the witnesses all stated that they never saw children at Cheung Ek: TENG TAY – who indicated that he worked at S-21 for five to six months in 1978 until the liberation – remembers seeing women and men arriving, but not children. He added the women and men were executed and buried at the same place. MEAS PENG KRY also averred that he did not see any children. CHHUN PHAL stated that none of the corpses he buried were of children. HIM HUY confirmed that he never saw any child prisoners being transported, but he remembers that he was not the only one in charge of transport. He added that children were executed at S-21 and that PENG was in charge of that. The **Charged Person** stated that

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the children who were arrested were killed at Cheung Ek or at S-21. He added that he was not aware of tree trunks being used to kill children [Photograph No. 17] and that he personally never gave any orders to this effect, but found the proposition plausible.

6. The participants then gathered **around the grave** where, according to HIM HUY, DUCH came to observe executions [Photograph No. 18].

6.1 Witness **HIM HUY** was inconsistent in his account of the number of times Duch came to this location: after stating that Duch did so “once in a while”, he then said that he did not remember how often, “but at least twice”. He then went on to describe “one” visit by **DUCH** and **HOR**, saying that, while he was in the house working on the lists, **DUCH**’s messenger came looking for him; he then went to the grave while **DUCH** was sitting there smoking a cigarette. He clearly remembers the place where **DUCH** asked him “if he was determined”, and he once again stated that he then grabbed a metal bar and used it to kill. As it was not quite clear how many prisoners he executed in this manner, he explained that **DUCH** ordered him to kill only one prisoner, since the others had been executed by the group led by **TENG TAY**, and that this was not the day when **HOR** ordered him to kill four prisoners.

6.2 The **Charged Person** rejected this account outright. Duch averred that he never went to the location referred to by **HIM HUY** and repeated that on the occasion of his only visit to Cheung Ek, he remained close to the house and was there for only a few minutes there; he returned to Phnom Penh on the pretext that his telephone was not working properly. He asserted that when **HIM HUY** was arrested and imprisoned for 10 months, he [**HIM HUY**] feared that he could be considered as the head of S-21; he thus lied about it and “continues to do so for the sake of protecting his reputation”. **HIM HUY** stood by his account.

6.3 Witness **TENG TAY** averred that he was not aware of the scene described by **HIM HUY**, because “he was inside the house”. He affirmed that he did not see **DUCH**, but only Comrade **HOR**: it may very well be that **DUCH** came to Cheung Ek without being seen by him, but he did not hear anyone say that he did.

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7.1 The participants were then invited to describe **their respective roles** at Cheung Ek.

7.1 The following is Witness **HIM HUY**’s account of what he knew regarding the then hierarchy: **DUCH** was **HOR**’s supervisor; **HOR** was **PHAL**’s supervisor; **PHAL** was **PENG**’s superior; **PENG** was **BOU**’s supervisor. **HIM HUY** stated that **HOR** instructed him to appoint a group to be in charge of Cheung Ek. He said that he did not receive his instructions from **DUCH**, but rather from **HOR**, and that he would, in turn, pass the instructions on to **TENG TAY**. The group led by **TENG TAY**, which comprised eight people, was thus put in charge of Cheung Ek from 1977 until the liberation; he was in charge of receiving prisoners, digging graves and guarding and executing prisoners.

7.2 Witness **TENG TAY** confirmed that he was assigned to Cheung Ek by **HIM HUY** and that he received his orders from the latter, and that his duties consisted in receiving arriving prisoners, digging graves and filling them after the executions. After having asserted that when prisoners were sent to the mass grave “he was on duty at the house and did not know what happened”, he acknowledged that members of his group were in charge of the executions and that he personally carried out some of the executions; however, he explained that, “this was not a habitual task”.

7.3 The **Charged Person** stated that one company – with about 100 individuals – was charged with

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guarding and executing prisoners at Cheung Ek. Before HIM HUY arrived, there was one special unit; it was headed by ENG, who ranked higher than HUY. HUY was under PENG, and PENG was under HOR; according to him, the difference in rank makes HIM HUY's account of what really occurred at the edge of the mass grave unworthy of belief: DUCH had no reason whatsoever to personally put HIM HUY's loyalty to the test by asking him if he was determined, and urging him to kill people. Had HIM HUY not been performing the work expected of him, PENG would have reported this to HOR; HOR would have made a report to DUCH, and the latter would have transmitted the report personally to SON SEN; DUCH would have reprimanded HOR, but not HUY.

In concluding, DUCH reaffirmed that he takes responsibility for the activities at S-21, including the executions. He could not remember if the decision to transfer some executions to Cheung Ek was taken at his initiative or HOR's, but he added that no such decision could have been taken without his approval.

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After the re-enactment, all the participants left the site without incident at 12.15 p.m.

A audio- and video-recording of re-enactment was prepared and copies thereof were served to the Charged Person.

The original of the Report was written in both Khmer and French, and was then translated into English.

Done at Phnom Penh, on 11 April 2008

[Seal of ECCC]

[Seal of ECCC]

(signed)

(Signed)

Ly Chantola Ham Hel

Marcel Lemonde You Bunleng

Greffiers

Co-Investigating Judges

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